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November 10, 1999

FILED<sup>2</sup>

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Missouri Public  
Service Commission

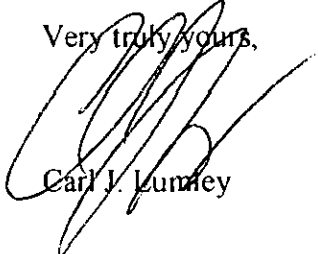
Dale Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Truman State Office Building, 5th Floor  
301 West High Street  
Jefferson City, Missouri 65101-1517

Re: Case No. TC-2000-225 Consolidated With TC-2000-226

Dear Mr. Roberts:

Enclosed please find for filing with the Commission an original and fifteen copies of MCI WoldCom Communications, Inc.'s and Brooks Fiber Communications of Missouri, Inc.'s Joint Motion to Strike. Upon your receipt, please file stamp the extra copy received and return to the undersigned in the enclosed, self-addressed, stamped envelope. If you have any questions, please do not hesitate to contact us.

Very truly yours,

  
Carl J. Lumley

CJL:dn

Enclosures

cc. Office of Public Counsel (W/Enclosures)  
General Counsel (W/Enclosures)  
SWBT (W/Enclosures)  
MCIWC (W/Enclosures)  
Brooks (W/Enclosures)



cause unnecessary delay and needless increase in the cost of litigation) and are not warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. "Evidence" simply cannot be considered in the analysis of a motion to dismiss. Nor do affidavits constitute evidence. Given that SWBT's improper arguments for dismissal due to lack of evidence are the main thrust of the "Reply", the Commission should strike that pleading in its entirety.

2. SWBT's "Reply" is otherwise an improper and cumulative restatement of its Motions to Dismiss. SWBT rehashes its mischaracterization of FCC and PSC rulings, even after MCIWC and Brooks provided a complete discussion of such rulings. For example, MCIWC and Brooks provided a full summary of the FCC Declaratory Ruling at pages 8-10 of the Joint Response, yet SWBT repeats its improper selective misinterpretation of only isolated portions thereof. Likewise, MCIWC and Brooks articulated the distinct differences between the Birch arbitration and this interpretation and enforcement proceeding, yet SWBT erroneously continues to assert the Birch proceeding as some type of precedent. MCIWC and Brooks fully responded to the Motions to Dismiss in their Joint Response. SWBT's cumulative restatement of its Motions in its "Reply" demonstrates that the pleading is unnecessary, improper and should be stricken.

3. Without any basis whatsoever, SWBT impugns MCIWC and Brooks and the undersigned counsel by characterizing the Complaints as "fictional" ("Reply" p. 6) – in other words SWBT wrongfully accuses counsel of filing false and fraudulent complaints. To the contrary, counsel fully complied with their ethical duties by investigating the factual underpinnings of the Complaints. There is no obligation to present evidence at this point. Nonetheless, in order to make it absolutely clear that the Complaints have been filed in good faith, that the representations regarding the evidence set forth in footnote 2 of the Joint Response

were truthful, and that the Complainants are entitled to relief, MCIWC and Brooks submit herewith the affidavits of Edward J. Cadieux and Gary Ball (attached). These affidavits demonstrate that, as alleged in the Complaints, SWBT intended and agreed to pay reciprocal compensation on all local traffic, including ISP-bound traffic, using prevailing industry terminology. In fact, Mr. Cadieux describes a specific discussion with SWBT's chief negotiator that confirmed SWBT's intent and agreement.

4. Notwithstanding SWBT's attempt to dictate new procedures to the Commission and to unilaterally impose an abbreviated procedural schedule on the other parties, MCIWC and Brooks have not attempted to prepare their entire set of direct evidence. MCIWC and Brooks do not consent to any truncated, "outside the rules" evaluation of the Complaints based on the limited affidavits filed thus far. MCIWC and Brooks remain entitled to a hearing on the merits of the consolidated Complaints. MCIWC and Brooks have filed affidavits herewith in response to SWBT's accusations of unethical conduct.

