

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

JUN 28 2000

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

Missouri Public
Service Commission

Complainants,

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

vs.

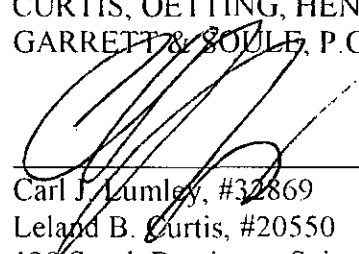
Southwestern Bell Telephone Company,

Respondent.

MEMORANDUM

COME NOW Complainants and herewith file with the Commission their Request for Admissions (with Highly Confidential Exhibits being filed under sealed) directed to Southwestern Bell Telephone Company (SWBT) and SWBT's Response thereto as part of their surrebuttal evidence in connection with this proceeding.

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

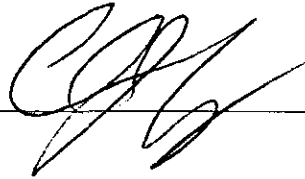


Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 South Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (Fax)

Attorneys for MCI WorldCom Communications,
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 sent to all parties listed on the attached service list by U.S. Mail, postage paid, on the 27 day of June, 2000.



Michael Dandino
Office of Public Counsel
Missouri Public Service Commission
P.O. Box 7800
Jefferson City, MO 65102
(573) 751-5562

Dan Joyce
General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-9285

Anthony K. Conroy
Legal Department
Southwestern Bell Telephone Company
One Bell Center, Room 3516
St. Louis, MO 63101
(314) 247-0014

BEFORE THE 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.)	

COMPLAINANTS' REQUEST FOR ADMISSIONS

COME NOW Complainants and in accordance with Commission Rule 4 CSR 240-2.090 request that Southwestern Bell Telephone Company (SWBT) admit the following:

1. Please admit that Exhibit RFA-1 attached hereto (that was produced by SWBT in response to Complainants' Request for Production No. 1 in this case) is a true and accurate copy of a string of e-mail messages between the SWBT representatives identified thereon, sent on the dates stated thereon, regarding the negotiation of the Brooks/SWBT interconnection agreement at issue in this case.

Response:

2. Please admit that Exhibit RFA-2 attached hereto (that was produced by SWBT in response to Complainants' Request for Production 4 in this case) is a true and accurate copy of correspondence and the attachments thereto from L.C. Sauer, Division Manager – Access Policy and Exchange Carrier Relations for SWBT or one of its affiliates to other SWBT or affiliates representatives identified thereon, sent on or about June 3, 1997, regarding the Southwestern Bell/Pacific Bell position regarding the payment of local terminating compensation for “interexchange Internet traffic”.

Response:

3. Please admit that Exhibit RFA-3 attached hereto (that was produced by SWBT in response to Complainants' Request for Production 4 in this case) is a true and accurate copy of correspondence and the attachments thereto from Jan Falkinburg (signed for Falkinburg by Rich Standish), General Manager – Carrier Marketing for SWBT or one of its affiliates to other SWBT or affiliates representatives identified thereon, sent on or about May 8, 1997, regarding “an update regarding issues surrounding enhanced services traffic”.

Response:

4. Please admit that Exhibit RFA-4 attached hereto (that was produced by SWBT in response to Complainants' Request for Production 5 in this case) is a true and accurate copy of

correspondence sent by Sharon McGee, Account Manager – Competitive Procedure Account Team for SWBT on or about August 27, 1997, to Dennis Perkins of Brooks Fiber Properties, Inc. regarding Local Compensation Invoice Payment for Missouri.

Response:

5. Please admit that Cadieux Schedule No. 1 attached hereto is a true and accurate copy of correspondence sent by Larry Cooper, General Manager – Competitive Procedure Account Team for SWBT on or about June 9, 1997, to Ed Cadieux of Brooks Fiber Properties, Inc. regarding Local Terminating Compensation for Delivery of Internet Service Provider Traffic.

