BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Initiate Residential Customer Winback Promotion	)))	Case No. TT-2002-472 Tariff No. 200200831
In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Initiate Business Customer Winback Promotion	)))	Case No. TT-2002-473 Tariff No. 200200828

SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY TO WCOM'S RESPONSE TO SWBT'S MOTION TO STRIKE

Comes now Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and, for its Reply to WCOM's Response to SWBT's Motion to Strike, states as follows:

1. On August 28, 2002, SWBT filed a Motion to Strike in which SWBT requested the Commission to strike portions of the Rebuttal Testimony of Mr. R. Matthew Kohly that was filed on behalf of AT&T, portions of the Rebuttal Testimony of Mr. Don Price that was filed on behalf of WCOM[1], and the Surrebuttal Testimony of Mr. Don Price that was also filed on behalf of WCOM.

2. On September 4, 2002, WCOM filed its Response to SWBT's Motion to Strike ("Response").

3. At the outset, SWBT notes that WCOM's Response completely fails to rebut the substance of SWBT's Motion to Strike; specifically, that Mr. Price's testimony is: (1) not confined to the purpose of which the Commission initially established this proceeding; (2) not

[1] As used herein WCOM collectively refers to MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc.

consistent with the Issues List which the Commission approved; and (3) not in compliance with the Commission's rules regarding Surrebuttal Testimony.

4. As SWBT explained in its Motion to Strike, the testimony filed by the various CLECs in this case, including Mr. Price, is not confined to the purpose for which the Commission initially established this proceeding and is not consistent with the Issues List which the Commission approved in this case.[2] Unless the Commission strikes those portions of the CLEC's testimony which exceed the scope of issues identified for resolution, the hearing in this case will be unnecessarily prolonged and will entail matters that are far beyond the scope of the proceeding as determined by the Commission.[3] SWBT outlined those portions of Mr. Price's Rebuttal Testimony that exceeds the scope of this case.[4]

5. With regard to Mr. Price's Rebuttal Testimony, WCOM cites two provisions in the Commission's Order Regarding Motion to Compel and in the Report and Order in Case No. TT-2002-108, apparently attempting to provide justification for its testimony.[5] The fact that the Commission previously ruled that certain information is discoverable is not the same thing as a determination that the information is admissible. See Rule 56.01(b)(1) of the Missouri Rules of Civil Procedure. For the reasons set forth in SWBT's Motion to Strike, the testimony that SWBT requested the Commission to strike is not admissible because it is not confined to the purpose of which the Commission initially established this proceeding and is not consistent with the Issues List which the Commission approved. As the Commission is well-aware, WCOM proposed a third issue: "Should the Commission commence an investigation regarding SWBT's winback and retention practices including but not limited to SWBT's use of CPNI and wholesale discount

[2] See SWBT's Motion to Strike, paragraph 4.
[3] Id.
[4] Id.
[5] See Response, paragraph 1.

information." The Commission rejected WCOM's proposal, noting "whatever the merits of the CLEC's allegations, the issue they propose is beyond the scope of the specific tariffs that the Commission is considering in this case."[6] Since these portions of Mr. Price's Rebuttal Testimony cited by SWBT are not confined to the purpose of which the Commission initially established this proceeding and is not consistent with the Issues List that the Commission approved, the Commission should strike his testimony as outlined in SWBT's Motion to Strike.

6. With regard to Mr. Price's Surrebuttal Testimony, SWBT moved to strike the testimony in its entirety. WCOM entirely fails to address SWBT's contention that this testimony is not in compliance with the Commission's rule. 4 CSR 240-2.130(7)(D) provides:

> (D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony. (Emphasis added).

Mr. Price's Surrebuttal Testimony violates this requirement. The entirety of Mr. Price's Surrebuttal Testimony explains why the Rebuttal Testimony of Mr. Thomas, Ms. Meisenheimer, and Mr. Kohly is in substantial agreement with the positions espoused by Mr. Price in his Rebuttal Testimony and further expounds upon his own Rebuttal Testimony. That is not proper Surrebuttal Testimony, as it does not take issue with the positions set forth in the testimonies of Mr. Thomas, Ms. Meisenheimer, or Mr. Kohly. Rather, Mr. Price used Surrebuttal Testimony as an opportunity to restate and add to his Rebuttal Testimony. WCOM was under an obligation to present all of its rationale and opposition to SWBT's proposed tariffs in its Rebuttal Testimony so that SWBT would have an opportunity to respond in Surrebuttal Testimony. The practice of filing "Surrebuttal Testimony" that does nothing more than point out how others filing Rebuttal Testimony agree with the witness filing "Surrebuttal Testimony" is wholly improper and should not be countenanced.

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[6] See Order Regarding List of Issues, p. 2.

7. WCOM also claims that Mr. Price's Surrebuttal Testimony addresses "SWBT's discovery responses that should have been provided by SWBT before rebuttal testimony was due, but instead was only provided upon an order compelling the response and even then several days late running right into the due date for surrebuttal testimony."[7] WCOM's claim is not only legally inaccurate, it is replete with factual inaccuracies. The history of the discovery process is as follows. On May 17, 2002, WCOM sent Data Requests to SWBT. SWBT objected to these Data Requests on May 28, 2002. WCOM waited until July 11, 2002, over six weeks, before it filed its Motion to Compel. SWBT timely responded to WCOM's Motion to Compel on July 22, 2002. The Commission issued its Order Regarding Motion to Compel on August 8, 2002, ordering SWBT to respond, in part, to WCOM's Data Requests as reflected in the Order by August 19, 2002.

8. WCOM's claim that SWBT's discovery responses should have been provided before Rebuttal Testimony was due is legally inaccurate. SWBT timely filed objections that the Commission overruled, in part, and ordered SWBT to respond. The Commission's ruling was not issued until August 8, 2002, well after Rebuttal Testimony was due (July 26, 2002).

9. WCOM's claim that SWBT's responses were several days late is also factually incomplete. SWBT was required to review and produce thousands of documents, but was unable to do within the allotted time despite substantial effort. SWBT contacted counsel for WCOM who agreed to a one-day extension. SWBT ultimately provided the responses the following day, following additional discussions with WCOM's counsel.

10. WCOM's claim that Mr. Price's testimony addresses SWBT's discovery responses is also overstated. Of the 12 pages of Surrebuttal Testimony that Mr. Price filed on behalf of WCOM, only a page and four lines is even devoted to discovery issues. Further, Mr. Price's

[7] See Response, paragraph 3.

testimony repeats WCOM's inaccurate claims regarding the discovery process, even though Mr. Price was not even a part of that process.

Wherefore, Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company prays the Commission grants its Motion to Strike, thereby striking portions of the Rebuttal Testimony of Mr. R. Matthew Kohly on behalf of AT&T as reflected in SWBT's Motion to Strike, portions of the Rebuttal Testimony of Mr. Don Price on behalf of WCOM as reflected in SWBT's Motion to Strike, as well as the Surrebuttal Testimony of Mr. Don Price in its entirety, together with any further or additional relief the Commission deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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