

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
BRIAN K. BOGARD
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

October 15, 2002

Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

FILED³

OCT 15 2002

Re: Case No. TC-2002-1077

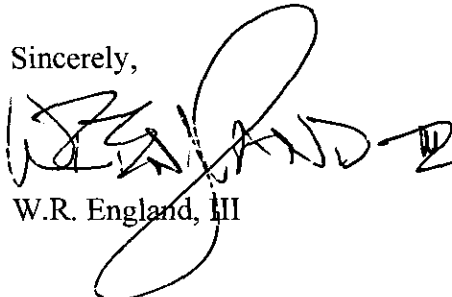
Missouri Public
~~Service Commission~~

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of Petitioners' Response to Respondents' Motion to Strike Prefiled Direct Testimony.

Please see that this filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this filing, please give me a call. I thank you in advance for your attention to and cooperation in this matter.

Sincerely,


W.R. England, III

WRE/da
Enclosures
cc: Parties of Record

FILED³

OCT 15 2002

Missouri Public
Service Commission
T-2002-1077

(

)

1

Case No. TT-2002-1077

1

(

1

1

1

1

1

,

¹ BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Craw-Kan Telephone Cooperative, Inc., Fidelity Communications Services I, Inc., Fidelity Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, IAMO Telephone Company, Kingdom Telephone Company, K.L.M. Telephone Co., Lathrop Telephone Company and Mark Twain Rural Telephone Company.

3. Generally, each of the items listed as impermissible hearsay in Respondents' Motion to Strike either falls within a permitted exception to the hearsay rule or does not fall within the definition of hearsay, all as fully detailed below. Further, pursuant to RSMo. §386.410.1, the Commission is not bound by the technical rules of evidence.

4. Petitioners' grounds for opposition to each of the Respondents' objections to the prefiled direct testimony are as follows:

David N. Beier (on behalf of Fidelity Telephone Company)	Page 6, Lines 10-11	The sentence in line 10 beginning with "I spoke with someone" is a nonhearsay statement, in that it is the direct, personal statement of Mr. Beier, and is logically relevant to the issue of the steps taken by Fidelity to resolve the subject dispute with VoiceStream prior to filing a Complaint. The second sentence beginning with "I was" is also logically relevant to the issue of the steps taken by Fidelity to resolve the subject dispute with VoiceStream, is not being offered for the truth of the matter asserted, and, therefore, is not impermissible hearsay.
Brian L. Cornelius (on behalf of Citizens Telephone Company)	Page 9, Lines 17-22	Although the testimony involves a statement by Kathie Munson, an out-of-court declarant, concerning a conversation with Chris Sikes, a VoiceStream employee, the statement is not being offered to prove the truth thereof. The testimony is logically relevant to the issue of the steps taken by Citizens to resolve the subject dispute with VoiceStream prior to filing a Complaint and explains the actions of Citizens in sending the letters attached as Schedules 2 and 3.

Brian L. Cornelius
(on behalf of Citizens
Telephone Company)

Schedule
No. 2, first
paragraph

Although the letter includes a statement by an out-of-court declarant, Kathie Munson, that portion of the letter is not being offered to prove the truth of the statement. The statements made by both Ms. Munson and VoiceStream employee Chris Sikes are not offered in testimony to prove the truth of those statements, and, therefore, are not impermissible hearsay. The fact *of* each the statements is logically relevant to the issue of the steps taken by Citizens to resolve the subject dispute and explains the actions of Citizens in sending the letter attached as Schedule 2; the truth of the facts *in* each of the statements is irrelevant. Further, the letter is admissible as a business record.

Brian L. Cornelius
(on behalf of Citizens
Telephone Company)

Schedule
No. 3

Although the letter includes a statement by an out-of-court declarant, Kathie Munson, that portion of the letter is not being offered to prove the truth of the statement. The statements made by both Ms. Munson and VoiceStream employee Chris Sikes are not offered in testimony to prove the truth of those statements, and, therefore, are not impermissible hearsay. The fact *of* each the statements is logically relevant to the issue of the steps taken by Citizens to resolve the subject dispute and explains the actions of Citizens in sending the letter attached as Schedule 2; the truth of the facts *in* each of the statements is irrelevant. Further, the letter is admissible as a business record.

