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July 3, 2000

FILED

JUL 3 2000

Missouri Public
Service Commission

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

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 a Reply of Southwestern Bell Telephone Company.

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

Very truly yours,

Anthony K. Conroy /tm

Anthony K. Conroy

Enclosure

cc: Attorneys of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED

JUL 3 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.

REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone Company (SWBT), and for its Reply to Complainants' Reply to SWBT's Motion to Compel, states to the Missouri Public Service Commission (Commission) as follows:

1. Throughout much of their Reply, Complainants arrogantly assume that the Commission has already decided a critical issue in this case – i.e., whether traffic bound for the Internet routed by Complainants to Internet Service Providers (ISPs) satisfies the definition of "Local Traffic" contained in the respective interconnection agreements between SWBT and Complainants. For example, in the very first sentence of the first paragraph of their Reply, Complainants state that "[T]his case concerns the question of whether or not the interconnection agreements between Complainants and SWBT require SWBT to pay reciprocal compensation on local traffic originated by its end users and terminated to ISP end users served by Complainants." The problem with this statement is that it erroneously assumes the Commission has already determined two very contested facts in this case, namely, whether traffic bound for the Internet is "local traffic," and whether such traffic is "terminated" to ISPs when Complainants route it to ISPs for further routing to the Internet.

2. If the Commission had already decided these issues, as Complainants misrepresent in their Reply, there would of course be no need for the Commission to proceed further with this case. There is no question SWBT agreed to pay – and has paid – reciprocal compensation for true local traffic that originates and is terminated by Complainants in the same local calling scope. The issue in this case, however, is whether SWBT and Complainants agreed to treat interstate, interexchange traffic bound for the Internet "as if" it were local traffic, and subject to reciprocal local compensation.

3. In paragraph 2 of their Reply, Complainants assert that they should not have to respond to SWBT's data requests because some of the information sought by SWBT in its data requests was contained in Complainants' direct testimony. The only information Complainants included in their testimony involves the dollar amount of their claim. The information SWBT requested in its data requests, regarding the actual number of minutes of traffic delivered to each ISP, the geographic location and identity of these ISPs, and the network and financial arrangements between Complainants and these ISPs (which relates directly to the jurisdictional nature of this traffic), has not been produced by Complainants. Furthermore, Complainants' response that it has already produced some of the information requested begs the question – if the information sought by SWBT is not relevant, as Complainants asserted in their objection, why did Complainants include it in their direct testimony? The answer is that Complainants do not want to disclose the information sought by SWBT because it will likely reveal that most if not all of the traffic for which Complainants seek reciprocal compensation in this case is not local traffic as defined in the respective interconnection agreements between the parties. Rather, the traffic is interstate traffic which Complainants handle for only a short portion of its journey to the Internet.

4. In paragraph 3, Complainants assert that "information about Complainants' individual [ISP] end users is irrelevant to the question of whether or not SWBT must pay reciprocal compensation on local calls terminated to ISPs." Again, however, Complainants erroneously assume that key contested facts in this case have already been determined by the Commission. The identity and location of ISP customers served by Complainants is directly relevant – it will allow the Commission to determine whether Internet traffic is "local traffic," and whether such traffic is "terminated" locally.

5. In addition, the information concerning the identity and location of ISPs to which Complainants are routing Internet traffic will reveal whether locally-dialed traffic bound for the Internet is actually being delivered to ISPs located in the same local calling scope. Even if the Commission determines that Complainants are entitled to reciprocal local compensation for calls handed off by Complainants to ISPs with facilities located in the same local calling scope (which SWBT disputes), if Complainants route any such traffic to an ISP by means of facilities which exit the local calling scope (e.g., by a special access circuit which carries the Internet traffic to an ISP location outside of the local calling scope), such traffic cannot be considered "local traffic" and would not be eligible for reciprocal local compensation.

6. In paragraph 9 of their Reply, Complainants claim that it "is irrelevant whether and/how Complainants and SWBT are compensated by their end users." However, in support of their claim that the Commission should interpret¹ the interconnection agreements at issue in this case to provide for reciprocal local compensation for Internet traffic, each Complainant asserted

¹ It is clear that the Complainants are asking the Commission to "interpret" (rather than enforce) the language contained in the interconnection agreements between Complainants and SWBT, since the definition of "Local Traffic" contained in these interconnection agreements does not mention "Internet," nor does it provide for treating Internet traffic as anything other than what the FCC has determined it to be for at least 15 years, i.e., interstate access traffic.

in their complaints that if SWBT was not required to pay such compensation, Complainants would not be compensated for carrying this traffic. (See, e.g., MCI WorldCom Complaint, par. 18). The information regarding the arrangements between Complainants and their ISP customers sought by SWBT will establish that this policy argument has absolutely no merit. Pursuant to the FCC's long-standing access charge exemption, in lieu of access charges, Complainants are entitled to receive the local business rate from their ISP customers for carrying this interstate access traffic. Complainants are asking the Commission to interpret the language contained in the respective interconnection agreements – which do not mention treating Internet traffic or enhanced service provider traffic as local traffic – in a manner which is contrary to the FCC's long-standing characterization of this traffic as interstate access traffic.

7. Finally, SWBT is compelled to respond to Complainants' suggestion that "[T]he timing of SWBT's motion is suspect." SWBT sent its data requests to Complainants on April 24, 2000, prior to any testimony being filed in this case. SWBT did not receive Complainants' objections to SWBT's data requests until ten days later, on May 4, 2000, while SWBT was in the midst of reviewing Complainants' recently-filed voluminous direct testimony and coordinating the production of its own rebuttal testimony. Once SWBT filed its rebuttal testimony on May 31, 2000, it reviewed Complainants' objections to SWBT's data requests and placed several calls to counsel for Complainants to attempt to resolve Complainants' objections, as required by Commission Rule 2.090(8)(A). Counsel for SWBT left at least two messages for Complainants' counsel which went unreturned for several days. When Complainants' counsel finally did return SWBT's counsel's call, and the objections could not be resolved, counsel for SWBT attempted to arrange a telephone conference with counsel for Complainants and the administrative law judge assigned to this case, as required by Commission Rule 2.090(8)(B). Counsel for Complainants

had difficulty finding an available time slot to participate in this call. Finally, a mutually acceptable date and time was reached, and the administrative law judge was notified. Less than an hour before the call was scheduled to take place, counsel for Complainants' secretary called to advise counsel for SWBT that Complainants' counsel was unavailable for the call due to travel delays. Counsel for SWBT then had to reschedule the call, despite the fact that counsel for Complainants could have easily participated on the call from his location at an airport in Chicago. Eventually, the call took place as required by Rule 2.090(8)(B), and two days later, SWBT filed its Motion to Compel. If there was any delay in filing this motion, it is attributable to Complainants, not SWBT.

WHEREFORE, SWBT respectfully requests that the Commission grant SWBT's Motion to Compel.

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 July 3, 2000.

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