

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Proposed PSC Rulemaking )  
4 CSR 240-2.071 Expedited Small ) Case No. AX-2005-0364  
Complaint Procedure )

**SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S  
COMMENTS REGARDING PROPOSED RULE 4 CSR 240-2.071**

Comes now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and for its Comments Regarding Proposed Rule 4 CSR 240-2.071, states as follows:

**Introduction**

While SBC Missouri believes that the current complaint process, set forth in 4 CSR 240-2.070, is sufficient and is flexible enough to achieve expedited complaint resolutions, SBC Missouri is not opposed to the Commission's efforts to provide an expedited alternative for certain complaints. As reflected in the comments below, however, the proposed expedited rule should be limited to residential customers and should require informal resolution to be pursued in the first instance. In addition, SBC Missouri proposes certain other modifications to the proposed rule.

1. SBC Missouri notes that, as written, proposed rule 4 CSR 240-2.071 may apply to all complaints by any customer, including any complaints by utilities purchasing service from another utility (e.g. an IXC purchasing access service from a LEC). These types of complaints are often very complicated and would not be appropriate for expedited treatment. Moreover, business customers are typically more sophisticated and do not require the same expedited process that is proposed here. Accordingly, this rule

should be limited to residential customers. For this reason, SBC Missouri proposes the following changes, reflected in bold, to the title and purpose of the rule:

4 CSR 240-2.071 Expedited Small Complaint Procedure **for Residential Customers**

PURPOSE: This rule establishes a simplified procedure for the processing of **residential** customer complaints against utilities.

2. Additionally, the informal complaint process which is set forth in 4 CSR 240-2.070(2) works well to resolve customer complaints and, at least for SBC Missouri, resolves virtually all of the concerns that customers have with SBC Missouri. For this reason, a provision should be included that requires complainants to comply with the informal complaint process set forth in 4 CSR 240-2.070(2) **before** the complainant may proceed with the procedure outlined in this proposed rule. This would conserve the Commission's resources as well as those of the regulated utilities as the vast majority of complaints would be resolved before the expedited process would even need to be utilized. SBC Missouri proposes the following language as a new proposed subsection (1), which would subsequently require all subparts to be renumbered:

**Residential customers may utilize the Expedited Small Complaint Procedure to file a complaint for regulated services against a company regulated by the Missouri Public Service Commission only if the complainant has filed an Informal Complaint against the regulated company pursuant to 4 CSR 240-2.070(2) and the customer is not satisfied with the resolution of the Informal Complaint.**

3. SBC Missouri proposes a modification to proposed rule 4 CSR 240-2.071(1) which provides: "[t]his rule applies only to complaints against companies regulated by the Missouri Public Service Commission made by customers who receive or are seeking to receive service in Missouri." Specifically, SBC Missouri objects to this portion of the proposed rule because it is overly broad and would exceed the scope of the

Commission's jurisdiction if it is intended to cover non-regulated services provided by companies which are regulated by the Missouri Public Service Commission. Additionally, the term "complaints" should be defined to be limited to complaints about regulated services under a threshold amount of \$1,000.00 or less. Further, if the Commission decides not to limit the rule to residential customers only, then corporations and unincorporated associations, should be required to be represented by an officer or authorized employee just as they are required to do so in small claims court. *See* 482.310(1), RSMo. 2000. Thus, if the proposed Rule is not limited to residential customers, the following language should be added: "Corporations or unincorporated associations shall be represented by an officer, authorized employee, or attorney." SBC Missouri, therefore, proposes the following changes, reflected in bold, to this proposed rule:

This rule applies only to complaints **by residential customers for regulated services where the amount in controversy does not exceed One Thousand Dollars (\$1,000.00)** against companies regulated by the Missouri Public Service Commission made by customers who receive or are seeking to receive service in Missouri. Individuals may use this procedure without an attorney when complaining about their own service, and are not bound by the rules concerning the form of pleading found elsewhere in this chapter. **Corporations or unincorporated associations shall be represented by an officer, authorized employee, or attorney.**

4. SBC Missouri offers the following comments on proposed rule 4 CSR 240-2.071(4) which provides:

[w]hen the complaint is received at the commission, the following will happen:

(A) A copy of the complaint will be sent to the company, and the company will have thirty (30) days to send an answer to the commission that admits or denies the matters in the complaint, and sets out any defenses the company has to the complaint;

(B) The matter will be assigned to a regulatory law judge and set for a hearing;

(C) The judge will notify the complainant and the company of the hearing date and require the parties to send such information as the judge may need, including a list of any witnesses either party may call or any other documents or information, and may set a deadline by which the information must be provided;

(D) The judge will provide the Office of Public Counsel and the commission technical staff with copies of the complaint and will notify them of the hearing. They may conduct a neutral investigation of the matter and present their findings at the hearing.

