

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 PUBLIC HEARING

6 June 4, 2004

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10 In the Matter of Proposed Amendments)
11 to Commission Rules 4 CSR 240-3.020,) Case No.
 4 CSR 240-3.510, 4 CSR 240-3.520 and) TX-2003-0380
12 4 CSR 240-3.525)

13 In the Matter of Proposed Amendments)
 to Commission Rules 4 CSR 240-3.530) Case No.
14 and 4 CSR 240-3.535, and New Rules) TX-2003.0389
 4 CSR 240-3.560 and 4 CSR 240-3.565)

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 NANCY M. DIPPELL, Presiding,
 SENIOR REGULATORY LAW JUDGE.

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20 CONNIE MURRAY,
 ROBERT CLAYTON, III
 COMMISSIONERS.
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24 REPORTED BY:
 TRACY L. THORPE, CSR, CCR
25 MIDWEST LITIGATION SERVICES

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A P P E A R A N C E S

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P R O C E E D I N G S

JUDGE DIPPELL: My name's Nancy Dippell. I'm the Regulatory Law Judge assigned in this matter. And this is public comment hearing in the matter of the proposed amendments to Commission Rules, Case No. TX-2003-0380 and TX-2003-0389. The Commission Rules are 4 CSR 240-2.060 in the caption, 3.020, 3.510, 3.520, 3.525. And then in 389, the rules are 3.535 and 3.560 and 3.565

We've come here today for the public comment hearing and I've consolidated these hearings at this time, so I will take public comments on all of those rules. I'll go ahead -- since there are several attorneys present, I'm going to go ahead and let you make your entries of appearance. If you have comments, however, I will swear you in as a witness for the purpose of comments on the rules.

I'll go ahead and take entries of appearance, if you'd like. We'll begin with Staff.

MR. MEYER: Good morning. David Meyer for the Staff of the Public Service Commission. Also, Robert Berlin, I'll enter an appearance on his behalf. He's got other Commission business but may be here before the conclusion of the proceeding. Our address is PO Box 360, Jefferson City, Missouri 65102.

JUDGE DIPPELL: Mr. Dandino?

MR. DANDINO: Thank you, your Honor. Michael

1 Dandino, Office of the Public Counsel, Post Office Box 2230,
2 Jefferson City, Missouri 65102 representing the Office of
3 Public Counsel and the public.

4 JUDGE DIPPELL: Ms. MacDonald?

5 MS. MACDONALD: Good morning. Mimi MacDonald
6 representing Southwestern Bell Telephone, LP, doing business
7 as SBC Missouri. My business address is One SBC Center, Room
8 3510, St. Louis, Missouri 63101.

9 JUDGE DIPPELL: Are there any other attorneys
10 that wish to make an entry?

11 All right. Well, we'll begin then by taking --
12 I usually begin by taking comments in favor of the rules and
13 then we take comments opposed to the rules. If you have sort
14 of a mixed bag of comments, that's okay. You can begin with
15 your in favor and lead into your opposed. And I'll just go
16 ahead and ask if you'll come to the podium to make your
17 comments.

18 Let's begin then with comments in favor of the
19 rules in Case No. TX-2003-380 and 2003-389. Are there further
20 comments from Staff?

21 MR. MEYER: Yes. Staff would like to provide a
22 witness. Call Natelle Dietrich.

23 (Witness sworn.)

24 JUDGE DIPPELL: Thank you.

25 NATELLE DIETRICH testified as follows:

1 MS. DIETRICH: To start with, TX-2003-0380,
2 the proposed amendments to codify current filing requirements
3 for competitive companies and remove certain exemptions when
4 competitive companies seek authority to sell, assign, lease or
5 transfer assets or authority to merge or consolidate. Staff
6 filed written comments summarizing the proposed amendments and
7 supports those amendments as proposed and I'd be happy to
8 answer any questions on 0380.

9 JUDGE DIPPELL: Thank you.

10 Commissioner Murray, did you have any questions
11 for Staff?

12 COMMISSIONER MURRAY: Not at this time. Thank
13 you.

14 JUDGE DIPPELL: Commissioner Clayton?

15 COMMISSIONER CLAYTON: What rule -- which one
16 did you just testify on?

17 THE WITNESS: 0380, which is 3.020, 3.510,
18 3.520 and 3.525.

19 COMMISSIONER CLAYTON: No. Thank you.

20 THE WITNESS: Okay. Then on TX-2003-0389, the
21 proposed rules establish filing requirements for companies
22 ceasing operation within the state or within certain areas of
23 the state and it also includes requirements for companies
24 filing bankruptcy.

25 The proposed amendments remove certain

1 exemptions when competitive companies seek authority to issue
2 stocks bonds, notes and other evidences of indebtedness or
3 authority to acquire a stock of a public utility. Staff
4 supports the proposed rules and amendments.

5 Staff and SBC both filed written comments, and
6 Staff generally supports the comments and language suggested
7 by SBC but would like to take this opportunity to respond to
8 some of SBC's concerns.

9 In Section 4 CSR 240-3.535 SBC notes that it
10 appears to add an exemption as opposed to removing current
11 exemptions. It appears that there was confusion when the rule
12 was changed from the former Chapter 2 to the new Chapter 3
13 rules. That was approximately a year ago or so. And somehow
14 an exemption got added that should not have been.

