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Secretary of the Commission
Missouri Public Service Commission
200 Madison, Ste. 100
Jefferson City, MO 65101

Re: Case Nos. TT-2002-472/TT-2002-473

Dear Secretary of the Commission

Attached please find for filing with your office an original and nine (9) copies of AT&T Communications of the Southwest, Inc.'s Motion to Strike. Should you have any questions, please feel to contact me.

Very truly yours,

Rebecca DeCook.
Senior Attorney

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Southwestern Bell Telephone Company's Tariff to Initiate Residential Customer Winback Promotion)))
Case No. TT-2002-472
Tariff No. 200200831

In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Extend Business Customer Winback Promotions.)))
Case No. TT-2002-473
Tariff No. 200200828

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Missouri Public Service Commission

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S
MOTION TO STRIKE

Comes now AT&T Communications of the Southwest, Inc. ("AT&T") and for its Motion to Strike states to the Commission:

1. Commission Rules 4 CSR 240-2.130(7)(A) and (C) require a moving party to state its entire case-in-chief in direct testimony, so that other parties may then respond. 4 CSR 240-130(8) further prohibits any party from supplementing prefiled direct testimony unless ordered by the Commission. In this proceeding, SWBT is the moving party as it is advocating approval of its tariffs and filed prepared direct testimony.
2. The Commission suspended SWBT's tariffs in this case to determine whether the proposed tariffs will have an adverse effect on competition (Order Setting a Prehearing Conference and Directing Filing of Procedural Schedule). In its direct case, SWBT addressed this issue with the direct testimony of Thomas F. Hughes and John Regan Jr. (Hughes Direct, p. 6-12; Regan Direct, p. 4-10).
3. In surrebuttal testimony, SWBT now seeks to inappropriately supplement its direct case through the surrebuttal testimony of Dr. Debra Aron. That surrebuttal testimony attempts to "explain the proper criteria for determining whether prices are anticompetitive" (Aron, Surrebuttal, pg. 4) and to articulate her

views on the proper economic and antitrust principals for evaluating winback offers (Aron, Surrebuttal, pg. 5). This testimony clearly should have been part of SWBT's direct case as it sets forth the SWBT's view of the proper criteria for determining whether SWBT's proposed tariffs will have an adverse effect on competition. By waiting until surrebuttal testimony, SWBT has intentionally chosen to "ambush" its opponents by denying them the right to respond. As a result, other parties have been prejudiced by the inability to provide testimony of existing or additional witnesses in response to her advocacy for SWBT.

4. In prior proceedings, SWBT has recognized the requirement that expert testimony supporting its direct case such as that proffered herein by Dr. Debra Aron should be included in its direct testimony. Dr. Aron's proposed surrebuttal testimony in this case is of the same nature as her direct testimony in TT-2002-227. For example, on pages 25 and 26 of Debra Aron's surrebuttal testimony, she puts forth her views on the development of the automobile industry. In addition to the fact that no party discussed the automobile industry in rebuttal testimony, this testimony is almost verbatim to pages 12 – 15 of the direct testimony filed by Dr. Aron in Case No. TT-2002-227. AT&T's rebuttal testimony filed in that case questioned the relevance of the automobile industry and pointed out that the material cited by Dr. Aron in support of her conclusions indicated that the Japanese automobile industry's success was a result of fortuitous chance as much as anything. However, by waiting until surrebuttal testimony to make the same arguments previously advocated in direct testimony in other proceedings, AT&T will not be able to respond. Another example of inappropriately waiting to advance SWBT's Direct Case through surrebuttal testimony are the conclusions she advances based upon her analysis of SWBT's historic costs vs. SWBT's UNE prices. In support of her conclusions, Dr. Aron cites two other analyses

purported to support her own analysis. Her testimony regarding UNE rates is clearly not responsive to any rebuttal testimony filed in this case. Therefore, it should be stricken. Further, AT&T strongly disagrees with many of the assumptions contained in the analyses cited by Dr. Aron and believes her conclusions are also erroneous. However, by waiting until surrebuttal testimony to advance SWBT's direct case, AT&T and other interveners will have no ability to respond and are clearly prejudiced.

5. The Commission should not allow SWBT to manipulate the procedural schedule with such apparent bad faith. SWBT is not entitled to such an artificial advantage. The only appropriate remedy is to strike the surrebuttal testimony of Dr. Debra Aron in its entirety.

WHEREFORE, AT&T moves the Commission to strike the surrebuttal testimony of Dr. Aron.

Respectfully submitted,


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Certificate of Service

A true and correct copy of the foregoing document was mailed this 16th day of September 2002, by placing same in the U.S. Mail postage paid to the persons listed on the attached list.



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