

**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 COMPANY'S
RESPONSE TO WCOM'S MOTION TO COMPEL SWBT'S DR REPOSES**

COMES NOW, Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and, for its Response to WCOM's¹ Motion to Compel SWBT's DR Responses, states as follows:

Executive Summary

This proceeding was established to consider whether two specific promotional tariffs proposed by SWBT should be approved. The tariffs propose to waive non-recurring charges for business and residential customers who seek to return to SWBT after having received service from a competitive local exchange carrier ("CLEC"). Both of the tariffs are identical or substantially similar to tariffs previously approved by the Missouri Public Service Commission ("Commission") and offered to Missouri customers.

This proceeding is not a general examination of SWBT's marketing, pricing, or operational practices. Nor is it a proceeding to consider a proposed rule concerning winback offers which would apply equally to all local exchange carriers ("LECs"). While WCOM might desire such a proceeding, it may not unilaterally appoint itself as the guardian of the public

¹ WCOM consists of MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc. (See WCOM's Motion to Compel SWBT's DR Responses, page 1).

interest, and vest itself with powers not granted to it by the legislature. The Data Requests ("DRs") to which SWBT has objected are irrelevant to the waiver of non-recurring charges for customers seeking to return to SWBT. And, even if the DRs were relevant to the non-recurring charge waiver as issue in the tariffs, any such relevance is substantially outweighed by the overbroad and unduly burdensome nature of the requests. WCOM seeks information pertaining to other, unrelated promotions since January 1, 2000, and seeks information relating to all SWBT states as well as SWBT's affiliates and parent corporation, SBC Communications Inc. WCOM's efforts to use the Missouri regulatory process to obtain information for use in other states should not be countenanced. SWBT would be required to expend countless hours to locate and produce thousands of pages of documents, none of which pertain to the waiver of non-recurring charges for winback customers.

Given the length and breadth of WCOM's Motion to Compel SWBT's DR Responses, SWBT felt compelled to respond to each of WCOM's allegations in separate sections below. However, the crux of why WCOM's DRs are overbroad, unduly burdensome, irrelevant, not calculated to lead to the discovery of admissible evidence, beyond the permissible scope of the Missouri Rules of Civil Procedure and the Department of Economic Development's Practice and Procedure Rules ("Practice and Procedure Rules") boils down to four main themes. First, WCOM's Data Requests do not bear on SWBT's tariffs that propose to waive the non-recurring charges for customers seeking to return to SWBT for service. Rather, WCOM's DRs seek information about all of SWBT's past winback and retention promotions, as well as all of SWBT's generally available promotions. Because this proceeding was opened to allow the Commission an opportunity to determine whether SWBT's two tariff proposals should be approved, SWBT's marketing, pricing, and operational practices are not relevant. WCOM is apparently seeking to use this proceeding to obtain information about SWBT's marketing

practices and other information for use in other states (e.g. Texas, where a winback rule is being considered in a rulemaking proceeding in which discovery by third parties is not permitted). WCOM's DRs are overbroad, unduly burdensome, irrelevant, not calculated to lead to the discovery of admissible evidence, and beyond the permissible scope of both the Missouri Rules of Civil Procedure and the Practice and Procedure Rules.

Second, WCOM's DRs focus on SWBT's retention efforts. SWBT has no retention tariff currently proposed or pending before the Commission. Since this proceeding was opened to allow the Commission an opportunity to determine whether SWBT's two winback tariff proposals will be approved, and was not established to address SWBT's retention efforts, WCOM's DRs are overbroad, unduly burdensome, irrelevant, not calculated to lead to the discovery of admissible evidence, and beyond the permissible scope of the Missouri Rules of Civil Procedure and the Practice and Procedure Rules.

Third, WCOM's DRs seek information not only from SWBT-Missouri, but either do or appear to seek information from SWBT-Arkansas, SWBT-Kansas, SWBT-Oklahoma, SWBT-Texas, SBC Communications, Inc., and all of SBC's subsidiaries, including Ameritech, Nevada Bell, Pacific Bell, SBC Telecom, SNET, and Advanced Solutions, Inc. Since this proceeding was opened to allow the Commission an opportunity to determine whether two SWBT-Missouri winback proposals offering to waive non-recurring charges rather than a general examination of SWBT' marketing, pricing, or operational practices, data requests concerning other SWBT states or SBC subsidiaries are overbroad, unduly burdensome, irrelevant, not calculated to lead to the discovery of admissible evidence, and beyond the permissible scope of both the Missouri Rules of Civil Procedure and the Practice and Procedure Rules.

Fourth, WCOM's DRs seek information on a multitude of subjects, none of which bear on SWBT-Missouri's two tariffs proposing to waive non-recurring charges for customers seeking

to return to SWBT for service, for the last two and one half years. Even if the information sought were otherwise proper, this time frame is entirely too broad and production of information for two and one half years would require countless hours to locate and produce thousands of documents. Again, since this proceeding is not a general examination of SWBT's marketing, pricing, or operational practices or a proceeding to consider a proposed rule concerning winback offers which apply equally to all LECs, WCOM's DRs are overbroad, unduly burdensome, irrelevant, not calculated to lead to the discovery of admissible evidence, and beyond the permissible scope of both the Missouri Rules of Civil Procedure and the Practice and Procedure Rules.

For all these reasons, the Commission should sustain SWBT's objections to WCOM's DRs and deny WCOM's Motion to Compel SWBT's DR Responses. SWBT reiterates that given WCOM's 24-page Motion to Compel SWBT's DR Responses, SWBT felt compelled to respond to the allegations contained in that Motion. That response follows below.

A. SWBT DOES NOT ALONE ACCESS CUSTOMER DISCONNECT INFORMATION.

In WCOM's Motion to Compel, WCOM alleges: "SWBT Alone Accesses Customer Disconnect Information."² Thereafter, WCOM alleges: "SWBT's marketing department receives customer disconnect information (Disconnect Information) that is available to SWBT solely because SWBT is the wholesaler incumbent local exchange carrier (ILEC)."³ WCOM's allegation is simply erroneous and nothing more than an attempt to mislead the Commission. SWBT's retail marketing department receives customer disconnect information about SWBT's own retail customers. SWBT's retail marketing department does not receive information from

² WCOM's Motion to Compel SWBT's DR Responses, p. 2.

³ *Id.* at 2.

SWBT's wholesale department. Further, every local exchange carrier can access their own disconnect information.⁴ SWBT's retail operations have no information regarding CLEC connect information and/or disconnect information. Any contention to the contrary is false.

WCOM also alleges: "As noted above, SWBT's wholesale arm generates the Disconnect Information and provides it to SWBT's marketing departments."⁵ Nothing could be further from the truth. SWBT's retail arm generates disconnect information and provides it to SWBT's retail marketing departments.

Finally, WCOM states: "clearly zealous SWBT personnel certainly have the opportunity to disparage CLEC services and prices."⁶ SWBT notes that neither WCOM nor any other LEC has filed a complaint against SWBT--Missouri claiming that SWBT has disparaged its services and/or prices. WCOM is merely seeking to inflame the Commission regarding issues that do not exist.