5. The affidavits of Russell Ewing and Eugene Springfield, and the other purported "evidence" attached to SWBT's Motions to Dismiss, should be stricken as improperly submitted. There is no provision for such preliminary submission of evidence. The completeness and veracity of such affidavits should also be the subject of inquiry in this case, given the conflict between such affidavits and the affidavits attached hereto, as well as the court ruling in Oklahoma that SWBT intended and agreed to pay reciprocal compensation on ISP-bound traffic.<sup>1</sup> SWBT has recently been sanctioned in Texas for the intentional submission of

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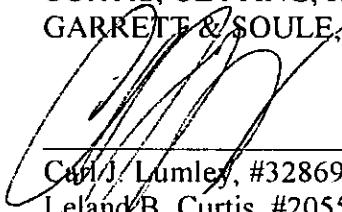
<sup>1</sup> Contrary to SWBT's assertions, the FCC has not rejected prior arguments that ISP-bound traffic should be viewed as terminating locally for purposes of compensation. As explained in detail in the Joint Response, the FCC specifically acknowledged that parties could have reasonably viewed ISP-bound traffic as terminating locally for compensation purposes, notwithstanding the interstate jurisdictional nature of the traffic. Applying the factors set forth by the FCC, the Oklahoma Federal Court held that Brooks and SWBT made such an agreement, consistent with Brooks argument (as quoted by SWBT) that "for compensation purposes under its interconnection agreement with SWBT, the disputed traffic terminates at the ISP location."

"evidence" from uninformed witnesses.<sup>2</sup> There should be an investigation into whether SWBT has repeated such improper conduct here.

WHEREFORE, MCIWC and Brooks move the Commission to strike SWBT's "Reply" and all the attachments to SWBT's Motions to Dismiss, to investigate SWBT's submission of such attachments, and to grant such other and further relief as to the Commission seems meet and proper in the premises.

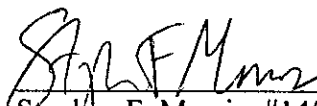
Respectfully submitted,

CURTIS, OETTING, HENIZ,  
GARRETT & SOULE, P.C.



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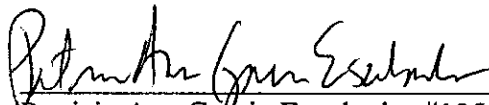


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Stephen F. Morris, #14501600  
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<sup>2</sup> See Order Ruling on ACI's and Covad's Motions and Amended Motions on Sanctions, Petition of Accelerated Connections, Inc dba ACI Corp for Arbitration to Establish an Interconnection Agreement with SWBT, Docket No. 20226, p. 26 Tx PUC (July 27, 1999) ("SWBT chose to designate witnesses who did not have knowledge of the core critical issues in this case and who could therefore not answer questions on these issues. The end result was that SWBT's witnesses presented an inaccurate and incomplete picture of the facts, which is misleading at best, and does not allow Petitioners to ascertain the truth nor adequately prepare for the arbitration. The discovery process and designation of SMEs is not new to SWBT, and the company should have proper procedures in place to efficiently and effectively designate witnesses and ensure they are aware of the company's activities. Failure to completely answer discovery is treated the same as not answering at all. (TEX R. Civl. Proc. 215(1)(c)) SWBT's failure to provide fully responsive SMEs in response to Petitioners RFIs and in the presentation of its case is an abuse of discovery.").



Patricia Ana Garcia Escobedo, #12544900

Senior Attorney

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Austin, Texas 78701


(512)495-6848

(512)477-3845 (FAX)

Attorneys for MCI WorldCom Communications, Inc.  
and Brooks Fiber Communications of Missouri, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this MCIWC and Brooks Joint Motion to Strike has been sent to all parties listed on the attached service list by first class U.S. Mail on on the 10 day of November, 1999.



A handwritten signature in dark ink, consisting of stylized, overlapping loops and strokes, is written over a horizontal line.

Office of Public Counsel  
Missouri Public Service Commission  
P.O. Box 7800  
Jefferson City, MO 65102

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Legal Department  
Southwestern Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis, MO 63101



STATE OF NEW YORK     )  
                                  )  
COUNTY OF KINGS     )     SS.

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

MCI WorldCom Communications, Inc.,     )  
and Brooks Fiber Communications of     )  
Missouri, Inc.,     )  
                                  )  
                          Complainants,     )     Case No. TC-2000-225  
                                  )  
                                  )  
                          vs.     )  
                                  )  
Southwestern Bell Telephone Company,     )  
                                  )  
                          Respondent.     )

**AFFIDAVIT OF GARY J. BALL**

I, Gary J. Ball, being of sound mind and over the age of 21 years, do hereby swear and affirm that I have personal knowledge of the following facts:

1. I am presently the Director of Regulatory Policy Development for MCI WorldCom. My current responsibilities include providing national policy guidance on pricing issues related to interconnection negotiations. I am also responsible for overseeing the company's contract enforcement activities related to disputes over the payments of reciprocal compensation. I have a Bachelor of Science degree in Electrical Engineering from the University of Michigan and a Masters of Business Administration from the University of North Carolina. I have worked in the telecommunications industry since 1991. I have had extensive experience in network and regulatory planning and analysis. My regulatory experience includes responsibility for developing and implementing regulatory policies on both state and federal levels, developing and filing local and federal tariffs, ensuring compliance with state and federal rules, and providing support for business, marketing, and network planning. Prior to my current position, I was responsible for the oversight of interconnection negotiations and agreements pursuant to the Telecommunications Act of 1996 ("Act").

