



Rebecca B. DeCook
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December 17, 2002

Dale Hardy Roberts
Secretary of the Commission
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65101

FILED⁴

DEC 17 2002

Missouri Public
Service Commission

Re: Tariff No. JI-2003-1231

Dear Mr. Secretary:

Attached for filing with the Commission, please find the original and eight (8) copies of AT&T's and WorldCom's Joint Application For Intervention And Motion To Suspend Tariffs or In The Alternative A Request For The Imposition Of A 30-Day Waiting Period For Any Winback Contact.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

Rebecca B. DeCook
Rebecca B. DeCook

Attachment
cc: All Parties of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED⁴
DEC 17 2002
Missouri Public
Service Commission

In the Matter of Southwestern Bell	)	
Telephone Company's Tariff to Initiate	)	Case No.
Residential Customer Winback Promotion	)	Tariff No. JI-2003-1231

**AT&T'S AND WORLDCOM'S
JOINT APPLICATION FOR INTERVENTION AND MOTION TO SUSPEND
TARIFFS OR IN THE ALTERNATIVE A REQUEST FOR THE IMPOSITION
OF A 30-DAY WAITING PERIOD FOR ANY WINBACK CONTACT**

COME NOW, AT&T Communications of the Southwest, Inc. ("AT&T"),
MCI Metro Access Transmission Services, LLC, Brooks Fiber Communications of
Missouri, Inc., MCI WorldCom Communications, Inc. (collectively "WorldCom")(jointly
"Applicants") and, pursuant to 4 CSR 240-2.065(3), 4 CSR 240.075 and Section
392.230(3) RSMo 2000, respectfully submit this joint application to intervene and moves
the Missouri Public Service Commission ("Commission") to suspend the residential
"Winback" tariff filed by Southwestern Bell Telephone Company ("Southwestern Bell").
In the alternative, Applicants request the Commission open, on its own initiative or
pursuant to the request to be filed shortly by Applicants, an investigation of the winback
business practices of Southwestern Bell and, pending such investigation, impose, on an
interim basis, until it can complete the investigation, a minimum 30-day waiting period
after a customer changes telecommunications carriers before Southwestern Bell can make
any affirmative winback contacts. As grounds for this Motion, Applicants states as
follows:

1. AT&T is a competitive local and interexchange telecommunications
company duly incorporated and existing under and by virtue of the laws of the State of

Delaware, authorized to do business in the State of Missouri as a foreign corporation.

AT&T's principal Missouri offices are located at 101 W. McCarty, Ste. 216, Jefferson City, MO 65101. AT&T has been granted authority to provide local exchange service and basic local exchange service in portions of Missouri as well as intrastate interexchange telecommunications services in Missouri under authority granted and tariffs approved by the Commission. All correspondence, pleadings, orders, decision and communications regarding this proceeding should be sent to:

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decook@att.com

J. Steve Weber MO Bar #20037
101 W. McCarty, Ste. 216
Jefferson City, MO 65101
Tel: 573-635-5198
Fax: 573-635-9442
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2. MCImetro is a Delaware limited liability company in good standing duly authorized to conduct business in Missouri with regulatory offices at 701 Brazos, Suite 600, Austin, Texas 78701. MCImetro is authorized as a competitive local exchange carrier under certificate granted and tariffs approved by the Commission.

3. Brooks is a Delaware corporation in good standing duly authorized to conduct business in Missouri with regulatory offices at 701 Brazos, Suite 600, Austin, Texas 78701. Brooks is authorized as a competitive local exchange carrier under certificate granted and tariffs approved by the Commission.

4. MCI WorldCom Communications, Inc. is a Delaware corporation in good standing duly authorized to conduct business in Missouri with regulatory offices at 701 Brazos, Suite 600, Austin, Texas 78701. MCIWC is authorized as a competitive local exchange carrier under certificate granted and tariffs approved by the Commission.

5. All communications and pleadings in this case should be directed to:

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Leland B. Curtis
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Stephen F. Morris
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6. On December 3, 2002, the Missouri Public Service Commission issued its Report and Order, determining, *inter alia*, that two winback tariffs submitted by Southwestern Bell in Case Nos. TT-2002-472 and TT-2002-473 are not harmful to competition and comply with applicable Missouri statutes. Because the promotion dates in the originally filed tariffs had expired, the Commission rejected the initial tariff submissions but indicated that it would approve newly submitted tariffs with new

effective dates. The effective date of the Commission's Order was set for December 7, 2002.

