

Exhibit No.:
Issues: Reciprocal Compensation
Witness: Edward J. Cadieux
Sponsoring Party: Brooks Fiber Communications of
Missouri, Inc.
Type of Exhibit: Direct Testimony
Case No.: TC-2000-225, et al.

BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC.

DIRECT TESTIMONY

OF

EDWARD J. CADIEUX

CASE NO. TC-2000-225, et al.

**St. Louis, Missouri
May 1, 2000**

FILED²
MAY 01 2000
Missouri Public
Service Commission

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

FILED²
MAY 01 2000
Missouri Public
Service Commission

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

MCI WorldCom Communications, Inc.,)
and Brooks Fiber Communications of)
Missouri, Inc., and BroadSpan)
Communications, Inc. d/b/a Primary)
Network Communications, Inc.,)

Complainants,)

vs.)

Southwestern Bell Telephone Company,)

Respondent.)

Case No. TC-2000-225, et al.

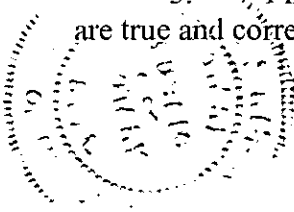
AFFIDAVIT OF EDWARD J. CADIEUX

Edward J. Cadieux, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is Edward J. Cadieux. I am Executive Director, Regulatory and Public Affairs for Gabriel Communications, Inc.

2. Attached hereto and made a part hereof for all purposes is my direct testimony in the above-referenced case.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.


Edward J. Cadieux
Edward J. Cadieux

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 26th day of April, 2000.

Ellen Rubin
Notary Public

My Commission Expires

ELLEN RUBIN
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: March 20, 2001

Direct Testimony of Edward J. Cadieux

1 **Q. Please state your name, business address, and your current position of employment.**

2 **A. My name is Edward J. Cadieux. My business address is 16090 Swingley Ridge Road,**
3 **Suite 500, Chesterfield, Missouri 63006. I am currently Executive Director, Regulatory**
4 **and Public Affairs with Gabriel Communications, Inc.**

5
6 **Q. Please describe your education and employment background.**

7 **A. From 1996 to early 1999 I was Director of Regulatory Affairs – Central Region with**
8 **Brooks Fiber Properties, Inc., the parent corporation of Brooks Fiber Communications of**
9 **Missouri, Inc. (Brooks). I have a Bachelor of Arts degree in political science from St.**
10 **Louis University, which I obtained in 1975 and a law degree from St. Louis University**
11 **that I obtained in 1978. I have been licensed to practice law in the State of Missouri**
12 **since 1979. I worked for the Missouri Public Service Commission from 1980 through**
13 **1987, first as a hearing examiner for two years, and then in the General Counsel's office**
14 **as an Assistant General Counsel and then as a Deputy General Counsel. After leaving the**
15 **PSC, I worked briefly for the Massachusetts Attorney General's office on public utility**
16 **matters, and then worked for MCI Telecommunications Corporation as a regulatory**
17 **attorney from 1987 until I started with Brooks in 1996.**

18
19 **Q. Were you involved in the negotiations between Brooks and Southwestern Bell**
20 **Telephone Company (SWBT) regarding the interconnection agreement between**
21 **those companies that was approved by the Missouri PSC in Case No. TO-97-334?**

1 A. Yes. In late 1996 and early 1997, I personally participated in the negotiations that
2 resulted in the Brooks/SWBT interconnection agreement for Missouri that was approved
3 by the Commission.
4

5 **Q. Did those Missouri negotiations include the subject of reciprocal compensation to be**
6 **paid by Brooks and SWBT to each other when one company terminated local calls**
7 **placed to its end-users by end-users served by the other company?**

8 A. Yes.
9

10 **Q. Were you involved in that part of the negotiations?**

11 A. Yes, I was in charge of that part of the negotiations for Brooks, among other subject
12 areas.
13

14 **Q. What was discussed between Brooks and SWBT during that part of the**
15 **negotiations?**

16 A. As a starting point for those negotiations, Brooks and SWBT worked from the same
17 reciprocal compensation language that had been agreed upon in Oklahoma only a few
18 months before. In 1996, I personally participated in the negotiations that resulted in an
19 interconnection agreement between Brooks Fiber Properties, Inc.'s Oklahoma
20 subsidiaries and SWBT. In the course of the Missouri negotiations, SWBT proposed to
21 alter the reciprocal compensation language that had been used in Oklahoma by splitting
22 the single local traffic termination rate used in Oklahoma into the two rate components
23 (end office and tandem) that are set forth now in the Missouri Brooks/SWBT agreement.