B. REQUEST FOR BUSINESS CPNI DOES NOT TRIGGER RETENTION OFFERS

Again, SWBT notes that it has no retention tariff pending before the Commission and, therefore, allegations regarding retention offers are irrelevant and not calculated to lead to the discovery of admissible evidence.

In its Response, WCOM's alleges that: "SWBT wholesale personnel can then communicate the CPNI request to SWBT's retail marketing department, serving as a "heads-up" to watch for possible customer migration and implement any needed retention or winback

⁴ The quote WCOM cites to the Texas 271 investigation confirms this information. That quote states that when a SWBT customer disconnects service and changes its service provider to a CLEC, the retail side of SWBT's operation has access to SWBT's retail disconnect records which are created after the order for the CLEC service is posted to completion (in other words after the SWBT customer has left SWBT and gone to a CLEC). SWBT's retail disconnect reason code, along with the billing name, address, and telephone number, are used in initiating the win-back program. Again, WCOM's insinuation that SWBT's retail side of the house is improperly using information from SWBT's wholesale side of the house is factually inaccurate and is nothing more than an attempt to mislead the Commission.

⁵ WCOM's Motion to Compel SWBT's DR Responses, p. 3.

⁶ Id. at page 3, footnote 6.

promotions."⁷ Neither WCOM nor any other LEC has brought a complaint against SWBT-Missouri alleging that SWBT-Missouri's wholesale personnel communicate CPNI to SWBT's retail marketing department. The reason that no LEC has done so is because SWBT's wholesale personnel do not communicate CPNI to SWBT's retail marketing department. Rather, SWBT follows the CPNI rules established by the FCC.

C. WCOM's Robinson-Patman Act Claim Is The Ultimate Attempt To Bootstrap As The Commission Is Not Empowered To Resolve Antitrust Disputes.

This purported "Issue in Dispute" highlights the absurdity of WCOM's claim and is the ultimate attempt to bootstrap. WCOM claims a violation of the Robinson-Patman Act (although no such claim is made in its Application to Intervene and this Commission is not empowered to adjudicate antitrust claims), then claims it is entitled to information on SWBT's practices in other states to rebut a defense to Robinson-Patman liability that SWBT has not even raised!⁸

Finally, WCOM alleges that SWBT's winback tariffs violate Section 392.200, RSMO.⁹ To the contrary, SWBT's two winback proposals do not violate Section 392.200 because SWBT offers the same discounts to all similarly situated customers.¹⁰

D. CLECs Are Not Disadvantaged By Unavailability Of Information

As SWBT has demonstrated above, CLECs are not disadvantaged by unavailability of information. Moreover, WCOM's claims that SWBT can win over customers with lower than CLEC pricing is a red-herring. As the Commission is well-aware, SWBT's prices are generally not lower than CLEC prices and there has been no claim brought against SWBT-Missouri that it is pricing any of its services in an unlawful manner. Finally, WCOM claims: "[b]y constructing call back lists composed of CLEC disconnect information, SWBT may violate interconnection

⁷ Id. at p. 4.

⁸ WCOM's Motion to Compel SWBT's DR Responses, pages 4-5, 19, and 21.

⁹ Id. at 4.

¹⁰ See Direct Testimony of Thomas F. Hughes, pages 2-3.

agreements and engage in the disclosure of CLEC proprietary and trade secret information." Again, SWBT notes that neither WCOM nor any other LEC has brought a complaint against SWBT--Missouri in which it alleges that SWBT has constructed call back lists composed of CLEC disconnect information and/or that SWBT has SWBT has violated any interconnection agreement in that regard. Furthermore, SWBT does not construct call backlist using either CLEC connect or disconnect information. WCOM's baseless allegations should be ignored.

E. WCOM's Data Requests Are Irrelevant, Not Calculated To The Discovery Of Admissible Evidence, And Are Beyond The Permissible Scope Of The Missouri Rules Of Civil Procedure And The Practice And Procedure Rules.

As indicated both above and below, WCOM's DRS are irrelevant, not calculated to lead to the discovery of admissible evidence, and are beyond the permissible scope of the Missouri Rules of Civil Procedure and the Practice and Procedure Rules. SWBT will demonstrate this with regard to each DR WCOM propounded in its responses below.

III. SWBT's Response to WCOM's Response to SWBT's General Objections

1. SWBT's first general objection is:

To the extent that any information requested contains Highly Confidential and/or Proprietary information, SWBT will produce it pursuant to the terms of the Protective Order that the Missouri Public Service Commission ("the Commission") issued in this case.

WCOM admits that SWBT's objection was appropriate.¹¹ Thus, the Commission need not address this issue.

2. SWBT's second general objection is:

SWBT objects to the production of any information and material related to its business operations outside of the state of Missouri. Because this docket is limited to a proposed tariff pertaining to business operations within the state of Missouri, information relating to operations beyond Missouri is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, is overbroad, and is unduly burdensome. See Rule 56.01(b)(1) of the Missouri

¹¹ WCOM's Motion to Compel SWBT's DR Responses, page 6, paragraph 1.

Rules of Civil Procedure. Likewise, information from and about SWBT's parent and affiliates is similarly neither relevant nor calculated to lead to the discovery of admissible evidence, is overbroad, and is unduly burdensome.

In response, WCOM claims that: "SWBT's offerings are anticompetitive and may violate the Robinson-Patman Act by discriminating between purchasers, i.e., winback versus non-winback customers."¹² WCOM then claims that "SWBT can rebut the discrimination if its offerings are tailored to meet the equally lower prices of a competitor" and that it is entitled to discovery practices in other states.¹³

At the outset, SWBT again notes that this docket was not established to investigate SWBT's winback activities in general and there has never been any complaint filed against SWBT alleging that SWBT's winback activities in Missouri have been or are inappropriate. What is at issue are two tariff filings SWBT made which seek to waive non-recurring charges for winback customers. Since the scope of this docket is limited to these two tariff offerings, WCOM's DRs should appropriately be confined to the tariffs that are at issue in this proceeding.

Further, although WCOM claims that SWBT's offerings are anticompetitive and may violate the Robinson-Patman Act by discriminating between purchasers, the Commission is not empowered to enforce federal antitrust laws even if properly raised by WCOM.¹⁴ WCOM then notes that alleged discrimination can be rebutted if SWBT's offerings are tailored to meet the equally lower prices of a competitor.¹⁵ But WCOM cannot justify its fishing expedition on the basis that it must rebut a defense that SWBT has not raised to a claim of an antitrust violation that has not been made and which is itself beyond the Commission's authority! But, to the extent the information has any relevance, it is publicly available to WCOM. According to WCOM,

¹² Id. at page 7, paragraph 2.

¹³ Id.

¹⁴ WCOM raises no claim of Robinson-Patman violation in its Application to Intervene.

¹⁵ Id.

what is at issue is whether SWBT's prices are lower than SWBT's competitor's prices; an issue that WCOM can research through tariffs which are publicly available and without the need to investigate SWBT's business operations outside the state of Missouri.

