

Exhibit No.:

Issues: Tariff Filing
Implementing Deposit
Requirements

Witness: John VanEschen

Sponsoring Party: MO PSC Staff

Type of Exhibit: Surrebuttal Testimony

Case No.: TT-2003-0043

Date Testimony Prepared: November 12, 2002

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

SURREBUTTAL TESTIMONY

OF

JOHN VAN ESCHEN

SPECTRA COMMUNICATIONS GROUP, LLC

CASE NO. TT-2003-0043

**Jefferson City, Missouri
November 2002**

****Denotes Highly Confidential Information****

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

In The Matter Of Spectra Communications)
Group, LLC MO No. 2 Facilities For)
Intrastate Access)

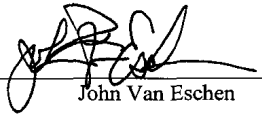
Case No. TT-2003-0043

AFFIDAVIT OF JOHN VAN ESCHEN

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

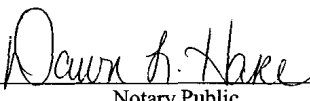
John Van Eschen, of lawful age, on his oath states: that he has participated in the preparation of the following Surrebuttal Testimony in question and answer form, consisting of 11 pages of Surrebuttal Testimony to be presented in the above case, that the answers in the following Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.





John Van Eschen

Subscribed and sworn to before me this 12th day of November, 2002.



Notary Public

DAWN L. HAKE
Notary Public - State of Missouri
County of Cole

My commission expires Jan 9, 2005

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1 presented in my Rebuttal Testimony and Mr. Price's Rebuttal Testimony concerning the number
2 of companies potentially affected by Spectra's proposal.

3 Q. What statements were made by Mr. Kohly and Mr. Price concerning pending FCC
4 action?

5 A. Both witnesses recommend the Missouri Commission wait to see what decision is
6 reached by the FCC before taking further action with Spectra's pending tariff filing. Mr. Kohly
7 states, "...any deposit implemented at the state level will have an effect on interstate switched
8 access and vice versa. For this reason, the Commission should reject the tariff revisions
9 proposed by Spectra until the FCC makes a decision at the interstate level and this Commission
10 has an opportunity to review and consider the findings and conclusions reached by the FCC."
11 Mr. Price states in his Rebuttal Testimony, "...the industry would be well served to wait and see
12 how the FCC reacts to proposals such as the one made herein by Spectra, given that interstate
13 access charges involve larger amounts of monies. A uniform approach would be beneficial."

14 Q. What is your reaction to the statements made by Mr. Kohly and Mr. Price that the
15 Missouri Commission should somehow take into account the FCC's decision on corresponding
16 interstate tariffs?

17 A. Based on further consideration, which I will discuss in this testimony, such a
18 proposal would be the most prudent course of action at this time. The FCC is currently in the
19 process of addressing proposals similar to Spectra's pending filing. Unless the FCC further
20 suspends such proposals, I anticipate the FCC would make a decision perhaps as early as next
21 month. The FCC specifically identified a series of questions for companies making such
22 proposals. The FCC's questions tend to mirror some of the question/concerns raised by Mr.

1 Kohly. I believe it would be beneficial for all parties to know the FCC's reaction to such
2 proposals before making a decision at the state level.

3 Q. Please explain how parties might benefit from knowing the FCC's decision.

4 A. The FCC will address many of the same questions raised by Mr. Kohly such as
5 whether we should expect the same level of uncollectibles in the future, whether a company's
6 debt rating is a valid predictor of a company meeting its short term operating expenses, and so
7 forth. I believe we would benefit in reviewing the FCC's decision before drawing final
8 conclusions. If the FCC approves such proposals, or approves them with some modification,
9 then it would be beneficial to explore whether a uniform approach is appropriate at both the
10 intrastate and interstate jurisdictions. On the other hand, if the FCC rejects such proposals it
11 would be beneficial to know the reasoning used by the FCC for rejection. Supporting evidence
12 might then be more finely targeted to address such reasoning if the state jurisdiction should
13 proceed to approve such a proposal.

14 Q. Are you suggesting parties should adopt the FCC's decision regardless of how the
15 FCC ultimately decides the issue?