2. During the period from 1996 to 1998, I held the position of Director of Regulatory Affairs for MFS Communications, reporting to Alex Harris, who, at that time, was Vice President of Regulatory Affairs for MFS Communications. Mr. Harris was the officer for MFS whose signature appears on the interconnection agreement between MFS and SWBT for Missouri. My principal responsibilities at that time concerned the negotiation of interconnection agreements in the northeastern United States with Bell Atlantic and NYNEX. My counterpart in the Southwestern Bell region was Tim Devine, who was also a Director who reported to Alex Harris and was responsible for negotiating interconnection agreements with SWBT and BellSouth.

3. Because Mr. Devine is no longer with MCIWorldCom, I have been asked to supply this Affidavit to describe my knowledge of MFS's negotiations with SWBT regarding the treatment of calls to Internet Service Providers (ISPs) as local traffic subject to the contractual provisions requiring the payment of reciprocal compensation.

4. During the time frame when the MFS-SWBT Missouri interconnection agreement was negotiated and made, the telecommunications industry custom and practice was to treat calls to ISPs as local calls terminating at the ISP locations. Based on FCC Rules and Orders, ISPs were allowed to purchase local business lines and trunks from SWBT's local service tariffs. Calls to ISPs by SWBT's end users were dialed using the seven or ten digit local dialing pattern and SWBT was compensated by their end users in the form of local service charges. Furthermore, based on FCC Accounting Rules and Orders, SWBT's revenues and expenses for these local calls to ISPs were treated as intrastate revenues and expenses. Additionally, SWBT did not request any unique treatment of calls to ISPs. SWBT could have, but did not, request that ISP traffic be routed, billed, or accounted for separately from other local traffic. I know this because, had such a request been made, our national position would have required that such a request be arbitrated. For example, US West objected to the treatment of ISP traffic as local

traffic subject to reciprocal compensation during the course of negotiations with MFS for Washington, Oregon, Arizona, Colorado, and Minnesota, and the issue was then arbitrated in each of these states. It should be noted that all of these arbitration decisions required that reciprocal compensation be paid for ISP traffic. No such arbitration was necessary in Missouri because MFS and SWBT agreed upon language requiring each company to pay reciprocal compensation to the other company on all local traffic, including calls to ISPs.

5. The interconnection negotiation that Mr. Devine was engaged in with SWBT was regional in nature, consistent with the negotiations with all of the other Regional Bell Operating Companies. The language in these interconnection agreements was substantially the same across all of the states in the areas in which MFS desired to operate. Hence, the language in the MFS-SWBT Missouri interconnection agreement is substantially the same as the language in the MFS-SWBT Texas, Oklahoma, and Kansas interconnection agreements.

6. Consistent with the custom and practice of the industry, MFS and SWBT agreed upon language that subjected all local traffic, including calls to ISPs, to reciprocal compensation.

FURTHER AFFIANT SAYETH NOT.

Gary J. Ball  
Gary J. Ball

Subscribed and sworn to before me, a Notary Public, this 10<sup>th</sup> day of  
November, 1999.

Cora L. Dorcent  
Notary Public

My Commission Expires:

**CORA L. DORCENT**  
Notary Public, State of New York  
No. 24-5011388  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires April 19, 2001

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

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

MCI WorldCom Communications, Inc.,  
and Brooks Fiber Communications of  
Missouri, Inc.,  
  
Complainants,  
  
vs.  
  
Southwestern Bell Telephone Company,  
  
Respondent.

**AFFIDAVIT OF EDWARD J. CADIEUX**

I, Edward J. Cadieux, being of sound mind and over the age of 21 years, do hereby swear and affirm that I have personal knowledge of the following facts:

1. I am currently Executive Director, Regulatory and Public Affairs with Gabriel Communications. From 1996 to early 1999 I was Director of Regulatory Affairs – Central Region with Brooks Fiber Properties, Inc., the parent corporation of Brooks Fiber Communications of Missouri, Inc. I have a Bachelor of Arts degree in political science from St. Louis University, which I obtained in 1975, and a law degree from St. Louis University which I obtained in 1978. I have been licensed to practice law in the State of Missouri since 1979. I worked for the Missouri Public Service Commission from 1980 through 1987, first as a hearing examiner for two years, and then in the General Counsel's office as an Assistant General Counsel and then as a Deputy General Counsel. After leaving the PSC, I worked briefly for the Massachusetts Attorney General's office on public utility matters, and then worked for MCI

Telecommunications Corporation as a regulatory attorney from 1987 until I started with Brooks in 1996.