Bill Rohde
(on behalf of Mark
Twain Rural Telephone
Company)

Page 8,
Lines 2-4

Although the testimony involves a statement by Jim Lyon, an out-of-court declarant, concerning a conversation with Ira Summit, a VoiceStream employee, the statement is not being offered to prove the truth thereof. The testimony is logically relevant to the issue of the steps taken by Mark Twain to resolve the subject dispute with VoiceStream prior to filing a Complaint.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Page 5,
Lines 13-15

Although the testimony includes a statement made by John Calhoun, a Western Wireless employee, the statement is not being offered to prove the truth of the matter asserted. The fact *of* the statement is logically relevant to the issue of the steps taken by Kingdom to resolve the subject dispute and explains the actions of Kingdom in sending all future bills and invoices to VoiceStream, as opposed to Western; the truth of the facts *in* Mr. Calhoun's statement is irrelevant.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Page 6,
Lines 6-7

Although the testimony includes a statement made by John Calhoun, a Western Wireless employee, the statement is not being offered to prove the truth of the matter asserted. The fact *of* the statement is logically relevant to the issue of the steps taken by Kingdom to resolve the subject dispute and explains the actions of Kingdom in sending all future bills and invoices to VoiceStream, as opposed to Western; the truth of the facts *in* Mr. Calhoun's statement is irrelevant.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Schedule 2

Although the letter includes a statement made by John Calhoun, a Western Wireless employee, the statement is not being offered to prove the truth of the matter asserted. The fact *of* the statement is logically relevant to the issue of the steps taken by Kingdom to resolve the subject dispute and explains the actions of Kingdom in sending all future bills and invoices to VoiceStream, as opposed to Western; the truth of the facts *in* Mr. Calhoun's statement is irrelevant. Further, the letter is admissible as a business record.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Schedule 3,
first
paragraph

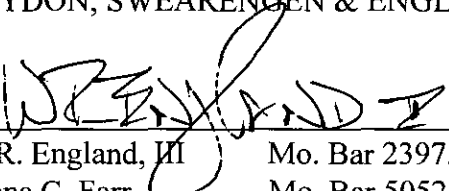
Although the letter includes a statement made by John Calhoun, a Western Wireless employee, the statement is not being offered to prove the truth of the matter asserted. The fact *of* the statement is logically relevant to the issue of the steps taken by Kingdom to resolve the subject dispute and explains the actions of Kingdom in sending all future bills and invoices to VoiceStream, as opposed to Western; the truth of the facts *in* Mr. Calhoun's statement is irrelevant. Further, the letter is admissible as a business record.

WHEREFORE, Petitioners request that the Respondents' Motion to Strike be denied and that the Petitioners' Direct Testimony be taken in whole as a part of the record in this proceeding.

Respectfully Submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


W.R. England, III Mo. Bar 23975
Diana C. Farr Mo. Bar 50527
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
573-635-7166 (telephone)
573-634-7431 (facsimile)
Email: trip@brydonlaw.com
dfarr@brydonlaw.com

ATTORNEYS FOR COMPLAINANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 15th day of October, 2002 to:

Bruce Bates
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

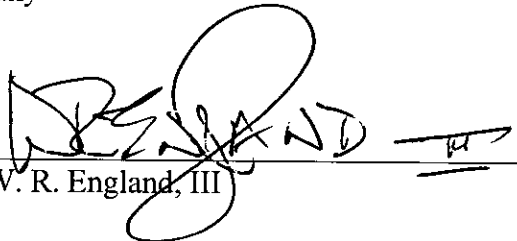
Michael Dandino
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Director of Regulatory Affairs
VoiceStream Wireless Corporation
3650 131st Ave. SE, Suite 200
Bellevue, Washington 98006

Gene DeJordy
Executive Director of Legal Affairs
Western Wireless Corporation
3650 131st Ave. SE, Suite 400
Bellevue, Washington 98006

Mark P. Johnson
Sonnenschein Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, MO 64111

Leo Bub
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101


W. R. England, III