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FILED²

NOV 04 2002

Missouri Public
Service Commission

November 4, 2002

Secretary of the Commission
Missouri Public Service Commission
200 Madison, Ste. 100
Jefferson City, MO 65101

Re: Case Nos. TT-2002-472/TT-2002-473

Dear Secretary of the Commission

Attached please find for filing with your office an original and nine (9) copies of AT&T Communications of the Southwest, Inc.'s Response to SWBT's Motion to Strike Portions of AT&T's and WCOM's Initial Briefs. Should you have any questions, please feel to contact me.

Very truly yours,

Rebecca DeCook.
Senior Attorney

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Southwestern Bell Telephone Company's Tariff 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 Extend Business Customer Winback Promotions.)) Case No. TT-2002-473 Tariff No. 200200828

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Missouri Public Service Commission

RESPONSE TO SWBT'S MOTION TO STRIKE PORTIONS OF AT&T'S INITIAL BRIEF

Comes now AT&T Communications of the Southwest, Inc. ("AT&T") and for its Response to Southwestern Bell Telephone Company's ("SWBT") Motion to Strike Portions of AT&T's Initial Brief and states as follows:

1. On October 28, 2002, SWBT filed a Motion to Strike Portions of AT&T's and WCOM's Initial Brief. As it relates to AT&T's Brief, SWBT alleges:

Despite the fact that the Commission has twice clearly ruled that issues related to SWBT's winback and retention practices, including SWBT's alleged misuse of CPNI and wholesale disconnect information, are beyond the scope of this docket, AT&T and WCOM once again seek to expand the scope of this docket in their Initial Briefs. Specifically in the first two full paragraphs on page 3, page 22, and page 23 of AT&T's Initial Brief, AT&T asks the Commission to consider the effect of SWBT's winback practices and procedures on competition.¹

In its Motion as it relates to AT&T, SWBT is effectively seeking to strike briefing that addressed the very issues from Mr. Kohly's testimony that SWBT previously sought to strike from the record, but were unsuccessful. SWBT claims that this briefing must now be stricken from AT&T's Initial Brief because the Commission preciously deemed them outside the scope of the case. As set forth below, this Commission specifically and unambiguously ruled that the testimony proffered by Mr. Kohly, which serves as the basis for AT&T's briefing, was relevant

¹ SWBT's Motion, ¶ 4.

to this proceeding. Therefore, SWBT's Motion is baseless and frivolous. It is contrary to the express provisions of this Commission's ruling on SWBT's previous Motion to Strike. SWBT should be required to pay AT&T's attorneys' fees and costs associated with responding to its second Motion to Strike.

2. On August 29, 2002, ("SWBT") filed a Motion to Strike portions of the rebuttal testimony of AT&T's witness R. Matthew Kohly relating to SWBT's winback practices and procedures. In its Motion, SWBT argued (as it does again in the instant Motion) that Mr Kohly's testimony as to SWBT's winback practices was beyond the issues identified by the Commission in its Order Regarding List of Issues. In its Order Regarding Motions to Strike Testimony, this Commission explicitly rejected SWBT's arguments regarding the majority of Mr. Kohly's testimony regarding SWBT's winback practices,² ruling:

Southwestern Bell also asks the Commission to strike portions of the rebuttal testimony of R. Matthew Kohly, filed by AT&T Communications of the Southwest, Inc. Southwestern Bell objects to a section of Kohly's testimony in which he discusses the "totality of SWBT's retention and winback efforts," including advertising and customer letters. Southwestern Bell argues that this testimony is "clearly outside the scope of the issues identified by the Commission." The Commission disagrees. The challenged section of Kohly's testimony appears to be an attempt to explain the larger picture of the state of competition in the local telecommunications market. It is relevant to the question of how Southwestern Bell's proposed tariffs might affect that market and whether those tariffs should be approved. Southwestern Bell's motion to strike the entire section of Kohly's testimony will be denied.³

3. As the Commission's Order clearly indicates, the discussion of SWBT's winback practices raised by AT&T in Mr. Kohly's testimony. Thus, there can be no doubt that AT&T's briefing that addresses the issues raised by Mr. Kohly in this permitted testimony is relevant to this proceeding. The portions of AT&T's Initial Brief in question relate to the overall effect that

² The Commission granted SWBT's Motion only as to the portion of Mr. Kohly's testimony that related to an AT&T employee's installation experience. (Kohly Rebuttal Testimony, p. 20, line 1 through line 8).

SWBT's practices have on the local telecommunications market and the development of competition therein. AT&T's discussion of SWBT's winback practices in its Brief shows its regard for the Commission's ruling, focusing its discussion on the effect SWBT's practices have on the development of competition and on why these concerns support the rejection of the tariffs under consideration.

4. AT&T's briefing is clearly consistent with the Commission's ruling. SWBT was well aware of the Commission's ruling in the Order Regarding Motions to Strike, yet SWBT fails to even cite the above portion of the Commission's Order. SWBT's Motion should be denied.

5. In addition, SWBT's Motion is baseless and frivolous. SWBT ignores clear and ambiguous rulings of the Commission that address the very issue raised by SWBT in its Motion. Therefore, SWBT's Motion violates Section 4 CSR 240-2.080(7) and Rule 55.03 of the Missouri Rules of Civil Procedure. Accordingly, SWBT should be required to pay AT&T's attorneys' fees and costs of responding to its Motion pursuant to Section 386.570.1 RSMo. 2000.

WHEREFORE, for all these reasons, AT&T requests that the Commission deny SWBT's Motion to Strike portions of AT&T's Initial Brief and order SWBT to pay AT&T's attorneys' fees and costs as a penalty under Section 386.570.1 RSMo. 2000.

³ Order, p. 3.

Respectfully submitted this 4th day of November, 2002.

**AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC.**

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Certificate of Service

A true and correct copy of the foregoing document was mailed this 4 day of November, 2002, by placing same in the U.S. Mail postage paid to the persons listed on the attached list.

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