16 A. No. In my opinion, all parties would benefit in simply knowing how the FCC
17 responds to the evidence presented. I anticipate parties will disagree with the FCC's ultimate
18 decision; however the debate about Spectra's pending proposal might be more targeted to
19 addressing an opposing point of view to the FCC's decision. In this regard, the Missouri
20 Commission could benefit from additional debate about Spectra's proposal until after the FCC
21 makes an initial decision.

22 Q. At this time, are you modifying your recommendation to the Missouri
23 Commission to approve Spectra's proposed tariff if certain revisions are made?

1 A. Yes. I'd like to revise my recommendation and recommend parties withhold
2 judgment on the proposal until the FCC makes an initial decision on the matter. The Missouri
3 Commission might consider requesting additional rounds of testimony and briefs including a
4 subsequent hearing. Spectra should notify the Missouri Commission of the FCC's initial
5 decision by supplying a copy of it into this record. A minimum of 30 days should be provided
6 for the companies to review the FCC's decision and respond to it. The parties should have an
7 opportunity to respond to the responses provided by other parties. The Missouri Commission
8 could expect the parties to respond to whether the Missouri Commission should mirror the
9 FCC's decision. If the Missouri Commission should not mirror the FCC's decision then the
10 parties ought to be expected to explain why not. Through such a process, the Missouri
11 Commission will have a more comprehensive record to base a decision and perhaps a more
12 unified approach at both the interstate and intrastate jurisdictions.

13 Q. What if the Missouri Commission does not want to wait for an FCC decision on
14 this matter?

15 A. In my Rebuttal Testimony, I indicated support for Spectra's proposed filing if
16 certain modifications were made. Based on the large number of bankruptcies that have occurred
17 within the telecommunications industry over the past several years, companies have experienced
18 a sharp increase in uncollectibles caused by bankrupt telecommunications carriers. We should
19 all be concerned about these events; however, I don't believe all options have been fully
20 explored to minimize the losses incurred by local telephone companies as companies become
21 bankrupt. Further consideration might be given to these other options before the Commission
22 allows a carrier to request a deposit based solely on a carrier's credit rating. Mr. Price casually
23 mentioned one option in his Rebuttal Testimony; however, there are some other options which I

Surrebuttal Testimony of
John Van Eschen

1 will discuss in addressing Mr. Kohly's concern that Spectra has failed to demonstrate that
2 Spectra's current deposit requirements, if employed, would have protected Spectra.

3 Q. What option was mentioned by Mr. Price?

4 A. Mr. Price suggested in his Rebuttal Testimony that accelerated payment
5 requirements could be an option to consider in lieu of deposits. So far, the record in this
6 proceeding hasn't explored the viability of this option other than the one sentence mentioned in
7 Mr. Price's Rebuttal Testimony. Southwestern Bell has made the proposal in its pending filing
8 with the FCC to require credit impaired carriers to pay their access charge bills in a 21 day
9 period rather than 30 days. Admittedly, Southwestern Bell's proposal is tied to a deposit
10 requirement based on impaired creditworthiness; however, it demonstrates an option that might
11 help minimize some risk to other carriers. Nevertheless, such a proposal to establish an
12 accelerated payment requirement for credit impaired carriers is something that deserves further
13 consideration.

14 Q. Are other options being pursued by the FCC?

15 A. Yes. Tariff filings at the federal level, similar to the one proposed by Spectra,
16 have sparked a debate on additional measures that might be taken to minimize the risk of
17 nonpayment. Besides proposing a deposit for carriers with less than an investment grade credit
18 rating or proposing shorter collection schedules, other proposals include abbreviated notice
19 periods for delinquent customers. Deposit alternatives are also discussed such as prepayments,
20 accelerated billing, irrevocable letters of credit and third party guarantee agreements. None of
21 these alternatives have received much attention, if any, in this proceeding. Again, all parties
22 might benefit in reviewing the FCC's decision on such matters and provide similar consideration
23 at the state level.

1 Q. What comments do you have regarding Mr. Kohly's concern that there is a lack of
2 evidence that Spectra's current deposit requirements, if employed, would have protected
3 Spectra?

4 A. In order to address this concern, we should take a close look at the payment
5 history of World Com and Global Crossing in their payments to Spectra. I would like to
6 separately look at each company in addressing this concern. By reviewing the payment history
7 and events leading up to the bankruptcies of WorldCom and Global Crossing, an option may
8 emerge for consideration.