WCOM makes no attempt to argue that information from and about SWBT's parent and affiliates is relevant or calculated to lead to the discovery of admissible evidence and is indicative of the overbreadth of WCOM's DRs. SWBT's objections should, therefore, be sustained.

3. SWBT's third general objection is:

SWBT objects to the extent that these data requests seek information that is privileged and is protected by the attorney/client privilege and/or the work product doctrine.

WCOM admits that SWBT's objection is well founded, stating: "WCOM will comply with the Missouri rules applicable to privileged information and material."¹⁶ However, in its very next breadth, WCOM requests the Commission to order SWBT to identify the information and material that SWBT claims is protected by the attorney/privilege and the work/product doctrine with specificity requested by the DR instructions so that WCOM can determine whether the privilege validly attaches. Specifically, WCOM is requesting the Commission to order SWBT, within five (5) days of serving its substantive response to: (a) state the type of document involved; (b) the date appearing on the document, or if no date appears, the date on which the document was prepared; (c) the name of the person(s) to whom the document was addressed; (d) the name of the person(s) who signed the document or, if not signed, the name of the person(s) who prepared it; and (e) the specific ground(s) upon which the claim of privilege rests.¹⁷ This

¹⁶ Id. at page 7, paragraph 3.

¹⁷ MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., MCImetro Access Transmission Services, L.L.C. Data Requests Directed to Southwestern Bell Telephone Company, Instructions, paragraph 8.

request is beyond the permissible scope of the Missouri Rules of Civil Procedure. Nowhere do the Rules indicate that this type of specificity is permitted, let alone, required because it is not. This type of specificity is unduly burdensome and would require SWBT to log every written communication its attorneys had with its employees regarding this case, the date of the communication, and what the communication was about. Through this type of request, WCOM could garner the thought processes of SWBT's attorneys in this matter, which is entirely inappropriate. SWBT's objections, therefore, should be sustained.

4. SWBT's fourth general objection is:

SWBT objects to each DR to the extent that each data request seeks documents that are already part of the public record before the Commission. SWBT will comply with the Missouri Public Service Commission's Practice and Procedure Rules ("Practice and Procedure Rules").

WCOM responds that SWBT "does not identify a single specific DR to which this objection applies."¹⁸ The breadth of SWBT's objection is directly related to the overbreadth of WCOM's DR as will be evidenced when the Commission reviews SWBT's specific objections to WCOM's DRs. Suffice it to say that it is well-established that a party need not produce documents that are publicly available. That is all that SWBT's objection states. For these reasons, SWBT's objection should be sustained.

5. SWBT's fifth general objection is:

SWBT objects to each data request that requests information since January 1, 2000, as overly broad and unduly burdensome.

As SWBT has repeatedly asserted, this docket was not opened to discuss SWBT's winback, retention, and promotion activities in general but was opened to examine two tariff filings that SWBT made. WCOM, nevertheless, seeks to go back over two and a half years to gather

¹⁸ WCOM's Motion to Compel SWBT's DR Responses, page 7, paragraph 4.

information related to all of SWBT's retention and winback activities, as well as all generally available promotions. WCOM claims: "information and material during this period is necessary to determine the effect of SWBT's winback offers on competition; a shorter timeframe would not provide sufficient information to conduct a valid analysis."¹⁹ If, contrary to SWBT's view, the Commission required SWBT to answer any of the DRs, the Commission should not require production of information for such a broad period. Further, as will be obvious to the Commission when reviewing SWBT's specific objections to DRs, WCOM's DRs are not drafted to seek information to determine the effect of SWBT's winback offers on competition; rather, WCOM seeks, for example, every winback policy, practice, requirement, guideline and/or directive applicable to every winback and retention offer in Missouri (DR 1). SWBT's objection, therefore, should be sustained.

IV. SWBT's Response to WCOM's Responses to SWBT's Objections to WCOM's Definitions and Instructions.

1. SWBT's first objection to WCOM's Definition and Instructions is:

SWBT objects to WCOM's instructions and definitions to the extent that they seek to impose obligations on SWBT in excess of those imposed by the applicable rules. SWBT will respond to WCOM's DR in compliance with the Practice and Procedure Rules and the Missouri Rules of Civil Procedure.

WCOM admits: "WCOM expects no more than that is required by the Missouri Rules."²⁰

WCOM, thereafter, states: "WCOM notes several DRs where it does not agree with SWBT's position that the WCOM definitions and instructions impose obligations on SWBT beyond those required by the applicable rules."²¹ Based on WCOM's response, it is apparent that SWBT's general objection is appropriate and, as indicated below, SWBT's specific objections to

¹⁹ Id. at pages 7-8, paragraph 5.

²⁰ Id. at page 8, paragraph 1.

²¹ Id.

WCOM's definitions and instructions are also appropriate. For these reasons, the Commission should sustain SWBT's objection.

2. SWBT's second objection to WCOM's Definition and Instructions is:

SWBT objects to WCOM's instruction that SWBT, for each answer, "identify at the end of each answer the person or person(s) most knowledgeable about the response the person or person(s) responsible for preparation of each response" as the responses hereto are collaborative effort. SWBT will identify the person or person(s) ultimately responsible for preparing each response.

WCOM states:

Apparent from SWBT's objections is that the SWBT employees responsible for preparing a response may not necessarily be the person most knowledgeable about the response and/or issue, as is proven by SWBT's response to DR No. 2. At DR No. 2, SWBT states that Renee Flores is the SWBT Director of Consumer Product Management for SWBT regional marketing responsible for the residential winback tariff at issue, yet the person preparing the response is Sam Maropis, Associate Director of Product Management for Ameritech Corporate. Lynn Lehew, SBC Southwestern Bell Director Consumer Winback, moreover signs the SWBT winback letter (Exhibit A).²²

At the outset, SWBT notes that it would virtually be impossible to identify one person within SWBT that is "most knowledgeable" on any one subject. Further, that is not what the Practice and Procedure rules require. 4 CSR 240-2.090 provides: "Answers to data requests need not be under oath or in any particular format, but shall be signed by a person who is able to attest to the truthfulness and correctness of the answers."

Turning specifically to DR No.2, DR. No.2 asks SWBT Missouri to identify the department's director for offers addressing: (a) residential winback; (b) residential retention; (c) business winback; (d) business retention; and (e) winback or retention of an end-user not classified by SWBT as residential or business. SWBT indicated that Renee Flores is the SWBT Director of Consumer Product Management for SWBT regional marketing responsible for the

²² Id. at pages 8-9, paragraphs 2.

residential winback tariff at issue. WCOM, however, questions SWBT's response, not with regard to its truthfulness and/or correctness, but that the person preparing the response was Sam Maropis, the Associate Director of Product Management for Ameritech Corporate, and because it attached a letter to the DRs it propounded to SWBT from Lynn Lehew, the SBC Southwestern Bell Director Consumer Winback. It is obvious from the question asked, that numerous individuals at SWBT would know the identity of the department director for the offer addressing residential winback, residential retention, business winback, business retention, and winback or retention of any end-user not classified by SWBT as residential or business. For example, Renee Flores and Sam Maropis would both be cognizant of this information and would be able to attest to the truthfulness and correctness of this answer. Finally, there is no indication in the winback letter that WCOM attached to its DRs directed to SWBT that Lynn Lehew is responsible for any of the tariff offerings that are at issue in this proceeding. This argument is nothing more than a red herring.

