

Exhibit No:  
Issues: Reciprocal Compensation  
Witness: Michael Brosler  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: Southwestern Bell Telephone Company  
Case No: TC-2000-225

**FILED**<sup>3</sup>

MAY 31 2000

Missouri Public  
Service Commission

**SOUTHWESTERN BELL TELEPHONE COMPANY**

**CASE NO. TC-2000-225**

Rebuttal Testimony  
of

Michael Brosler

Dallas, Texas

May, 2000

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
MAY 31 2000

Missouri Public  
Service Commission

MCI WorldCom Communications, Inc. )  
 )  
v. ) Case No. TC-2000-225  
 )  
Southwestern Bell Telephone Company )

AFFIDAVIT OF MICHAEL A. BROSLER

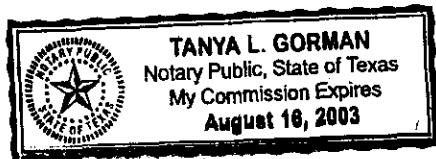
COUNTY OF DALLAS )  
 ) SS  
STATE OF TEXAS )

I, Michael A. Brosler, of lawful age, being duly sworn, depose and state:

1. My name is Michael A. Brosler. I am presently Director – Industry Markets Select Accounts for Southwestern Bell Telephone Company.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and 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.

Michael A. Brosler  
Michael A. Brosler

Subscribed and sworn to before me on this 25<sup>th</sup> day of May 2000.



Tanya L. Gorman  
Notary Public

1 **Q PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2

3 A. My name is Michael Brosler. My business address is Four Bell Plaza, Room 852  
4 Dallas, Texas 75202.

5

6 **Q. WHAT ARE YOUR RESPONSIBILITIES AS DIRECTOR-IM SELECT**  
7 **ACCOUNTS?**

8

9 A. I am Director – Industry Markets Select Accounts and am responsible for a group  
10 of Southwestern Bell Telephone Company (“SWBT”) Account Managers  
11 assigned to facilitate implementation, and provide ongoing account management  
12 support for Competitive Local Exchange Carriers (CLECs) who are our local  
13 wholesale customers. I was also responsible for negotiating interconnection  
14 agreements between SWBT and CLECs at the time that BroadSpan and SWBT  
15 negotiated the terms of their Interconnection Agreement, under which BroadSpan  
16 claims reciprocal local compensation for internet traffic in this case.

17

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

19

20 A. The purpose of my testimony is to describe the history and evolution of the  
21 BroadSpan/SWBT Interconnection agreement for Missouri, and to address the  
22 negotiations and discussions relating to reciprocal compensation which took place  
23 during negotiations between SWBT and BroadSpan Communications.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**Q. ARE YOU FAMILIAR WITH THE MISSOURI INTERCONNECTION AGREEMENT BETWEEN SWBT AND BROADSPAN COMMUNICATIONS UNDER WHICH BROADSPAN CLAIMS RECIPROCAL COMPENSATION FOR INTERNET TRAFFIC IN THIS CASE?**

A. Yes, I am.

**Q. WOULD YOU PLEASE DESCRIBE THE EVOLUTION OF THE SWBT/BROADSPAN INTERCONNECTION AGREEMENT?**

A. Yes. The original Interconnection Agreement between SWBT and Broadspan Communications was based upon the Interconnection agreement that resulted from the SWBT/AT&T arbitration. On September 16, 1997, SWBT received a written request from BroadSpan to adopt the SWBT/AT&T arbitrated interconnection agreement pursuant to Section 252 (i) of the Telecommunications Act of 1996. An agreement was reached and submitted to the Missouri Commission, and the Commission approved the agreement on August 12, 1998.