9 Q. Please explain your understanding of Spectra's experience with Global Crossing.

10 A. Global Crossing's average monthly bill to Spectra is ** HC-----** which can be
11 broken down into ** HC-----** for the intrastate jurisdiction and ** C-----** for the
12 interstate jurisdiction. Prior to filing for bankruptcy on January 28, 2002, Global Crossing did
13 have a significant unpaid balance. For example, beginning in March 2001 through December
14 2001, Global Crossing had unpaid balances as follows:

Month	Unpaid Amount
March 2001	** <u>HC-----</u> **
April 2001	** <u>HC-----</u> **
May 2001	** <u>HC-----</u> **
June 2001	** <u>HC-----</u> **
July 2001	** <u>HC-----</u> **
August 2001	** <u>HC-----</u> **
September 2001	** <u>HC-----</u> **
October 2001	** <u>HC-----</u> **
November 2001	** <u>HC-----</u> **
December 2001	** <u>HC-----</u> **
Total	** <u>HC-----</u> **

15
16 The cumulative total unpaid balance prior to Global Crossing filing for bankruptcy is
17 ** HC----- **. During January through March 2002, Global Crossing incurred additional

1 unpaid balances totaling ** HC----- --**. These figures represent both interstate and
2 intrastate switched access charges for Missouri and when combined, represent the
3 ** HC----- --** identified in Mr. Martinez's Direct Testimony.

4 A complicating factor is the unpaid balances for Global Crossing reflect a dispute with
5 Spectra over the percentage of interstate usage. It could be argued Spectra's existing tariff
6 provisions prevent Spectra from formally taking such action as requesting a deposit based on
7 disputed bills. Nevertheless, the length of time and the dollar amounts associated with the
8 disputed bills is troubling. Based on discussions with Spectra officials, the dispute centered on
9 the percentage of calls assigned to the intrastate jurisdiction versus interstate jurisdiction.
10 According to Spectra, the intrastate portion of the unpaid amount is ** HC----- --** or
11 approximately ** HC **% of the total unpaid balance of ** HC----- --**. From my
12 perspective, the billing dispute between Global Crossing and Spectra should have been resolved
13 in a more timely manner. Other measures should be considered to address such situations.

14 Q. Is there an option that perhaps should be considered to address such situations?

15 A. One possible remedy is to require interexchange carriers to pay disputed charges
16 when due. Once the dispute is settled, then the interexchange carrier could be credited with any
17 payments, including interest, in excess of those actually due the company. It should be noted, Z-
18 Tel Communications, Inc. recently made such a tariff filing with the Missouri Commission on
19 November 1, 2002. Although such a filing has not yet become effective for Z-Tel, such a tariff
20 provision might help minimize unpaid balances where billings are being disputed. Attached as
21 Schedule 1 is a copy of Z-Tel's pending tariff filing. In my opinion, such a filing, if enforced by
22 Spectra, could potentially minimize Spectra's uncollectibles attributed to future situations such
23 as experienced with Global Crossing. I should point out the requirement for a carrier to pay all

1 undisputed and disputed charges is a provision contained in many interconnection agreements,
2 including Southwestern Bell's Missouri 271 Agreement commonly referred to as the M2A.

3 Q. Please explain your understanding of Spectra's experience with World Com.

4 A. WorldCom's average monthly bill to Spectra is ** HC-----**, which can be
5 broken down into ** HC-----** for the intrastate jurisdiction and ** -----** for the
6 interstate jurisdiction. Prior to filing for bankruptcy on July 21, 2002, WorldCom developed an
7 unpaid balance of ** HC-----** in January 2001, and an additional unpaid balance of
8 ** HC-----** in February 2001, for a total of ** HC-----**. It is unclear whether WorldCom
9 formally disputed the unpaid charges totaling ** C-----**. WorldCom failed to pay an
10 additional ** HC-----** in charges to Spectra after WorldCom filed for bankruptcy. These
11 figures represent both interstate and intrastate charges owed by WorldCom to Spectra and are
12 part of the ** HC-----** pre-petition balance cited by Mr. Martinez. Therefore, WorldCom
13 had a total unpaid balance of ** C----- ** with Spectra prior to filing for bankruptcy. Based on
14 this information, the question is whether Spectra's existing tariff provisions could have
15 minimized Spectra's loss.

