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August 9, 2000

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
301 West High Street, Floor 5A  
Jefferson City, Missouri 65101

**FILED<sup>2</sup>**  
AUG 10 2000  
Missouri Public  
Service Commission

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

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and eight copies of Southwestern Bell Telephone Company's Motion to Establish Supplemental Hearing Date.

Please stamp "Filed" on the extra copy of the pleading and return the copy to me in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Anthony K. Conroy".

Anthony K. Conroy

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>  
AUG 10 2000

Missouri Public  
Service Commission

MCI WorldCom Communications, )  
Inc. et al., )  
 )  
Complainants, )  
 )  
v. )  
 )  
Southwestern Bell Telephone Company, )  
 )  
Respondent. )

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

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
MOTION TO ESTABLISH SUPPLEMENTAL HEARING DATE**

COMES NOW Southwestern Bell Telephone Company (SWBT) and for its Motion to Establish Supplemental Hearing Date, states to the Missouri Public Service Commission (Commission) as follows:

1. On January 20, 2000, the Commission issued its Order Adopting Procedural Schedule and Directing Mediation in this case. In that Order, the Commission adopted the parties' proposed procedural schedule (with two exceptions not relevant to this Motion). The procedural schedule proposed by the parties and adopted by the Commission included evidentiary hearing dates of July 19-21, 2000. Consistent with this procedural schedule, all of SWBT's witnesses were available and planned to testify before the Commission on July 19-21, 2000.
2. On July 13, 2000, the Commission issued its Order Modifying Procedural Schedule. In this Order, the Commission, sua sponte, rescheduled the evidentiary hearing in this case to August 23-25, 2000. In its Order Modifying Procedural Schedule, the Commission stated

that "[S]hould SWBT prevail on its motion to compel, it appears that it would be hampered in its ability to actually use the information thereby acquired in its defense at hearing." (Order, p. 1).

3. After receiving the Commission's Order rescheduling the evidentiary hearing to August 23-25, 2000, counsel for SWBT contacted all of the witnesses who had pre-filed Rebuttal testimony on behalf of SWBT on May 31, 2000. All but one of SWBT's witnesses were available to appear before the Commission on August 23-25, 2000, and testify on cross examination and answer questions from the Commissioners and the bench. However, one SWBT witness, Albert Halprin (former Chief of the Common Carrier Bureau at the Federal Communications Commission), advised counsel for SWBT that he was unavailable to testify on the rescheduled hearing dates, due to preexisting scheduling conflicts. Mr. Halprin also advised that it was not now possible to reschedule this pre-existing conflict.

4. Upon learning of Mr. Halprin's unavailability for the August 23-25, 2000 hearing dates, counsel for SWBT contacted counsel for Complainants, and counsel for Complainants indicated that he did not object to rescheduling the hearing in this case to dates in September when all witnesses would be available for hearing. Counsel for SWBT then contacted the regulatory law judge assigned to this case and left a detailed message regarding the unavailability of SWBT witness Albert Halprin. Counsel for SWBT also suggested that there were several dates in September when all witnesses would be available to testify in this case.

5. On July 25, 2000, the Commission issued its Notice Regarding Hearing, in which it stated it would not change the new hearing dates (August 23-25, 2000). The Commission also stated that "[T]o the extent that the new hearing dates are inconvenient for any witness, the following dates are available for proceedings involving those witnesses: August 17, 18, 21, 22 and September 5, 6, 7, and 8."

6. Based on Complainants' failure to comply with the Commission's July 20, 2000, Order Regarding Motion to Compel, it is not clear that the Commission will need to conduct any hearing in this case on August 23-25, 2000. On August 2, 2000, SWBT filed its Motion for Sanctions, in which SWBT asked the Commission to dismiss the complaints in this case based on Complainants refusal to comply (or even attempt to comply) with the Commission's July 20, 2000 Order Regarding Motion to Compel. As described in SWBT's Motion for Sanctions, Complainants produced little if any of the information they were ordered to produce, and their responses indicated that they put little if any effort into even looking for responsive information. Since Complainants did not provide responses to SWBT's data requests on July 31, 2000, as ordered by the Commission, it should come as no surprise to the Commission that Complainants also did not file any Supplemental Direct Testimony on August 7, 2000, which the Commission specifically permitted Complainants to do "as may be necessary in view of the Commission's decision herein." Since Complainants have refused to provide or even look for the information SWBT needs for its defense of this case, and which the Commission specifically ordered Complainants to produce by July 31, 2000, SWBT believes the Commission cannot permit Complainants to proceed to hearing, and instead must dismiss their complaints. In addition, until the Complainants decide (or are ordered again) to comply with the Commission's earlier order and produce the information they were previously ordered to produce, SWBT cannot submit any Supplemental Rebuttal Testimony on or before August 18, 2000, again as provided in the Commission's July 20, 2000 Order.

7. In the event the Commission somehow permits this case to proceed in some fashion, of the dates identified by the Commission as being available for additional proceedings involving witnesses, Mr. Halprin is available on September 8, 2000. If the Commission does not

dismiss the complaints in this case for the reasons described herein and in SWBT's Motion for Sanctions and the Commission does not wish to reschedule the entire hearing in this case to dates in September when all witnesses would be available, SWBT respectfully requests that the Commission establish a supplemental hearing date of September 8, 2000, so that Mr. Halprin may appear before the Commission to present his direct testimony, be cross examined by opposing parties, and answer any questions from the Commissioners or the bench.

WHEREFORE, SWBT respectfully requests that if the Commission does not dismiss Complainants' complaints based on Complainants' refusal to comply with the Commission's July 20, 2000, Order Regarding Discovery, that the Commission enter an order establishing September 8, 2000, as a supplemental hearing date to permit SWBT witness Albert Halprin to testify before the Commission in this matter.

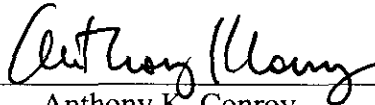
Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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**CERTIFICATE OF SERVICE**

A copy of the foregoing was mailed prepaid postage to the following parties on August 9, 2000.

  
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Anthony K. Conroy

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