WCOM's contention that: "the parties to this proceeding should have the opportunity to question the SWBT employee that has the most knowledge of the requested and relevant information,"²³ is also clearly erroneous. It is common practice for telecommunication companies to respond to DRs wherein the person that prepared the DR may not be an individual who subsequently testifies in the hearing of the matter. WCOM's claim: "neither the Commission nor the participant should have to deal with SWBT employees who can claim little knowledge of the issues." There is absolutely no indication that SWBT had any individual with "little knowledge of the issues" prepare a DR response in this proceeding. Finally, the overbreadth and inappropriateness of WCOM's instruction is evident when one considers

²³ Id. at page 9, paragraph 2.

WCOM's final sentence in its response. That sentence states: "additionally, identification of the persons most knowledgeable about the responses versus the persons responsible for the preparation of each response will assist WCOM in identifying those persons who may need to be deposed or subpoenaed." Rule 57.03(b)(4) of the Missouri Rules of Civil Procedure provides:

A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify.

The Missouri Rules of Civil Procedure, quite simply do not require a corporation to identify one person who is most knowledgeable. For all these reasons, SWBT's objection should be sustained.

3. SWBT's third objection to WCOM's Definitions and Instructions is:

SWBT objects to WCOM's instruction regarding documents about which SWBT claims a privilege as beyond the permissible scope of the Practice and Procedure Rules and the Missouri Rules of Civil Procedure. Specifically, without limiting the generality of the foregoing, SWBT objects to providing a statement, within five (5) days of serving its substantive responses to these DRs, setting forth to as to each: (a) the type of document involved; (b) the date appearing on the document, or if none appears, the date on which the document was prepared; (c) the name of the person(s) to whom the document was addressed; (d) the name of the person(s) who signed the document or if not signed, the name of the person(s) who prepared it; and (e) the specific ground(s) upon which claim of privilege rests.

Please see SWBT's response to WCOM's response to SWBT's general objections, paragraph 3, and pages 9-10.

4. SWBT's fourth objection to WCOM's Definitions and Instructions is:

SWBT objects to WCOM's instruction regarding information that is unavailable and a request to which SWBT cannot respond. WCOM improperly demands that SWBT rephrase data request and/or answer data requests that were not asked. Neither the Practice and Procedure Rules nor the Missouri Rules of Civil

Procedure impose such an obligation on the responding parties. Furthermore, these instructions are overly broad and unduly burdensome. SWBT will comply applicable Practice and Procedure Rules and the Missouri Rules of Civil Procedure.

WCOM states that it is simply asking SWBT to explain "why information is not available, e.g., SWBT cannot produce the information, because it does not keep the data in the format requested. In which case, the second part of WCOM's instruction would require that SWBT produce the information in the format in which it does keep the data."²⁴ This, quite simply, is oversimplification of WCOM's instruction. As written, WCOM's instruction seeks two specific pieces of information. First, WCOM's instruction asks SWBT that if any information is unavailable state why it is unavailable. The second half of WCOM's instruction instructs SWBT that if it cannot respond to the request as stated, that SWBT provide any information that is available that would respond to the request at a level of detail different from that specified herein. These are separate and distinct questions. The first half of the question assumes that information should be available and if it is not available, it asks SWBT to explain why it is not available even in situations where there is no reason for the information to be available. For example, WCOM may be seeking information that SWBT has made a determination that it is not going to track. The second half of the instruction is independent from the first half of the instruction and instructs SWBT to rephrase WCOM's DRs for it when it has not precisely sought the type of information that WCOM is requesting. In other words, WCOM is asking SWBT to rephrase DRs and/or answer DRs that were asked. This request is beyond the scope of the Missouri Rules of Civil Procedures and the Practice and Procedure Rules and is inappropriate. SWBT's objection should, therefore, be sustained.

5. SWBT's fifth objection to WCOM's Definitions and Instructions is:

²⁴ Id. at page 9, paragraph 4.

SWBT objects to WCOM's instruction requesting that for each response to a data request, "state fully any exception(s) that apply" as vague and ambiguous.

WCOM claims that in cases where SWBT does not comply with its established policies and practices, WCOM requests that SWBT provide an explanation of any policies and practices that are not identical to that described—the exceptions.²⁵ This instruction reflects the absurdity of WCOM's DRs. In situations where WCOM has requested SWBT's Policies and Practices, even though WCOM has not asked SWBT whether it complies with its Policies and Practices, WCOM would have SWBT not only provide this information but also any exceptions to SWBT following its Practices and Policies. In other words, WCOM wants SWBT to respond to DRs that were not asked. WCOM should be confined to the questions asked as it is inappropriate for SWBT to be required to guess what WCOM wants to know. For these reasons, SWBT's objection should be sustained.

6. SWBT's sixth objection to WCOM's Definitions and Instructions is:

SWBT objects to WCOM's definition of "concerning" as overly broad, unduly burdensome, and beyond the permissible scope of the Practice and Procedure Rules and the Missouri Rules of Civil Procedure. WCOM improperly demands that SWBT rephrase data requests and/or answer data requests that were not asked.

WCOM claims that it uses a standard definition of the word "concerning."²⁶ WCOM's claim is preposterous. WCOM's definition of concerning, as evidence on Page 10 of its motion, "includes all facts, events, circumstances, documents, information or communications which contain, show, relate, mention, refer or pertain in anyway, directly or indirectly to, or in any legal, logical or factual way connected with, a request for information." (Emphasis added). In other words, WCOM would have SWBT respond to questions that were not asked but which it

²⁵ Id. at page 10, paragraph 5.

²⁶ Id. at page 10, paragraph 6.

believes are indirectly or legally, logically, or factually connected with the requests it made. Further, WCOM's DRs includes documents, underlying, supporting, now or previously attached or appended to or used in preparation of any document called for by such requests, even in situations where the documents underlying and/or supporting the information were not requested and even if documents attached or appended to a document are in no way responsive to their DRs. For these reasons, WCOM's definition of concerning is overbroad and unduly burdensome and SWBT's objection should be sustained.

7. SWBT's seventh objection to WCOM's Definitions and Instructions is:

SWBT objects to WCOM's definition "document" to the extent that it improperly includes material "of which you have knowledge." Pursuant to Rule 58.01(a) of the Missouri Rules of Civil Procedure, any party may serve on another party a request to produce and permit the party making the request to inspect and copy any designated documents which are "in the possession, custody, or control of the party upon whom the request is served." Knowledge of the existence of material is not the standard protection. Furthermore, to the extent that WCOM's definition requests SWBT to create a document or to reconstruct documents no longer in existence, the request is beyond the permissible scope of the Practice and Procedure Rules and the Missouri Rules of Civil Procedure, is overly broad, and impracticable.

