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August 1, 2000

FILED³

AUG 01 2000

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, et al.

Dear Mr. Roberts:

Enclosed please find for filing with the Commission in connection with the above-referenced proceeding an original and nine copies of the following:

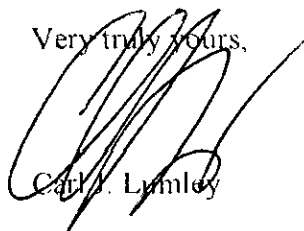
1. MCI WorldCom's Motion for Protective Order to Conclude Discovery together with Attachments filed under sealed designated as follows:

- a. Schedule 1A Highly Confidential
- b. Schedule 1C Highly Confidential
- c. Schedule 2-D-1 Proprietary
- d. Schedule 2-D-2 Proprietary
- e. Schedule 2-D-3 Proprietary
- f. Schedule 2E Proprietary;

2. Motion to Shorten Time

Upon your receipt, please file stamp the extra copies received and return to the undersigned. If you have any questions, please do not hesitate to contact us.

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

FILED³

AUG 01 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.

vs.)

Southwestern Bell Telephone Company,)

Respondent.)

MCI WORLDCOM'S
MOTION FOR PROTECTIVE ORDER
TO CONCLUDE DISCOVERY

COME NOW Complainants Brooks Fiber Communications of Missouri, Inc. and MCI WorldCom Communications, Inc. pursuant to 4 CSR 240-2.090 and Civil Procedure Rule 56.01 (c) and move the Commission to rule that their July 31, 2000 discovery response is sufficient and issue an additional Protective Order herein to conclude discovery. In support thereof Complainants state to the Commission:

1. This proceeding commenced nearly a year ago with the filing of complaints on September 9, 1999 and the issuance of notices thereof to SWBT on September 13, 1999.

2. On January 20, 2000, the Commission issued a procedural schedule that called for completion of the filing of testimony by June 26, 2000, with hearings to be held July 19-21, 2000.

3. It was not until April 24, 2000, that SWBT served its Second Set of Data Requests. This was only a few days before the parties were to file direct testimony. The discovery was not an exploration of written testimony (none was filed yet), but rather concerned

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matters about which SWBT could have inquired (subject to objections) at any time since the case commenced.

4. Complainants objected to several of the questions posed by SWBT's Second Set of Data Requests on May 4, 2000.

5. SWBT did not file a motion challenging the objections until June 16, 2000, immediately before the submission of the last round of written testimony.

6. On July 13, 2000, the Commission decided to postpone the hearing until August 23-25, 2000, to allow itself more time to rule regarding the contested discovery.

7. On July 20, 2000, the Commission issued its order requiring that Complainants answer the discovery by July 31, 2000 as best they could, and to identify any problems in making a complete response within that abbreviated time period.

8. On July 31, 2000, Complainants served the attached discovery responses upon SWBT in compliance with the Commission's order.

9. In its July 20th order, the Commission also established an abbreviated schedule for parties to revise their pre-filed testimony and related pleadings regarding this final discovery in anticipation of going forward with the hearing on August 23-25. On July 25, 2000 the Commission issued a notice indicating that it would not change the hearing date due to witness conflicts informally identified by SWBT.

10. The Commission and the parties are three (3) weeks away from hearing and counting down.

11. As has been true from the beginning, this case presents the issue of whether or not certain traffic is subject to the reciprocal compensation rates established in the respective interconnection agreements. This case has never involved a determination by the Commission of

the exact amount owed by SWBT for reciprocal compensation. As SWBT indicated in its Answer, the Commission does not have jurisdiction to award money damages. See Answer, paragraph 24. Complainants and SWBT have always agreed on this point. See Joint Response filed October 22, 1999, page 14, note 14.

12. As explained by Complainants in their Joint Response of October 22, 1999, the Commission has jurisdiction to determine the applicability of a particular rate to particular traffic, not to determine amounts owed and award payment thereof. See, e.g., Inter-City Beverage Co., Inc. v. Kansas City Power & Light, 889 SW2d 875, 877-78 (Mo. App. 1994); State ex rel Kansas City Power & Light v. Buzard, 168 SW2d 1044, 1046 (Mo. banc 1943); DeMaranville v. Fee Fee Trunk Sewer, Inc., 573 SW2d 674, 676 (Mo. App. 1978).

