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August 14, 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 14 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 the Highly Confidential (HC) version and an original and one copy of the redacted (NP) version of Reply of Southwestern Bell Telephone Company to Brooks Fiber Communications of Missouri, Inc.'s, MCI WorldCom Communications, Inc.'s and BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc.'s Response to SWBT's Motion for Sanctions.

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

FILED<sup>3</sup>

AUG 14 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. )

**REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY  
TO BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC.'S,  
MCI WORLD COM COMMUNICATIONS, INC.'S AND BROADSPAN  
COMMUNICATIONS, INC. D/B/A PRIMARY NETWORK  
COMMUNICATIONS, INC.'S RESPONSES TO  
SWBT'S MOTION FOR SANCTIONS**

COMES NOW Southwestern Bell Telephone Company ("SWBT"), and for its Reply to Brooks Fiber Communications of Missouri, Inc.'s ("Brooks") and MCI WorldCom Communications, Inc.'s ("MCI"), (together "WorldCom Complainants") and BroadSpan Communications, Inc., d/b/a Primary Network Communications, Inc.'s ("BroadSpan") Responses to SWBT's Motion for Sanctions ("Response") states as follows:

1. The WorldCom Complainants seek an Order from the Missouri Public Service Commission ("Commission") which would permit an action to seek more than \$33 million in reciprocal compensation payments on Internet-bound calls from SWBT end users delivered to Complainants. Despite the magnitude of the financial stakes, the WorldCom Complainants have refused to comply with legitimate discovery requests and have failed to meet the requirements of

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the Commission's Order requiring compliance with those discovery requests. Now, in their Response to SWBT's Motion for Sanctions, the WorldCom Complaints have continued to ignore the Commission's discovery ruling. As detailed below, even considering the additional information provided by WorldCom in a supplemental (and late) production on August 8, 2000, the vast majority of SWBT's requests have still not been satisfied. As a result, the Complaint by the WorldCom Companies should be dismissed. At the least, the hearing in this case must be continued until the WorldCom Complainants have complied with the Commission's discovery order and SWBT has the opportunity to review that discovery and to prepare and present its positions.

2. SWBT served its two data requests on the WorldCom Complainants on April 24, 2000. Following WorldCom's objections, SWBT filed a Motion to Compel on June 16, 2000.<sup>1</sup> On July 20, 2000, the Commission issued its Order regarding Motion to Compel which required the WorldCom Complainants to provide "full and complete responses to the data requests in question on Respondent Southwestern Bell Telephone Company on or before July 31, 2000." That Order also established timeframes for the filing of additional testimony based upon the discovery produced, a schedule which is no longer feasible given the Complainants' failure to comply with the Commission's Order.

3. WorldCom produced only a modicum of information on July 31, 2000. SWBT filed its Motion for Sanctions on August 2, 2000 and detailed the WorldCom Complainants' failure to comply with discovery requests. Although ordered to produce the information by July

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<sup>1</sup> SWBT's July 3, 2000 Reply details its efforts to comply with Commission Rule 2-090(8)(a) and (b) which were delayed by WorldCom Complaints' failure to return telephone calls and failure to be available for telephone conference with the Regulatory Law Judge assigned to this case. The WorldCom Complainants' claim that SWBT "only recently" pursued this matter (Response at para. 14) is completely false. It is only completely irrelevant to Complainants' blatant disregard of the Commission's Order.

31, the WorldCom Complainants produced additional information on August 8, 2000.<sup>2</sup> It is the information produced on August 8, 2000 which the WorldCom Complainants rely upon in their Response to SWBT's Motion for Sanctions. As shown below, however, that additional information still does not come close to providing the information which SWBT seeks and which this Commission has ordered the WorldCom Complainants to provide.