15 The current 4 CSR 240-3.535 as was published on
16 March 31st, 2003 is correct and reflects the previous
17 Chapter 2. So Staff recommends that no changes to the
18 existing rule be made at this time and recommends the proposed
19 amendment be withdrawn and the existing rule remain in effect
20 as it currently is published.

21 In 4 CSR 240-3.560, SBC suggests the language
22 be modified to clarify that the rule is intended to apply to
23 companies that cease providing basic local or interexchange
24 telecom services in Missouri or in certain Missouri exchanges.

25 Staff agrees with SBC's proposed language. It

1 was the intent of the rule that the companies notify the
2 Commission when they either cease operation completely or
3 cease offering in a particular area, not every time a company
4 decides to cease providing a particular service.

5 SBC suggests the requirement to report the
6 bankruptcy of an affiliate be changed to reporting the
7 bankruptcy of a parent company. It is not clear to Staff why
8 affiliate does not also include the parent company. The
9 standard definition for affiliate that is used in various
10 Missouri PSC rules does include parent as one of the options.

11 Staff suggests that either adding the
12 definition to 4 CSR 240-3.565 or in, the alternative, taking
13 SBC's recommendation that the rule say parent only.
14 Regardless of the nature of the parent, the Commission needs
15 to be notified when a parent company files bankruptcy;
16 however, if the affiliate -- or also if the affiliate is a
17 telecom company, that it would be required to notify the
18 Commission of a bankruptcy under the rule as it currently is
19 proposed.

20 If the entity is neither a parent nor a
21 telecommunications company, there would be less of a need to
22 notify the Commission if the affiliate files bankruptcy
23 because it would not address the safety or reliability of
24 telecommunications services for a particular customer or group
25 of customers.

1 SBC suggests that 4 CSR 240-3.565(2) (A) be
2 modified to require a telecommunications company to file an
3 application for service authority or transfer of assets within
4 45 days after the bankruptcy court enters the order approving
5 the transfer of customers.

6 From previous experience, the activities seems
7 to occur much more quickly than the 45 days proposed by SBC
8 and often the companies have come to the Commission seeking
9 the authority prior to the final bankruptcy order and the
10 Commission, at times, has had to wait for the issuance of the
11 bankruptcy order to proceed.

12 So Staff would suggest modifying the language
13 to read, An application for service authority or application
14 for approval to transfer assets may be filed before, comma,
15 but shall be filed no more than 10 working days after the
16 effective date of the bankruptcy courts order approving the
17 transfer of the customers.

18 SBC also suggests that 4 CSR 240-3.565, Section
19 3, be modified to include a time frame to provide the
20 Commission with certain information regarding the disposition
21 of property, and Staff does not object to this suggestion.

22 And, finally, SBC also suggests that Section D
23 of 4 CSR 240-3.565(3) be modified to require the company to
24 provide a statement as to when facilities have been or will be
25 disconnected and removed from the premises of the other

1 telecommunications company, and Staff does not object to this
2 proposed clarification either.

3 And that ends our formal comments. I'll be
4 happy to answer any questions.

5 JUDGE DIPPELL: Thank you.

6 Commissioner Murray, do you have questions?

7 COMMISSIONER MURRAY: Thank you. On 240-3.565,
8 the language regarding where SBC had suggested within 45 days
9 after the bankruptcy court approves the transfer, what was
10 your language there that Staff proposed? I missed it all.

11 MS. DIETRICH: Okay. Some of it's part of
12 SBC's, but it's an application for service authority or
13 application for approval to transfer assets may be filed
14 before, comma, but shall be filed no more than 10 working days
15 after the effective date of the bankruptcy court's order
16 approving the transfer of customers. In other words, once the
17 order becomes effective, they would have an additional 10 days
18 if needed to file something with the State Commission.

19 COMMISSIONER MURRAY: Okay. And I'm sorry, I
20 was not quite following what you said about we sometimes have
21 to wait for the order.

22 MS. DIETRICH: There have been times where a
23 company has filed requesting authority from this Commission
24 and the bankruptcy order has not been issued yet or at least
25 has not been provided. And so the Commission at some point in

1 the recent past directed Staff to make sure that we had the
2 orders prior to making a recommendation, and that is now part
3 of our recommendation that we attach a copy of the order or at
4 least note that we have reviewed it.

5 COMMISSIONER MURRAY: Okay. And on 240-3.535
6 you're suggesting that we go back to the original -- we
7 withdraw this amendment and go back to the original language?

8 MS. DIETRICH: Correct. The amendment is
9 incorrect. And I went back and tried to track where it came
10 from and the Secretary of State's Office had called us and
11 asked us to add some language to make it in agreement with
12 what we were actually proposing. And when I went back and
13 tracked it further in addressing SBC's comments, I can't see
14 where it originally even came from. So I think we just need
15 to remove it altogether.

16 COMMISSIONER MURRAY: Okay. Thank you. That's
17 all I have, Judge.

18 JUDGE DIPPELL: Commissioner Clayton?

19 COMMISSIONER CLAYTON: My questions relate
20 solely to 4 CSR 240-3.565. And if at any point I ask a
21 question, I would say either you or Mr. Meyer could answer
22 because they may be more legal in nature regarding this
23 bankruptcy issue.