Response:

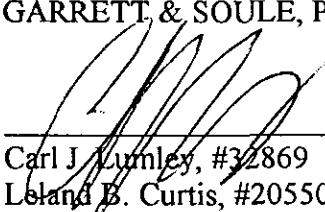
7. Please admit that Price Schedule No. 4 attached hereto is a true and accurate copy of a form letter, of which a personalized copy was signed and sent by Larry Cooper, General Manager – Competitive Procedure Account Team for SWBT on or about June 9, 1997 to MFS regarding Local Terminating Compensation for Delivery of Internet Service Provider Traffic.

Response:

8. Please admit that Price Schedule No. 5 attached hereto is a true and accurate copy of correspondence sent by Larry Cooper, General Manager – Competitive Procedure Account Team for SWBT on or about July 30, 1997, to Alex J. Harris of MFS, responding to Mr. Harris' letter of June 27, 1997.

Response:

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




Carl J. Turnley, #32869
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130 South Bemiston, Suite 200
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Attorneys for MCI WorldCom Communications,
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 sent to all parties listed on the attached service list by U.S. Mail, postage paid, on the 5 day of May, 2000.

_____

Anthony K. Conroy
Legal Department
Southwestern Bell Telephone Company
One Bell Center, Room 3516
St. Louis, MO 63101
(314) 247-0014

HIGHLY CONFIDENTIAL

EXHIBIT RFA 1

HIGHLY CONFIDENTIAL

EXHIBIT RFA 2

HIGHLY CONFIDENTIAL

EXHIBIT RFA 3



"The One to Call On".

August 27, 1997

Sharon McGee
Account Manager-
Competitive Provider
Account Team

Mr. Dennis Perkins
Vice President- Corporate Controller
Brooks Fiber Properties, Inc.
425 Woods Mill Road South, Suite 300
Town and Country, MO 63017

RECEIVED

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RE: Local Compensation Invoice Payment

Dear Mr. Perkins:

This letter is in follow-up to our discussion on August 21, 1997, regarding Brooks' June and July 1997 Interconnection Compensation Billing Statements. For Settlement months of May and June 1997 SWBT has determined the following estimated amounts based on internal payables programs. These payables reflect traffic originated by SWBT or others, where applicable, which terminated, or in the case of ISP traffic, transited Brooks network, as this payment does not exclude Internet traffic at this time. The sum of \$13,732.76 for May and \$15,444.48 for June was forwarded to the SWBT's Voucher Unit on August 25, 1997, for payment to be issued immediately. The remaining amount on the invoice from Brooks to SWBT has been placed in dispute status. As you know, both companies are working on a resolution.

If any of the remaining disputed usage is identified as qualifying local compensation traffic between Brooks and SWBT, as per our agreement, payment for such usage will be made to Brooks within 30 days of identification. On the other hand, if the disputed usage is identified as non-qualifying local compensation traffic, SWBT requests that such usage charges be removed from any invoices submitted to SWBT for payment.

Sincerely,

Sharon McGee

cc: Edward Cadieux
Kathy Swaller
William Kleffman
Mary Wallace
Paul Roan
Vinisha Clark

One Bell Plaza
Suite 0522.05
Dallas, Texas 75202

Phone 214 464-8147
Fax 214 464-1486

EXHIBIT

RFA-4

Larry B. Cooper
General Manager-
Competitive Provider
Account Team

Southwestern Bell Telephone
One Bell Plaza
Suite 0525
Dallas, Texas 75202
Phone 214 464-8145
Fax 214 464-1486



June 9, 1997

Mr. Edward Cadieux
Director, Regulatory Affairs - Central Region
Brooks Fiber Properties
425 Woods Mill Road South,
Suite 300
Town and Country, MO 63017

RE: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Cadieux:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for internet service providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC vs. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISPs premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

Cadieux Schedule No. 1

Mr. Edward Cadieux
June 9, 1997
Page 2

In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interexchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you would like to discuss this matter further, I can be reached on 214-464-8145 or you may call your account manager, Sharon McGee, on 214-464-8147.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Cooper".