4. SWBT's two data requests are attached as Exhibit A to this filing. In its Motion for Sanctions, SWBT noted that the response to data request 1A sought the number of minutes of traffic, by month, that each Complainant claims was originated by a SWBT end user and which was delivered to each ISP served by Complainant. The information provided in the August 8 supplement provides only a limited response. For Complainant MFS, the information was provided for the period February, 1998 to July, 2000, but excluding information for August-November, 1998. In addition, the February, 1998-May, 1999 data that was provided includes Kansas customers and minutes of use, thus rendering that information essentially useless. See, Exhibit A to the WorldCom Complainants' Response to SWBT's Motion for Sanctions, pp. 1-2. With regard to the Brooks Complainant, the information was provided only from April, 1999-July, 2000. Id. at p. 2. Given that the Complaint covers the timeframe from August, 1997 for Complainant Brooks and January, 1998 for Complainant MFS, it is apparent that the WorldCom Complainants have still not provided the information sought in data request 1A.

5. With regard to data request 1C, SWBT seeks information concerning the name, address and telephone numbers associated with each Internet Service Provider which Complainants claim terminated traffic originated by a SWBT end user for which reciprocal

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<sup>2</sup> The WorldCom Complainants' claim the Commission's July 20 Order "expressly acknowledged" that a complete response by July might not be possible (Response at para. 14) is not borne out by the July 20 Order which required "full and complete" response by July 31. (See, July 20, Order at Ordered 3)

compensation payments are due. The additional information provided by Complainants on August 8 is not a satisfactory response. SWBT sought information concerning the names and addresses of the ISPs served by the WorldCom Complainants in order to determine whether the calls are terminated within the local calling area.<sup>3</sup> The WorldCom Complainants, however, have refused to provide the addresses where the ISPs are served. Brooks identified \*\* \*\* ISPs in Kansas City \*\* \*\* ISPs in Springfield while MFS identified \*\* \*\* ISPs in St. Louis for the period June, 1999-July, 2000. (See, Schedule 1 to August 8 Supplemental Response). Both Brooks and MFS also identified potential ISPs served during the period February, 1998-May, 1999 (many of whom are the same as those served in the subsequent time period). In Schedule 1C, however, Complainants identified only five ISPs and provided the billing address, not the place of service. In fact, many of the billing addresses provided in Schedule 1C are in the State of Kansas, thus calling into question whether this Complaint is even filed in the right jurisdiction. In any event, it is absolutely clear that the WorldCom Complainants have substantially failed to provide the information sought in data request 1C in their failure to provide the names and addresses where service is provided to ISPs and for which reciprocal compensation payments are claimed to be due.

6. With regard to data request no. 2, SWBT sought information concerning each ISP served by a WorldCom Complainant including (A) financial arrangements related to service, (B) financial compensation or incentives offered to ISPs, (C) sharing of reciprocal compensation revenues, (D) collocation of ISPs and, for each collocation arrangement, a copy of the contract and any financial arrangements relating thereto and (E) copies of contracts or correspondence

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<sup>3</sup> SWBT maintains that all calls to ISPs are interstate, while the WorldCom Complainants contend that a locally dialed call is terminated upon delivery to the ISP. But if the call is directly routed to the ISP at a location beyond the local calling scope, then such a call is clearly not terminated locally.

NP

between Complainants and ISPs relating to the provision of any service in Missouri between the parties or the flow of traffic or compensation in Missouri to such ISP. Although the Commission's July 3, 2000 Order found that "all" of the information sought by SWBT in those data requests was "clearly relevant," the WorldCom Complainants have continued to fail to comply. In their July 31, 2000 production, the WorldCom Complainants provided essentially no information concerning data request no. 2. (See, SWBT's Motion for Sanctions). In the August 8, 2000 supplement (again well past the date ordered by the Commission) the response is equally inadequate. WorldCom produced seven collocation agreements but failed to provide (1) the schedules to the agreements which established the place and terms of collocation in Missouri and (2) failed to produce copies of documents related to other service arrangements between Complainants and the ISPs.

7. The Commission should note that the contracts produced by the WorldCom Complainants expressly call for a collocation schedule to accompany each collocation arrangement under the contract. In the seven contracts produced, no schedules detailing any collocation arrangement in Missouri were produced. Instead, the only schedules attached related to one collocation arrangement in Tennessee and another in California. The WorldCom Complainants continue to evade the Commission's Order while claiming compliance.