7. On December 13, 2002, Southwestern Bell re-filed the tariffs it initially filed in Case Nos. TT-2002-472 and TT-2002-473, changing only the effective dates for the promotions. A copy of the tariff is attached hereto.

8. The Commission should suspend these newly-filed winback tariffs on three separate grounds. First, Applicants have filed a Joint Application for Rehearing in Case Nos. TT-2002-472 and TT-2002-473. The Commission should grant rehearing and not approve or allow these tariffs to go into effect for all the reasons set forth in the Joint Application for Rehearing and the Testimony, and the Initial and Reply Briefs filed by Applicants in Case Nos. TT-2002-472 and TT-2002-473. Alternatively, the tariffs should not be approved or allowed to go into effect until the Commission acts on the Joint Application for Rehearing. Second, Southwestern Bell made certain commitments regarding changes it would make to these tariffs during the hearings in Case Nos. TT-2002-472 and TT-2002-473. The newly-filed tariffs do not reflect such changes. Third, the Commission should not approve or allow the tariffs to take effect until it conducts an investigation into Southwestern Bell's winback business practices to address the concerns raised by Applicants in Case Nos. TT-2002-472 and TT-2002-473. In the alternative, the Commission should mandate a minimum 30-day waiting period after a customer changes telecommunications carriers before Southwestern Bell makes any affirmative winback contacts until the Commission completes an investigation of Southwestern Bell's winback business practices.

9. On December 6, 2002, the Applicants filed a Joint Application for Rehearing, raising numerous legal, factual and procedural deficiencies with the Commission's Report and Order. Specifically, Applicants asserted that the Commission failed to address: 1) the discriminatory effect of the tariffs; 2) the arbitrary classification made by Southwestern Bell in the tariffs; 3) the competitive effect of the tariffs; 4) the negative impact of Southwestern Bell's business practices for engaging in winbacks. In addition, the Commission failed to make proper findings of fact on a number of delineated issues. The Joint Applicants contend that the Commission should reverse its decision because the Commission's decision is contrary to law and is not supported by competent and substantial evidence. At a minimum, the Commission should suspend the newly filed tariffs until it acts upon the Joint Application for Rehearing.

10. Second, during the course of the hearing in Case Nos. TT-2002-472 and TT-2002-473, it became apparent that the language in the rejected tariffs concerning the eligibility of customers whose service had been disconnected for nonpayment did not match Southwestern Bell's representations made at the hearing and that Staff asserted that additional "tweaking" of the tariff language was necessary to alleviate concerns of discrimination (Tr. pp. 275-279 and 504-505). Southwestern Bell's counsel, during cross examination of Staff witness Chris Thomas, asked if Southwestern Bell were to modify its tariffs to reflect the representations regarding Southwestern Bell's intent as testified to by Southwestern Bell witness John Regan, Jr. whether that would satisfy Staff's concern. Mr. Thomas indicated that it would. (Tr. pp. 504-505.)¹ Southwestern Bell has not made the clarifying changes it indicated to Staff that it would make in the newly-filed winback

tariffs. Absent these clarifications, the Commission can only conclude that Southwestern Bell intends to exclude customers who have had their service disconnected for nonpayment from the promotions. Southwestern Bell's tariffs should not be approved or allowed to go into effect until these clarifying changes are made.

11. The Commission should also be aware that the Kansas Corporation Commission recently rejected similar tariff revision made by SWBT in Kansas. In rejecting those revision the Kansas Commission stated: "The Commission finds and concludes that SWBT's application for tariff revisions should be denied on the basis that the proposed revisions are discriminatory and not in the public interest at this time. The discounts are discriminatory because they are not made available to all similarly situated customers.¹ A customer that leaves a CLEC will receive a discount while a current customer that is changing service or a customer that is seeking service for the first time will pay the full price. In addition, the revisions require the customer to agree to a twelve-month term agreement that will effectively prevent other carriers from competing for that customer's business. The Commission believes that these tariff revisions, which target customer through offers that are only available to CLEC customer and lock customers into a term of service, are not in the public interest in an emerging competitive market, particularly when only a small percentage of customers are currently served by competitive companies. The tariff revisions should be denied."