**Q. HOW DID THE ORIGINAL SWBT/BROADSPAN INTERCONNECTION AGREEMENT, WHICH WAS BASED UPON THE SWBT/AT&T**

1           **ARBITRATED INTERCONNECTION AGREEMENT, ADDRESS**  
2           **RECIPROCAL COMPENSATION FOR LOCAL TRAFFIC?**

3  
4           A. The original SWB/BroadSpan interconnection agreement provided for the  
5           reciprocal compensation rate elements contained in Section 3.3 of Attachment 12,  
6           Compensation, to be applicable to “Local Traffic” as defined in Section 1.2.

7  
8           **Q. HOW DOES THE ATTACHMENT 12: COMPENSATION DEFINE**  
9           **“LOCAL TRAFFIC”?**

10  
11          A. Section 1.2 of Attachment 12, Compensation, states that: “Calls originated by  
12          BCI’s end users and terminated to SWBT’s end users (or vice versa) will be  
13          classified as “Local Traffic” under this Agreement if: (i) the call originates and  
14          terminates in the same SWBT exchange area; or (ii) originates and terminates  
15          within different SWBT Exchanges that share a common mandatory local calling  
16          area, e.g., mandatory Extended Area Service (EAS), or other like types of  
17          mandatory expanded local calling scopes; or (iii) originates and terminates within  
18          Metropolitan Calling Areas (MCA) that share either mandatory or optional calling  
19          scopes.

20  
21          **Q. DID THE SWBT/AT&T INTERCONNECTION AGREEMENT PROVIDE**  
22          **FOR RECIPROCAL LOCAL COMPENSATION TO BE PAID FOR**  
23          **INTERNET TRAFFIC?**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

A. No. As described above, the SWBT/AT&T arbitrated interconnection agreement upon which the SWBT/BroadSpan interconnection agreement was based, provided that reciprocal compensation only applied to “Local Traffic”, and Internet traffic is not “Local Traffic” as that term is defined in the SWBT/AT&T agreement. To my knowledge, neither AT&T nor any other CLEC which has adopted the SWBT/AT&T agreement has claimed that the SWBT/AT&T agreement provides for reciprocal local compensation for internet traffic.

**Q. WAS THE QUESTION OF RECIPROCAL COMPENSATION FOR ISP TRAFFIC EVER DISCUSSED DURING THESE NEGOTIATIONS?**

A. Yes. The initial negotiation meeting between SWBT and BroadSpan was held on November 19, 1997. SWBT’s records reflect that the topic of reciprocal compensation for ISP traffic was discussed at this meeting. SWBT advised BroadSpan that its position was that Internet traffic was not included as part of the reciprocal compensation terms of our interconnection agreement. In attendance from SWBT were Jack Frith, Kathy Swaller and Arpana Kagal. In attendance from BroadSpan were Blake Ashby, Carl Lumley, Dan Pinkard, Darell Gentry, and Sam Blumoff.

**Q. DID BROADSPAN SUBSEQUENTLY SEEK TO CHANGE ITS INTERCONNECTION AGREEMENT WITH SWBT?**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

A. Yes. On November 20, 1998 BroadSpan filed a Petition with the Commission in which it asked the Commission to approve its adoption of terms from the interconnection agreement between SWBT and Birch Telecom of Missouri, Inc. This agreement had been approved by the Commission in June 1998, following an arbitration proceeding in which Birch claimed that language should be included in its Interconnection agreement with SWBT that specifically provided that reciprocal compensation should be paid for internet traffic.

**Q. ARE YOU FAMILIAR WITH THE COMMISSION'S DECISION IN THE BIRCH ARBITRATION?**

A. Yes. I understood that the Commission had deferred to the jurisdiction of the FCC to decide what compensation, if any was applicable to this interstate traffic.

**Q. DID BROADSPAN SUBSEQUENTLY INFORM SWBT THAT IT WAS NO LONGER INTERESTED IN ADOPTING THE PORTIONS OF THE BIRCH INTERCONNECTION AGREEMENT IT PREVIOUSLY IDENTIFIED?**

A. Yes. In December 1998, Carl Lumley, the attorney for BroadSpan, (who is also the attorney for Brooks Fiber in this case), advised SWBT that BroadSpan was no

1 longer interested in adopting portions of the SWBT/Birch interconnection  
2 agreement.