8. The Commission will also note that the collocation agreements expressly contemplate that the collocating ISP must purchase other services from the WorldCom Complainants as a condition to collocation, including all interexchange services. This information is also clearly requested in data request 2A, D and E. Yet the WorldCom Complainants produced none of the information concerning the purchase of these additional services from Complainants. SWBT has accordingly been unable to determine whether and to

what extent the calls to collocated ISPs are actually routed directly by the WorldCom Complainants to locations of the ISPs out of the local calling area and even out of state. SWBT suspects that some of the traffic for which reciprocal compensation payments are claimed may be delivered to the ISPs outside the local calling area or even out of state via special access or private line arrangements, and that the WorldCom Complainants are refusing to provide this information because it would verify that the calls are not subject to local reciprocal compensation. In any event, whatever WorldCom's reason for non-compliance, SWBT is entitled to pursue this line of inquiry and the WorldCom Complainants are required to comply both with legitimate discovery requests and with the Commission's Order requiring such compliance.

9. It is difficult to reconcile the actual production of responses by the WorldCom Complainants with their Response to SWBT's Motion for Sanctions. Given the paucity of information produced, and the failure to produce schedules and information clearly contemplated by the request, the Commission cannot accept the WorldCom Complainants' claim that they responded "in good faith, to the best of its ability, given the time and information that was available." See, Response to SWBT's Motion for Sanctions, p. 1. It is also difficult to accept WorldCom Complaints' claim that "SWBT declined to collaborate" (Response at para. 4) when SWBT has and continues to seek the information requested in its data requests pursuant to the Order of the Commission which found all of the information to be clearly relevant. At this point, it is the WorldCom Complainants' obligation to comply with the Commission's Order, not SWBT's obligation to "collaborate" in some unidentified way. Nor is it reasonable for the WorldCom Complainants to refuse to provide the information requested in data request 1A unless SWBT agrees to pay the cost of creating a database. Id. at para. 4. The contract between

the parties calls for SWBT's originating records to be used to determine the amount of terminating compensation paid. By their Complaint, the WorldCom Complainants seek to use their own terminating records to justify a substantially higher level of payments than would be due if SWBT's records were used for the payment of compensation for ISP-bound traffic. Yet when SWBT seeks information to discover whether those claims of a higher number of minutes are justified, the WorldCom Complainants instead offer to let SWBT pay to create a database.

10. The WorldCom Complainants also contend that SWBT has the burden of proof as to whether the calls at issue are interstate. Id. at para. 11. The burden of proof issues are separate from the WorldCom Complainants' failure to comply with the Commission's discovery order. In any case, the WorldCom Complainants' position is erroneous. Brooks and MCI are the Complainants here and have the burden of proving that the calls to ISPs are within the contractual requirements to pay reciprocal compensation. In any event, SWBT is clearly entitled to pursue its theory of the case and to demonstrate that the calls to the ISPs are not local but are interstate in nature. It is inappropriate for the WorldCom Complainants to block SWBT's discovery requests and to refuse to comply with the Commission Order regardless of which party has the burden of proof.

11. The appropriate remedy for these continual refusal to comply with a valid Commission Order is for the Commission to dismiss the WorldCom Complaint. Failing that, the Commission should require the WorldCom Complainants to comply with the Order on an expedited basis and permit SWBT to pursue additional discovery based on the information provided. At this point, given WorldCom's continued failure to comply with the Commission's Order, the case cannot go forward at the scheduled time. SWBT has not yet seen the information which must be produced pursuant to the Commission's Order nor has it been able to pursue



additional discovery based on that information. SWBT has obviously been unable to supplement its testimony as contemplated by the July 20, 2000 Order given the WorldCom Complainants' failures.

12. BroadSpan has raised no different arguments then those addressed by the WorldCom Complainants. SWBT will not duplicate its arguments here, but would respectfully refer to SWBT's Motion for Sanction for its position with regard to BroadSpan.