13. Missouri law leaves it to the courts to determine amounts owed and to award damages therefor, once the Commission has resolved any disputes over the applicability of the rates. This division of authority was demonstrated in the dispute between the Depaul Hospital School of Nursing and SWBT. First, the school presented a complaint to the Commission that SWBT was applying the wrong rate to the school's service. That dispute was resolved by the Commission with judicial review. See State ex rel Depaul Hospital School of Nursing v. PSC, 464 SW2d 737 (Mo. App. 1970). Then the school brought a civil action against SWBT to recover the amounts it had been overcharged, based on the prior determination regarding the applicable rate. See DePaul Hospital School of Nursing v. SWBT, 539 SW2d 542 (Mo. App. 1976). This process was recently repeated regarding the dispute between A.C. Jacobs and Company, Inc. and Union Electric. Again the Commission determined that rates had been misapplied, but left it to the civil courts to resolve and award the amount owed. The court in the separate civil action noted that the Commission relied on the same cases cited herein for the

proposition that it could not get involved in the determination and award of the amount owed. A.C. Jacobs and Co., Inc. v. Union Electric Co., 17 SW3d 579, 581 (Mo. App. 2000).

14. In its Order of July 20, 2000 herein, the Commission indicated some confusion regarding the nature and scope of this case and its jurisdiction. In particular, the Commission stated that a record would be made herein regarding the amount owed by SWBT to Complainant and then determined by a reviewing court. That is incorrect. As reflected by the cases cited above, the determination of the amount owed is not made on review, but rather by a separate civil action with its own record (and discovery). In this case, the Commission faces the task of resolving the applicability of reciprocal compensation to the disputed traffic. Once that determination has been made, the parties will either resolve any dispute over the amount owed between themselves, or the matter will be presented in a separate civil court action. Contrary to the Commission's statement in its July 20 Order, SWBT does not need to make any record in this case disputing the numeric amounts owed.

15. A review of the testimony will show that the parties have not presented a full record regarding any dispute over the total amount owed in the event the Commission agrees with Complainants regarding the applicability of reciprocal compensation to the traffic in question. Complainants have presented a summary of the running total, and SWBT has made only limited comments thereon. No party has attempted to make a customer-by-customer or minute-by-minute examination of the traffic in question, nor should they given the scope of this case. The parties know the total amount billed to SWBT for reciprocal compensation, and the amounts that have gone unpaid by SWBT. This case concerns the reason asserted by SWBT for non-payment, not the accuracy of its calculation of the amounts it withheld for that reason, and

not the accuracy of bills rendered in light of SWBT's refusal to supply traffic records as required by the agreements.

16. Likewise, no party has made any attempt to present a proceeding under Section 252 of the Telecommunications Act to arbitrate any amendment to the interconnection agreements regarding any identification and reporting of the traffic in dispute. The agreements do not provide for any identification or separate treatment of the traffic in dispute. To date, SWBT has unilaterally relied upon its own methods, and the Complainants have maintained that no methods are needed because the traffic is local traffic that does not require any separate treatment.

17. Given the limited scope and nature of this case, there is no reason for the parties to commence discovery that will pertain to a potential subsequent civil action regarding amounts owed or a potential arbitration regarding interconnection agreement amendments. Moreover, with only three weeks remaining until the hearing, there is insufficient time to conduct such discovery. As reflected in the July 31 discovery responses served upon SWBT by Complainants, there is no precise way of even identifying which customers are ISPs. To date Complainants have not had any reason to develop a method for doing so. They have simply billed total local traffic. That is all that is required under the agreements. They have used their records in addition to SWBT's to generate bills, because SWBT has refused to supply records in the form required by the agreements. Complainants serve ISPs like other business customers out of local tariffs. The interconnection agreements do not call for separate identification of this type of local traffic. There is no established or agreed separation process. Complainants have now attempted to estimate the identity and traffic volumes of ISP local customers to respond to the discovery, and SWBT has previously explained that it has unilaterally developed its own distinct process for

doing so as a means of withholding payments. Before Complainants can proceed further with providing information about specific ISP customers, there would have to be an agreement upon the method of identifying those customers. Otherwise a great deal of resources could be wasted coming up with estimated answers that are not deemed acceptable. Yet, if the Commission determines that Complainants are correct that reciprocal compensation applies to local calls terminated to ISPs, then there will be no reason even to try to separate such traffic. If the Commission disagrees, then either the parties or the courts will have to resolve matters regarding customer and traffic identification historically, and presumably an arbitration would have to be presented if the parties could not agree upon a forward-looking process to incorporate into their interconnection agreements. Either way, there are not matters presently before the Commission.