24 MS. DIETRICH: Okay.

25 COMMISSIONER CLAYTON: Is Staff satisfied

1 simply with being placed on notice of a bankrupt or should
2 Staff also receive copies of other documentation coming from a
3 bankruptcy court? Should that be made part of the rule? I
4 specifically refer to perhaps a Chapter 11 plan or a
5 disclosure statement. We've had those pop up in other cases,
6 so I guess I wanted to get a thought from you all whether
7 that's important or not or whether you should take that as a
8 case-by-case request?

9 MS. DIETRICH: I guess what we've been
10 operating with so far is the information in the rule, and it
11 allowed us -- when we found this information, it allowed our
12 legal department to go out and do the searches and find these
13 documents. As to whether we would like it filed or not, I
14 guess I would defer to legal counsel and see if it makes a
15 difference.

16 COMMISSIONER CLAYTON: Well, in your experience
17 do you receive -- in a bankruptcy setting do you receive
18 either electronically or paper versions of the disclosure of
19 Chapter 11 plan, which are basically the overall explanations
20 of how the case is going to be resolved, and do you even find
21 them important or not?

22 MS. DIETRICH: I personally don't.

23 COMMISSIONER CLAYTON: You have no appreciation
24 for the bankruptcy court.

25 David, what do you think?

1 MS. DIETRICH: I know we do have electronic
2 access to the documents in the bankruptcy proceeding.

3 MR. MEYER: I can only add that I wish that
4 Mr. Berlin was here. I think we've had this somewhat similar
5 discussion before and I think it was me covering for him then
6 too. Again, he's the one who receives the documents.

7 I know that he has provided me a couple of
8 copies along the way of some plans in some cases that I had
9 some interest in. I suspect that he does not get that in
10 every case. Typically the Commission should be made a party
11 and be put on mailing lists of entities where the Commission
12 is a creditor. However, in my own personal experience
13 representing the Commission, I've had to contact a couple of
14 bankruptcy trustees to get us on the mailing list. At that
15 point they put us on the mailing list and we start getting the
16 mail. And, again, it all goes to Mr. Berlin.

17 COMMISSIONER CLAYTON: That was going to be my
18 next question was whether under the requirements of --
19 notification or requirements of action under subsection 1
20 whether we should require being listed as a creditor in the
21 case so that theoretically you wouldn't have to go in and make
22 that request or file a motion pro hoc vici or whatever it is
23 to be placed on the mailing list. Do you have any feeling
24 regarding that?

25 MR. MEYER: I suspect they have a

1 responsibility to put us on the mailing list if they are aware
2 that we are a creditor. I think if we --

3 COMMISSIONER CLAYTON: They may or may not. I
4 guess the question is, should we also require it in this rule?

5 MS. DIETRICH: I know we had the discussion
6 when the rule was being drafted with the Commission and I
7 think the general feeling at that time was that most of the
8 bankruptcies are not something that we would necessarily want
9 to be entered in as a creditor because either, you know, they
10 didn't owe us anything or it was a smaller company or that
11 type of thing. And so to actually make it a rule requirement
12 was something that perhaps wasn't necessary and, like you said
13 earlier, do it on a case-by-case basis where we would actually
14 request it.

15 COMMISSIONER CLAYTON: And that's what you'd
16 prefer to do rather than have it be part of the rule? Don't
17 sugarcoat it now. Tell me what you think.

18 MS. DIETRICH: I'm thinking. I guess I
19 personally really don't have an opinion, but, you know --

20 COMMISSIONER CLAYTON: David, what do you --

21 MR. MEYER: I think I could probably express
22 Mr. Berlin's opinion in that he's probably concerned of
23 getting a deluge of mail from companies that owe us a dollar,
24 two dollars and -- rather than being able to focus on the
25 companies that owe us thousands and, of course, there are some

1 of those as well. So I suspect he would probably prefer
2 case-by-case basis.

3 COMMISSIONER CLAYTON: Does he handle all the
4 bankruptcy receipts or do you handle some of them or how are
5 bankruptcy filings divvied up or is the bankruptcy designation
6 irrelevant in how cases are divvied up in general counsel's
7 office?

8 MR. MEYER: Again, I'm speaking to a case that
9 I'm not assigned to, but as I understand it, there's sort of a
10 general bankruptcy monitoring case out there and all of the
11 filings that come through that case get directed, at least in
12 the general counsel's office, to Bob Berlin.

13 COMMISSIONER CLAYTON: Well, I know that you
14 have a certain affection for the bankruptcy code and that you
15 take it home over the weekends and peruse through it in your
16 off time just to get comfortable with the provisions.

17 MS. DIETRICH: If I might add --

18 MR. MEYER: There was a week there.

19 MS. DIETRICH: -- the general bankruptcy case
20 that he's referencing was a working docket that was originally
21 created when MCI filed bankruptcy and the Commission directed
22 Staff to monitor bankruptcy and just file a monthly status
23 report as to what companies have filed bankruptcy through the
24 past month. It contains things like what court and what
25 state, you know, if they have customers, things like that.