Accordingly, for all the foregoing reasons, SWBT respectfully requests the Commission to dismiss the WorldCom and BroadSpan Complaints for their failure to comply with this Commission's July 20, 2000 discovery order, or in the alternative, to again order production and continue this case from its scheduled hearing dates of August 23-25, 2000.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY Paul G. Lane tm  
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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

MCI WorldCom Communications, Inc.,	)	
et al.,	)	
	)	
Complainants,	)	Case No. TC-2000-225. et al.
	)	
v.	)	
	)	
Southwestern Bell Telephone Company,	)	
	)	
Respondent,	)	

**SECOND SET OF DATA REQUESTS**

COMES NOW Respondent, Southwestern Bell Telephone Company (SWBT), and for its Second Set of Data Requests to Complainants MCI WorldCom Communications, Inc. (MCIWC), Brooks Fiber Communications of Missouri, Inc. (Brooks), and BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc. (PNC), states as follows:

**INSTRUCTIONS**

- A. These data requests (1-4) are propounded pursuant to 4 CSR 240-2.090. Your responses to these data requests shall answer each question separately and fully in writing, and the reasons for any objections shall be stated in detail.
- B. These data requests are continuing in character, and require you to promptly amend or supplement your answers if you obtain further material information.
- C. In producing any documents requested herein, please specify to which request they respond. If there are not documents responsive to a particular response, please so state.
- D. If any document cannot be produced by you in full, then you are requested to produce each such document to the extent possible, to specify the reason for your inability to produce the remainder of each such document, and to specify the reason for your inability to produce the remainder of each such document, and to state whatever information, knowledge or belief you have concerning the substance of any document not produced in whole or in part.

E. If you withhold any documents covered by these data requests by reason of claim of privilege, work product or any other immunity, a list to be furnished identifying each such document together with the following information: (A) the date of the document; (b) the name of its author, authors, or preparers and an identification by employment and title of each such person; (c) the name, employment, and title of each person (i) to whom the document was sent or furnished, or (ii) who viewed or has had custody of the document; (d) a brief description of the document sufficient to permit the Commission to adjudicate the validity of the privileged claimed; (e) a statement of the basis for the claim of privilege; and (f) the data request to which the document relates. In the case of any document relating to any way to a meeting or to any other conversation, all participants in the meeting or conversation are to be identified.

## DEFINITIONS

As used in these discovery requests, the following terms are to be interpreted in accordance with these definitions:

- (a) The term "person" includes any individual, entity, joint stock company, unincorporated association or society, municipal or other corporation, the State of Missouri, its agencies or political subdivisions, any court, or any other governmental entity.
- (b) The terms "you" and "your" include MCIWC, Brooks and PNC, and any person or entity that controls, is controlled by, is under common control with, or affiliated with MCIWC, Brooks or PNC, including its agents, attorneys, employees, and predecessor in interest.
- (c) The terms "document" or "documents" include any tangible thing, including, but not limited to: all originals, copies, and drafts of any written, typewritten, recorded, transcribed, printed, tape, photographic, or graphic matter, however maintained, produced or reproduced, whether sent or received, or neither, including, but not limited to, all books, pamphlets, articles, handbooks, manuals, periodicals, letters, memoranda, files, envelopes, notices, instructions, reports, financial reports, records, filings made with governmental agencies or other authorities, studies, transcripts, design plans, blueprints, schematics, diaries, formal/informal audited and unaudited financial statements, working papers, notes, notations, charts, lists, comparisons, telegrams, cables, telex messages, communications, including reports, notes, notations and memoranda of, or relating to, telephone conversations and conferences, minutes, transcriptions, correspondence, offering, circulars, graphs, tabulations, analyses, evaluations, projections, statements, summaries, desk calendars, appointment books, telephone logs, questionnaires, surveys, indices, tapes, computer inputs or outputs, data stored in computer memory (regardless of whether it was ever translated to hard copy), microfilm, magnetic tapes and photographs within your possession, custody, or control. Different versions of the same documents, handwritten notes or notations in any form, drafts of documents, and documents with handwritten notations or marks not found in the original or on other copies are different documents.
- (d) The terms "identify," "identity" or "identification", when used in reference to a natural person, require you to state that person's full name, last known address, home and business telephone numbers, and present business affiliation. When used in reference to a person other than a natural person,

