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November 10, 1999

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
301 West High Street, Floor 5A  
Jefferson City, Missouri 65101

FILED<sup>3</sup>

NOV 10 1999

Re: Case No. AX-2000-108

Missouri Public  
Service Commission

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's:

1. Motion to Accept Reply Comments; and
2. Reply Comments

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

*Leo J. Bub /tm*

Leo J. Bub

Enclosure

cc: Attorneys of Record

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Missouri Public  
Service Commission

2. Under the Commission's current rulemaking procedures, there are provisions under which the Commission may receive reply comments. 4 CSR 240-2.180(4) provides that the Commission may either provide for the submission of comments on a proposed rule by a specific date not less than 30 days after the publication date; or "for both a written comment period and hearing." Under 4 CSR 240-2.180(6), "hearings on rulemaking may be for commissioner questions or for the taking of initial or reply comments." (emphasis added). And the Commission typically provides parties such an opportunity to express their views in rulemakings. For example, the Commission provided for public hearings in its recent

rulemakings on proposed Safety Standards (4 CSR 240-18.010); Surety Bonding Requirements (4 CSR 240-32.110); Snap-Back Procedures (4 CSR 240-32.120); and Billing Practices (4 CSR 240-33.010-33.140). (See, October 1, 1999 Mo. Register, Vol. 24, No. 19, pp. 2340-2377).

3. Here, no hearing has been scheduled which would allow parties to present their views on the comments filed by other parties.

4. Southwestern Bell, after reviewing comments filed by other parties in this rulemaking, has concerns about certain proposals made in those comments and wishes to express them to the Commission.

WHEREFORE, Southwestern Bell respectfully requests the Commission to accept the Reply Comments being filed simultaneously with this Motion.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY Leo J. Bub / tm

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

In the Matter of the Proposed Rule 4 CSR     )  
240-2.010(2) Practice and Procedure -     )     Case No. AX-2000-108  
Definitions.                                     )

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
REPLY COMMENTS**

Southwestern Bell Telephone Company, pursuant to 4 CSR 240-2.080(12), respectfully submits the following Reply Comments to certain proposals made by other parties in this rulemaking:

1.     On November 1, 1999 the Office of the Public Counsel (OPC) recommended the revision of the definition of both "proprietary information" and "highly confidential." OPC proposes the definition for "proprietary information" be revised to read:

Information concerning trade secrets, as well as confidential or private technical, financial and business information where the party seeking protection from the disclosure of this information has made a showing that the public disclosure of the information will be detrimental to the parties' marketing and strategic planning of competitive products or services. (Underline indicates OPC's proposed new language).

And OPC proposes the definition for "highly confidential" to be:

Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, workpapers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration from contract negotiations where the party seeking protection from the disclosure of this information has made a showing that the detriment to the party outweighs the public interest in public disclosure. (Underline indicates OPC's proposed new language).

2.     Southwestern Bell opposes the revisions OPC proposes for the definitions of "proprietary information" and "highly confidential." These proposed definitions create new and

inappropriate standards for the protection of sensitive information, and impose additional steps to obtain protection that simply would be unworkable.

3. The current definition of “proprietary information” in the Commission’s Standard Protective Order protects trade secrets, and confidential or private technical, financial and business information. Providing protection for this information only when disclosure is shown to be “detrimental to a party’s marketing and strategic planning competitive products or services” imposes a standard that would wipe out protective safeguards that traditionally and appropriately have been afforded to the “proprietary” category. OPC’s proposed new standard has little or no relevance to most of the information that would be covered by the proposed rule (and which is now covered by the Commission’s Standard Protective Order). Most companies have trade secrets, technical, financial and business information that are wholly separate from their proprietary marketing and product planning functions. Adding the additional standard OPC proposes would have the effect of stripping the current proprietary protection from such sensitive information that the Standard Protective Order was designed to protect.

4. For the “highly confidential” category, OPC proposes imposing a new standard for obtaining such protective classification under which a party must show that the “detriment to the party outweighs the public interest and public disclosure.” Adding this new standard is not appropriate. Already, the Commission’s Standard Protective Order (the definitions from which the Commission in this rulemaking seeks to incorporate into its rules) appropriately balances the interest of all parties. It grants appropriate protection for very narrowly articulated categories of sensitive information, and with that protection, allows a party to obtain such information and to use it in proceedings before the Commission. While the public has an interest in ensuring the availability and use of such sensitive material, OPC confuses that interest (which is adequately

addressed now by the Commission's Standard Protective Order) with some vague desire that such material be made public. But making such sensitive information subject to public disclosure under OPC's proposed new standard would have a chilling effect on parties' willingness to disclose highly confidential information. And it would upset the carefully crafted balance the Commission has established in its Standard Protective Order which the Courts in the State have enforced.

5. In addition, OPC's suggested revisions to the definitions for "proprietary" and "high confidential" information appear to create an unneeded additional step to obtain protection. Under current Commission procedures and the Standard Protective Order, parties appropriately obtain protection of sensitive information by designating a document to be "proprietary" or "highly confidential" or "HC" (e.g., with a rubber stamp or typing the words out on the document). With the protection these designations and Commission procedures currently afford, parties routinely produce sensitive material during discovery and include them in material presented to the Commission. When filed with testimony, a party submitting material designated as proprietary or highly confidential must, within five days of filing the designated testimony, file with the Commission the specific ground or grounds for each claim. (See, Standard Protective Order, &I). And it is only when such designation has been challenged by another party must a showing be made to support the "proprietary" or "highly confidential" designations.

6. Here, however, OPC appears to suggest that this showing be made even before the protection attaches. Such an additional step would unnecessarily complicate the current discovery process and the procedure the Commission has developed for handling sensitive information during hearings. Parties would refuse to produce any material until the classification issue was resolved, a result which runs counter to the desire for discovery and testimony

deadlines to be met. The current procedure has been in place for a number of years, is known by all parties who practice before the Commission, and works well. There is simply no need to change the Commission's current practice in this area.

WHEREFORE, Southwestern Bell respectfully requests the Commission to reject OPC's suggested revisions to the proposed definitions of "proprietary information" and "highly confidential."

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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**CERTIFICATE OF SERVICE**

Copies of these documents were served on the following parties by first-class, postage prepaid, U.S. Mail on November 10, 1999.

*Leo J. Bub / tm*

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