3  
4 **Q. DID BROADSPAN THEN SEEK TO ADOPT A PORTION OF THE**  
5 **SWBT/BROOKS INTERCONNECTION AGREEMENT, INCLUDING**  
6 **THE COMPENSATION PROVISIONS OF THAT AGREEMENT?**

7  
8 A. Yes, it did, and from December 1998 through March 1999, SWBT and  
9 BroadSpan representatives negotiated those changes.

10  
11 **Q. WAS THE QUESTION OF RECIPROCAL COMPENSATION FOR ISP**  
12 **TRAFFIC EVER DISCUSSED DURING THESE NEGOTIATIONS?**

13  
14 A. Yes. On December 22, 1998, Arpana Kagal and Blake Ashby had a conversation  
15 regarding BroadSpan's compensation amendment request and reciprocal  
16 compensation for ISP traffic. Arpana reiterated SWBT's position on reciprocal  
17 compensation for Internet traffic, and reminded Mr. Ashby that SWBT would not  
18 be paying compensation for Internet traffic in Missouri.

19  
20 **Q. DID SWB LATER DOCUMENT ITS POSITION ON RECIPROCAL**  
21 **COMPENSATION IN RELATION TO ISP TRAFFIC IN THE**  
22 **AGREEMENT?**



1 A. Yes. SWBT's position was included on the signature page of the agreement. A  
2 copy of the statement included by SWBT, and a corresponding (but contrary)  
3 statement by BroadSpan, is attached hereto as Schedule 1.

4

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6

7 A. Yes, it does.

8

**BroadSpan Communications, Inc.<sup>1</sup>**

**Southwestern Bell Telephone Company<sup>2</sup>**

By: [Signature]

By: [Signature]

Title: PRESIDENT

Title: President-Industry Markets

Name: Richard Spawls  
(Print or Type)

Name: Larry B. Cooper  
(Print or Type)

Date: 3/23/99

Date: 3/26/99

The Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 1999 WL 24568 (U.S.). The Parties further acknowledge and agree that by executing this Amendment, neither Party waives any of its rights, remedies, or arguments with respect to such decision, including its rights under the intervening law clause of this Agreement, and any legal or equitable rights of review (including court reconsideration).

<sup>1</sup> BroadSpan makes the following unilateral statement in conjunction with its execution of this Agreement: On February 25, 1999, the Federal Communications Commission adopted an order declaring that existing agreements regarding the application of reciprocal compensation to ISP-bound traffic shall remain enforceable. The FCC also declared that state commissions may construe such agreements as applying such compensation to such traffic and in the absence of agreement may order the application of such compensation (or another compensation mechanism). BroadSpan has always maintained that ISP-bound traffic is subject to reciprocal compensation, under the original provisions of this Agreement and under the provisions added by this Amendment. Importantly, BroadSpan did not agree during negotiations (and does not presently agree) that the Parties would terminate ISP-bound traffic for each other without compensation under the rates, terms and conditions of this Agreement regarding reciprocal compensation.

<sup>2</sup> SWBT makes the following unilateral statement in conjunction with its execution of this Agreement: On February 25, 1999, the Federal Communications Commission adopted an order declaring that calls placed to a Internet Service Provider (ISP) do not terminate at the ISP's local server. The FCC also declared that such calls are jurisdictionally interstate. SWBT has always maintained that traffic originated by and passed to ISPs is not local and not subject to local reciprocal compensation. Importantly, SWBT did not agree during negotiations (and does not presently agree) that the local reciprocal compensation rates, terms, and conditions contained in this Agreement require reciprocal compensation for ISP traffic.

Brosler Schedule 1

03/17/99