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August 1, 2002

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Missouri Public  
Service Commission

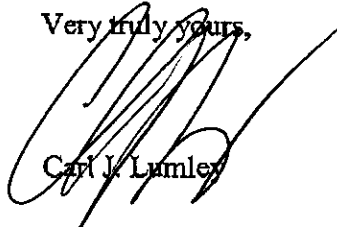
Secretary of the Commission  
Missouri Public Service Commission  
200 Madison, Suite 100  
Jefferson City, Missouri 65101

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

Dear Secretary of the Commission:

Enclosed please find for filing with your office an original and nine (9) copies of WCOM's Response to Southwestern Bell Telephone Company's Response to WCOM's Motion to Compel SWBT's DR Responses in connection with the above-referenced matter. Upon your receipt, please file stamp the extra copy received and return to the undersigned. If you have any questions, please do not hesitate to contact us.

Very truly yours,



Carl J. Lumley

CJL:dn  
Enclosure  
cc. Parties of Record (W/Enclosure)

AUG 01 2002

## BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Southwestern Bell )  
 Telephone Company's Tariff to Initiate )  
 Residential Customer Winback Promotion )

Missouri Public  
Service Commission

Case No. TT-2002-472  
Tariff No. 200200831

In the Matter of Southwestern Bell Telephone )  
 Telephone Company's Tariff Filing to Extend )  
 Business Customer Winback Promotions )

Case No. TT-2002-473  
Tariff No. 200200828

**WCOM'S RESPONSE TO SOUTHWESTERN BELL TELEPHONE COMPANY'S  
 RESPONSE TO WCOM'S MOTION TO COMPEL SWBT'S DR RESPONSES**

Comes Now, WorldCom (WCOM), consisting of MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc. and responds to Southwestern Bell Telephone Company's Response to WorldCom's Motion to Compel SWBT's DR Responses ("SWBT Response") filed with Public Service Commission (Commission) of the State of Missouri on July 22, 2002, in the above-styled and numbered proceedings:

**I. WCOM's General Response To SWBT**

SWBT generally re-urges the same objections propounded on May 28, 2002. WCOM, therefore, will not repeat its response to each of SWBT's objections. WCOM stands on the arguments it made in its July 11, 2002, Motion to Compel. WCOM does respond to SWBT's general arguments below.

**II. WCOM's Response to SWBT's Executive Summary**

Tangible evidence<sup>1</sup> points to the fact that SWBT has in place policies and practices to market and price SWBT promotional offerings in Missouri, including the two

<sup>1</sup> See WCOM Exhibits A and B, attached to WCOM's DRs.

winback promotions at issue, that greatly disadvantage all competitors and, therefore, harm competition in Missouri. WCOM Exhibits A and B, attached to WCOM's Data Requests (DRs), respectively, are copies of a winback letter and voice mail script received by a former-SWBT customer within two or three days of migration of the customer's service from SWBT to a competitive local exchange carrier ("CLEC").

For an end user to receive mail within such a short timeframe from SWBT marketing personnel is no coincidence. WCOM asserts SWBT is passing customer proprietary network information ("CPNP") and/or similar data—SWBT labels it customer disconnection information—between its wholesale and retail operations. The voice mail in WCOM Exhibit B, moreover, was made to an unlisted telephone number, further tangible evidence that SWBT's wholesale arm provides its retailing departments prohibited information. The universe of Missouri end users who are receptive to competitive telecommunications offers is information available only to SWBT which takes a free ride on CLECs' research and marketing. CLECs have access only to the narrowed listing of customers they have won over after expending precious resources.

WCOM's DRs focus on SWBT's use of these policies and practices in Missouri and for comparison purposes in the other jurisdictions wherein the affiliates of SBC, SWBT's parent, operate.<sup>2</sup> SWBT asserts the DRs are irrelevant because "[t]his proceeding is not a general examination of SWBT's marketing, pricing, or operational practices."<sup>3</sup> The DRs are highly relevant, because of SWBT's past and probable future use of the policies and practices with the

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<sup>2</sup> Exhibit A, the winback letter, is signed by Lynn Lehew, whose title is "Director Consumer Winback - SBC Southwestern Bell (emphasis added)."

