

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

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

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

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
MOTION TO STRIKE**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and for its Motion to Strike portions of prefiled testimonies of Mr. R. Matthew Kohly and Mr. Don Price states as follows:

1. On March 29, 2002, SWBT filed proposed tariffs that would waive non-recurring charges for residential and business customers who wished to return to SWBT after having received service from a competitive local exchange carrier ("CLEC"). On April 3, 2002, Staff filed a Motion to Suspend and Reject the Tariff in both Case No. TT-2002-472 (involving SWBT's residential winback tariff) and Case No. TT-2002-473 (involving SWBT's business winback tariff). On April 5, 2002, the Missouri Public Service Commission ("Commission") issued its Order Suspending Tariff and Establishing Time for a Response. On April 18, 2002, the Commission issued its Order Further Suspending Tariff and Directing Notice, finding that further suspension of the tariffs was appropriate "to allow the Commission an opportunity to determine whether [the tariffs] will also have an adverse affect on competition."

2. Although this case was established to determine whether SWBT's proposed winback tariffs that would waive non-recurring charges for returning customers should be approved, certain parties have sought to expand the scope of the proceeding. On August 9, 2002,

NuVox Communications of Missouri, Inc., MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri and MCI WorldCom Communications, Inc. (collectively “WorldCom”) filed a pleading advising the Commission that the parties had been unable to agree upon issues and proposing its own list of issues. WorldCom proposed two issues that focused on whether the two tariffs should be approved and a third issue which was framed as follows: “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 information?” On August 13, 2002, AT&T Communications of the Southwest, Inc. (“AT&T”) filed a pleading indicating that it concurred with WorldCom’s proposed issues list. SWBT and Staff both filed responses to WorldCom’s proposal, and each objected to the inclusion of the third issue proposed by WorldCom and pointed out that the purpose of the case was to determine whether the two specific tariff filings made by SWBT should be approved.

3. On August 22, 2002, the Commission issued its Order Regarding List of Issues. The Commission rejected the third issue proposed by WorldCom and supported by AT&T. The Commission noted: “Whatever the merits of the CLECs’ allegations, the issue they propose is beyond the scope of the specific tariffs that the Commission is considering in this case.” *Id.* at 2.

4. The testimony filed by the various CLECs in this case 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 has approved in this case. Unless the Commission strikes those portions of the CLECs’ 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. Accordingly, the Commission should strike the testimony that exceeds the scope of the issues in this case.

5. The following portions of the rebuttal testimony of Mr. Don Price should be stricken:

- A. The sentence beginning on page 2, line 23 and ending on page 3, line 4: This portion of the testimony directly deals with the alleged improper use of CPNI which the Commission has determined is not properly a part of this proceeding.
- B. Page 3, line 10 through page 13, line 8: In these pages, Mr. Price seeks to misdirect the Commission to an analysis of market power, including SBC advertising campaigns and SBC's participation as a CLEC in regions outside of the areas where an SBC ILEC serves. SBC's advertising campaigns and its participation as a CLEC outside its ILEC territory is irrelevant to the approved issues list which is focused on whether to approve the tariffs proposing a waiver of non-recurring charges to customers seeking to return to SWBT in Missouri.
- C. The sentence beginning on page 14, line 1 and ending on line 3: Mr. Price makes the same allegation of alleged abuse of CPNI which the Commission specifically determined was not an issue in this case.
- D. Page 14, line 9 through page 17, line 15: This section directly deals with alleged improper use of CPNI which this Commission has determined is not an issue in this proceeding.
- E. Page 26, line 23 beginning with the phrase "and should initiate" through page 27, line 3: In this section, Mr. Price recommends the Commission establish a proceeding to investigate SWBT's use of CPNI. The Commission has determined that this is not an issue in this proceeding.

6. SWBT also moves the Commission strike the surrebuttal testimony of Mr. Price in its entirety. The testimony should be stricken because it is not in compliance with 4 CSR 240-2.130(7). The Commission rules contemplate that the party initiating the case will file direct testimony and that rebuttal testimony must fully respond and set forth all claims why a party opposes the position set forth in a party's direct case. Surrebuttal testimony is limited solely to matters raised in another party's rebuttal testimony. Mr. Price's surrebuttal testimony violates these requirements. The entirety of the 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 on behalf of WorldCom in his rebuttal testimony, and further expounds on 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. Mr. Price uses his surrebuttal testimony as an opportunity to restate and add to the testimony he provided in rebuttal. To the extent WorldCom opposes the tariffs proposed by SWBT, it was required to present its views in rebuttal testimony. SWBT is prejudiced by WorldCom's attempt to "supplement" its rebuttal through purported surrebuttal testimony, as it is precluded from filing any additional testimony to further rebut WorldCom's additional contentions. WorldCom 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. The practice of filing "surrebuttal" testimony that does nothing more than point out how others filing rebuttal agree with the witness filing "surrebuttal" is wholly improper and should not be countenanced.

7. SWBT also moves to strike a portion of the rebuttal testimony of Mr. Kohly on behalf of AT&T. SWBT moves to strike that portion of Mr. Kohly's rebuttal testimony beginning on page 19, line 12 and concluding on page 21, line 17. In that portion of his rebuttal testimony, which is identified as "Other Winback Issues," Mr. Kohly discusses the "totality of SWBT's retention and winback efforts," including advertising and customer letters. These matters are clearly outside the scope of the issues identified by the Commission. In addition, page 20, lines 1-8 involves clearly inadmissible hearsay (consisting of alleged comments of an unidentified employee of a SWBT affiliate to an unidentified AT&T employee on an unspecified date and at undisclosed location) as well as matters which are irrelevant to this proceeding.

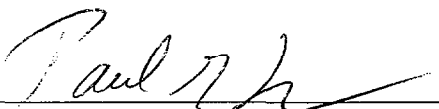
8. The Commission, not WorldCom and AT&T, decides what issues are properly presented in this proceeding. The Commission has determined that the issues are whether or not to approve the two SWBT tariffs which propose to waive non-recurring charges to business and residence customers returning to SWBT from a CLEC. Extraneous issues regarding SWBT's advertising, marketing practices, and alleged improper use of CPNI are beyond the issues that the Commission has set.

9. Accordingly, the Commission should strike the designated portions of Mr. Price's rebuttal and the entirety of his surrebuttal as well as portions of the rebuttal testimony of Mr. Kohly. If this Motion to Strike is granted, then SWBT will withdraw those portions of the surrebuttal testimonies of SWBT witnesses Mr. Thomas Hughes, Mr. John Regan and Dr. Debra Aron that respond to the stricken portion of Mr. Price's and Mr. Kohly's testimonies.

WHEREFORE, for the foregoing reasons, SWBT respectfully requests the Commission to strike (1) the portions of Mr. Price's rebuttal testimony indicated above and the entirety of his surrebuttal and (2) the portions of Mr. Kohly's rebuttal indicated above.

Respectfully submitted,

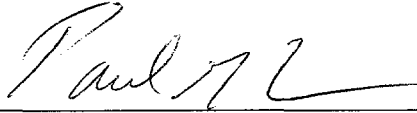
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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on August 28, 2002.



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