18. In their discovery response, Complainants have identified estimated current ISP customers and traffic volumes, as well as provided the form agreement used for all local business customers including ISPs for service out of tariffs, and the form collocation agreements used by Complainants with ISPs and other customers alike. This information is sufficient for purposes of this proceeding. None of it has anything to do with the negotiation of the interconnection agreements, but it will allow SWBT to expand upon its irrelevant arguments about the structure of Complainants' business dealings with ISPs and the purported accuracy of SWBT's methods of estimating and withholding payment for the disputed traffic. There is no time or reason to require Complainants to continue to search years of records for the actual service agreements and any collocation agreements for businesses that may happen to be or have been ISPs in Missouri, when Complainants and SWBT have not even agreed upon a process for identifying who the ISPs even are or were. As indicated in the discovery response, it would take weeks after agreeing upon an identification method to generate the special reports to identify all customers

estimated to be ISPs served since the agreements took effect (or at least as far back as records are available) and their estimated traffic volumes, and then an even greater amount of time to try to locate specific contracts with those customers that constitute completed versions of the form contracts that have been supplied to SWBT. The hearings will be over long before such a process can be completed. It would take months to conduct full discovery regarding each and every ISP served by Complainants in Missouri since 1996 and the specific traffic levels of those customers.

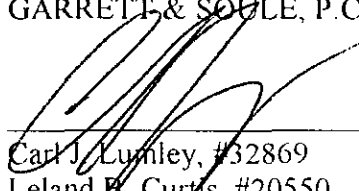
19. Additionally, SWBT is now informally suggesting that it wants to take depositions prior to the hearings. Such last minute discovery is unnecessary and will serve only to interfere with final preparations for the hearings. This case has been pending for nearly a year. The Complainants witnesses have been identified since May. The parties now have an obligation to update written testimony and otherwise prepare for the orderly and efficient conduct of the hearings. The schedule does not leave room for further discovery. A last minute mad scramble to take depositions will not be conducive to an orderly proceeding. It would also be unfair to witnesses, and counsel, for SWBT to attempt to force such discovery in such a short time period, without regard to pre-existing obligations and commitments.

20. For these reasons, Complainants request that the Commission rule that their July 31 discovery response is sufficient and that discovery is concluded in this case. The parties obviously felt that their pre-filed testimony was sufficient to present the issue in this case to the Commission. Otherwise, they would have conducted and pursued additional discovery long before the filing of such testimony. The Commission has established a schedule for the presentation of this case. The issue has been framed. The parties can present other issues in other proceedings, but cannot competently start a new case now, conduct additional discovery,

and present additional evidence on new issues before the end of the month. Court procedural schedules now routinely include a cut-off date for discovery well before anticipated trial dates, and the Commission should consider including such a cut-off date in its procedural schedules as well to eliminate the need for motions such as this one. There is no reason for further discovery given the limited scope of this case, and there is no time for such further discovery given the upcoming hearing dates.

WHEREFORE, Complainants move the Court to rule that the July 31, 2000 discovery response is complete and issue its protective order prohibiting any further discovery in this case.

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Inc., Brooks Fiber Communications of Missouri,
Inc. and BroadSpan Communications, Inc.
d/b/a Primary Network Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was hand delivered to all parties listed on the attached service, on the 1st day of August, 2000.



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July 31, 2000

Anthony Conroy
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St. Louis, Missouri 63101

Via Fax 247-0014

Re: WC Answers to SWBT's Second Set of Data Requests
Case No. TC-2000-225 et al, per PSC Order of 7/20/00

Dear Tony:

The WorldCom complainants have the following answers to SWBT's Second Set of Data Requests per the Commission's Order of July 20, 2000.