1 As part of that order establishing that case,
2 the Commission did direct Staff to file a follow-up report
3 once MCI was released from bankruptcy indicating, you know,
4 what action the Commission needs to take for future
5 bankruptcies to be aware of it. And so MCI was just recently
6 released by the bankruptcy court and has filed something here
7 at the Commission stating that and so Staff will be filing in
8 the near future with some recommendations on how to proceed.

9 COMMISSIONER CLAYTON: Well, the MCI case
10 certainly comes to mind. I mean, there were a couple of
11 transfers and name changes and things that came up or have
12 come up through the Commission that I think have been
13 indicative of a need to require filing electronically of the
14 disclosure statement.

15 That's a large document and I wouldn't expect
16 the parties to submit a 300-page paper document but since it
17 can be done electronically, that's why I was wondering, just
18 so that our Staff, so that you, so the general counsel's
19 office has that material so we can view our role and what the
20 bankruptcy court is sending out through the order confirming
21 the plan.

22 MS. DIETRICH: And in the MCI case, the
23 Commission did order MCI to file various documents and
24 quarterly status reports in this working docket and so they
25 have been doing it so we have received the information. And

1 like you said, it's all been done electronically so we do have
2 it.

3 COMMISSIONER CLAYTON: So I guess in conclusion
4 on this subject, Staff is satisfied with the filing
5 requirements of bankruptcy documents and that you don't see a
6 need of having an additional requirement of filing the
7 disclosure statement or perhaps the Chapter 11 plan or a
8 Chapter 7 plan of liquidation? Would you want those mandated
9 or do you want to leave that to a case-by-case?

10 MS. DIETRICH: I would say leave it to a
11 case-by-case, but if there was a decision to mandate it, to
12 clarify that it would be an electronic copy so we wouldn't be
13 inundated with paper.

14 COMMISSIONER CLAYTON: Wait a minute. You want
15 it mandated or you don't want it mandated?

16 MS. DIETRICH: I'm saying I don't think it's
17 necessary, but if the Commission were to decide that it was --

18 COMMISSIONER CLAYTON: I'm asking for your
19 first choice.

20 MS. DIETRICH: My first choice would be no.

21 COMMISSIONER CLAYTON: Your first choice is
22 don't mandate it. Then, second choice would be do it
23 electronically?

24 MS. DIETRICH: If the Commission mandated it,
25 then do it electronically.

1 COMMISSIONER CLAYTON: Are there any other
2 problems associated with companies filing bankruptcy that are
3 regulated by this Commission, any problems that have arisen in
4 terms of retrieving information that we should deal with in
5 this rule or could deal with this in rule?

6 MS. DIETRICH: I guess the biggest problem we
7 have is just being aware of it so that we can go out and
8 monitor it. And so this rule would require the companies to
9 tell us that they filed bankruptcy and provide us with the
10 information so that we could go out and monitor. So that
11 would be one hurdle.

12 COMMISSIONER CLAYTON: The federal court system
13 is also electronic and -- or at least accessible
14 electronically and you all are able to use as a PACER or RACER
15 or something like that is the acronym, you all are able to use
16 that with --

17 MS. DIETRICH: Right. And we also have a
18 subscription to a bankruptcy kind of collection or storage
19 area and that has since expired, but that is another option
20 that we can do -- use.

21 COMMISSIONER CLAYTON: Okay. The only other
22 question that I had relates to this definition of affiliate.
23 And I wasn't sure exactly where we were going in terms of a
24 definition of affiliate, what affiliate means in terms of
25 going up to a parent or down to a subsidiary or perhaps going

1 up and over like a sister organization. Is there a definition
2 of affiliate for telecommunication company purposes somewhere
3 in the rule -- in this rule or any rule?

4 MS. DIETRICH: There's nothing in this rule.
5 We do have in the affiliate transactions rule a definition of
6 affiliate, but it also includes other utilities. So, for
7 instance, for the CPNI rules, we took that definition and just
8 removed any reference to other utilities so that it was
9 telecom specific.

10 COMMISSIONER CLAYTON: So is this word
11 "affiliate" defined in the affiliate transaction?

12 MS. DIETRICH: Yes.

13 COMMISSIONER CLAYTON: It is. And does it go
14 up to a parent?

15 MS. DIETRICH: Yes.

16 COMMISSIONER CLAYTON: And does it go down to a
17 subsidiary?

18 MS. DIETRICH: Yes.

19 COMMISSIONER CLAYTON: Does it go to a sister
20 organization?

21 MS. DIETRICH: That I don't know.
22 Do you?

23 MR. MEYER: I'm just wishing that I would have
24 written down -- there's a definition of affiliate in
25 Chapter 14 and I don't think that is the affiliate transaction

1 rules. 14.010(6)(A) says, Affiliate shall include any person
2 who directly or indirectly controls or is controlled by or is
3 under common control with a public utility. So I think the
4 common control with probably addresses your question.

5 COMMISSIONER CLAYTON: Any person, I mean, that
6 could --

7 MR. MEYER: But, of course, person may be
8 corporate person.

9 COMMISSIONER CLAYTON: Sure. But that may take
10 in more than what I just suggested.

11 MS. DIETRICH: Uh-huh.

12 MR. MEYER: And I wish I would have written
13 what Chapter 14 was.

14 COMMISSIONER CLAYTON: Me too.

15 So you all are satisfied with that definition
16 of affiliate?

17 MS. DIETRICH: Yes. Chapter 14 is utility
18 promotional practices.

19 COMMISSIONER CLAYTON: On the record, we always
20 want to say thank you to our regulated entities who can help
21 out at these difficult times.

