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August 21, 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
AUG 21 2000
Missouri Public
Service Commission

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

Dear Judge Roberts:

Enclosed for filing in the above-referenced case are an original and eight copies of Southwestern Bell Telephone Company's Request for a Ruling on its Motion for Sanctions, or in the Alternative, Motion for Continuance.

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

Very truly yours,

Paul G. Lane / TM

Paul G. Lane

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

AUG 21 2000

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)

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

v.)

Southwestern Bell Telephone Company.)

Respondent.)

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REQUEST FOR A RULING ON ITS MOTION FOR SANCTIONS, OR IN THE
ALTERNATIVE, MOTION FOR CONTINUANCE**

COMES NOW Southwestern Bell Telephone Company ("SWBT"), and for its Request for a Ruling on its Motion for Sanctions, or in the Alternative, Motion for Continuance, states as follows:

1. As detailed below, SWBT has sought discovery from Complainants on matters which are crucial to the presentation of its defense in this case to the Missouri Public Service Commission ("Commission"). Complainants have failed to produce the information requested, even after this Commission issued a very specific Order compelling Complainants to provide "full and complete" responses to SWBT's discovery. See, Order Regarding Motion to Compel, issued July 20, 2000.¹ Instead of complying, Complainants sought a protective order which

¹ The Commission previously continued this case on its own motion prior to issuing its Order Regarding Motion to Compel, noting that absent a continuance, SWBT would be hampered in its ability to use the information at the hearing. Order Modifying Procedural Schedule, July 13, 2000, p. 1

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would permit Complainants to ignore the discovery Order. See, MCI WorldCom's Motion for Protective Order to Conclude Discovery, filed August 1, 2000. In its Order Regarding Motion for Protective Order to Conclude Discovery, issued on August 17, 2000, the Commission rejected Complainants' attempt to evade the Commission's Order requiring the production of information and documents.

2. Following Complainants' failure to comply with the Commission's July 20, 2000 Order compelling Complainants to respond to SWBT's discovery by July 31, SWBT filed a Motion for Sanctions on August 2, 2000. On August 8 or 9, 2000, Complainants filed a Response² (which attached some additional, but still inadequate additional information) and SWBT filed its Reply on August 14, 2000. SWBT's Motion for Sanctions is now ripe for Commission decision.

3. SWBT has been severely prejudiced by Complainants' failure to respond to SWBT's discovery requests, and Complainants' refusal to comply with the Commission's Order compelling discovery. Because Complainants have refused to comply with the Commission's Order, SWBT has not received the documents and information it needs to present its defense to the Commission. Among other items, the information sought by SWBT -- and which the Commission ordered Complainants to produce -- is necessary for SWBT to rebut Complainants' contention as to both the volume of internet-bound traffic at issue and whether this traffic can be said to terminate in the local calling scope. These issues are fundamental to Complainants' case, and to SWBT's defense in this case. As set forth in its Motion for Sanctions, SWBT believes the information sought in its data requests and which the Commission ordered Complainants to

² The filing letters accompanying Complainants' separate Responses are dated August 8, 2000. However, the certificates of service attached to the Responses reflect that copies were mailed to parties of record on August 9, 2000. SWBT received the Responses on August 11, 2000.

produce would show that the volume of traffic claimed by Complainants is excessive and that Complainants have concealed their role in carrying the traffic in question to ISP locations outside of the local calling scope and possibly outside the State of Missouri. As a result of Complainants' actions, SWBT has been thwarted from being able to present supplemental Rebuttal Testimony as contemplated by the Commission's July 20 Order.

4. The Commission has already recognized that SWBT needs this information to prepare its defense, as it noted in Order Regarding Motion to Compel: "Thus, SWBT is surely entitled to demand the details of the debts that Complainants' claim it owes them because, to the extent that SWBT disputes those details, SWBT must make that record before this Commission." (Order Regarding Motion to Compel at p. 7). The Commission further noted that the agreements and financial arrangements between Complainants and their ISP end-users are relevant to the issues raised in the pleadings. Accordingly, the Commission's Order Regarding Motion to Compel required Complainants' production by July 31, 2000, and gave SWBT the opportunity to file supplemental Rebuttal Testimony.

5. As a direct result of Complainants' failure to comply with the Commission's July 20, 2000 Order Regarding Motion to Compel, SWBT is not in a position to try this case on August 23-25, 2000. The appropriate response to Complainants' blatant refusal to comply with the Commission's Order is dismissal of this action, as sought by SWBT in its Motion for Sanctions. In the event the Commission chooses not to exercise its discretion to dismiss the case, the Commission may choose to give Complainants once last opportunity to comply with the July 20 Order and give SWBT the opportunity to conclude the discovery and file supplemental rebuttal testimony. In either case, because of Complainants' actions, the matter is not ready to be tried on August 23-25, 2000.

6 SWBT has prefiled the testimony of nine witnesses in this case. Most of the witnesses are from locations other than St. Louis and Jefferson City. Given that Complainants' failure to comply with this Commission's Order has placed SWBT in a position where it cannot adequately present its case to the Commission, SWBT believes it is inappropriate to require the witnesses to appear in Jefferson City for the hearing until the Motion for Sanctions has been determined. SWBT believes the most reasonable procedure at this juncture is to determine the Motion for Sanctions and, if the case is not dismissed, for the Commission to issue a subsequent Order again requiring Complainants to comply with SWBT's discovery, with SWBT given the opportunity to file supplemental Rebuttal Testimony before the hearing is conducted. This Order should also put Complainants on notice that if they continue to refuse to comply with the Commission's Orders requiring them to provide "full and complete" responses to SWBT's discovery requests, their Complaints will be dismissed.

7. Complainants seek an Order from the Commission which would ultimately require SWBT to pay more than \$35 million in reciprocal compensation payments on Internet-bound calls from SWBT end-users delivered to Complainants. SWBT is surely entitled to the opportunity for discovery to support its position in the case and to make a fair presentation to the Commission. It has been deprived of that opportunity by the actions of Complainants, who have failed to abide by the Commission's discovery Order in this case. Under these circumstances, SWBT respectfully requests the Commission to promptly grant its Motion for Sanctions and dismiss the case or, if the Commission exercises its discretion to give Complainants one more opportunity to comply, to continue this case until SWBT has received the information from Complainants and been given an opportunity to file its supplemental rebuttal testimony as contemplated by the Commission's July 20, 2000 Order Regarding Motion to Compel.

WHEREFORE, for all the foregoing reasons, SWBT respectfully requests the Commission to issue a prompt determination on its Motion for Sanctions and, if the case is not dismissed pursuant to SWBT's request, to grant a continuance of the hearing in this case until Complainants have complied with the Commission's Order and SWBT has been given an opportunity to conclude discovery and to file supplemental rebuttal testimony.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY Paul G. Lane /tm

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail and by facsimile on August 21, 2000.



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