

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

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

1. On September 4, 2002, MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc. ("WCOM") filed its Motion to Strike ("Motion"). In its Motion, WCOM states that Commission rules require a moving party to state their entire case-in-chief in their direct testimony, so that other parties may then respond.¹ WCOM, thereafter, claims "SWBT has recognized the requirement that expert testimony supporting its case such as that proffered herein by Dr. Debra Aron should be included in its direct testimony package."² For the following reasons, WCOM's claim is without merit.

2. 4 CSR 240-2.130(7) provides:

For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

¹ See Motion, paragraph 1.

² Id.

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

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

3. SWBT filed direct testimony from its marketing witness, John Regan, Jr., and from its policy witness, Thomas F. Hughes. The purpose of Mr. Regan's and Mr. Hughes' testimony is to explain SWBT's case-in-chief. Thus, by the express terms of 4 CSR 240-2.130(7)(A), Mr. Regan's and Mr. Hughes' testimony is proper and no party argues to the contrary.

4. Further, as Dr. Aron explains in her Surrebuttal Testimony, the purpose of her testimony is: "to respond to the allegations and assertions made by Staff and intervenors insofar as their rebuttal testimonies rest on an erroneous understanding of the economics of competition."³ Thus, by the express terms of 4 CSR 240-2.130(7)(D), Dr. Aron's testimony is proper and should not be stricken.

5. As the Missouri Public Service Commission ("Commission") is aware, on August 28, 2002, SWBT filed a Motion to Strike portions of the prefiled testimonies of Mr. R. Matthew Kohly and Mr. Don Price, including all of Mr. Price's Surrebuttal Testimony, on the basis that it is not in compliance with 4 CSR 240-2.130(7). SWBT indicated that 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

³ See Surrebuttal Testimony of Dr. Debra J. Aron, page 4.

in a party's direct case.⁴ Surrebuttal testimony is limited solely to matters raised in another party's Rebuttal Testimony.⁵ SWBT explained that Mr. Price's Surrebuttal Testimony violates this requirement in that the entirety of his 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 WCOM in his Rebuttal Testimony and further expounds upon his own Rebuttal Testimony.⁶ 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.⁷

6. It is clear that WCOM seeks to deflect attention from its failure to follow the Commission's rules by claiming that SWBT did not follow the Commission's rules. As indicated above, SWBT followed the Commission's rules. The Commission should not strike Dr. Aron's testimony but should see WCOM's filing for what it is--an attempt to have the Commission treat SWBT's Motion to Strike and WCOM's Motion to Strike as "offsetting" each other. WCOM's late filing and lack of support for its position reveal that this should not be the result the Commission reaches. Rather, the Commission should strike portions of the prefiled testimony of Mr. R. Matthew Kohly and Mr. Don Price, including all of Mr. Price's Surrebuttal Testimony, for the reasons set forth in SWBT's Motion to Strike, and should not strike the testimony of Dr. Aron as it complies with 4 CSR 240-2.130(7)(D).

7. Finally, SWBT finds it offensive that WCOM claims that it "has intentionally chosen to 'ambush' its opponents by reserving Dr. Aron's testimony to the Surrebuttal phase, in an attempt to completely preclude other parties from providing testimony for existing or

⁴ See Southwestern Bell Telephone Company's Motion to Strike, paragraph 6.

⁵ Id.

⁶ Id.

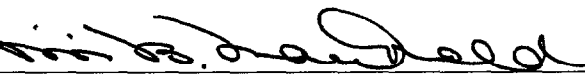
⁷ Id.

additional witnesses in response to her advocacy for SWBT."⁸ If WCOM or any other party had chosen to file Direct Testimony opposing SWBT's tariffs and making the same claims that they made in Rebuttal Testimony, then SWBT would have filed Rebuttal Testimony in response to that testimony, and WCOM would have had the opportunity to respond to SWBT's Rebuttal Testimony. Instead, WCOM chose not to file Direct Testimony and only to file Rebuttal and Surrebuttal Testimony. The Rebuttal Testimony filed by WCOM and others contains incorrect and misleading statements on issues involving economics, and it is those issues to which Dr. Aron responded. What WCOM is really seeking is to preclude SWBT from responding to its testimony. That request should be flatly denied.

Wherefore, Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company prays the Commission denies WCOM's Motion to Strike, together with any other further and additional relief the Commission deems just and proper.

Respectfully submitted,


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⁸ See Motion, paragraph 3.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on September 10, 2002.



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