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December 6, 2002

VIA HAND DELIVERY

Secretary of the PSC
Missouri Public Service Commission
200 Madison, Suite 100
Jefferson City, Missouri 65101

FILED³

DEC 06 2002

Missouri Public
Service Commission

Re: Case No.: TT-2002-472; TT-2002-473

Dear Sir or Madam:

Enclosed for filing with the Commission in the above-referenced case is an original and nine copies of the Joint Application for Rehearing of AT&T Communications of the Southwest, Inc., MCI WorldCom Communications Inc., Brooks Fiber Communications of Missouri, Inc., MCImetro Access Transmission Services, LLC, and Nuvox Communications of Missouri, Inc.. Please file stamp the additional copy and return it to our courier for delivery.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Leland B. Curtis (att)

Leland B. Curtis

CJL/klb

cc: Parties of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED³

DEC 06 2002

Missouri Public
Service Commission

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

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

**JOINT APPLICATION FOR REHEARING OF AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC., MCI WORLDCOM COMMUNICATIONS, INC., BROOKS FIBER
COMMUNICATIONS OF MISSOURI, INC., MCImetro ACCESS TRANSMISSION
SERVICES, LLC, and NUVOX COMMUNICATIONS OF MISSOURI, INC.**

COME NOW Joint Applicants AT&T Communications of the Southwest, Inc.

("AT&T"), MCI WorldCom Communications, Inc. ("MCI WorldCom"), Brooks Fiber Communications, Inc. ("Brooks"), MCImetro Access Transmission Services, LLC ("MCImetro" and, with MCI WorldCom and Brooks, collectively "WorldCom"), and NuVox Communications of Missouri, Inc. ("NuVox") and for their Joint Application for Rehearing pursuant to Sections 386.500 and 4 CSR 240-2.160 state to the Commission:

1. On December 3, 2002 the Commission issued its Report and Order in this case, wherein *inter alia* it indicated its approval of Southwestern Bell Telephone Company's ("SWBT") residential and business winback discounts upon their being refiled with the Commission. The Commission noted that the residential and business winback discounts as originally proposed were to have been in effect from April 9, 2002 until April 8, 2003, but since most of that one year period had expired, the Commission rejected the tariffs and invited SWBT to refile for Commission approval the same tariffs with revised effective periods for the discounts. The Report and Order bears an effective date of December 7, 2002.

2. Applicants seek rehearing of the Commission's Report and Order which, in essence, approved SWBT's residential and business winback discounts. On rehearing, the Commission should reverse its decision and conclude instead that there is no factual or legal basis for an approval of those discounts.

3. SWBT expended enormous amounts of its time and resources at the hearing and in its brief in advancing its argument that its unfounded and unsubstantiated winback discounts were not discriminatory tariffs under §392.200.2 and §392.200.3 RSMo because SWBT claimed its winback discounts would be offered to all customers similarly situated and would not charge different rates for the same service for similarly situated customers. The Joint Applicants herein also expended substantial resources proving the converse, that SWBT's tariffs were patently discriminatory discounts proscribed by §392.200.2 and §392.200.3 RSMo. Yet, the Commission failed in its Order to make any findings of fact or conclusions of law whatsoever as to whether the winback discounts were discriminatory or whether such discrimination, if found, is unduly or unjustly discriminatory.

4. The Commission's Report and Order failed to make proper findings of fact and conclusion of law, to wit:

- a) The Commission failed to find or conclude whether SWBT's proposed residential and business winback discounts would charge different rates for doing a like or contemporaneous service to customers similarly situated.
- b) The Commission failed to define a promotional program and failed to identify what period of time is appropriate for a promotional program.

- c) The Commission failed to find or conclude whether SWBT's winback discounts would promote diversity in the supply of telecommunications service and products in Missouri.
- d) The Commission failed to find or conclude whether SWBT's winback discounts would allow full and fair competition to function as a substitute for regulation.
- e) The Commission failed to find or conclude whether SWBT's winback discounts would be in the public interest.

5. Instead, the Commission only found that SWBT's winback discounts "will not harm the necessary competitive market" (Order p. 8). This is no substitute for proper findings of fact, and conclusions of law.

