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August 4, 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<sup>2</sup>

AUG 04 2000

Missouri Public  
Service Commission

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 Southwestern Bell Telephone Company's Response to MCI WorldCom's Motion for Protective Order to Conclude Discovery.

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<sup>2</sup>

AUG 04 2000

Missouri Public  
Service Commission

MCI WorldCom Communications, )  
Inc. et al., )

Complainants, )

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

v. )

Southwestern Bell Telephone Company, )

Respondent. )

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
RESPONSE TO MCI WORLDCOM'S MOTION FOR  
PROTECTIVE ORDER TO CONCLUDE DISCOVERY**

COMES NOW Southwestern Bell Telephone Company (SWBT), and for its Response to MCI WorldCom's Motion for Protective Order to Conclude Discovery (Motion), states to the Missouri Public Service Commission (Commission) as follows:

1. SWBT is shocked and appalled at MCI WorldCom's Motion. In its Motion, MCI WorldCom brazenly asks the Commission to rule that its July 31, 2000 "response" to SWBT's data requests was "sufficient." (Motion at p. 1). The problem with this argument, as SWBT described in detail in its Motion for Sanctions (which is incorporated herein by this reference), is that MCI WorldCom did not respond to SWBT's data requests on July 31, 2000. In fact, MCI WorldCom has had since April, 2000, to respond to SWBT's data requests, and still has not done so.

On July 20, 2000, this Commission issued its Order Regarding Motion to Compel, in which it directly rejected MCI WorldCom's objections to SWBT's data requests, and ordered MCI WorldCom to "serve full and complete responses" on SWBT by July 31, 2000. MCI WorldCom did not seek reconsideration of this Order. As described in SWBT's Motion for

Sanctions and in detail below, however, instead of complying with the Commission's Order and producing the information and documents requested by SWBT, MCI WorldCom choose to defy the Commission's Order, and now seeks to justify its decision by asking the Commission to cut off any further discovery. MCI WorldCom's request is particularly ironic since the Commission's July 20, 2000 Order (which MCI WorldCom has not complied with) specifically contemplated that the information MCI WorldCom was supposed to produce would identify potential witnesses. (Order p. 7). MCI WorldCom's claim that the information sought by SWBT is irrelevant is wrong, and has already been rejected by the Commission.

2. As described above, MCI WorldCom has wholly failed to respond to SWBT's data requests. In response to SWBT's DR 1(A), MCI WorldCom produced one page of information (for only one month – June, 2000) in which MCI WorldCom lists "customers with high volumes of incoming calls that could be ISPs." (emphasis added). MCI WorldCom goes on to state:

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 in fact it 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.

This "response" is preposterous. In fact, it is completely unresponsive. In DR 1(A), SWBT asked MCI WorldCom to identify the specific traffic for which it seeks reciprocal compensation in this case. If MCI WorldCom cannot (or is not willing to) identify this traffic, its Complaint must be dismissed. Furthermore, MCI WorldCom's "response" to DR 1(A) evidences a complete lack of any effort by MCI WorldCom to provide "full and complete responses" to SWBT's DRs, as this Commission specifically ordered in its July 20, 2000, Order Regarding Motion to Compel. As the Commission found in this Order,

"Thus, SWBT is surely entitled to demand the details of the debts that Complainants claims it owes them...."

Instead, MCI WorldCom's response indicates that it did not even look for the information it was ordered to produce!

4. Likewise, in response to SWBT's DR 1(C), MCI WorldCom produced one page of summary information – again for only one month (June, 2000) – consisting of "information from the billing system for most of the customers identified on Schedule 1A as potential ISPs. Work continues on this schedule." Again, MCI WorldCom's so-called "response" to DR 1(C) is completely unacceptable, and again evidences a lack of any effort to produce the information requested, as the Commission specifically ordered it to do. MCI WorldCom no doubt has a mechanized billing system, and giving it the benefit of the doubt, the information provided by MCI WorldCom on Schedule 1(C) took – at most – a few minutes to produce. MCI WorldCom simply cannot argue with a straight face that its response to SWBT's DR 1(C) is the "full and complete" response ordered by the Commission in its July 20, 2000 Order Regarding Motion to Compel.

5. MCI WorldCom's "response" to SWBT's DR 2 is even more appalling. In DR 2(A), SWBT sought the following information:

A. The financial arrangements between each complainant and each such Internet Service Provider, including the price paid, if any, by each Internet Service Provider to each complainant for each service provided by each complainant in Missouri, for the time period 1996 until present;

In response, MCI WorldCom stated:

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.

One again, MCI WorldCom's response is simply not responsive to SWBT's request. SWBT did not ask for a reference to MCI WorldCom's tariff provisions. SWBT asked for, and MCI WorldCom was ordered to provide, complete information relating to the financial arrangements between the Complainants and ISPs they serve. While the tariff may be relevant, the complete financial arrangements between MCI WorldCom and its ISP customers are not described in its tariffs. MCI WorldCom was ordered by this Commission to provide "full and complete responses" to SWBT's DRs, including this subpart, and instead has produced no responsive information.