22 MS. DIETRICH: Affiliate shall include any
23 person who directly or indirectly controls or is controlled by
24 or is under common control with a public utility.

25 COMMISSIONER CLAYTON: Okay. You all are

1 comfortable with that

2 MS. DIETRICH: Uh-huh.

3 COMMISSIONER CLAYTON: Okay. Thank you all.

4 JUDGE DIPPELL: I believe that's all the
5 questions for you then. Thank you.

6 MS. DIETRICH: Thank you.

7 JUDGE DIPPELL: Okay. Are there additional
8 comments on the rules? Ms. MacDonald, did you have additional
9 comments you want to make?

10 MS. MACDONALD: I do.

11 COMMISSIONER CLAYTON: Do you want your book
12 back?

13 MS. MACDONALD: Good morning. As you know, SBC
14 Missouri filed written comments regarding proposed rules
15 4 CSR 240--3.530, 4 CSR 240-3.535 and new rules
16 4 CSR 240-3.560 and 4 CSR 240-3.565.

17 I would be happy to answer any questions that
18 you have about any of SBC's comments in these. In addition to
19 that, upon further reflection and discussions with Staff, we
20 have a few additional comments that we'd like to make.

21 Proposed Rule 4 CSR 240-3.565(1) requires a
22 telecommunications company to report on the bankruptcy of an
23 affiliate, but fails to require such notice when the parent
24 company of a local exchange company files bankruptcy.

25 Now, I know we've had some discussion today

1 exactly what we mean by that term "affiliate." And our
2 concern is that if you leave affiliate as broadly as it
3 appears currently to be defined, you are going to be inundated
4 with paperwork that you probably don't need to see.

5 For example, recently Delta Phones and Easy
6 Talk filed for bankruptcy. Delta Phones and Easy Talk are the
7 subsidiaries of a parent corporation named MNT Capital. MNT
8 Capital owns -- I couldn't specify exactly how many, but other
9 companies that are completely unrelated to telecommunications
10 companies, one of which makes a sugar substitute.

11 Under the proposed rule as written, you would
12 literally get filings if the sugar substitute company went
13 bankrupt. And I don't think that that was probably the intent
14 of the rule when it was proposed.

15 Therefore, we proposed the parent language.
16 But upon further reflection, we weren't completely convinced
17 that that would get all of the entities that you would want to
18 know about because we believe that you probably also want to
19 know about the parents of a parent corporation.

20 So at this time we're proposing language that
21 we believe will cover all of the entities that you do want to
22 know about and that language is as follows: Any
23 telecommunications company certificated in Missouri that files
24 bankruptcy or whose parent or any parent of its parent files
25 bankruptcy shall immediately after filing bankruptcy provide

1 to the Commission, A, a notice that the company or its parent
2 or any parent of its parent has filed bankruptcy; B, the
3 bankruptcy case number; C, the bankruptcy filing date; D, the
4 bankruptcy chapter number; and E, the bankruptcy court.

5 Regarding 4 CSR 240-3.565, subsection 2,
6 Missouri propose -- SBC Missouri proposed that a
7 telecommunications company be required to file an application
8 for service authority or for approval to transfer assets
9 within 45 days after the bankruptcy court enters the order
10 approving the transfer of customers.

11 The 45-day time frame that we proposed in our
12 comments was not chosen at complete random. Bankruptcy court
13 orders typically become effective 11 days after they're
14 entered. Moreover, when companies receive an order proving
15 the transfer of customers, that order may apply to customers
16 in all 50 states.

17 So after having discussed that problem with our
18 bankruptcy attorneys, they felt that bankruptcy attorneys that
19 are going to be required to make filings in as many as
20 50 states may need 45 days after the effective date. And that
21 was the way that we chose that time frame. So although we
22 think Staff's proposed language today was getting better on
23 the right track, we still think that some of those companies
24 may need a longer time period.

25 Proposed Rule 4 CSR 240-3.565, subsection 3,

1 requires a telecommunications company filing bankruptcy that
2 has telecommunications facilities that are located at the
3 premises of another telecommunications company to provide
4 certain information to the Commission.

5 SBC Missouri proposes that the
6 telecommunications company filing bankruptcy should provide
7 such information to the Commission within 75 days of filing
8 for the petition for bankruptcy relief. That recommendation
9 was based on two sections of the bankruptcy code, which I'm
10 not going to read to you because they're already contained in
11 my pleading and they're on page 5, but I wanted to clarify one
12 thing that I think has raised some concern.

13 When those sections that are on page 5 refer to
14 the date of the order for relief, that is the same as the
15 filing date for bankruptcy relief because as soon as you file
16 for bankruptcy, so long as it's a voluntarily bankruptcy, the
17 order automatically issues and you get bankruptcy relief. So
18 they're the same day. So to the extent that they -- those are
19 two different terminologies, it's still the same time frame
20 and we suggest 75 days.