First, subsection (A) should be clarified to ensure that a company retains the right to file a motion to dismiss for failure to state a claim on which relief may be granted, a motion to strike irrelevant allegations as permitted by 4 CSR 240-2.070(6), and/or any other responsive pleading that is permitted by the Missouri Rules of Civil Procedure and the Missouri Code of State Regulations. Second, subsection (B) implies that all matters will be set for a hearing and does not appear to allow the regulatory law judge to dismiss the complaint for failure to state a claim on which relief may be granted or for any other reason set forth in a responsive pleading. Third, subsection (C) requires the parties to send such information as the judge may need and allows the judge to set a deadline by which the information must be provided. That section should be modified to substitute the words “reasonably request” for the word “need,” so that the parties are not required to anticipate what the regulatory law judge may request. Moreover, the parties should also be permitted to submit such documents and information as the party believes is relevant and appropriate for proper resolution of the case. Fourth, although SBC Missouri believes that the regulatory law judge should be allowed to call upon the expertise of the technical staff if he or she sees fit, there is no need for the “neutral” investigation and report set forth in proposed rule 4 CSR 240-2.071(D). The Office of Public Counsel,

designated by statute as a consumer advocate,<sup>1</sup> is not a “neutral” party. Moreover, if the goal of this rule is to provide an expedited process for “small” complaints, multiple parties should not be permitted to intervene. Finally, this rule should clarify that each party may conduct discovery and cross examination as permitted by the Missouri Rules of Civil Procedure and the Code of State Regulations. SBC Missouri, therefore, proposes the following changes to this proposed rule:

[w]hen the complaint is received at the commission, the following will happen:

(A) A copy of the complaint will be sent to the company,~~and t~~. The company will have thirty (30) days to **file a motion to dismiss for failure to state a claim on which relief may be granted, a motion to strike irrelevant allegations, send an answer to the commission that admits or denies the matters in the complaint, and sets out any defenses the company has to the complaint, or any other type of responsive pleading or motion that is permitted by the Missouri Rules of Civil Procedure and/or the Missouri Code of State Regulations;**

(B) The matter will be assigned to a regulatory law judge and, **if appropriate, may be set for a hearing;**

(C) The judge will notify the complainant and the company of ~~the~~ **any** hearing date and require the parties to send such information as the judge may ~~need~~ **reasonably request**, including a list of any witnesses either party may call or any other documents or information, and may set a deadline by which the information ~~must~~ **may** be provided;

(D) The judge will provide the Office of Public Counsel and the commission technical staff with copies of the complaint and will notify them of the hearing. ~~They may conduct a neutral investigation of the matter and present their findings at the hearing.~~

(E) **The parties may conduct discovery and cross examination as permitted by the Missouri Rules of Civil Procedure and the Missouri Code of State Regulations.**

5. Finally, SBC Missouri believes that proposed rule 4 CSR 240-2.071(5) should be clarified so that any rehearing would take place before the Missouri Public Service Commission. This process would be more similar to the associate circuit court process in which either party has the right to a trial de novo before the circuit court and

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<sup>1</sup> Section 386.710(2) provides: “[h]e [the public counsel] may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”


would avoid the concern that, through this proposed rule, the Commission has unlawfully delegated its authority to resolve complaints. Additionally, any party should be permitted to receive the regulatory law judge's decision through the Court's Electronic Filing Information System ("EFIS") should he/she/it so choose. For these reasons, SBC Missouri proposes the following changes:

After the conclusion of the hearing, the judge will give the parties a written decision. That decision will be ~~mailed~~**sent** to the complainants and the company **via U.S. mail or, at the request of the party, through the Commission's Electronic Filing and Information System ("EFIS")**. If either of those parties believes that the decision is wrong, then that party must request a rehearing **before the Missouri Public Service Commission** within ten (10) days of the date of the judge's decision. A request for rehearing must set out the reasons why the decision is wrong or unlawful, and must be received at the commission no later than ten (10) days from the date of the decision.

Wherefore, SBC Missouri prays that the Commission consider its comments modify the proposed rule as outlined above, together with any further and/or additional relief the Commission deems just and proper.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

Copies of this document were served on all counsel of record by e-mail on July 14, 2005.

  
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