WCOM claims knowledge of the existence of material is a proper request as knowledge of the existence of a document falls within the permissible "control" standard of Rule 58.01(a).²⁷ Control, as used in Rule 58.01(a) has nothing to do with knowledge; rather, control as used in Rule 58.01(a) is used in the context in which that word is commonly defined as: "to exercise authority over."²⁸ In other words, a party must permit another party to inspect and copy, test or sample, any tangible thing which constitutes or contains matters within the scope of Rule 56.01(b) and which are in the possession, custody, or control (i.e., where the party has the power to exercise authority over) a designated document. Rule 58.01(a) requires production of

²⁷Id. at page 10, paragraph 7.

²⁸ Webster's New World Compact School and Office Dictionary, Page 103.

documents, which SWBT has, or which SWBT has control over; it does not require SWBT to produce documents that it does not have and/or control. For these reasons, SWBT's objection should be sustained.

8. SWBT's eighth objection to WCOM's Definitions and Instructions is:

SWBT objects to WCOM's definition of "retention" as overly broad and unduly burdensome in that it would include every generally available promotional offer or discount.

If retention means every promotional offer that is available to SWBT customers, such a request would include every past or current promotion that SWBT had or has in effect. Although SWBT does not believe that this information is relevant, such information is publicly available and can be researched by WCOM. Retention offers in general, are not defined as all promotional offers but are those offers that are designed to retain customers. As such, WCOM's definition is improper and SWBT's objection should be sustained.

9. SWBT's ninth objection to WCOM's Definitions and Instructions is:

SWBT objects to the definition of "you" and "your" to the extent that the definition includes SWBT's attorneys, employees, representatives, or consultants. WCOM's definition is overly broad. SWBT also objects to the definition to the extent that it requests information from, or about, SWBT's attorneys and/or consultant experts. Such information is protected by the attorney/client privilege and/or work product document and is not discoverable.

SWBT stands on its objection as WCOM has failed to provide any basis for the Commission to determine that SWBT's objection is inappropriate. For these reasons, SWBT's objections should be sustained.

10. SWBT's tenth objection to WCOM's Definitions and Instructions is:

SWBT objects to WCOM's definition of "winback" as overly broad and unduly burdensome in that it would include every generally available promotional offer or discount.

WCOM's definition is inappropriate as winback tariffs are those tariffs that are directed to customers that have left a telecommunications company, have gone to another service provider, and now seek to return to their former telecommunication's provider. By defining winback as including a promotional offer or discount that is available to former SWBT customers that voluntarily terminated their service and subscribe to the services of a competitor, WCOM has requested SWBT to identify each and every promotional offer it has. Although SWBT does not believe that promotional offers that are available to all customers (current SWBT customers and SWBT winback customers) are relevant, those promotions are publicly available and can be researched by WCOM. Winback Retention offers, in general, are not defined as all promotional offers but are those offers that are designed to winback customers. As such, WCOM's definition is improper and SWBT's objection should be sustained.

11. SWBT's eleventh objection to WCOM's Definitions and Instructions is:

SWBT objects to WCOM's instruction regarding supplementation as exceeding SWBT's obligation under the Practice and Procedure Rules. SWBT will instead comply with the Practice and Procedure Rules.

Rule 4 CSR 240-2.090 provides: "the responding parties shall promptly notify the requesting party of any changes to the answers previously given to a DR." SWBT will promptly notify WCOM of any changes to its answers to any DRs. However, the standard is not that SWBT supplement its original answer "as soon as possible." Further, WCOM's instruction states, "these DRs are continuing in nature and a supplement to the original answer should be filed as soon as possible if a change or modification to the answer is necessary." WCOM states that: "SWBT cannot be permitted to claim it cannot locate requested information and material but,

when located, does not produce it because it asserts it is not required to supplement its production.”²⁹ WCOM then cites Rule 56.010(e) (2). Rule 56.010(e) (2) provides:

a party who has responded to written interrogatories with the response that was complete when made is under no duty to supplement the response to include information thereafter required, except as follows:

2. A party is under duty to amend a prior response seasonably if the party obtains information upon the basis of which the party knows that the response (A) was incorrect when made; or (B) the correct when made is no longer true. (Emphasis added).

SWBT is under no duty to supplement the response to include information it acquires after responding to written discovery requests except when the response was incorrect when made or the correct when made is no longer true. SWBT will supplement its responses in such situations as required by the Practice and Procedure Rules and the Missouri Rules of Civil Procedure. For these reasons, SWBT’s objection should be sustained.

V. **SWBT’s Response to WCOM’s Responses to SWBT’s Objections Regarding WCOM’s Data Request.**

Data Request No.1.

SWBT’s objections is as follows:

In addition to the above objections, SWBT objects to Data Request No. 1 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting to the generality of the foregoing, SWBT objects to Data Request No. 1 to the extent that it: (1) seeks information regarding SWBT’s affiliates and/or SWBT states other than the state at issue here, Missouri; or (2) seeks information on policies, practices, requirements, guidelines, and/or directives not associated with the tariffs proposed and at issue in this matter.

SWBT was genuinely confused with WCOM’s DRs in that it defines does not define SWBT, but does define SBC as "SBC Communications, Inc. and all of SBC’s subsidiaries, including Ameritech, Nevada Bell, Pacific Bell, SBC Telecom, SNET, Southwestern Bell, and Advanced

²⁹ Id. at page 11, paragraph 11.

Solutions, Inc.”³⁰ Since WCOM concedes³¹ that this request is directed only to Southwestern Bell Telephone Company and only for Missouri, if SWBT is ordered to answer this DR, SWBT will do so with regard to Southwestern Bell Telephone Company in Missouri. However, SWBT stands on its objection to the production of all documents concerning SWBT’s winback and/or retention policies, practices, requirements, guidelines and/or directives applicable to Missouri since January 1, 2000. At the outset, SWBT notes that two tariffs filings are at issue in this proceeding. SWBT’s general retention, winback, and promotional activities are not at issue in this proceeding and, in fact, there has never been a complaint against SWBT with regard to its retention, winback, and/or promotional activities in Missouri. Further, there are only two tariff filings that are at issue in this proceeding, both filings of which are winback tariffs which are directed to customers who have disconnected their local network access line service with SWBT and established service with another LEC within the SWBT service area and who now wish to return service with SWBT. There is no retention tariff filing at issue in this proceeding. Finally, as indicated above, production of any and all documents concerning SWBT’s winback and/or retention policies, practices, requirements, guidelines, and/or directives applicable to Missouri since January 1, 2000, is overly broad and unduly burdensome given the expansive timeframe.