16 A strict reading of Spectra's tariff suggests Spectra perhaps could have requested a two-
17 month deposit from WorldCom after becoming delinquent for two months in February 2001,
18 when it appeared WorldCom did not completely pay its charges to Spectra. For instance, failure
19 to pay charges in full could qualify a company for delinquency. According to Spectra's records,
20 WorldCom appeared to pay in full charges to Spectra for the remaining ten months of 2001 plus
21 the first six months of 2002 before WorldCom filed for bankruptcy; however the ** C-----**
22 remained unpaid. In my opinion, companies such as Spectra need to make decisions on whether
23 a deposit is warranted for attempting to collect a two-month deposit for a carrier's failure to pay

1 a very small fraction of its overall charges. In this instance, I cannot fault Spectra for failing to
2 apply its existing deposit provisions.

3 Q. Please reconcile the discrepancy between the figures identified in Mr. Price's
4 Rebuttal Testimony with your Rebuttal Testimony regarding the number of companies
5 potentially affected by Spectra's proposed filing.

6 A. Mr. Price indicates that Standard & Poors only tracks 4% of the interexchange
7 carriers certificated to do business in Missouri and that 72.9% of these companies would be
8 subject to Spectra's deposit requirements. In contrast, my Rebuttal Testimony indicated that out
9 of the 29 largest interexchange carriers operating in Missouri, based on revenues, only two
10 carriers have a credit rating of less than BBB and would therefore be subject to Spectra's deposit
11 requirements.

12 To analyze this discrepancy, I have prepared Schedule 2. Schedule 2 represents those
13 certificated telecommunications companies in Missouri known to have a bond rating. The
14 schedule also attempts to reflect affiliates of the bond rated company whenever possible. This
15 schedule shows that the following six companies have a rating of less than BBB: Allegiance
16 Telecom of Missouri (CCC), Focal Communications Corporation of Missouri (CCC), Level 3
17 Communications LLC (CCC), Pac-West Telecomm Inc. (CCC-), Primus Telecommunications
18 Inc. (CCC+), and RCN Telecom Services Inc. (CCC+). This same schedule also shows those
19 identified companies with a "D" rating who have already defaulted. In my opinion, the
20 discrepancy between Mr. Price's figures and my figures primarily pertains to how affiliates are
21 reflected.

22 Q. In summary, what action should the Commission take in this proceeding?

1 A. I recommend the Commission wait and see how the FCC rules on similar
2 proposals at the federal level. The Commission should solicit input from the parties based on the
3 FCC's initial decision. Although I have initially recommended the Commission approve
4 Spectra's proposal, if certain modifications are made, I would like to reserve judgment on this
5 recommendation until I review the FCC's decision. Based on further consideration, other
6 options should be considered. I agree with Mr. Kohly and Mr. Price that waiting for the FCC's
7 decision may be prudent at this time. In this testimony, I have proposed a couple of options that
8 would attempt to take into account the FCC's decision into this proceeding.

9 If the Missouri Commission does not want to wait for the FCC's decision, then I would
10 prefer to explore other alternatives rather than proceed to modify Spectra's proposal as
11 recommended in my Rebuttal Testimony. In this respect, I recommend the Missouri
12 Commission simply reject the proposed tariff filing. Greater scrutiny should be given to
13 exploring such alternatives as accelerating payment schedules for credit impaired switched
14 access customers, requiring interexchange carriers to pay disputed charges while the dispute is
15 being worked out or some other options before approving Spectra's proposal. Therefore I agree
16 with Mr. Kohly's assessment that additional evidence should be presented justifying the
17 proposed tariff filing.

18 At this time, this proceeding has been placed on a very fast track at the request of the
19 parties. The Missouri Commission might wish to consider alternative proposals before
20 approving Spectra's proposal. As reflected in the Order Further Suspending Tariff, Directing
21 Notice, and Scheduling a Prehearing Conference in this case, the Missouri Commission has
22 suspended the tariff filing for 120 days. Missouri statutes allow the Commission to suspend the
23 filing for an additional six months. Therefore, the Missouri Commission has the ability to take

1 additional time to consider Spectra's proposal. In my opinion, taking additional time would be
2 worthwhile.

3 Q. Does this conclude your testimony?

4 A. Yes, it does