the terms "identify," "identity" or "identification" require you to describe the nature of such person (that is, whether it is a corporation, partnership, etc. under the definition of "person" above), and to state that person's last known address, telephone number, and principal place of business. Once any person has been identified properly, it shall be sufficient thereafter when identifying that same persons to state the name only.

(e) The terms "identify," "identity" or "identification", when used in reference to a document, require you to state the date, the author (or, if different, the signor or signors), the addressee, and the type of document (e.g. letter, memorandum, telegram, chart, etc.) If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it and the reason for such disposition. In lieu of so identifying a document, at your option you may attach an accurate copy of it to your answers appropriately labeled to correspond to the response for which it is being produced.

(f) The term "Internet traffic" refers to calls originated by the end user of one local exchange carrier, which are destined for (or intended to be destined for) and routed to (or intended to be routed to) an Internet Service Provider (ISP) served by a second local exchange carrier located in the same local calling scope as the end user originating the call to the Internet through the ISP.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing First Set of Data Requests was faxed and mailed to  
Carl Lumley, 130 S. Bemiston, Suite 200, Clayton, Missouri 63105 on the 24<sup>th</sup> day of April, 2000.

  
\_\_\_\_\_  
Anthony K. Conroy

CASE NO. TC-2000-225

SOUTHWESTERN BELL TELEPHONE COMPANY  
DATA REQUEST NO. 1

Requested From: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., and  
BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc.

Date Requested: April 24, 2000

Information Requested:

1. For all traffic for which each complainant claims reciprocal local compensation in this case, please state the amount of such compensation claimed by each complainant, and how each complainant determined this amount. Please provide the following information, on a monthly basis, for any month in which each complainant claims compensation:
  - A. The number of minutes of traffic, by month, that each complainant claims was originated by a SWBT end user and which was delivered to each Internet Service Provider (ISP) served by a complainant, located in the same local calling scope as the SWBT end user.
  - B. The per minute reciprocal compensation rate which each complainant claims is applicable and owed for such traffic.
  - C. The name, address, and telephone numbers associated with each Internet Service Provider to which each complainant delivered traffic originated by a SWBT end user, and for which each complainant seeks reciprocal compensation in this case.

Requested by: David Osborn

Information Provided:

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Southwestern Bell Telephone Company (SWBT) requests the above data/information pursuant to Rule 4 C.S.R. 240-2.090.

The information provided to Southwestern Bell Telephone Company in response to the above data request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform Southwestern Bell Telephone Company if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Response Received: \_\_\_\_\_

Signed By: \_\_\_\_\_

Prepared By: \_\_\_\_\_

CASE NO. TC-2000-225

SOUTHWESTERN BELL TELEPHONE COMPANY  
DATA REQUEST NO. 2

Requested From: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., and  
BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc.

Date Requested: April 24, 2000

Information Requested:

2. For each Internet Service Provider identified in response to data request 1.C above, please describe the following:
  - 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;
  - B. Whether any complainant offered any such Internet Service Provider any financial consideration or incentive in connection with providing service to such Internet Service Provider;
  - C. Whether any complainant offered to share reciprocal compensation revenues with any such Internet Service Provider;
  - 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 arrangements 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
  - 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.

Requested by: David Osborn

Information Provided:

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Southwestern Bell Telephone Company (SWBT) requests the above data/information pursuant to Rule 4 C.S.R. 240-2.090.

The information provided to Southwestern Bell Telephone Company in response to the above data request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform Southwestern Bell Telephone Company if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Response Received: \_\_\_\_\_

Signed By: \_\_\_\_\_

Prepared By: \_\_\_\_\_



CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on August 14, 2000.

Paul G. Lane /tm

Paul G. Lane

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