6. Most glaring is the Commission's failure to address SWBT's claim that the customers eligible for the winback are a unique class of "similarly situated" customers. The Commission did not address why it is not unreasonably discriminatory for SWBT to offer the same services to the customers eligible for the winback offer at a lower rate than they offer the same services to customers that are not eligible for the winback promotion. Missouri courts establish that "arbitrary discriminations alone by a utility are unfair, but if a difference in rates is based upon reasonable and fair differences in conditions which equitably and logically justify a different rate, it is not unjust discrimination." (State ex rel. DePaul Hospital School of Nursing v. Public Service Commission, 464 S.W.2d 737, citing §392.200, subds. 1-3 RSMo 1969, V.A.M.S.) The record before the Commission in this proceeding is bereft of any "reasonable" or "fair differences ... which equitably and logically justify" the discrimination in rates effected by SWBT's winback tariffs. (See also, State ex rel. City of Grain Valley v. Public Service Com'n

of State of Mo, 778 S.W. 2d 287, reversing the Commission because it ignored “undisputed evidence ... that the Grain Valley and Blue Springs customers are receiving the same services....”)

7. The Commission ignored the fundamental nature of the local exchange market - SWBT as the incumbent has its ubiquitous network, paid for primarily as a result of its regulated monopoly operations, and started with all of the customers. CLECs remain new market entrants that must invest in new facilities and persuade customers to leave SWBT. This is the critical area of competition, which the Commission failed to address in any meaningful fashion.

8. The Commission also failed to consider or address the substantial amount of evidence which tends to show that SWBT’s business practices that will be used in connection with the winback discounts will place SWBT in a uniquely and unfairly advantageous position with respect to its CLEC competition. Southwestern Bell begins sending winback letters to customers that have converted to CLECs within 2 days of the customer switching to the CLEC. For residential customers, Southwestern Bell continues this letter campaign until the customer converts or Southwestern Bell sends at least 9 letters, whichever comes first. At the same time, Southwestern Bell, through third party telemarketers and its internal recorded message system, begins contacting the CLEC customer through phone calls. In addition, the first letter sent to the CLEC customer seeks to cast doubt on the CLECs conversion on the customer by seeking to “determine if the customer has been slammed.” Southwestern Bell provides no explanation or definition of the term “slammed” to the customer in the letter, but encourages the customer to contact an 800 number in the Southwestern Bell retail winback group. Southwestern Bell has no access to any information to determine if the CLEC used proper third party verification procedures or if the person contacting Southwestern Bell was even the person that authorized the

initial switch to the CLEC. The sum and substance of SWBT's winback efforts, including the slamming inquiries, are invasive customer contacts that are designed to undermine the CLEC's ability to win and retain customers before the customer has even begun to experience the service the CLEC offers. These contacts are clearly designed to hinder customer choice, confuse customers, minimize the financial impacts of competition, and, ultimately, thwart competitive entry. Yet the Commission utterly fails to address how, given these concerns, SWBT's winback promotions are in the public interest.

9. On rehearing, the Commission should reverse its decision approving SWBT's discounts. Such approval was contrary to law and not supported by competent and substantial evidence as required by law. See, e.g., State ex rel Rice v. PSC, 220 SW2d 61, 64 (Mo. 1949). Further, there are not adequate or sufficient findings of fact and conclusions of law regarding the approval of SWBT's discounts, contrary to the requirements of Chapter 386 and Section 536.090. The approval of SWBT's tariffs was unreasonable, unjust, unwarranted, arbitrary, capricious, unlawful, contrary to the public interest, and should be reversed.

10. If this Commission does not grant this Application for Rehearing and reconsider SWBT's proposed winback discounts in concert with the evidence of SWBT's potentially predatory business practices shown in this case, then in the alternative, this Commission should, on its own motion, open an investigation into the predatory and anti-competitive business practices of SWBT in the CLEC market and, pending such investigation mandate a minimum thirty (30) day waiting period after a customer changes carriers before SWBT makes any affirmative winback efforts.¹

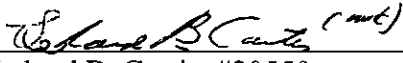
¹ Other states have recognized the validity of mandating waiting periods before any winback efforts can be made by the incumbent LEC. See Corecomm Newco, Inc. v. Ameritech, Ohio PUC. Case No. 02-0579-TP-CSS, Entry on Rehearing issued July 18, 2002.

11. In further support hereof, Joint Applicants incorporate by reference their respective Initial and Reply Briefs previously filed in this case.

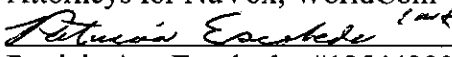
WHEREFORE, Joint Applicants apply for rehearing and further relief as requested herein.

Respectfully submitted,

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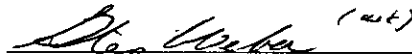
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Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 6 day of Dec, 2002, by e-mail and by placing same in the U.S. Mail, postage paid.

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