WCOM’s response to SWBT’s objection is that: "SWBT Departments that conduct winback offerings and the policies and practices by which they conduct are necessary to a determination whether the tariffs are anticompetitive."³² SWBT has no objection to producing its policies, practices, requirements, guidelines and/or directives applicable to the two tariff filings that are at issue in this proceeding. However, since this data request includes not only the

³⁰ Id. at page 6, definition 17.

³¹ Id. at page 12.

³² Id. at page 12.

wo tariff offerings that are at issue in this proceeding, but all SWBT winback and/or retention offers for Missouri and all winback or retention policies, practices, requirements, guidelines and/or directives applicable to Missouri since January 1, 2000, it is inappropriate. For these reasons, the Commission should sustain SWBT's objections.

Data Request No. 2

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 2 on the basis that is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, this data request asks SWBT to identify the department director for offers that are not at issue in this proceeding. Without waiving its objections, SWBT will identify the director responsible for the tariff that is in this proceeding.

WCOM alleges that SWBT has access to competitively advantageous disconnection and/or CPNI-related information that it improperly uses to make its winback and/or retention pitches.³³

WCOM claims this DR seeks information that can lead to a determination of how extensive SWBT's use of the information is and its effect on competition. As SWBT repeatedly stated, there has never been any complaint filed against SWBT that alleges that it has engaged in any inappropriate activity with regard to its winback and/or retention tariffs. WCOM is merely going on a fishing expedition to gain knowledge about SWBT's winback and/or retention activities in general. SWBT has appropriately answered Data Request No. 2. Further, SWBT's objection to Data Request No. 2 should be sustained.

Data Request No. 3

SWBT's objection is as follows:

In addition to its above objections, SWBT objects to Data Request No. 3 on the basis that it is vague, overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to discover of admissible evidence.

³³ Id. at page 13.

Specifically, without limiting to generality of the foregoing, SWBT objects to Data Request No. 3 on the basis that seeks information about matters not pertaining to the tariff that is issue in this proceeding.

WCOM alleges that this DR focuses on WCOM's claim that SWBT uses information unavailable to CLECs that competitively advantages SWBT.³⁴ Again, WCOM has never brought any complaint against SWBT in which it has claimed SWBT's winback and/or retention activities are in any way inappropriate. WCOM seeks to expand the scope of this case that was established to determine whether two tariff filings would have an adverse affect on competition, to investigate SWBT's retention and winback activities in general. How departments receive notice than an end user plans to migrate or is migrating to a competitor is beyond the scope of this docket. For these reasons, SWBT's objection should be sustained.

Data Request No. 4:

SWBT's objection is as follows:

In addition to its above objections, SWBT specifically incorporates the objections asserted in response to Data Request No. 3.

Again, this case was not opened to examine SWBT's retention and/or winback activities in general. Rather, it was opened to determine whether two tariff filings will, on a prospective basis, have an adverse affect on competition. Thus, information regarding change notices is irrelevant and not calculated to lead to discovery of admissible evidence. For the reasons stated above, the timeframe requested in this Data Request is overly broad and unduly burdensome. For these reasons, SWBT's objections should be sustained.

Data Request No. 5:

SWBT's objection is as follows:

In addition to its above objections, SWBT specifically incorporates the objections asserted in response to Data Request No. 3.

³⁴ Id. at page 13.

Again, this case was established to determine whether SWBT's two tariff filings, which seek to provide a benefit to customers who return to SWBT, should be approved. This case was not established to determine whether SWBT has inappropriate access to disconnection information and/or Change Notice information. For these reasons, SWBT's objections should be sustained.

Data Request No. 6:

SWBT's objection is as follows:

In addition to the above objections, SWBT specifically incorporates the objections asserted in response to Data Request No. 3.

Again, this case was not opened to determine whether disconnect information and change notices are available to CLECs under the same terms and conditions as available to SWBT. There has been no complaint lodged against SWBT to that effect. Rather, this case was opened to determine whether two tariff filings that seek to waive nonrecurring charges to business and residential customers returning to SWBT should be approved. WCOM's data request is irrelevant and not calculated to lead to the discovery of admissible evidence. For these reasons, SWBT's objections should be sustained.

Data Request No. 7

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 7 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, Data Request No. 7 seeks information regarding winback and/or retention offer(s) not associated with the tariffs proposed and at issue in this proceeding.

WCOM claims that this DR focuses on two timeframes when SWBT learns that an end-user is migrating to a CLEC, which in combination with winback and/or retention offers that SWBT has used in Missouri, establish the range of activity that may be anticompetitive and threaten

competition.³⁵ Again, this case was not established to examine SWBT's winback activities in general. Rather, it was established to determine whether two specific tariff filings that seek to waive nonrecurring charges for customers returning to SWBT will be approved. Requesting SWBT to describe each winback and/or retention offer that SWBT has used in Missouri since January 1, 2000, is simply beyond the scope of the current docket and is nothing more than a fishing expedition on the part of WCOM. For these reasons, SWBT's objections should be sustained.

Data Request No. 8

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 8 on the basis that it is overly broad, unduly burdensome, and it seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting to generality that the foregoing, Data Request No. 8 requests SWBT to provide a copy representative of each document mailed to its Missouri customers by SWBT since January 1, 2000, even though such documents may not be associated with the tariff that is proposed and at issue in this proceeding.

WCOM responds that its request for copies of documents used to achieve winback and/or retention of end-users from January 1, 2000, to date would establish the applicable winback and retention practice policies and practices that clearly would apply to the tariffs at issue. This claim is preposterous. Again, WCOM's DR is nothing other than a fishing expedition to obtain copies of all retention and/or winback letters that SWBT has sent to its customers since January 1, 2000. Those letters are neither relevant nor calculated to lead to the discovery of admissible evidence since those letters are not associated with the tariffs that are proposed and at issue in this proceeding. WCOM has already requested a copy of SWBT's winback and retention

³⁵ Id. at page 15.

policies and practices that would apply to the tariffs at issue in this proceeding. (DR 1). For these reasons, SWBT's objection should be sustained.

Data Request No. 9

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 9 on the basis that it is vague in referring to “department receiving the telephone calls,” is overly broad, unduly burdensome, and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Specifically, without limiting to generality of the foregoing, Data Request No. 9 seeks information not associated with the tariff proposed and at issue in this proceeding.

The crux of Data Request No. 9 is that it is asking SWBT to identify each department in each winback letter that it has sent since January 1, 2000, and it requests SWBT to provide a script and/or other guideline used by SWBT personnel answering the calls. Although WCOM contends that “department receiving the telephone calls” is not vague in that if SWBT sends letters to end-users containing winbacks/retention offers and a call back telephone number is included, the department to which the call back number is assigned is the department which identity WCOM’s seeks,³⁶ the telephone number contained in such winback letters may not identify a specific department. That is the basis of SWBT’s objection.

