

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>4</sup>

In the Matter of Proposed Amendments to )  
Commission Rule 4 CSR 240-2.075 )

Case No. AX-2002-157

MAY 31 2002

Missouri Public  
Service Commission

COMMENTS OF  
SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company (Southwestern Bell), and for its Comments regarding the Missouri Public Service Commission's (Commission's) proposed amendments to Rule 4 CSR 240-2.075, states to the Commission as follows:

1. The Commission's proposed amendments to Rule 2.075 - Intervention, which were published in the Missouri Register on May 1, 2002, provide as follows:<sup>1</sup>

(6) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. **The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the Commission, the brief must be filed no later than seven (7) days after the parties have filed their initial briefs. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.**

(7) Any party whose application to intervene is granted shall, within thirty (30) days thereafter or such other period as the commission may order, file a responsive pleading to the application, complaint or tariff that is the subject of the contested case, specifically admitting or denying each fact asserted therein.

The purpose of the proposed amendments, as stated by the Commission in the preamble to the amendment, "is to clarify the proceedings applicable to *amici curae* and to impose on intervenors an obligation to file a responsive pleading."

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<sup>1</sup> As used in these Comments, new text proposed by the Commission appears in bold. Text from the current rule which the Commission proposes to delete is bracketed. New text proposed by Southwestern Bell is underlined, and text from the Commission's proposed rule which Southwestern Bell proposes to strike is lined-out.

2. Southwestern Bell supports most of the Commission's proposed amendments to Rule 2.075 (6) and (7). For example, Southwestern Bell agrees that any person or entity seeking to file an *amicus curiae* brief should "state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case, as proposed by the Commission." Likewise, with respect to intervenors, Southwestern Bell agrees that it is reasonable to require a party that has sought and been granted intervention in a contested case to file a timely pleading "specifically admitting or denying each fact asserted" in the original application, complaint or tariff, again as set forth in the Commission's proposed amendments to Rule 2.075.

3. The only aspect of the Commission's proposed amendments to Rule 2.075 with which Southwestern Bell disagrees is the Commission's proposal to permit an *amicus* brief to be filed up to seven (7) days after the parties to the case have filed their initial briefs. If the Commission's proposed amendment was adopted, the seven day lag between parties' initial briefs and an *amicus* brief would permit the *amicus* brief to become, in effect, a reply brief in which an *amicus* could respond to the parties' arguments in their initial briefs. An entity seeking to file an *amicus* brief after a hearing has occurred should know the position it will seek to advance without first reading the initial briefs of all parties to the case. Moreover, under the time limit contained in most Commission briefing schedules, and the "default" time limit of ten (10) days for filing a reply brief contained in Commission Rule 2.140(2), parties would have very little time to evaluate and respond to the arguments raised for the first time in an *amicus* brief filed seven days after the parties' initial briefs. If *amicus* briefs are not required to be filed at the same time as parties' initial briefs, parties will be forced to hurriedly respond to arguments raised for the first time in *amicus* briefs, from entities not even parties to the case.

4. Southwestern Bell urges the Commission to adopt a rule which provides that in cases where the Commission determines that an *amicus curiae* brief is desirable and the matters asserted are relevant to a particular case, it should require that the *amicus curiae* brief be filed no later than the date on which parties are required to file their initial briefs. This modification to the Commission's proposed rule will permit parties a reasonable opportunity to respond to any issue raised in an *amicus curiae* brief.

5. As described above, Southwestern Bell would support the following modifications to the Commission's proposal to amend sections (6) and (7) of modified Rule 2.075:

**(6) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the commission, the brief must be filed no later than the last date on which parties may file ~~(7) days after the parties have filed their initial~~ briefs. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.**

**(7) Any party whose application to intervene is granted shall, within thirty (30) days thereafter or such other period as the commission may order, file a responsive pleading to the application, complaint or tariff that is the subject of the contested case, specifically admitting or denying each fact asserted therein.**

WHEREFORE, for the reasons described above, Southwestern Bell respectfully requests that the Commission adopt an amended Rule 2.075(6) and (7), with the modification described herein.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties via hand-delivery on May 31, 2002.

  
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