21 And that is all the formal comments that we
22 have to make on this rulemaking, but I would be happy to
23 answer any questions that you have or discuss the implication
24 of these rules, because although we believe that 3.565
25 is on the right track to helping the Commission with companies

1 that are going bankrupt, although it's providing the
2 Commission with notice, it's not ordering the bankrupt
3 companies to do these things, for example, remove the
4 equipment. It's just providing the Commission with notice
5 that they're going to remove the equipment. So if you have
6 any questions about that, we'd be happy to answer them.

7 JUDGE DIPPELL: Commissioner Murray, do you
8 have questions?

9 COMMISSIONER MURRAY: Yes. Would you please
10 explain what you meant by your last comment?

11 MS. MACDONALD: Sure. Okay. If you look at
12 3.565, and specifically if you just turn to subsection D, it
13 says, A statement informing of the date when
14 telecommunications facilities have been or will be
15 disconnected and removed from the premises of the other
16 telecommunications company and disposed of properly. That's
17 the language that SBC is proposing.

18 And while we believe that that's on the right
19 track, all that language really requires the bankrupt
20 telecommunications company to do is to file this statement.
21 Then if they don't file this statement, I believe that they
22 would be in violation of a rule and then you could go down the
23 path of following the statutes and what would happen in a rule
24 violation.

25 But because we don't have a surety bond in

1 place for local exchange telecommunications companies, there
2 would not be any clearly easy way to get money out of that
3 telecommunications company to the Commission for violating an
4 order because they'd be in bankruptcy. And if they don't do
5 it, SBC Missouri would still be stuck with the equipment at
6 its premises and eventually we have to do something with that
7 abandoned equipment and we have to properly remove it.

8 And currently we've -- in the last four years,
9 we've had over 100 bankruptcies of CLECs. And we have cost
10 estimates that range anything from a few thousand dollars,
11 like seven or so thousand dollars, to remove the abandoned
12 equipment in a collocation cage to tens of thousands of
13 dollars depending on what the equipment is.

14 For example, one bankrupt company had towers on
15 top of one of our buildings. And in that -- the tower was
16 just like kind of you imagine outside when you're driving by
17 and it's lit up so the planes don't fly into it. Well, when
18 they went bankrupt, they abandoned their towers so the lights
19 weren't flashing. So the FAA became involved in that because
20 it was a safety hazard. But they had no money and eventually
21 SBC had to do something about the fact that there was a tower
22 on top of our building.

23 So while we believe this rule is going in the
24 right direction, you should be aware that this rule just is
25 requiring a statement that it's going to be done.

1 COMMISSIONER MURRAY: So the only way to cure
2 that is to have them -- require them to have a surety bond.
3 Is that your --

4 MS. MACDONALD: Well, I mean, I think that's
5 one way to cure it. I mean, the problem is without a surety
6 bond rule, which we had -- there was a proposed surety bond
7 rule and that rule just never came into effect.

8 And without having them have any money
9 deposited at the Commission, it -- I mean, although there are
10 ways to enforce the removal, it would seem to me that what
11 would happen would be that if the Commission said, Well, you
12 violated our rules, then the general counsel could institute
13 an action in the state court saying, you know, they should
14 be -- you know, this fine that we've imposed should be
15 enforced, but they have no money and the bankruptcy court
16 isn't going to let you do that because there's going to be a
17 stay in place.

18 And, frankly, I don't know even if you had a
19 surety bond rule, whether that would be a complete solution
20 because I don't know that the money that would be put aside
21 could be used. I mean, I'm just not such a bankruptcy expert
22 that I could completely tell you that as I stand here today.

23 COMMISSIONER MURRAY: When equipment is
24 abandoned on your premises now, are you restricted from what
25 you can do with that property for any period of time?

1 MS. MACDONALD: Well, we typically don't do
2 anything with the property for a period of time because the
3 problem is that creditors may contend that they have an
4 interest in that property. And a lot of times they've given
5 their assets as their assurance for doing whatever they've
6 agreed to do for a creditor.

7 And, I mean, the problem with the CLECs going
8 bankrupt is that for SBC, among other problems, is that these
9 creditors then want tours of our Central Office facilities so
10 that they can see the stuff in the collocation cage to decide
11 if they even want it. So it's not even just that the
12 equipment is there.

13 And in certain circumstances where we've had a
14 CLEC go bankrupt and a Central Office that has a lot of
15 facilities in it and another CLEC needs a collocation cage, we
16 have taken the equipment out and put it in storage. But then
17 again, that's another expense for SBC that isn't being paid by
18 the CLEC that went bankrupt.

19 COMMISSIONER MURRAY: And I show my ignorance
20 on bankruptcy law here, but is there any way that SBC can
21 become a creditor in the bankruptcy proceeding based on the
22 fact that there will be expenses resulting from it?

23 MS. MACDONALD: I'm sure we're a creditor in a
24 ton of these bankruptcy proceedings.

25 COMMISSIONER MURRAY: Well, I understand that

1 for the things that they literally owe you payments for, but
2 in terms of costs that you may have to incur as a result of
3 abandoned equipment --

4 MS. MACDONALD: Well, my understanding -- and I
5 don't profess to be a bankruptcy expert at all, but my
6 understanding is that the bankruptcy code does allow you to
7 abandon property, so that's a fundamental problem that we have
8 with the way bankruptcies are working.