1 When I asked why SWBT wanted to make such a change, given that we had just
2 completed the Oklahoma agreement, I was told by the SWBT chief negotiator Bruce
3 Sparling that SWBT wanted to add the second and lower rate, for traffic terminating at
4 end offices rather than tandems, in order to reduce the total amount of money that SWBT
5 would have to pay to Brooks in reciprocal compensation. Mr. Sparling stated that SWBT
6 at that point realized the financial implications of Brooks' early focus on Internet Service
7 Providers (ISPs) as customers in Oklahoma, specifically that SWBT would be required to
8 pay significant amounts of reciprocal compensation in Oklahoma on local traffic bound
9 from its end-users to ISPs served by Brooks. He further stated that SWBT wanted to
10 reduce the amount of reciprocal compensation that it would have to pay on similar traffic
11 in other states including Missouri, and that SWBT had decided to achieve such reduction
12 by insisting upon a bifurcated reciprocal compensation rate and treatment of all or most
13 of SWBT's local traffic terminated on Brooks' network as end-office terminating (i.e.
14 subject to the lower rate). Mr. Sparling was absolutely clear about the fact that the
15 impetus for SWBT's insistence on this type of bifurcated reciprocal compensation rate
16 was SWBT's recognition of the negative (to it) financial implications of Brooks' early
17 success in gaining ISPs as customers, and that for that reason SWBT would force
18 arbitration over its proposed bifurcated reciprocal compensation rates unless Brooks
19 accepted that proposal.

20
21 **Q. Did Brooks accept SWBT's proposal?**

22 **A.** Yes, Brooks agreed to the bifurcated tandem/end office rate structure in the Missouri
23 agreement.

1 **Q. Were you surprised by Mr. Sparling's acknowledgement that SWBT would be**
2 **paying reciprocal compensation on calls from its end-users that terminated over**
3 **Brooks facilities to ISP end-users served by Brooks?**

4 **A.** No. There was never any doubt on Brooks' part during the Missouri negotiations that the
5 parties intended to pay each other reciprocal compensation on all local traffic, and that
6 calls from end users of one company to ISP end users served by the other company
7 located in the same calling scope were local traffic for such purposes consistent with
8 industry terminology and practices. The above-mentioned conversation with Mr.
9 Sparling simply confirmed what I already believed, namely that SWBT held a similar
10 understanding.

11
12 **Q. Were you satisfied that the negotiated contract language adequately captured the**
13 **intent of the parties to pay reciprocal compensation on ISP-bound local traffic?**

14 **A.** Yes. The language of the Missouri interconnection agreement captures the agreement of
15 the parties to pay reciprocal compensation on such ISP-bound local traffic by using the
16 accepted industry language of the time, which described such traffic as terminating at the
17 ISP location. The Oklahoma Commission and courts have already held that the similar
18 language used in the Oklahoma Brooks/SWBT document captured that agreement.

19
20 **Q. To what language are you referring?**

21 **A.** The agreement defines "Local Traffic" as follows:

22 Calls originated by one Party's end users and terminated to the other
23 Party's end users shall be classified as "Local Traffic" under this
24 Agreement if the call: (i) originates and terminates in the same SWBT
25 exchange area; or (ii) originates and terminates within different SWBT

1 exchanges which share a common mandatory local calling area. Calls not
2 classified as local under this Agreement shall be treated as interexchange
3 for intercompany compensation purposes.
4

5 The agreement also defines "Terminating Traffic" at Appendix Define, "X" as follows:

6 "Terminating Traffic" is a voice-grade telecommunications service which is
7 delivered to an end user(s) as a result of another end user's attempt to establish
8 communications between the parties."
9

