

December 17, 2002

VIA HAND DELIVERY

Secretary of the PSC
Missouri Public Service Commission
200 Madison, Suite 100
Jefferson City, Missouri 65101

Re: Case No.: TT-2002-472; TT-2002-473

FILED⁴
DEC 17 2002
Missouri Public
Service Commission

Dear Sir or Madam:

Enclosed for filing with the Commission in the above-referenced case is an original and nine copies of the Supplemental Filing for Joint Application for Rehearing of AT&T Communications of the Southwest, Inc., MCI WorldCom Communications Inc., Brooks Fiber Communications of Missouri, Inc., MCImetro Access Transmission Services, LLC, and Nuvox Communications of Missouri, Inc.. Please file stamp the additional copy and return it to our courier for delivery.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Leland B. Curtis (mk)

Leland B. Curtis

CJL/klb
cc: Parties of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

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

FILED
DEC 17 2002
Missouri Public
Service Commission

**SUPPLEMENTAL FILING TO JOINT APPLICATION FOR REHEARING OF AT&T
COMMUNICATIONS OF THE SOUTHWEST, INC., MCI WORLDCOM
COMMUNICATIONS, INC., BROOKS FIBER COMMUNICATIONS OF MISSOURI,
INC., MCImetro ACCESS TRANSMISSION SERVICES, LLC, and NUVOX
COMMUNICATIONS OF MISSOURI, INC.**

COME NOW Joint Applicants AT&T Communications of the Southwest, Inc.
("AT&T"), MCI WorldCom Communications, Inc. ("MCI WorldCom"), Brooks Fiber
Communications, Inc. ("Brooks"), MCImetro Access Transmission Services, LLC ("MCImetro"
and, with MCI WorldCom and Brooks, collectively "WorldCom"), and NuVox Communications
of Missouri, Inc. ("NuVox") and for their Supplemental Filing to their Joint Application for
Rehearing state:

1. On December 10, 2002 the Kansas Corporation Commission issued its Order
denying tariffs which appear to be very similar to SWBT's proposed winback discounts in the
instant case. In its Kansas filing, SWBT's tariffs would have waived the non-recurring charges
for new residential customers having service within the SWBT service area and who transfer at
least one residential local exchange access line to SWBT. The Kansas staff stated that the filing
is a winback-type filing that specifically targets competitive local exchange carrier ("CLEC")
customers. Current SWBT customers that are changing service and customers that are seeking
local exchange access service for the first time are not eligible for this offering.

2. In rejecting SWBT's winback tariff, the Kansas Commission stated: "The Commission finds and concludes that SWBT's application for tariff revisions should be denied on the basis that the proposed revisions are discriminatory and not in the public interest at this time. The discounts are discriminatory because they are not made available to all similarly situated customers.¹ A customer that leaves a CLEC will receive a discount while a current customer that is changing service or a customer that is seeking service for the first time will pay the full price. In addition, the revisions require the customer to agree to a twelve-month term agreement that will effectively prevent other carriers from competing for that customer's business. The Commission believes that these tariff revisions, which target customer through offers that are only available to CLEC customer and lock customers into a term of service, are not in the public interest in an emerging competitive market, particularly when only a small percentage of customers are currently served by competitive companies. The tariff revisions should be denied."

¹ As stated earlier, the Commission is reviewing the issue of whether winback and retention offerings are discriminatory in Docket No. 02-GIMT-678-GIT. Customer classifications or guidelines might be established that will allow approval of offerings similar to that being reviewed here. However, the generic proceeding is not completed, and no evidence has been presented here that justifies the discriminatory nature of this offering.

3. A complete copy of the Kansas Commission order in its Docket No. 03-SWBT-337-TAR is attached hereto.

Respectfully submitted,

CURTIS, OETTING, HEINZ,
GARRETT & O'KEEFE, P.C.

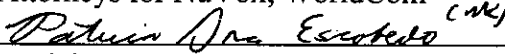
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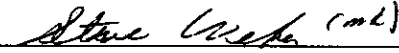
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Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 17th day of December, 2002, by e-mail and by placing same in the U.S. Mail, postage paid.

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THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

2002.12.10 09:26:41
Kansas Corporation Commission
/S/ Jeffery S. Waasman

Before Commissioners: John Wine, Chair
 Cynthia L. Claus
 Brian J. Moline

In the Matter of the Application of)
Southwestern Bell Telephone Company)
Filing Tariff Revisions to the Waiver of)
Nonrecurring Charges for New Residence)
Customers who have Service with Another)
Carrier within the SWBT Serving Area and)
Who Transfer at Least One Residence)
Local Exchange Access Line to SWBT.)