WCOM also requests the scripts and/or other guidelines used by SWBT personnel answering the calls. As previously stated, this is nothing more than a fishing expedition by WCOM to gain SWBT’s scripts and guidelines for past retention and/or winback efforts of SWBT so that WCOM can garner knowledge of SWBT's marketing activities. Such requests are beyond the scope of this docket. This case was not established to examine SWBT’s winback and/or retention activities in general. Rather, it was established to determine whether two tariff

³⁶ Id. at page 16.

filings that seek to waive nonrecurring charges for business and residential customers should be approved. Thus, the departments receiving telephone calls and the scripts and/or guidelines used by SWBT personnel answering calls related to retention and/or winback activities from January 1, 2000, is neither relevant nor calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome. Although WCOM claims that any attempt to pass off the mailings containing messages that you “may have been slammed” should be prohibited as anticompetitive and deceptive, there is no complaint against SWBT that any winback and/or retention letter that it has sent in Missouri is anticompetitive nor has WCOM ever brought any allegation against SWBT in Missouri that messages regarding whether a customer has been slammed are anticompetitive. These issues seek to expand the scope of this docket beyond that which it was established to examine: whether two tariff filings by SWBT should be approved. For these reasons, SWBT's objections should be sustained.

Data Request No. 10

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 10 on the basis that it is overly broad, unduly burdensome and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, Data Request No. 10 seeks information not associated with the tariff proposed and at issue in this proceeding.

WCOM contends that the number of successful winback and/or retentions resulting from the telephone calls that are generated from the disconnection information and change notices are the focus of this DR.³⁷ WCOM further claims these numbers will help to establish or dispel whether the use of customer information available to SWBT because of its ILEC/wholesale position is

³⁷ Id. at page17.

anticompetitive.³⁸ Again, this docket was not established to determine whether SWBT uses customer information in an anticompetitive manner. There has been no complaint filed against SWBT in which any telecommunication company has alleged that SWBT has used disconnect information and/or change notice information in an anticompetitive manner in Missouri. The purpose of this docket to determine whether two tariff filings waiving nonrecurring charges should be approved. Thus, documentation relating to the number of telephone calls SWBT has received as a result of past residential and/or business winback and/or retention mailings is neither relevant nor calculated to lead to the discovery of admissible evidence, is overly broad, and unduly burdensome. For these reasons, SWBT's objections should be sustained.

Data Request No. 11

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 11 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting generality the foregoing, Data Request No. 11 seeks information not associated with the tariff proposed and at issue in this proceeding.

WCOM claims that "scripts from the voicemail and telephone calls may establish the marketing nature of the calls, the slamming misrepresentation, and any anticompetitive predisposition, such as a requirement to obtain a name of the CLEC provider which SWBT can then use to try to disparage the CLEC or to target particular CLEC customers, if customers repeatedly name a specific CLEC."³⁹ Again, there have been no complaints alleging that SWBT has made any slamming misrepresentations and/or that SWBT has acted in any anticompetitive way with respect to its retention and/or winback activities with regard to business and/or consumer customers in Missouri. This case was not established as a general winback investigation.

³⁸ Id.

³⁹ Id. at pages 17-18.

Rather, this docket was established to determine whether two tariff filings should be approved. As such, WCOM's data request is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. For these reasons, the Commission should sustain SWBT's objections.

Data Request No. 12

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 12 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 12 on the basis that it seeks information not associated with the tariff proposed and at issue in this proceeding.

WCOM contends that this DR: "will establish the job function for the SWBT department that receives callbacks to the telephone numbers that provide putative assistance with possible slamming violations. As with DR No. 11, any scripts and/or guidelines used to answer return calls will allow a determination of the nature of the information provided and whether or not the information is anticompetitive."⁴⁰ There has been no complaint filed alleging that SWBT has acted in any improper way with regard to its retention and/or winback activities in Missouri. This case was established to determine whether two tariffs waiving nonrecurring charges should be approved. Thus, information related to the department that was responsible for in taking telephone calls from customers for whom SWBT had left a message and the script and/or guidelines used by the SWBT personnel answering the calls, related to winback activities as far as back as January 1, 2000, is neither relevant nor calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome. For these reasons, SWBT's objection should be sustained.

⁴⁰ Id. at page 18.

Data Request No. 13

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 13 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 13 on the basis that it seeks information not associated with the tariff proposed and at issue in this proceeding.

Again, there has been no complaint filed alleging that SWBT has engaged in any anticompetitive activity with regard to its retention and/or winback activities. This case was not established as a general winback docket. Rather, this case was established to determine whether two tariff filings seeking to waive nonrecurring charges for returning residential and business customers should be approved. As such, WCOM's DR which seeks information about the number of calls SWBT received with regard past winback and retention offers is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. For these reasons, SWBT's objection should be sustained.

Data Request No. 14

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 14 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 14 on the basis that it seeks information not associated with the tariff proposed and at issue in this proceeding.

WCOM seeks to have SWBT reveal its procedure for determining rates, terms, and conditions for winback and retention offers in Missouri, including under specific conditions. There has been no filed complaint alleging that SWBT's rates, terms, and conditions for winback and/or retention offers in Missouri are in any way anticompetitive. Thus, this DR is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the

discovery of admissible evidence. Additionally, WCOM seeks to discover SWBT's marketing information which is not related to any current or past retention and/or winback tariff by requesting that SWBT produce documentation of any rates, terms, and conditions that are not contained in published tariffs. As such, this request is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Further, WCOM's claim that if SWBT's Policies and Procedures are applicable region-wide, then SWBT cannot avail itself of the "meet the equally low price of the competitor" affirmative defense that is permitted pursuant to the Robinson-Patman Act⁴¹ is an absurd contention. WCOM raises an antitrust claim that is beyond this Commission's jurisdiction, and then claims it needs the information to rebut a defense to the antitrust claim that SWBT has not even raised. Only Missouri rates are at issue and should be discoverable in the above-captioned matter. For these reasons, SWBT's objections should be sustained.

Data Request No. 15

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 15 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 15 on the basis that it seeks information not associated with the tariff proposed and at issue in this proceeding.

WCOM claims that SWBT should be required to respond to this DR in full with regard an explanation of all tariffs, not for just the two tariffs at issue in this proceeding.⁴² WCOM claims this information is necessary to determine whether SWBT uses customer information relating from disconnection notices, CPNI requests, or other information available to incumbent SWBT

⁴¹ Id. at page 19 is factually inaccurate.

⁴² Id. at page 20.

to determine whether it discriminates among those identified from such information.⁴³ There have been absolutely no filed complaints that SWBT at any time has used any information in any inappropriate manner with regard to its retention and/or winback activities in Missouri. WCOM is simply on a fishing expedition to learn about SWBT's marketing practices and how SWBT identifies prospective recipients of winback or retention offers in Missouri. As such, this DR is overly broad, unduly burdensome, and is beyond the permissible scope of the Missouri Rules of Civil Procedures. For these reasons, SWBT's objections should be sustained.

Data Request No. 16

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 16 on the basis that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 16 on the basis that it seeks information not associated with the tariff proposed and at issue in this proceeding.