10 Further, in Section III, the agreement addresses "Compensation for Delivery of Traffic"
11 as follows:

12 Calls originated by one Party's end users and terminated to the other
13 Party's end users shall be classified as "Local Traffic" under this
14 Agreement if the call: (i) originates and terminates in the same SWBT
15 exchange area; or (ii) originates and terminates within different SWBT
16 exchanges which share a common mandatory local calling area. Calls not
17 classified as local under this Agreement shall be treated as interexchange
18 for intercompany compensation purposes.
19

20 Further, the agreement states:

21 A. Reciprocal Compensation for Termination of Local Traffic
22

23 1. Applicability of Rates:
24

25 a. The rates, terms, and conditions in this Subsection
26 A apply only to the termination of Local Traffic,
27 except as explicitly noted.
28

29 b. Brooks agrees to compensate SWBT for the
30 termination of Brooks Local Traffic originated by
31 Brooks end users in the SWBT exchanges described
32 in Appendix DCO and terminating to SWBT end
33 users located within those exchanges referenced
34 therein. SWBT agrees to compensate Brooks for
35 the termination of SWBT Local Traffic originated
36 by SWBT end users in the SWBT exchanges
37 described in Appendix DCO and terminating to
38 Brooks end users located within those exchanges
39 referenced therein.

1 A. After the Missouri negotiations were completed in February, 1997 and the agreement was
2 approved by the Missouri PSC in May, 1997, I was surprised to receive a letter from
3 SWBT in June, 1997 that asserted that SWBT would not pay reciprocal compensation on
4 ISP-bound local traffic. A copy of that letter is attached hereto as Cadieux Schedule No.
5 1.

6
7 **Q. Did you respond?**

8 A. I promptly responded on behalf of Brooks by letter, advising SWBT that such refusal to
9 pay would be a material breach of the agreement. In the letter, I stated:

10 Please be advised that Brooks unequivocally rejects the position stated by
11 SWBT – i.e., the assertions that traffic terminating to ISPs is interstate or
12 intrastate interexchange traffic for compensation purposes, and that SWBT
13 will neither request nor pay local traffic compensation for termination of
14 such traffic. Suffice it to say that none of the purported precedents cited in
15 your letter are on-point, much less controlling, with respect to this issue.
16 To the contrary, the long-standing and well-recognized practice and rule is
17 that such traffic, when originated and terminated to an ISP located within
18 the same local area is local traffic.

19
20 Indeed, Brooks finds SWB's position to be so completely devoid of merit
21 such that it can properly be characterized as a bad faith after-the-fact
22 attempt to unilaterally avoid the financial implications of the local
23 compensation provisions voluntarily entered into by your Company in its
24 bilateral negotiations with Brooks.

25
26 A copy of my letter is attached hereto as Cadieux Schedule No. 2.

27
28 I believe my letter made it clear that Brooks was not going to tolerate SWBT's attempt to
29 retroactively alter the agreement.

1 **Q.** You have quoted contract language that defines "Local Traffic" for purposes of
2 reciprocal compensation. In Appendix ITR of the Contract, the phrase "Local
3 Traffic" also appears. In that Appendix, the contract "provides descriptions of the
4 trunking requirements for LSPs (Local Service Providers) to interconnect with
5 SWBT." It goes on to describe circumstances under which the Local Traffic must
6 be provided by SWBT to Brooks over a separate trunk group. Are you familiar
7 with this part of the agreement?

8 **A.** Yes.

9
10 **Q.** Were you involved in the negotiation of this part of the agreement?

11 **A.** Yes.

12
13 **Q.** Did any SWBT representative inform you, orally or in writing, prior to signature of
14 the agreement that SWBT intended to provide traffic that it did not consider to be
15 Local Traffic over the separate local trunk groups?

16 **A.** No.

17
18 **Q.** Did you observe any SWBT representative make such a statement to any other
19 Brooks representative prior to signature of the agreement?

20 **A.** No.