9 But aside from that, I mean, I would assume
10 that they -- under the sections that I cited on page 5, they
11 would decide whether or not they were going to honor the lease
12 of the non-residential real property. And if they were going
13 to honor it, then theoretically they should either maintain it
14 or the provisions of whatever contract we had with regard to
15 the collocation space would apply.

16 COMMISSIONER MURRAY: Okay. And I may be
17 getting a little off track here, so I'm not going to go too
18 long with this, but I'm interested in this whole process. And
19 I'm wondering if the Telecommunications Act would allow an
20 ILEC in any of their interconnection agreements to provide for
21 a situation like this, what would happen if -- within so many
22 days after a bankruptcy of equipment is abandoned on your
23 premises? I mean, is that even allowed under the Teleco Act,
24 or do you know?

25 MS. MACDONALD: I have to believe that that's

1 not addressed. And the only reason why I'm saying that is
2 because I do know that our bankruptcy attorneys have advised
3 me that the bankruptcy code allows you to abandon property.
4 So if that were in the Act, I would think that our
5 interconnection agreements at this point would have attempted
6 to address that, but I'm not 100 percent sure on that. I
7 mean, we just know that it's becoming a larger and larger
8 issue for a variety of reasons, including the tours that I was
9 discussing and then what to do with all of the property.

10 COMMISSIONER MURRAY: Okay.

11 MS. MACDONALD: And just so it's really clear,
12 a lot of the property that's abandoned is not reuseable. So
13 even if we wanted to, we couldn't use it. It just needs to be
14 disposed of.

15 COMMISSIONER MURRAY: Okay. You're given
16 obligations under the Act, but you're not necessarily given
17 rights to counteract where you may be injured because of the
18 Act?

19 MS. MACDONALD: Well, I think that a lot of it
20 is just that -- I mean, perhaps people didn't understand how
21 many bankruptcies were going to result after the
22 telecommunications went into effect. I mean, if you think
23 about the fact that there's been over 100 in the last four
24 years, that's a lot of bankruptcies. And it keeps our
25 bankruptcy attorneys, you know, busy.

1 COMMISSIONER MURRAY: I have a question about
2 the 45-day time frame.

3 MS. MACDONALD: Uh-huh.

4 COMMISSIONER MURRAY: When there's a transfer
5 of assets approved, I guess that that would be different for
6 each state. There would be an approval to transfer -- or
7 would it be one approval from the bankruptcy court giving
8 permission to transfer all of the assets?

9 MS. MACDONALD: I think it could be either, but
10 I do know that, for example, we had one situation in
11 California where there was an application for service
12 authority filed by a CLEC and they wanted to transfer numerous
13 customers over to this to be newly formed CLEC.

14 And the California Public Utilities Commission
15 determined that they were not going to allow the new to be
16 CLEC to become a CLEC based on the fact that the Pennsylvania
17 Commission had already entered an order requiring the
18 individual owners of another CLEC to pay \$400,000 in fines and
19 those individual owners were the same people that were trying
20 to become a new CLEC in California. So then the problem
21 becomes, where are the customers? And, I mean, it's --
22 there's just no doubt it's a problem.

23 And I tried to think about how I could fix this
24 rule. And it's very difficult because I don't think that we
25 can put in the rule something about like the bankruptcy court

1 can only transfer customers to an entity that already is
2 allowed to provide service, because I would think that the
3 Missouri Public Service Commission couldn't tell the
4 bankruptcy court what to do. So, I mean, there's a number of
5 problems when you read these rules, but how to fix them is not
6 an easy answer.

7 COMMISSIONER MURRAY: Well, in terms of giving
8 notice or an application to transfer assets within each state,
9 do those applications have to be specific to the assets in
10 each state? In other words, are they going to be different
11 applications for each state?

12 MS. MACDONALD: Well, yeah, because the
13 bankruptcy court would enter an order and they would say, You
14 can serve these customers. But if the new -- if the CLEC
15 wasn't certificated in Missouri, for example, then they're
16 going to have to seek to become a provider in Missouri.

17 And let's say they were certificated in
18 10 states, then they'd still have 40 states, if they were
19 going to operate in all 50, in which they would have to apply
20 to become a service provider. And then in the 10 states where
21 they already did have a certificate of service authority, then
22 in those states they would have to file an application to
23 transfer assets, which would be the customer's.

24 COMMISSIONER MURRAY: And that is what you are
25 saying is impractical to --

1 MS. MACDONALD: Yeah.

2 COMMISSIONER MURRAY: -- consider that could be
3 done within 10 days after the effective date of the bankruptcy
4 is ordered?

5 MS. MACDONALD: Yeah. Our bankruptcy attorneys
6 just felt that there -- if it was a small bankruptcy, they
7 felt that that wouldn't be a problem. But if it was massive
8 bankruptcy where they had to make filings in as many as
9 50 states, they felt that the attorneys would need more time.

10 And, frankly, listening to Staff this
11 Morning -- I mean, I guess one way around it is you could
12 enter a 10-day requirement and under the Commission rules they
13 could still seek an extension from that 10-day requirement.
14 So, I mean, I don't think it's completely impermissible, it
15 just has to do with, again, where you want your paper,
16 requesting more time or whether you want to give them more
17 time up front and try to avoid the paper down the line.