WCOM claims that in order to assess the anticompetitive affect of use of customer information regarding changes to CLECs, WCOM's DR seeks to establish the degree of marketing that SWBT conducts that does not improperly depend upon such customer information.⁴⁴ DR No. 16 asks SWBT to describe any and all winback and/or retention marketing for Missouri end-users that has been used since January 1, 2000 that was/is not triggered by a change notice and/or not directed to a specific end-user's address and/or telephone number and produce any documents that established SWBT's policy, practice, requirement, directive and/or guideline for such marketing not triggered by a change notice and/or not directed to a specific end-user's address and/or telephone number. WCOM's DR is aimed at gaining knowledge about SWBT's

⁴³ Id.

⁴⁴ Id. at page 21.

marketing activities in general and is no way related to the two tariffs that are in issue in this proceeding. As such, it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. For these reasons, SWBT's objections should be sustained.

Data Request No. 17

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 17 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 17 on the basis that it: (a) seeks information regarding SWBT's affiliates and/or SWBT other than the state at issue here, Missouri; and (b) seeks information to associated with the tariff proposed and at issue in this proceeding.

WCOM claims that this DR addresses information necessary to a determination of whether or not SWBT engages in a violation of the Robinson-Patman Act by discriminating among different purchases of commodities of like grade and quality.⁴⁵ WCOM claims that offers that are consistent across SWBT's region are unlikely to meet the affirmative defense in meeting the equally low price of a competitor.⁴⁶ DR No. 17 asks SWBT to explain how its current winback and retention offers in Missouri differ from SWBT's current winback or retention offers in Arkansas, Kansas, Oklahoma, and Texas. It is evident that WCOM is seeking to expand the scope of this docket beyond the two current tariffs that are at issue in this proceeding and/or before the Commission to examine SWBT's winback and/or retention offers in SWBT's other states.⁴⁷ In this proceeding, the only issue before the Commission is

⁴⁵ Id. at page 21.

⁴⁶ Id. at page 20.

⁴⁷ Although under the terms of the Protective Order that was issued in this case, information obtained in this proceeding is only to be used for purposes of this proceeding, it is curious that WCOM is seeking information about SWBT's winback activities in other states, some of which currently have winback dockets which do not allow discovery.

whether the two tariffs at issue will have an anticompetitive effect on the market in Missouri. Thus, only those tariffs need to be examined. For these reasons, SWBT's objections should be sustained.

Data Request No. 18

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 18 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 18 on the basis that it seeks information not associated with the tariff proposed and at issue in this proceeding.

WCOM claims that this DR requests numbers that will establish the impact of SWBT's use of change notice information. WCOM further claims it will assist in an analysis of whether SWBT's access to the information and its unavailability to CLECs is anticompetitive.⁴⁸ DR No. 18 requests SWBT to produce all documents that establish, for Missouri, by exchange for each month beginning with January 1, 2000, the number of end users for which SWBT originated or received a Change Notice but SWBT did not lose to a competitor and lost to a competitor but then regained the end users. It is obvious that this DR has nothing to do with the two tariffs that are before the Commission. Rather, this is yet another example of a fishing expedition so that WCOM can learn the number of end-users in each of SWBT's exchanges which SWBT did or did not lose to a competitor. In other words, WCOM is again seeking to garner knowledge regarding SWBT's marketing activities. Such exploration is beyond the scope of the current docket that was established to determine whether two tariff filings would have an anticompetitive effect on the market. For these reasons, SWBT's objections to this DR should be sustained.

⁴⁸ WCOM's Motion to Compel SWBT's DR Responses, page 22.

Data Request No. 19

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 19 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 19 on the basis that it seeks information not associated with the tariff proposed and at issue in this proceeding. Additionally, SWBT objects to DR No. 19 in that WCOM is as aware of SWBT of the regulatory requirements of the Commission and the FCC.

WCOM claims that it does not ask SWBT to cite to regulations requiring that SWBT to admit alleged slamming information to the Commission or FCC but asks SWBT that SWBT provide an explanation of its Policies and Practices for reporting to the Commission or FCC information regarding a customer who returns to SWBT after calling the voice mail callback telephone number.⁴⁹ SWBT complies with the requirements of both this Commission and the FCC. WCOM is as aware of SWBT of the regulatory requirements of the Commission and the FCC as SWBT and, as such, this DR is objectionable. WCOM next claims that SWBT opens the door to this slamming DR with references to slamming in both winback letters and voicemail and its use in winback may have as its purpose in anticompetitive outcome.⁵⁰ WCOM has failed to establish that there is any slamming reference in any winback letter in Missouri. Further, even if there has been a slamming reference in winback letters in Missouri, there has been no complaint filed against SWBT that any of its winback and/or retention activities in Missouri have in any way been anticompetitive. The purpose of this case is to investigate whether two tariffs at issue in this proceeding should be approved. Thus, WCOM's DR is beyond the scope of the purpose of

⁴⁹ Id. at 22.

⁵⁰ Id.

this docket and, therefore should be denied. For these reasons, SWBT's objections should be sustained.

Data Request No. 20

SWBT's objection is as follows:

In addition to the above objections, SWBT objects to Data Request No. 20 on the basis that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Specifically, without limiting the generality of the foregoing, SWBT objects to Data Request No. 20 on the basis that it: (a) may seek information regarding SWBT's affiliates and/or SWBT other than the state at issue here, Missouri; and (b) may seek information not associated with the tariff proposed and at issue in this proceeding. Without waiving the foregoing objections, SWBT will answer this DR to the extent that it requests SWBT to state whether that the winback letter attached as Exhibit A has been mailed to end-users in Missouri with respect to the tariff that is at issue in this proceeding.

SWBT responded to the DRs in both TT-2002-472 and TT-2002-473 stating that the winback letter attaches Exhibit A has not been mailed to end-users in Missouri with respect to the tariffs that are in issue at TT-2002-472 or TT-2002-473. WCOM requests that the Commission compel SWBT to state whether the winback letter attached Exhibit A as Exhibit A has been mailed to end-users in Missouri in either attached format or a similar format.⁵¹ WCOM further asks the Commission to order SWBT that if the winback letter has been sent to Missouri end-users, explain any differences in the rates, terms, or conditions for service or return-call telephone number. This docket was established to determine whether two winback tariffs that seek to waive nonrecurring charges should be approved. As such, whether a letter, attached as Exhibit A, has even been mailed to end-users in Missouri is neither relevant nor calculated to lead to the discovery of admissible evidence. Further, WCOM's requests that SWBT explain the difference in rates, terms, or conditions for service or return-call telephone number is merely a fishing

⁵¹ Id.

expedition on WCOM's part to investigate SWBT's marketing activities with regard to retention and/or winback tariffs in general. That is not the purpose of this case and, therefore, is neither relevant nor calculated to lead to the discovery of admissible evidence. For these reasons, SWBT's objection should be sustained.

WHEREFORE, Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company respectfully requests the Commission to deny WCOM's Motion to Compel SWBT's DR Responses, and to grant any further and additional relief this Commission deems just and proper.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail and first-class, postage prepaid, U.S. Mail or via hand-delivery on July 22, 2002.

Mimi B. MacDonald / ta
Mimi B. MacDonald

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