<sup>3</sup> SWBT Response at 1.

marketing and pricing of the contested tariffs. SWBT's marketing, pricing, or operational practices, thus, require an examination in the context of the proposed tariffs.

WCOM agrees with SWBT's statement that the proceeding is not one "to consider a proposed rule concerning winback offers which would apply equally to all local exchange carriers ('LECs')." <sup>4</sup> CLECs' policies and practices are not at issue. <sup>5</sup> SWBT's statement does not render irrelevant, however, WCOM's DRs. If SWBT engages in the policies and practices outlined above and the Commission determines the policies and practices are anticompetitive, the Commission is authorized to require changes to SWBT's policies and practices including, but not limited to, that SWBT not engage in the activity resulting from the policies and practices with these tariffs. <sup>6</sup> WCOM is not attempting to vest itself with powers not granted it by the Legislature but is seeking to provide all information necessary for the commission to make an informed decision on the issues relevant to this proceeding. Further, if SWBT's policies and practices are anticompetitive as to these tariffs, they are similarly anticompetitive for all SWBT tariffs, and the Commission is authorized to prohibit all use of the policies and practices and resulting SWBT activities for all SWBT tariffs filed prospectively. Section 392.200 RSMO. See also, Section 392.185 (3) (6).

SWBT's claim that WCOM's DRs are overly broad and unduly burdensome with a time frame of January 1, 2000, adds nothing to its previously filed objections. WCOM reiterates that

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<sup>4</sup> SWBT Response at 1.

<sup>5</sup> There is no evidence that CLECs make use of disconnection information in the manner used by SWBT nor evidence that CLEC discriminate among customers by offering discriminatory winback prices.

<sup>6</sup> WCOM believes the Commission has a variety of remedies available to it, including making available to CLECs all the information available to SWBT.

the information is relevant to a determination of whether SWBT's pricing—lower pricing available to only winback customers for the same services provided to non-winback end users—and marketing—the use of disconnection information not available to CLECs—policies and practices harm competition in the Missouri telecommunications marketplace. SWBT, moreover, has opened the door to this timeframe with references in the direct testimonies of both John Regan and Thomas Hughes to the changes in the level of competition and the SWBT tariffs the Commission has approved during this timeframe.

A. **ACCESS TO CUSTOMER DISCONNECTION INFORMATION BY SWBT NOT SAME ACCESS AVAILABLE TO CLECS**

SWBT's denial on the point that SWBT accesses information not available to CLECs is self-serving. WCOM has offered a valid basis for its DRs—the winback letter and voice mail issued by SWBT under circumstances that bring into question the availability of information gathered by SWBT's wholesale operation to SWBT's retail arm. The Commission should be permitted to make its determination based on the best evidence—SWBT's verified DR responses provided by the SWBT personnel with the most accurate information, rather than a pleading that carries no evidentiary weight.

WCOM also asserts that CLECs are disadvantaged by being limited to disconnection information only about their respective customers, while SWBT has access to information regarding ALL customers who are seeking new offerings from competitive providers. The competitive marketplace in Missouri is harmed by SWBT's unique access to and improper use of that sensitive and confidential disconnect information.

SWBT begs the question with its claim that CLECs have not complained to the Commission about “the opportunity to disparage CLEC services and prices” afforded by the call-back number included in SWBT's winback letter and voice mail. WCOM DRs ask about the

toll-free number, provided in both the winback letter and voice mail, that misrepresents itself as the number to call if the end user questions her/his change in service. WCOM's call to the number reached SWBT personnel who refused to explain the service that could be provided by calling the number. WCOM asserts the number reaches a SWBT marketing department, and WCOM's DRs focus on these issues

The DRs addressing all these issues are highly relevant and calculated to lead to the discovery of admissible evidence.

**B. BUSINESS CPNI AND RETENTION OFFERS AT EFFECTIVELY AT ISSUE**

While SWBT's two tariffs at issue are not labeled retention promotions, they are effectively retention offerings. WCOM's DRs question the timeframe when disconnection information regarding residential customers is available to SWBT's marketing personnel. WCOM asserts that SWBT may acquire advanced knowledge of a CLEC courting a business customer if SWBT's wholesale operations advise SWBT retail operations that a CLEC has requested CPNI. Again, the winback is effectively a retention based on the timeframe. The DRs seek to obtain information regarding these issues and are relevant to this proceeding.