1 **Q. Are you aware of any oral or written communication from SWBT to Brooks prior to**
2 **signature of the agreement that stated such an intent?**

3 **A. No.**
4

5 **Q. To your knowledge, did Brooks have any plans to deliver traffic to SWBT that**
6 **Brooks did not consider to be local over the separate local trunk groups?**

7 **A. No.**
8

9 **Q. Are you aware of any provisions in the agreement that pertain to the segregation,**
10 **measurement or estimation of ISP-bound traffic being exchanged between the**
11 **parties?**

12 **A. No, there are none to my knowledge.**
13

14 **Q. Were there any negotiations about such segregation, measurement or estimation, to**
15 **your knowledge?**

16 **A. No.**
17

18 **Q. Does this conclude your direct testimony?**

19 **A. Yes.**

Larry B. Cooper
General Manager-
Competitive Provider
Account Team

Southwestern Bell Telephone
One Bell Plaza
Suite 0525
Dallas, Texas 75202
Phone 214 464-8145
Fax 214 464-1486



June 9, 1997

Mr. Edward Cadieux
Director, Regulatory Affairs - Central Region
Brooks Fiber Properties
425 Woods Mill Road South,
Suite 300
Town and Country, MO 63017

RE: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Cadieux:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for internet service providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC vs. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISPs premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

Cadieux Schedule No. 1

Mr. Edward Cadieux

June 9, 1997

Page 2

In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interexchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you would like to discuss this matter further, I can be reached on 214-464-8145 or you may call your account manager, Sharon McGee, on 214-464-8147.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Cooper". The signature is fluid and cursive, with a large loop at the end.

cc: Sharon McGee



June 20, 1997

Larry B. Cooper
General Manager -
Competitive Provider Account Team
Southwestern Bell Telephone Company
One Bell Plaza, Suite 0525
Dallas, Texas 75202

Re: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Cooper:

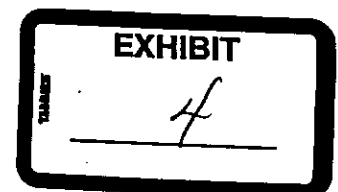
I am in receipt of your letter dated June 9, 1997 concerning the matter of local terminating compensation for delivery of traffic destined for internet service providers (ISPs). This letter responds on behalf of the Brooks Fiber Communications, Inc., operating companies ("Brooks") to the Southwestern Bell/PacBell (SWB) position as described therein.

Please be advised that Brooks unequivocally rejects the position stated by SWB – i.e., the assertions that traffic terminating to ISPs is interstate or intrastate interexchange traffic for compensation purposes, and that SWB will neither request nor pay local traffic compensation for termination of such traffic. Suffice it to say that none of the purported precedents cited in your letter are on-point, much less controlling, with respect to this issue. To the contrary, the long-standing and well-recognized practice and rule is that such traffic, when originated and terminated to an ISP located within the same local area is local traffic.

Indeed, Brooks finds SWB's position to be so completely devoid of merit such that it can properly be characterized as a bad faith after-the-fact attempt to unilaterally avoid the financial implications of the local compensation provisions voluntarily entered into by your Company in its bilateral negotiations with Brooks. In this regard we find SWB's statement of intent to be highly anti-competitive and extremely disturbing in terms of its implications for the on-going business relationship between our companies. If SWB acts in concert with the position stated in its June 9, 1997 letter, Brooks would consider such action to constitute a material breach by SWB of its interconnection agreements with Brooks.

Cadieux Schedule No. 2

Brooks Fiber Properties, Inc.
425 Woods Mill Road South / Suite 300
Town & Country, Missouri 63017
314 878-1616 Fax 314 878-3211





Due to the importance of the issue and the nature of SWB's position, Brooks hereby declares this issue to be a dispute between the parties under the Dispute Resolution provisions of the Brooks-SWB Interconnection Agreements covering the States of Oklahoma, Arkansas, Missouri and Kansas. (Brooks will communicate separately on this issue with respect to the same issue with PacBell in California.) The undersigned is hereby identified as Brooks' representative for purposes of a dispute resolution meeting. Again, due to the importance and nature of the issue, an expedited meeting schedule and period for resolution is appropriate. I propose that SWB immediately designate its representative and that we meet at SWB's offices in St. Louis, Missouri on one of the following days: June 26, 27 or July 1 or 2.

Please call me at (314) 579-4637 to confirm the identification of SWB's representative for dispute resolution purposes, and to confirm your choice among the above-listed dates and the location of the meeting.

Very truly yours,

Edward J. Cadieux
Director, Regulatory Affairs - Central Region

cc: John C. Shapleigh, Brooks
Sharon McGee, SWB