cc: Sharon McGee

Southwestern Bell



June 9, 1997

«M» «FirstName» «LastName»
«Title»
«Company»
«Address1»
«Address2»
«City» «State» «ZipCode»

RE: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear «M» «LastName»:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for internet service providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC vs. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISP's premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

Price Schedule No. 4

«M» «FirstName» «LastName»

June 9, 1997

Page 2

In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interexchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you would like to discuss this matter further, I can be reached on 214-464-8145 or you may call your account manager, «Account», on «Number».

Sincerely,

original signed by "Larry B. Cooper"

Ms. Mary C. Albert
Attorney
KMC Telecom, Inc.
3000 K Street, N.W.
Suite 300
Washington, D. C. 20007-5116

Mr. Mike Pelletier
Central Regional Director
Teleport Communications Group
2755 North Hickory Ridge Rd.
Highland, MI 48357

Mr. Bill Mullen
Local Service Development
MFS WorldCom
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Oakbrook Terrace, IL 60181

Ms. Cindy Schonhaut
Vice President/Government Affairs
ICG Telecom Group
Executive Office
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Englewood, Colorado 80112

Ms. Julia Strow
Intermedia Communications
3625 Queen Palm Drive
Tampa, FL 33619

Ms. Stacey Waddell
Director - Network Operations
WinStar Wireless
30116 NE 132nd Avenue
Battle Ground, WA 98604

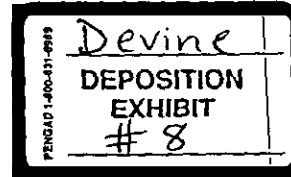
Mr. Gary George
President
American MetroComm Corporation
6001 Stars & Stripes Blvd.
Suite 100
New Orleans, LA 70126

Mr. Jerry James
General Manager
Golden Harbor of Texas, Inc.
401 Carlson Circle
San Marcos, TX 78666

Larry B. Cooper
General Manager
Competitive Provider
Account Team

Exhibit 2
Southwestern Bell Telephone
One Bell Plaza
Suite 0525
Dallas, Texas 75202
Phone 214 484-8145
Fax 214 484-1486

© Southwestern Bell



July 30, 1997

Mr. Alex J. Harris
Vice President, Regulatory Affairs
MFS
33 Whitehall Street, 15th Floor
New York, N.Y. 10004

Dear Alex:

In response to your June 27, 1997 letter where you dispute SWB's position on treatment of Internet Service Provider (ISP) traffic for the purpose of compensation, I respectfully offer an alternative approach toward resolution.

First, SWB does not view declining to pay MFS any termination compensation for Internet traffic pursuant to a local interconnection agreement, a direct violation of the letter and spirit of our Interconnection Agreement or The Act. The FCC has made it quite clear that "the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic." First Report and Order in CC Docket No. 96-98, released August 8, 1996, para. 1034 (emphasis added). Internet traffic by its very nature is jurisdictionally interstate, or at an absolute minimum is interexchange. In receiving and transporting end user calls originating on a LEC's network and bound for the Internet, an LSP is not "terminating" any kind of call. Rather, it is merely acting as an intermediary switching point along an originating, jurisdictionally interstate call. The call does not "terminate" on the LSP's network because the LSP is merely passing the call along to an ISP who in turn is then passing the call along to the World Wide Web - an interstate transmission under every definition of that term as settled by the FCC and reviewing courts for many years.

Price Schedule No. 5

Mr. Alex J Harris

July 30, 1997

Page 2

Since the FCC had a formal proceeding on this very issue (CCB/CPD 97-30), I suggest that we wait to see the outcome of those proceedings. Of course, if after the conclusion of the pleading cycle in that proceeding, you still feel that SWB has not responded to points being made by your company in support of its position, please just let me know.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Cooper". The signature is written in a cursive, flowing style with a large initial "T" and a long, sweeping underline.