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July 2, 2002

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

RE: Consolidated Case No. TC-2002-57

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter, please find an original and eight (8) copies of Southwestern Bell Wireless LLC's Surrebuttal Testimony of William H. Brown.

This filing has been mailed or hand-delivered this date to all counsel of record. Thank you for your attention to this matter.

Sincerely,



Larry W. Dority

Enclosure
cc: Counsel of Record

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, First Class mail, postage prepaid, this 2nd day of July 2002, to:

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Exhibit No:
Issue: Other Telephone Specific Issues
Witness: William H. Brown
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Southwestern Bell Wireless LLC
Case No.: TC-2002-57 *et al.*
Date Testimony Prepared: July 1, 2002

SURREBUTTAL TESTIMONY
OF
WILLIAM H. BROWN
ON BEHALF OF
SOUTHWESTERN BELL WIRELESS LLC

CASE NO. TC-2002-57

Atlanta, Georgia
July 1, 2002

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

Northeast Missouri Rural Telephone)
Company *et al.*)

Petitioners)

v.)

Case No. TC-2002-57 (consol.)

Southwestern Bell Telephone Company,)
et al.)

Respondents.)

AFFIDAVIT OF WILLIAM H. BROWN

STATE OF GEORGIA)

ss:.

COUNTY OF FULTON)

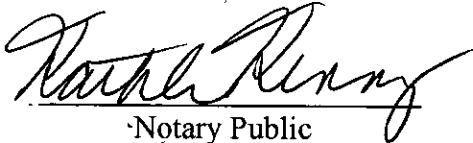
I, William H. Brown, being duly sworn or affirmed, depose and state:

1. My name is William H. Brown and I am presently Senior Interconnection Manager for Cingular Wireless.
2. Attached hereto and made part hereof for all purposes is my surrebuttal testimony in the captioned case.
3. I hereby swear or affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



William H. Brown

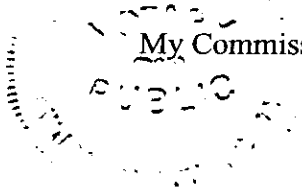
Subscribed and sworn or affirmed
before me this 15th day of ~~June~~^{July}, 2002.



Notary Public

**Notary Public, Gwinnett County, Georgia
My Commission Expires Aug. 3, 2005.**

My Commission expires:



1 **SURREBUTTAL TESTIMONY OF WILLIAM H. BROWN**

2 **ON BEHALF OF**

3 **SOUTHWESTERN BELL WIRELESS LLC**

4 **CASE NO. TC-2002-57 et al. (consolidated)**

5 **DATE: July 1, 2002**

6 **Q. Please state your name, address and occupation.**

7 A. My name is William H. Brown. I am Senior Interconnection Manager for
8 Cingular Wireless ("Cingular") and my office address is Glenridge Highlands Two,
9 1685D, 5565 Glenridge Connector, Atlanta, GA 30342. Cingular operates the licenses
10 held in Missouri by Southwestern Bell Wireless LLC.

11 **Q. Are you the same William H. Brown who provided Rebuttal Testimony in**
12 **this docket?**

13 A. Yes.

14 **Q. What is the purpose of this surrebuttal testimony?**

15 A. I am responding to the some of the assertions made by Michael S. Schepeler in his
16 June 10, 2002 Rebuttal Testimony filed on behalf of Staff. While he correctly notes that
17 access rates are not appropriate for intraMTA traffic, he inexplicably asserts that the tariff
18 rates should be used for traffic delivered since February of 1998, thus arguing in support
19 of an action that clearly constitutes retroactive ratemaking. He also fails to take into
20 account the compensation Complainants have obtained through *de facto* bill and keep.

21 **Q. Mr. Schepeler asserts that the wireless carriers have violated the**
22 **Commission's order in SWBT's Case No. TT-97-524 and relies on this assertion as a**

23 **basis for allowing the Complainants to assess yet-to-be tariffed rates retroactively.**

24 **Do you agree with his analysis?**

25 A. No. Mr. Scheperle argues that the Complainants that do not now have a wireless
26 termination service tariff should be directed to file one consistent with those approved in
27 Commission Case No. TT-2001-139 consol. (the so-called *Mark Twain* case).¹ As I
28 understand his testimony, he then suggests that those wireless termination service rates
29 should be applied retroactively to February of 1998. In an apparent effort to address what
30 is obviously a recommendation of retroactive ratemaking, Mr. Scheperle asserts that:

31 Some CMRS providers sent traffic to SWBT terminating to
32 MITG companies *in violation of* SWBT's tariff and Report
33 and Order in Case No. TT-97-524. A Wireless
34 Termination Tariff is only effective going forward or when
35 established. However, Staff recommends that
36 compensation is appropriate for traffic originated by CMRS
37 providers prior to the effective date of the Wireless
38 Termination Tariffs.

39
40 Scheperle Rebuttal at 20 (emphasis added). In short, Mr. Scheperle relies on what he
41 characterizes as the violation of SWBT's tariff and the Commission's Order approving the
42 tariff as a basis for imposing a retroactive rate. But retroactive ratemaking is never
43 appropriate and cannot be justified as a punitive measure, as Mr. Scheperle appears to
44 advocate.

45 Moreover, most, if not all, wireless carriers operate pursuant to interconnection
46 agreements with SWBT, and I don't think any wireless carrier could be properly accused
47 of "violating" the Commission's Order after the wireless carrier has offered to negotiate
48 an interconnection agreement and been rebuffed by the carrier. Ironically, Staff's

¹ Cingular does not agree with Mr. Scheperle's suggestion that it would be appropriate for the Commission to approve additional *Mark Twain*-type tariffs. However, it will not use this proceeding to collaterally attack a Commission decision that is currently subject to appeal.

49 compensation scheme would have the effect of rewarding Complainants for their
50 intransigence.

51 **Q. Mr. Scheperle reviews the claims made by Mr. Jones and the other**
52 **Complainants regarding the money they claim they are owed. Do you have any**
53 **comment on that?**

54 A. Yes. As I explained in my rebuttal testimony, it is inappropriate to consider what
55 the Complainants have lost by refusing to negotiate interconnection agreements without
56 considering what they have gained. Specifically, Mr. Scheperle accepts without apparent
57 criticism the allegations of the Complainants about minutes of use they have terminated.
58 Yet, he never considers the minutes of use directed to wireless customers in the same
59 MTA (many in the same local exchange) on which the Complainants have not had to pay
60 terminating access and, in fact, on which the Complainants have been paid originating
61 carrier access. These carriers are not only billing and *keeping* local exchange service
62 revenues from their end user customers for calls the carriers do not incur the cost of
63 terminating, they are also billing and *collecting* originating carrier access charges from
64 IXC's, while subjecting their customers to toll rates for intraMTA calls, many of which
65 may be across town or across the block. Where the question is whether the Complainants
66 should be compensated for traffic terminated to their customers in the absence of
67 interconnection agreements, it is inappropriate to ignore the compensation they have
68 realized *as a result of* avoiding the negotiation of interconnection agreements.

69 **Q. Have your recommendations changed based on Staff's testimony?**

70 A. No. I continue to believe that the Commission should reject any claim for
71 access charges, no matter how it is couched. Moreover, it should reject any attempt by

72 the Complaining Carriers to engage in retroactive ratemaking. The Commission should
73 not reward the Complaining Carriers' intransigence and should unequivocally reject their
74 attempt to impose higher, one-way charges on wireless carriers through stonewalling.

75 **Q. Does that conclude your rebuttal testimony?**

76 **A. Yes.**