

Staff mtg

ReBinder

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 30th  
day of June, 1989.

In the matter of Southwestern Bell Telephone )  
Company's application for classification of ) Case No. TO-89-56  
its nonbasic services. )  
)

ORDER CONCERNING MOTION TO COMPEL

On June 2, 1989, MCI Telecommunications Corporation (MCI) filed a motion requesting the Commission order Commission Staff to answer a data request (DR). The DR asked that Staff provide to MCI "copies of all discovery requests directed from Staff to SWBT (Southwestern Bell Telephone Company) in connection with this proceeding." The DR was made on May 1, 1989. Staff filed a response to the motion, as did Southwestern Bell Telephone Company (SWB).

4 CSR 240-2.090(2) authorizes the use of DRs as a means of discovery in Commission proceedings. Parties are required to respond to DRs within 20 days after receipt unless otherwise agreed by the parties. If a party objects to a DR or determines it will be unable to answer a DR within the 20 days, the party shall serve, in writing, within 10 days after receipt of the DR, the objections or the reasons for the inability to answer.

MCI states that Staff informed MCI by letter dated May 18, 1989, of its objection to the DR. Staff admits it did not state its objection within the 10 days required. Staff states it failed to comply with the requirements of 4 CSR 240-2.090(2) because it was waiting for Southwestern Bell Telephone Company (SWB) to indicate whether SWB objected to the release of Staff DRs directed to SWB.

The controversy over this DR raises two issues which the Commission has determined it must confront directly to avoid similar controversies throughout these

proceedings. The first issue is whether Staff's DRs propounded to utilities regulated by the Commission are discoverable by other parties. The second issue is whether strict compliance with 4 CSR 240-2.090 will be required.

Staff has a unique position in proceedings before the Commission since it has auditing authority over all of a company's records and has a continuing relationship with a company. Staff propounds DRs to companies based upon information it has obtained under its authority, not just from a particular case. Since Staff is not constrained by Commission Protective Orders, Staff's DRs may contain information which is considered confidential and not discoverable by other parties and information gathered outside the scope of particular proceedings.

The Commission has determined that other parties cannot obtain Staff DRs. Each party must determine its own interests and engage in its own discovery. Because of the specific statutory authority granted Staff, it is inappropriate to allow other parties access to DRs propounded by Staff.

The Commission has learned from discovery disputes in other cases that the requirements of 4 CSR 240-2.090(2) regarding the time for answering or objecting to DRs are not strictly followed. Staff's failure to follow the notice of objection requirements follows the pattern in other disputes. Parties do not insist upon compliance and do not comply themselves until the laxity conflicts with their own interests.

The Commission believes that strict adherence to the provisions of 4 CSR 240-2.090(2) is necessary to ensure discovery proceeds on a reasonable basis. The notice process for objections and inability to answer are particularly necessary. Staff should be especially cognizant of the 10 day notice provision since the DR rule was proposed by Staff.

The Commission has determined that parties should adhere to the requirements of 4 CSR 240-2.090(2). Those provisions provide for agreements to extend the

20 days for answering, and notice of objections and inability to answer. The provisions are reasonable and should be followed.

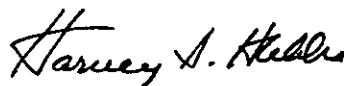
In the motion before the Commission, though, the motion to compel seeks information that the Commission has determined is not discoverable. MCI's motion will therefore be denied.

It is, therefore,

ORDERED: 1. That the motion to compel filed by MCI Telecommunications Corporation is hereby denied.

ORDERED: 2. That this order shall become effective on the date hereof.

BY THE COMMISSION



Harvey G. Hubbs  
Secretary

(S E A L)

Steinmeier, Chm., Mueller,  
Fischer and Rauch, CC., Concur.  
Hendren, C., Not Participating.