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June 23, 2000

FILED<sup>2</sup>  
JUN 26 2000

Missouri Public  
Service Commission

Via Federal Express

Dale Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Truman State Office Building, 5th Floor  
301 West High Street  
Jefferson City, Missouri 65101-1517

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

Dear Mr. Roberts:

Enclosed please find for filing with the Commission an original and nine copies of Complainants' Reply to SWBT's Motion to Compel. Upon your receipt, please file stamp the extra copy received and return to the undersigned in the enclosed, self-addressed, stamped envelope. Thank you.

Very truly yours,

  
Carl J. Lumley

CJL:dn

Enclosures

cc. Michael Dandino, Office of Public Counsel (W/Enclosure)  
Dan Joyce, General Counsel (W/Enclosure)  
Anthony Conroy, SWBT (W/Enclosure)

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. )

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Service Commission

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

COMPLAINANTS' REPLY TO SWBT'S MOTION TO COMPEL

Come Now Complainants and for their Reply to SWBT's Motion to Compel state to the Commission as follows:

1. This case concerns the question of whether or not the interconnection agreements between Complainants and SWBT require SWBT to pay reciprocal compensation on local traffic originated by its end users and terminated to ISP end users served by Complainants. Once the Commission rules that SWBT is required to pay reciprocal compensation on such traffic under the interconnection agreements, either SWBT will voluntarily make the payments or the parties will have to resolve a refusal to pay by SWBT in court. As the parties have already acknowledged in the pleadings exchanged regarding SWBT's unsuccessful Motion to Dismiss, this Commission cannot adjudicate the exact amount owed and make an award of damages. The Commission has before it a matter of primary jurisdiction, concerning whether or not local traffic

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terminated at ISP locations is subject to the reciprocal compensation rates set forth in the agreements.

2. In its DR No. 1, SWBT first asks for a statement of the amount claimed due and how it was determined, including the applicable rates. As stated in Complainants' objection, this information was already provided in the direct testimony that was filed after the DR was served, but before the objections were due. Specifically, witnesses Aronson and Senft provide detailed testimony and schedules that answer the question regarding the amounts owed. The other witnesses identify the applicable rates in their testimonies. SWBT acknowledges such information was provided, and yet inexplicably also ignores the existence of such testimony.

3. SWBT then continues in DR No. 1 to ask for a monthly breakdown of the minutes of traffic terminated to each separate ISP, and the name, address and telephone number of each such ISP. Such information about Complainants' individual end users is irrelevant to the question of whether or not SWBT must pay reciprocal compensation on local calls terminated to ISPs. The Commission will be answering the question in the aggregate regarding all such traffic, and will not be considering specific traffic terminated to specific end users.

4. In DR No. 2, SWBT seeks substantial amounts of additional information regarding the details of any arrangements between Complainants and their ISP end users. Again, such information is irrelevant. This case concerns the agreements between SWBT and Complainants, not any other agreements.

5. The information SWBT seeks about the individual ISPs served by Complainants does not meet the scope of discoverable information as defined by Rule 56.01(b)(1) quoted by SWBT. As stated, the information is not relevant, it does not pertain to any claim or defense, and it will not lead to the discovery of admissible evidence. This case concerns the negotiations

and agreements between the parties, not agreements between parties and their customers, not the identity of specific customers, and not the traffic patterns of specific customers.

6. The parties have submitted testimony regarding the total amount of traffic involved, to give the Commission a sense of the scope of the dispute. SWBT refers to discrepancies regarding the total amount of traffic at issue, as described in the competing testimonies of the parties. The Commission will not be resolving such discrepancies. Furthermore, to the extent SWBT contends that the discrepancies result from failure on the Complainants part to utilize SWBT records, as will be established in surrebuttal testimony SWBT has unilaterally refused to provide complete records and thereby forced Complainants to utilize other sources of information.

7. Complainants have not asked the Commission to rule on "some other yet to be described type or types of traffic" as SWBT states on page 5 of its motion.

8. The accuracy of SWBT's "tracking mechanism" is not an issue that will be resolved in this case. What is relevant is that no tracking mechanism is discussed in the agreements, because the parties agreed that local traffic terminated to ISP end users would be treated the same as all other local traffic. No tracking is required, nor have Complainants agreed to any such mechanism.

9. Complainants have stated that reciprocal compensation is the only method by which they would be compensated for SWBT's use of their networks resulting from the termination of traffic originated by SWBT end users to ISP end users served by Complainants. It is irrelevant whether and/or how Complainants and SWBT are compensated by their end users. It is only relevant how SWBT and Complainants agreed to compensate each other.

10. Whatever Complainants and/or SWBT may or may not do to take full advantage of their interconnection agreements and business opportunities has nothing to do with what they agreed to in the interconnection agreements. Further, gains made pursuant to negotiated agreements are not windfalls.

11. This is not a matter of public interest or policy. This is not an arbitration to establish terms and conditions of an agreement. This is a case that presents a question of whether or not the parties have agreed that reciprocal compensation rates apply to local calls terminated to ISP end users.

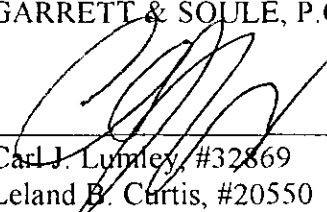
12. Specific calls and/or traffic are not at issue. This is not an audit of reciprocal compensation bills. Again, this case simply concerns the terms and conditions of the parties' agreement.

13. While the Commission has established a protective order, such measures do not justify parties incurring the time and expense of assembling and supervising the review of proprietary information that has no bearing on the case.

14. The timing of SWBT's motion is suspect. It has been a month and a half since the objections were made. Since then, SWBT has prepared and submitted its rebuttal testimony. Only now, while Complainants are working on their surrebuttal testimony, has SWBT chosen to raise this dispute. The Commission could well conclude from such circumstances that SWBT merely seeks to distract Complainants from putting together their evidence, and does not really believe its own arguments regarding its irrelevant discovery.

WHEREFORE, Complainants request the Commission to deny SWBT's Motion to Compel.

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Inc. and BroadSpan Communications, Inc.  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was sent to all parties listed on the attached service list by U.S. Mail, postage paid, on the 23 day of June, 2000.



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