

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
August 17, 2000**

**CASE NO: TC-2000-225**

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**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 17th  
day of August, 2000.

MCI WorldCom Communications, Inc., Brooks	)	
Fiber Communications of Missouri, Inc.,	)	
and BroadSpan Communications, Inc., d/b/a	)	
Primary Network Communications, Inc.,	)	
	)	
Complainants,	)	
	)	
v.	)	<b><u>Case No. TC-2000-225</u></b>
	)	
Southwestern Bell Telephone Company,	)	
	)	
Respondent.	)	

**ORDER REGARDING MOTION FOR PROTECTIVE ORDER  
TO CONCLUDE DISCOVERY**

On August 1, 2000, Complainants MCI WorldCom Communications, Inc. (MCI) and Brooks Fiber Communications of Missouri, Inc. (Brooks; collectively, Complainants), filed their Motion for Protective Order to Conclude Discovery and Motion to Shorten Time. The latter motion is now moot and need not be herein determined.<sup>1</sup> Respondent Southwestern Bell Telephone Company (SWBT) responded to Complainants' Motion for Protective Order on August 4, 2000, and Complainants replied on August 10. That motion is now ripe for determination.

**Discussion:**

In their motion of August 1, 2000, Complainants suggest that the Commission has "indicated some confusion regarding the nature of this case and its jurisdiction." According to Complainants, "the Commission

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<sup>1</sup> Although the Commission never ruled on this motion, it was effectively granted as SWBT did respond by August 4, 2000, as the motion requested.

has jurisdiction to determine the applicability of a particular rate to particular traffic, not to determine amounts owed and award payment thereof." Complainants rely on a line of Missouri cases originating ultimately with State ex rel. Laundry, Inc. v. Public Service Commission, 327 Mo. 93, 34 S.W.2d 37 (1931), which affirmed the authority of the Commission to determine which of several tariffed rates ought properly to apply to the service furnished to a particular customer. The Commission agrees, based on Laundry, supra, and other cases, that the Commission can neither award money damages nor construe, enforce or reform a contract. American Petroleum Exchange v. Public Service Commission, 172 S.W.2d 952, 955 (Mo. 1943); May Department Stores Co. v. Union Electric Light & Power Co., 341 Mo. 299, 107 S.W.2d 41, (Mo. 1937); Kansas City Power & Light Co. v. Midland Realty Co., 93 S.W.2d 954, 959 (Mo. 1936).

SWBT, in its response to Complainants' motion, argues that Complainants are actually seeking to evade their responsibilities under the Commission's Order Regarding Motion to Compel, issued on July 20, 2000. Therein, the Commission determined that Complainants must provide the discovery sought by SWBT. With respect to Complainants' response to SWBT's data requests (DRs), in the wake of the Commission's Order of July 20, 2000, SWBT states "MCI WorldCom has wholly failed to respond to SWBT's data requests." On August 3, 2000, SWBT filed a Motion for Sanctions which is not yet ripe.

Complainants replied on August 10, 2000, stating that they have replied in full to SWBT's DRs "given available time and circumstances." Complainants again urge the Commission to grant their motion and to cut off discovery herein.

Discovery is available in cases before the Commission on the same basis as in civil cases in circuit court. 4 CSR 240-2.090(1). The same

time limits and sanctions apply. *Id.*; and see St. ex rel. Arkansas Power & Light Co. v. Missouri Public Service Com'n, 736 S.W.2d 457, 460 (Mo. App., W.D. 1987) ("This court holds the PSC may impose sanctions pursuant to Rule 61.01."). Necessarily, the Commission's authority extends to protective orders under Rule 56.01(c).

This matter arose when, on April 24, 2000, SWBT served its DRs 1 and 2 upon the Complainants. Complainants objected to these DRs and SWBT sought to compel responses. Thereafter, having been fully advised of the circumstances by the parties' respective pleadings, the Commission determined that Complainants' objections were without merit and granted the motion to compel.

Complainants' Motion for Protective Order to Conclude Discovery must be denied. The grounds cited by Complainants in support of their motion go to the Commission's jurisdiction which, by comparison to the plenary jurisdiction of a circuit court, is limited. However, the Commission has not purported to make any order herein awarding money damages, enforcing a contract or otherwise exceeding its jurisdiction. Discovery before the Commission is of equal scope to discovery before a circuit court. The Commission has made an order enforcing discovery herein, an order which the Commission was clearly authorized to make. As the discovery sought by SWBT is appropriate, and Complainants have not shown undue burden or expense, a protective order will not lie.

**IT IS THEREFORE ORDERED:**

1. That the Motion for Protective Order to Conclude Discovery, filed by Complainants MCI WorldCom Communications, Inc., and Brooks Fiber Communications of Missouri, Inc., on August 1, 2000, is denied.

2. That this order shall become effective on August 17, 2000.

**BY THE COMMISSION**

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Drainer, Murray,  
Schemenauer, and Simmons, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

FYI: To Be Issued By Delegation

agenda 8/17

AL/Sec'y: Thompson/Hoppe

8-11  
Date Circulated

8-16  
Return by 3:pm.

10 am.

TC-2600-225  
CASE NO.

Lumpe, Chair

Draimer, Vice Chair

Murray, Comptroller

Schemenauer, Commissioner

Simmons, Commissioner

5-045

**CONTESTED**

STATE OF MISSOURI  
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 17<sup>th</sup> day of Aug. 2000.

*Dale Hardy Roberts*

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