¹ As stated earlier, the Commission is reviewing the issue of whether winback and retention offerings are discriminatory in Docket No. 02-GIMT-678-GIT. Customer classifications or guidelines might be established that will allow approval of offerings similar to that being reviewed here. However, the generic proceeding is not completed, and no evidence has been presented here that justifies the discriminatory nature of this offering.

¹ Mr. Regan testified that customers whose services had been disconnected for nonpayment could be eligible for the promotions if they had paid the outstanding balance or made acceptable payment

12. In addition, Applicants presented a substantial amount of evidence at the hearing on the initial tariffs that demonstrated that Southwestern Bell's business practices that Southwestern Bell will use in connection with the winback discounts will place Southwestern Bell 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 makes no attempt 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 Southwestern Bell'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, improperly thwart competitive entry.

13. In reaching its decision on the initial tariffs, the Commission utterly failed to consider the impact of Southwestern Bell's winback procedures on competition and the public interest. Applicants raised this omission in their Joint Application for Rehearing. In addition, Applicants will be filing shortly a request with the Commission to open an investigation to examine Southwestern Bell's winback practices and procedures. At a minimum, the Commission should not approve or allow these tariffs to go into effect until it conducts an investigation of Southwestern Bell's winback business practices.

14. In the alternative, if this Commission determines that it does not want to delay the approval or effectiveness of these tariffs, it should impose upon Southwestern Bell, on an interim basis pending such investigation, a minimum 30-day waiting period after a customer changes carriers before Southwestern Bell or its third party telemarketers make any affirmative winback contacts. This will allow the Commission to complete its investigation of Southwestern Bell's practices to ensure that Southwestern Bell is not misusing CPNI or CLEC data.

15. Such waiting periods have been ordered by other state commissions that have considered winback issues. For example, the Ohio Commission ordered the implementation of a 30-day waiting period, while it investigated Ameritech's winback program.² Other state Commissions have ordered waiting periods (Arizona has a 6 month waiting period, Georgia has a 7-day waiting period, South Carolina has a 10-day waiting period). In addition, Texas is currently considering adopting a 30-day waiting period. Further, based upon a recent order issued in Florida, it appears that BellSouth has

² *In the Matter of the Complaint of Corecom Newco, Inc. v. Ameritech Ohio*, Ohio Public Utilities Commission, Entry on Rehearing, Case No. 02-579-TP-CSS, July 18, 2002 ¶ 12.

voluntarily established a region-wide 10-day waiting period.³ Such a waiting period would minimize Southwestern Bell's ability to misuse customer CPNI or CLEC proprietary data for winback purposes by using this information to inappropriately contact the converting customer prior to the actual conversion to the competing CLEC. It would also enable the customer to actually experience the service from the CLEC before Southwestern Bell begins its winback barrage, although the shorter the waiting period the less experience the customer will gain.

16. The Applicants are wholesale customers, as well as competitors, of Southwestern Bell in the local exchange market. In these capacities, Applicants have an interest in this proceeding that is different from that of the general public. Applicants may be adversely affected by the tariff proposed by Southwestern Bell. Therefore, a decision on this matter will affect their interests as providers of telecommunications services in Missouri. Further, Applicants' intervention in this proceeding is in the public interest because of their interest in enhancing competition and their expertise in the telecommunications industry.

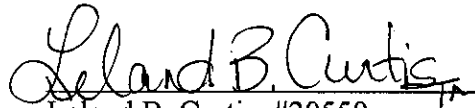
WHEREFORE, Applicants respectfully request that the Missouri Public Service Commission grant this Joint Application to Intervene and Motion to Suspend the residential "winback" tariff filed by Southwestern Bell on December 13, 2002. In the alternative, Applicants urge the Commission to impose, on an interim basis until the investigation into Southwestern Bell's back office practices is completed, a 30-day

³ *In re: Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s Key Customer Promotional Tariffs and For Investigation of Bell South's Promotional Pricing and Marketing Practices by Florida Digital Network, Inc.*, Florida Public Service Commission, Notice of Proposed Agency Action, Order Regarding BellSouth's 2002 Key Customer Tariff Program and Winback Promotions, Docket No. 020119-TP, Order No. PSC-02-0875-PAA-TP, dated June 28, 2002, p. 19.

waiting period after a customer changes telecommunications carriers before Southwestern Bell can make any affirmative winback contacts.