6. In SWBT's DR 2(D), SWBT sought the following information:

D. Whether any complainant agreed to permit any Internet Service Provider to collocate such Internet Service Provider's facilities with complainant's facilities. If such collocation arrangement [sic] existed or currently exist, provide a copy of the collocation agreement or similar document describing the collocation arrangement and any financial arrangements relating thereto; and

Once again, MCI WorldCom did not provide any responsive information. Nor did MCI WorldCom produce a single copy of any collocation agreement with any ISP! Instead, MCI produced three blank forms (Schedules 2D-1, 2D-2 and 2D-3), which MCI WorldCom claims are the "master agreement form currently used by WorldCom companies" (2D-1), the "form previously used by MFS prior to becoming a WorldCom company" (2D-2), and the "form believed to have been used by Brooks prior to becoming a WorldCom company" (2D-3). MCI WorldCom went on to state:

it has not been possible to locate Missouri specific customer contracts yet. While personnel are working on this project, we request SWBT notify us immediately if these form agreements provide the needed information.

Obviously, the three forms produced by MCI WorldCom do not "provide the needed information," and more importantly, they do not respond at all to the data request MCI

WorldCom was ordered to respond to with "full and complete responses." Interestingly, MCI WorldCom does not describe what efforts – if any – it undertook from July 20 to July 31, 2000 (much less from April, 2000 when SWBT's DRs were first sent to MCI WorldCom) to locate responsive documents and information. From MCI WorldCom's "response," however, it should be apparent that it took no efforts to comply with the Commission's Order.

7. Finally, in its July 20, 2000 Order Regarding Motion to Compel, the Commission ordered MCI WorldCom to respond to SWBT's DR 2(E), which provides:

E. Provide copies of any contracts and/or correspondence between complainants (including complainants' affiliates) and any Internet Service Provider (and its affiliates) relating to (1) the provision of any service in Missouri between the parties and (2) the flow of traffic or compensation in Missouri to such ISP.

Not surprisingly, MCI WorldCom provided no contracts, correspondence, or any other documents responsive to this request. Instead, MCI WorldCom produced a useless (and not requested) "form" service agreement. MCI WorldCom also stated that:

it has not been possible to locate Missouri specific customer service agreements yet. While personnel are working on this project, we request SWBT notify us immediately if this form agreement provides the needed information.

Obviously, the form produced by MCI WorldCom does not provide the "needed information." More importantly, it does not provide even a shred of the information and documentation that SWBT requested, and which MCI WorldCom was ordered to produce. Again, MCI WorldCom did not describe what efforts, if any, it undertook to locate and produce the requested information. Giving MCI WorldCom the benefit of the doubt, however, SWBT estimates that it could have taken up to one minute to make a copy of the blank service form which MCI WorldCom did provide in response to this DR.

8. Having completely failed to comply with the Commission's July 20, 2000 Order Regarding Motion to Compel, and in fact having not even attempted to comply, MCI WorldCom

now has the audacity to ask the Commission to condone this blatant misbehavior, instead of imposing sanctions on MCI WorldCom, as the Commission clearly should do. As the Commission stated in its Order, "all of the information sought by SWBT's DRs 1 and 2 is clearly relevant." The Commission went on to conclude:

Likewise, SWBT is fully entitled to know the identities of Complainants' ISP end-users, their locations, and their agreements and financial arrangements with Complainants. The ISPs, if nothing else, are witnesses who are probably in possession of admissible information. One purpose of discovery is to identify witnesses. Furthermore, as SWBT has pointed out, the agreements and financial arrangements between Complainants and their ISP end-users are relevant to issues raised by Complainants in their pleadings. Finally, as to Complainants' vague assertion that the information in question is "not available," the Commission simply does not find that statement credible.

9. MCI WorldCom's actions are egregious and warrant dismissal of its Complaint.

By its contumacious conduct and disregard for the authority of the Commission, MCI WorldCom has chosen its own destiny in this case. MCI WorldCom has refused to provide (or even look for) the information which it must have to even establish a submissible case, as well as the information in its possession which the Commission has rightfully determined SWBT needs to defend itself against this Complaint. It should be obvious to the Commission why MCI WorldCom does not want to even look for, much less produce this information. It does not want to do so because the information and documentation which SWBT requested, and which the Commission ordered MCI WorldCom to produce will expose that the relief sought in this case by MCI WorldCom (i.e., to be paid windfall reciprocal local compensation for interstate Internet traffic) fails based on the facts, the law, and as a matter of sound public policy.

WHEREFORE, SWBT respectfully requests that the Commission deny MCI WorldCom's Motion for Protective Order to Conclude Discovery, and for the reasons described herein and in SWBT's Motion for Sanctions, dismiss MCI WorldCom's complaint in this case.

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 August 4, 2000.

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