2. In 1996, I personally participated in the negotiations that resulted in an interconnection agreement between Brooks Fiber Properties, Inc.'s Oklahoma subsidiaries and SWBT. The United States District Court for the Northern District of Oklahoma recently ruled, applying the factors identified in the FCC's February, 1999 Declaratory Ruling, that SWBT intended and agreed to pay reciprocal compensation to Brooks on ISP-bound traffic under that Oklahoma interconnection agreement.

3. In late 1996 and early 1997, shortly after the negotiations in Oklahoma were concluded, I personally participated in the negotiations that resulted in the Brooks/SWBT interconnection agreement for Missouri that is the subject of this proceeding. As a starting point for those negotiations, Brooks and SWBT worked from the same reciprocal compensation language that had been agreed upon in Oklahoma. In the course of these Missouri negotiations, SWBT proposed to alter the reciprocal compensation language that had been used in Oklahoma by splitting the single local traffic termination rate used in Oklahoma into the two rates that are set forth now in the Missouri agreement. When I asked why SWBT wanted to make such a change, given that we had just completed the Oklahoma agreement, I was told by the SWBT chief negotiator Bruce Sparling that SWBT wanted to add the second and lower rate, for traffic terminating at end offices rather than tandems, in order to reduce the total amount of money that SWBT would have to pay to Brooks in reciprocal compensation. Mr. Sparling stated that SWBT at that point realized the reciprocal compensation financial implications of Brooks' early focus on ISPs as customers in Oklahoma (i.e., that SWBT would be required to pay significant amounts of reciprocal compensation in Oklahoma on traffic bound to ISPs served by Brooks),

that SWBT wanted to mitigate the reciprocal compensation financial effect of similar traffic in other states, and that SWBT had chosen to insist upon a bifurcated reciprocal compensation rate and treatment of all or most of SWBT's local traffic terminated on Brooks' network as end-office terminating (i.e. subject to the lower rate). Mr. Sparling was absolutely clear about the fact that the impetus for SWBT's insistence on this type of bifurcated reciprocal compensation rate was SWBT's recognition of the negative (to it) reciprocal compensation financial implications of Brooks' early success in gaining ISPs as customers, and that for that reason SWBT would force arbitration over its proposed bifurcated reciprocal compensation rate unless Brooks accepted.

4. There was never any doubt on Brooks part during the Oklahoma and Missouri negotiations that the parties intended to pay each other reciprocal compensation all local traffic, and that ISP-bound traffic was local traffic for such purposes consistent with industry terminology and practices. The above mentioned conversation with Mr. Sparling confirmed to me that SWBT held a similar understanding at that time.

5. I have reviewed the affidavit of Russell Ewing submitted with SWBT's Motion to Dismiss filed in this proceeding. It is inaccurate. Brooks and SWBT did intend to pay reciprocal compensation in both Oklahoma (as confirmed by the court) and Missouri, and there was a specific discussion to that effect during the course of the Missouri interconnection negotiations as described herein. The language of the Missouri interconnection agreement captures the agreement of the parties to pay reciprocal compensation on ISP-bound traffic by using the accepted industry language of the time, which described such traffic as terminating at the ISP location.

6. After the Missouri negotiations were completed in February, 1997 and the agreement was approved by the Missouri PSC in May, 1997, I was surprised to receive a letter

from SWBT in June, 1997 that asserted that SWBT would not pay reciprocal compensation on ISP-bound traffic. I promptly responded by letter, advising SWBT that such refusal to pay would be a material breach of the agreement. In the letter, I stated:

Please be advised that Brooks unequivocally rejects the position stated by SWBT – i.e., the assertions that traffic terminating to ISPs is interstate or intrastate interexchange traffic for compensation purposes, and that SWBT 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.

A true and accurate copy of my letter is attached hereto as Exhibit EJC-1.



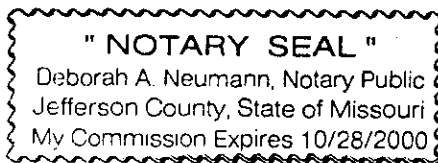
FURTHER AFFIANT SAYETH NOT.

Edward J. Cadieux  
Edward J. Cadieux

Subscribed and sworn to before me, a Notary Public, this 10<sup>th</sup> day of November, 1999.

Deborah A. Neumann  
Notary Public

My Commission Expires:





June 20, 1997

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

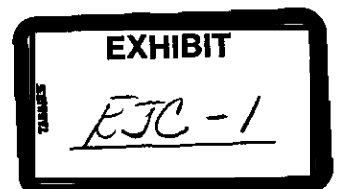
**Re: Local Terminating Compensation for Delivery of Internet Service Provider Traffic**

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.





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