Docket No. 03-SWBT-337-TAR

ORDER

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission"). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On October 25, 2002, Southwestern Bell Telephone Company ("SWBT") filed for approval of revisions to its tariff to waive the nonrecurring charges for new residential customers having service within the SWBT serving area and who transfer at least one residential local exchange access line to SWBT. To be eligible, customers must establish a twelve-month term commitment and subscribe to residence local exchange service, Caller ID-Calling Number Deliver, Caller ID-Calling Name Delivery, and Call Waiting.
2. On November 8, 2002, the Commission suspended the tariff revisions until December 16, 2002. The Commission granted the Citizens' Utility Ratepayer Board's request to intervene on November 22, 2002.

2. On November 14, 2002, Commission staff ("Staff") submitted a memorandum recommending the Commission deny SWBT's application for tariff revisions on the basis that it is discriminatory and not in the current public interest. Staff states the filing is a winback-type filing that specifically targets competitive local exchange carrier ("CLEC") customers. Current SWBT customers that are changing service and customers that are seeking local exchange access service for the first time are not eligible for this offering. Staff explains that the proposed tariff is slightly different from prior winback offerings because the offer is not limited to SWBT's prior customers; however, the filing raises the same anti-competitive concerns, in addition to concerns regarding the discriminatory treatment of customers.

3. Staff states that the concerns about discrimination and the public interest it expressed in Docket No. 02-SWBT-677-MIS ("677 Docket") are not resolved in this filing. Staff explains that the subject of the 677 Docket was a winback promotion that waived the nonrecurring rates for new business customers who left a CLEC and took service from SWBT. Staff expressed its concern in the 677 Docket that winback offerings discriminate against other classes of customers and that, if the promoter possesses market power, anticompetitive results may occur, especially in the residential market. Staff explains that the 2001 CLEC annual reports and 2001 SWBT Armis data show that the CLECs' residential access lines represent 6.75% of the market, while SWBT's residential access lines (including resale lines) represent 93.25% of the market.

4. In Docket No. 677, the Commission denied SWBT's application based on the determination that such a promotion was in violation of K.S.A. 2001 Supp. 66-2005(k). The Commission deferred the other issues addressed in Staff's Report and SWBT's Comments, including the definition of "customer class" and its effect on the nondiscrimination requirements,

to the generic winback proceeding, Docket No. 02-GIMT-678-GIT. Docket No. 02-SWBT-677-MIS, Order Addressing Staff's Report and Recommendation, ¶ 14.

5. While the current SWBT filing is not a promotion, and therefore K.S.A. 2001 Supp. 66-2005(k) does not apply, Staff remains concerned that these tariff provisions will result in discriminatory treatment of customers. The tariff being reviewed in this docket provides a discount to customers that leave a CLEC to take service from SWBT, while customers requesting the identical service that are obtaining local exchange access service for the first time are charged differently. Under the proposed tariff revisions, two customers ordering the exact same service in the exact same exchange can be charged differently. Under Kansas law "[e]very unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, joint rate, toll, charge or exaction is prohibited, unlawful and void." K.S.A. 66-1,189; *see also* K.S.A. 2001 Supp. 66-1,191.

6. Staff states that, in the current market, these tariff provisions are not likely to foster the continued growth of competition in Kansas as required by both the State and Federal Telecommunications Acts. Staff noted that the tariff changes are available for resale, but further resale does not encourage CLECs to become facilities based, as instructed by the Kansas Legislature. K.S.A. 2001 Supp. 66-2003(c).

7. The Commission notes that the time available to it and its Staff to review these pleadings is limited under K.S.A. 2001 Supp. 66-2005. It would be preferable for SWBT to refrain from filing these types of tariffs and promotions until the guidelines have been established in the generic proceeding. However, because the tariff revisions have been filed, the Commission must make a determination on the merits of the filing.

8. The Commission finds and concludes that SWBT's application for tariff revisions should be denied on the basis that the proposed revisions are discriminatory and not in the public interest at this time. The discounts are discriminatory because they are not made available to all similarly situated customers.¹ A customer that leaves a CLEC will receive a discount while a current customer that is changing service or a customer that is seeking service for the first time will pay the full price. In addition, the revisions require the customer to agree to a twelve-month term agreement that will effectively prevent other carriers from competing for that customer's business. The Commission believes that these tariff revisions, which target customers through offers that are only available to CLEC customers and lock customers into a term of service, are not in the public interest in an emerging competitive market, particularly when only a small percentage of customers are currently served by competitive companies. The tariff revisions should be denied.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The application filed by Southwestern Bell Telephone Company requesting tariff revisions is hereby denied.

B. Any party may file a petition for reconsideration of this order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

¹ As stated earlier, the Commission is reviewing the issue of whether winback and retention offerings are discriminatory in Docket No. 02-GIMT-678-GIT. Customer classifications or guidelines might be established that will allow approval of offerings similar to that being reviewed here. However, the generic proceeding is not completed, and no evidence has been presented here that justifies the discriminatory nature of this offering.

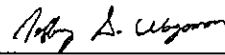
BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus, Com.; Moline, Com.

Dated: DEC 10 2002

ORDER MAILED

DEC 10 2002

 Executive
Director

Jeffrey S. Wagaman
Executive Director

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