Request No. 1

Schedules 1 and 2 to the Surrebuttal testimony of Dan Aronson show the balances owed by SWBT to MCIWC and Brooks, respectively, as of the 4/10/00 invoices for reciprocal compensation for local traffic in Missouri. Mr. Aronson has been out on vacation since the Commission issued its order, but will be back late this week and he will then create and produce an even more current version of the spreadsheets.

A. As has been indicated throughout this proceeding, it is not possible for WC companies to specifically and precisely identify local customers that are ISPs. Such records are not kept. Schedule 1A is a special report for June 2000 resulting from the filtering of a combination of billing and traffic data, resulting in the identification of customers with high volumes of incoming local calls that could be ISPs. This is not information generated on a regular basis. If this special report provides the desired information, then over the next several weeks it can be generated going back to August 1998 for Brooks and March 1998 for MCIWC. The location of older Brooks information is uncertain, as is the capability of generating such a special report from it if it in fact can be located. Older MCIWC records are on tapes that would have to be retrieved and processed, but the amount of time required is uncertain. The information on schedule 1A relates directly to specific customers and market-specific information relating to services offered in competition with others, and is classified as highly confidential under the provisions of the protective order issued in this case.

B. As per the testimony and interconnection agreements, the rates for local traffic terminated by Brooks are tandem served \$0.0092 per minute and end office served \$0.0072 per minute and the rates for local traffic terminated by MCIWC are \$0.009 per minute local rate and \$0.0160 per minute optional EAS rate.

C. See the response to question 1A regarding the problems involved in trying to identify customers that are ISPs. Schedule 1C represents information from the billing system for most of the customers identified on schedule 1A as possible ISPs. Work continues on this schedule. We can generate similar information for subsequent special reports if schedule 1A is determined to be sufficient. The information on schedule 1C relates directly to specific customers and market-specific information relating to services offered in competition with others, and is classified as highly confidential under the provisions of the protective order issued in this case.

Request No. 2

A. See the response to question 1A regarding the problems involved in trying to identify customers that are ISPs. ISPs are provided service pursuant to the same tariff provisions as other local business service customers. See Brooks Mo.PSC tariff No. 2, Section 21.1 and MCIWC Mo. PSC tariff No. 4, Section 13.1.

B. No. This information relates directly to specific customers and market-specific information relating to services offered in competition with others, and is classified as highly confidential under the provisions of the protective order issued in this case.

C. No. This information relates directly to specific customers and market-specific information relating to services offered in competition with others, and is classified as highly confidential under the provisions of the protective order issued in this case.

D. Customers, whether ISPs or not, are permitted to collocate facilities. Schedule 2D-1 is the master agreement form currently used by WorldCom companies. Schedule 2D-2 is the form previously used by MFS prior to becoming a WorldCom company. Schedule 2D-3 is the form believed to have been used by Brooks prior to becoming a WorldCom company. In addition to the problem of not having a specific list of customers that are ISPs, it has not been possible to locate Missouri specific customer collocation contracts yet. While personnel are working on this project, we request that SWBT notify us immediately if these form agreements provide the needed information. These forms constitute confidential business information and are classified as proprietary under the protective order issued in this case.

E. ISPs are provided service pursuant to the same service agreement and tariff provisions as other local business service customers. A sample service agreement is attached as schedule 2E. In addition to the problem of not having a specific list of customers that are ISPs, it has not been

Anthony Conroy

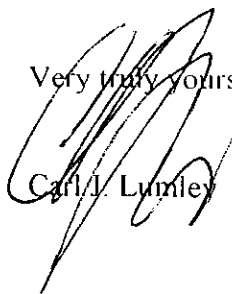
July 31, 2000

Page 3

possible to locate Missouri specific customer service agreements yet. While personnel are working on this project, we request that SWBT notify us immediately if this form agreement provides the needed information. This form constitutes confidential business information and is classified as proprietary under the protective order issued in this case.

The sources for the answers to these questions were Dan Aronson, Don Price, and Mark Argenbright of WorldCom.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carl L. Lumley", is written over the typed name. The signature is stylized with a large, sweeping initial "C".

Carl L. Lumley

Attachments
(Submitted Under Seal)

Schedule 1A is Highly Confidential

Schedule 1C is Highly Confidential

Schedule 2-D-1 is Proprietary

Schedule 2-D-2 is Proprietary

Schedule 2-D-3 is Proprietary

Schedule 2E is Proprietary