Respectfully submitted,

CURTIS, OETTING, HEINZ,
GARRETT & O'KEEFE, P.C.



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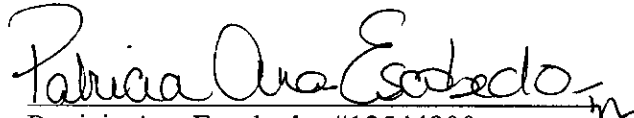
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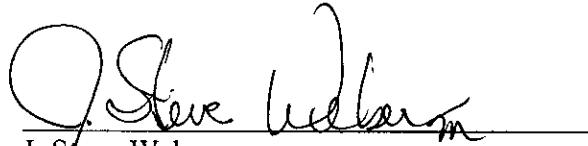
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A handwritten signature in cursive script, reading "J. Steve Weber", is positioned above a horizontal line.

J. Steve Weber

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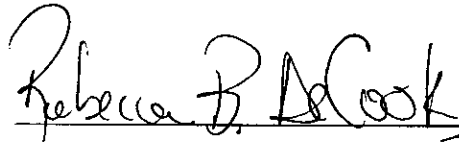
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Attorneys for AT&T

Certificate of Service

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


_____m

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ATTACHMENT

December 13, 2002

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

JI-2003-1231

Dear Judge Roberts:

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri proposes to revise the Local Exchange Tariff, P.S.C. Mo.-24. The purpose of the revision is to offer a waiver of the Service and Equipment Charge to residential customers who have disconnected their access line with SWBT for the purpose of establishing service with another local exchange carrier and now wish to return to SWBT. This letter serves as our ten-day notice that SWBT will be conducting this promotion. SBC Missouri is re-filing this tariff as directed in the final order in TT-2002-472.

Under this promotion, residential customers who qualify will receive a waiver of the Service and Equipment Charge on their primary and additional lines. In addition, those customers returning to SBC Missouri and also subscribing to the SBC Advantagesm, Essentialssm, BASICS or WORKS package will receive a waiver of the nonrecurring charges associated with those packages. This promotion will be available from December 23, 2002 through December 22, 2003.

This promotion will be available for resale.

The proposed revisions are reflected on the attached tariff sheet. The issued and requested effective dates are December 13, 2002 and December 23, 2002 respectively.

Questions concerning this filing may be referred to Sherry Myers on 314-235-6380.

Very truly yours,
Sherry Myers

I certify that a copy of the foregoing, including attachments, is being forwarded postage prepaid to the Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri, 65102 this 13th day of December 2002.

Sherry Myers

Attachment

No Supplement to this
tariff will be issued
except for the purpose
of canceling this tariff.

Local Exchange Tariff
Appendix
3rd Revised Sheet 2
Replacing 2nd Revised Sheet 2

LOCAL EXCHANGE

PROMOTIONS

1. The Telephone Company will offer a promotion to waive the \$51.77 Service and Equipment Charge for additional Business Access Lines ordered between March 29, 2001 and June 11, 2001. For new customers who order more than one line, this promotional offer applies only to the first additional line. No credit is given for the main line. This credit will apply to only additional flat rate business lines, multiline and reserve lines. This credit will be applied to the customer's first bill following installation. There is no service retention period associated with this promotion. This promotion may not be combined with other business access line offers.

(AT)

For the period of December 23, 2002 through December 22, 2003, residence customers who have disconnected their local network access line service with SWBT for the purpose of establishing service with another local exchange carrier within the SWBT service area and who now wish to return service with SWBT are eligible for this promotional offer. During this promotional period, the normally applicable non-recurring Service Connection Charges will be waived on the primary and any additional access line. In addition, those customers returning service to SWBT and also subscribing to the SBC AdvantageSM, EssentialsSM, BASICS or WORKS packages will receive a waiver of the non-recurring charges associated with these packages. The residence customers must not have had: 1) service disconnected for nonpayment; or 2) any past due bills for regulated service owed to the Company.

(AT)

Issued: December 13, 2002

Effective: December 23, 2002

By CINDY BRINKLEY, President-Missouri
Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company
St. Louis, Missouri