**C. COMMISSION REVIEW OF WCOM'S ROBINSON-PATMAN ACT CLAIM**

WCOM raises the Robinson-Patman Act, not because it seeks the Commission to adjudicate an anti-trust cause of action, but because the Robinson-Patman Act provides guidance on the effect of price discrimination on the incipient Missouri telecommunications industry—one critical issue before the Commission in this proceeding. WCOM DRs focus on SWBT's pricing strategies and whether they are based on competitive conditions in Missouri. For the contrast and comparison needed to make the determination, WCOM requests information regarding SWBT's pricing strategies in other SBC states.

Whether SWBT's winback tariffs are available to "all similarly situated customers" in violation of Section 392.200, RSMO, is, of course, another of the Commission's principal determinations. SWBT's statement that there is no violation is self-serving, and WCOM—supported by Missouri caselaw—disputes the truth of SWBT's statement.<sup>7</sup>

**D. UNAVAILABILITY OF INFORMATION DISADVANTAGES CLECS**

SWBT again begs the question by claiming neither WCOM nor any other CLEC has complained to the Commission about SWBT engaging in information-sharing activity. SWBT focuses in this section on WCOM's statement that SWBT may construct call-back lists composed of CLEC disconnect information and, thus, may violate interconnection agreements and may disclose CLEC proprietary and trade secret information. It makes the self-serving statement that it does not. SWBT claims it follows the CPNI rules established by the Federal Communications Commission. The proof is in the responses to WCOM DRs regarding these issues. The DRs, therefore, are relevant and calculated to lead to the discovery of admissible evidence.

SWBT references WCOM's claim that SWBT can win customers with lower than CLEC pricing and calls WCOM's assertion a red herring. In another beg-the-question response, SWBT states that no claim has been brought against SWBT-Missouri that it is pricing services in an unlawful manner. In this proceeding, WCOM asserts that these tariffs violate 392.200, RSMO and may also constitute Robinson-Patman-like price discrimination that hampers the development of the nascent Missouri telecommunications market. WCOM's participation in this proceeding is effectively its complaint.

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<sup>7</sup> See Rebuttal Testimony of Don Price, filed July 26, 2002, at 22-26.

E. **DATA REQUESTS ARE HIGHLY RELEVANT, CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE, AND WITHIN PERMISSIBLE SCOPE OF MISSOURI RULES**

WCOM stands by the arguments for each DR contained in its July 11, 2002, Motion to Compel SWBT's DR Responses, which it incorporates herein as if set out in full.

**III. Conclusion**

SWBT appears to have in place policies and practices that greatly disadvantage CLECs. Obtaining information that is a function of SWBT's wholesale operations, SWBT's retail personnel may have knowledge—before even the new CLEC provider—that the end user's service has been migrated. Winback letters and voice mail that clearly is in the works contemporaneously with the migration process tout promotions that discriminate against non-winback customers. The same policies and practices appear to be in place for retention promotions. WCOM's DR address the issues that are critical to a determination of whether competition in the Missouri telecommunications marketplace is affected and the degree to which it is affected by these policies and practices. The DRs are highly relevant and calculated to lead to the discovery of admissible evidence. WCOM urges that the Commission compel SWBT's responses to WCOM's DRs.

Respectfully submitted,

  
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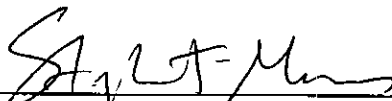
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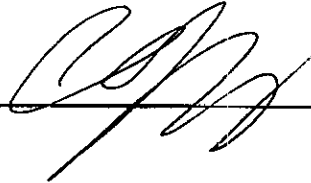
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**Certificate of Service**

A true and correct copy of the foregoing document was mailed this 1st day of August, 2002, by placing same in the U.S. Mail postage paid to the persons listed on the attached list.

  
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