18 COMMISSIONER MURRAY: Okay. Thank you very
19 much.

20 MS. MACDONALD: Thank you.

21 JUDGE DIPPELL: Commissioner Clayton, did you
22 have questions?

23 COMMISSIONER CLAYTON: How many bankruptcies
24 did you say that your company's lawyers had to deal with over
25 the last four years?

1 MS. MACDONALD: Over 100. They thought the
2 number was around 111.

3 COMMISSIONER CLAYTON: A hundred. And are
4 those UNEs or facilities-based or are they all CLECs or --

5 MS. MACDONALD: Well, they would all be CLECs,
6 but there be would be a combination of resale CLECs and
7 facilities-based CLECs.

8 COMMISSIONER CLAYTON: Just plowing right over
9 them, huh?

10 MS. MACDONALD: I don't think we're plowing
11 right over them. We have serious competition in the state of
12 Missouri.

13 COMMISSIONER CLAYTON: Yes, yes, yes, but over
14 100.

15 I was wondering maybe --

16 MS. MACDONALD: And I'm not saying that those
17 were all 100 in Missouri. I'm just saying nationwide.

18 COMMISSIONER CLAYTON: Oh, okay. Okay. Well,
19 I understand.

20 For the affiliate definition, I was wondering
21 if we could define this like in the third degree of
22 consequence. Would you all be okay with that?

23 MS. MACDONALD: I was having a hard time doing
24 lineal language that I thought would be appropriate.

25 COMMISSIONER CLAYTON: Third cousin once

1 removed. See, the lawyers are laughing. No one else knows
2 what we're talking about. But, anyway, thank you.

3 MS. MACDONALD: Thank you.

4 JUDGE DIPPELL: I believe that's all the
5 questions. Thank you, Ms. MacDonald.

6 Did Office of Public Counsel want to make
7 comment on these rules?

8 MR. DANDINO: Yes, your Honor. May it please
9 the Commission.

10 JUDGE DIPPELL: Thank you.

11 MR. DANDINO: We just want to briefly say that
12 we do support the rules generally, I think as Staff pointed
13 out, with some of the changes be made.

14 Specifically we just have comments on two of
15 the rules, Rule 3.525, which removes the exemption for
16 competitive companies for merger and consolidation. We
17 agree -- we think that's an important rule. It's consistent
18 with the Commission's authority over all companies in which
19 they certify to do business in Missouri. And I think it's
20 important to at least be informed.

21 And there are certain mergers, I guess if
22 they're non-telecommunications companies, that you don't
23 necessarily -- or haven't exercised jurisdiction over, but at
24 least I think it's important that you do look at those
25 telecommunications companies, especially the competitive

1 companies. There are a number of those out there. And I
2 don't know if that 100 bankruptcies that Southwestern Bell was
3 talking about relates more to CLECs than to IXC's, but I'm sure
4 there's many IXC's also that are disappearing.

5 And also I think it's important to -- something
6 that Ms. MacDonald mentioned out in California about where
7 there was a proposed transfer to some company that was being
8 fined by another state, the ownership -- there was some
9 question about the ownership.

10 And that's something that Public Counsel has
11 brought to the attention to the Commission and to the Staff a
12 number of times when we find that a proposed transfer is to
13 what we usually call bad actor in another state and we think
14 it's important that the Commission look into that and the
15 Staff consider that.

16 The other rule that we're concerned about or
17 want to express our specific support for is 3.560 about the
18 requirements for when the company ceases operations. I think
19 it's very important for the consumer, it's a reasonable
20 process and I don't think it's really burdensome given the
21 public interest and providing the customers with continued
22 service and also to let them know that they have a right to go
23 out and select another provider. We think that's very
24 important. Other than that, that's all the comments we have.

25 JUDGE DIPPELL: Thank you.

1 Commissioner Murray, did you have any questions
2 for Mr. Dandino?

3 COMMISSIONER MURRAY: Just briefly.

4 You don't have any opposition, I'm assuming, to
5 the proposed change in language on 3.560, which would add
6 basic local or interexchange telecommunications?

7 MR. DANDINO: No. That's fine.

8 COMMISSIONER MURRAY: Thank you. That's all I
9 have.

10 JUDGE DIPPELL: Commissioner Clayton?

11 COMMISSIONER CLAYTON: No questions.

12 MR. DANDINO: Thank you.

13 JUDGE DIPPELL: Thank you, Mr. Dandino.

14 Is there anyone else present that would like to
15 present comments on these rules? Ms. MacDonald?

16 MS. MACDONALD: Your Honor, if you could wait
17 just one second, I'm pulling up the name of that case so the
18 record's a little clear about the California Commission.

19 JUDGE DIPPELL: Okay. We can pause one moment.
20 The wonders of technology.

21 MS. MACDONALD: It never fails when you need
22 them to be -- that case is In Touch Communications, Inc. and
23 Inflection California Communications Corporation for the sale
24 and purchase respectively of the customer base, operating
25 authorities and other assets. And the case number in

1 California is Application 0311011.

2 JUDGE DIPPELL: Okay. Thank you.

3 Well, if there's no further comments, then this
4 will conclude the public comment hearing on these rules.

5 Thank you. We can go off the record.

6 WHEREUPON, the public hearing was adjourned.

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