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October 25, 2002

Secretary of the Commission  
Missouri Public Service Commission  
200 Madison, Suite 100  
St. Louis, Missouri 65101

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

OCT 28 2002

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

Missouri Public  
Service Commission

Dear Secretary of the Commission:

Enclosed please find for filing with your office an original and nine (9) copies of MCI metro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., MCI WorldCom Communications, Inc. and NuVox Communications of Missouri, Inc.'s Reply Brief. Upon your receipt, please file stamp the extra copy received and return to the undersigned in the enclosed, self-addressed, stamped envelope. Thank you.

Very truly yours,



Leland B. Curtis

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

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

OCT 28 2002

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Missouri Public  
Service Commission

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

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

**REPLY BRIEF**  
**OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC,**  
**BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC., AND**  
**MCI WORLDCOM COMMUNICATIONS, INC.**

COME NOW MCImetro Access Transmission Services, LLC; Brooks Fiber Communications of Missouri, Inc.; and MCI WorldCom Communications, Inc. (collectively "WorldCom") and reply to the Initial Brief of Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") as follows:<sup>1</sup>

**ARGUMENT**

I. **Background**

A. **List of Issues**

SWBT has failed to establish that its proposed winback and win tariffs are consistent with Missouri statutes pursuant to which it seeks approval. The absence of any Missouri case law to support its claim is most telling.

SWBT instead relies on self-serving, conclusory statements, irrelevant "evidence," and federal law that fail to meet its statutory burden. Missouri law requires that it establish its proposed tariffs do not provide the class of customers that would

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<sup>1</sup> For the convenience of the Commission, WorldCom responds in generally the same order as argued by SWBT, excluding the executive summary.

benefit from the proposed tariffs—solely end users who are currently CLEC customers: (1) a special rate or rebate for “doing a like and contemporaneous service . . . under the same or substantially the same circumstances and conditions as ineligible consumers” (Section 392.200.2 RSMo 2000) or (2) an undue and unreasonable preference (Section 392.200.3 RSMo 2000).

B. Winback and Win Tariffs

Both SWBT winback and win promotions—with availability only to CLEC customers—fail to meet the Section 392.200.2 and Section 392.200.3 requirements.

SWBT’s win class, itself discriminatory, is riddled with discrimination within the class. SWBT’s justification for the class is for no reason other than “it’s just a definition change” (Tr. 211 at l. 17-19). The win promotion is not available to residential customers (Tr. 315 at l. 15-23). At the business level, unlike winback end users, win customers need not all have been former SWBT consumers who migrated to CLECs. Although SWBT is uncertain, the win promotion appears available only to a select class of CLEC customers—those end users whose CLECs purchased facilities from SWBT (SWBT Brief at 7, but see Tr. 281-82 at l. 12-23<sup>2</sup>). Generally, SWBT’s rationale for the unavailability of the proposed promotions to *all* consumers is that “I don’t believe they’re similarly situated to the customer group that is identified for purposes of this tariff who

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<sup>2</sup> The transcript states as follows:

“Q. So if a CLEC is provisioning the business customer service over their own facilities, is that customer eligible for this winback promotion?”

“A. If the customer is in the same area, they’ve established service with a CLEC on a facilities bypass situation and wanted to take advantage of this tariff offering, they would -- they would be eligible for the nonrecurring charge waiver.

“Q. And that particular customer is not provisioned service in any way using Southwestern Bell underlying facilities?”

“A. That is correct.”

we intend to offer the tariffs to (Tr. 290 at l. 23-25).” SWBT provided no evidence supporting the witness’ “belief.”

Any alleged benefits to consumers cannot overcome the blatant and widespread discrimination between the classes that SWBT establishes between recipients of the proposed winback and win tariffs and those who are ineligible. The evidence shows that the installation of local service for ineligible residential and business consumers is the same as for those SWBT targets for the benefits of the proposed tariffs (Ex. 10, Kohl Rebuttal at 8, l. 5-7). Features for ineligible residential end users are installed no differently as those of eligible customers.

C. SWBT’s Residential Promotion NOT APPROVED Previously

With denial of the promotions to former residential customers with delinquent payment histories, SWBT segregates still another class of consumers. Former SWBT customers with past due bills and/or disconnected service are ineligible for the promotions, unless they make payment arrangements. (SWBT Brief at 9). Business customers with such payment histories are subject to the same disqualifications.

SWBT notes that, if its residential tariff is approved, it plans to refile the residential tariff and request that it remain effective for one year. (SWBT Brief at 8-9). SWBT further admits that it probably intends to refile the same promotion upon expiration of the one-year period, as this filing is a an extension of one that expired. (Tr. 404-05 at l. 16-5). SWBT’s promotion, thus, is effectively not a promotion; under such repetitive refiling conditions, the tariff becomes a regular rate, term, and condition for service installation charges—but available solely to former CLEC customers, rather than all customers shopping for service in a putative competitive market.

SWBT ignores the distinction between Commission approval of tariffs and tariffs going into effect by operation of law. Unlike the Commission-approved AT&T \$1.95 monthly interLATA service charge tariff that SWBT holds up for comparison purposes,<sup>3</sup> the Commission has not approved any SWBT winback tariffs in a contested proceeding. SWBT concedes the point (Tr. 329 at l. 22-24).

D. SWBT's Business Promotion NOT APPROVED Previously

Like the residential tariff, the business tariff raises the same concerns: (1) SWBT refiling the tariff upon expiration of the initial one-year period; and (2) the transformation of the promotional rates into permanent rates, terms, and conditions available only to former CLEC customers, rather than all customers.

As with the residential tariff, SWBT claims the Commission has approved similar business tariffs but concedes the Commission has not approved any winback tariffs in a contested proceeding (Tr. 329 at l. 22-24).

II. SWBT's Proposed Tariffs Are NOT In The Public Interest

A. All Customers Do Not Benefit From Lower Prices and Increased Options

SWBT claims the proposed tariffs are in the public interest, the standard required by Section 392.200.4 RSMo 2000, but seeks approval pursuant to Sections 392.200.2 and 392.200.3. (SWBT Brief at 14-15). SWBT's proposed tariffs cannot overcome the Section 392.200.2 and 392.200.3 requirements.

Section 392.200.2 prohibits any special rate or greater or less compensation "for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions." The tariffs propose to waive the nonrecurring charges (NRCs) for the installation of local service of returning

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<sup>3</sup> See footnote 5 at p. 11.

CLEC customers. The NRCs for service installation are the same NRCs that SWBT would charge non-CLEC customers, such as wireless-only consumers who sought to return to SWBT local service (Tr. 317 at l. 18-24) or SWBT customers who moved across the street within the same exchange (Tr. 319 at l. 6-15). SWBT's justification is that customers expect SWBT to also waive installation NRCs as do CLECs (SWBT Brief at 11). SWBT's rationale is equally applicable to non-CLEC customers, something that SWBT never addresses either with evidence of "differences" or with policy and/or legal argument.

Section 392.200.3 prohibits granting "any undue or unreasonable preference or advantage to any person . . . ." SWBT's proposed promotions unduly and unreasonably confer a preference and advantage on returning CLEC customers. Waiving local service and feature installation NRCs for CLEC customers results in a \$0.00 installation charge for these eligible customers and \$35-40 for ineligible residential customers (Tr. 107 at l. 1-5). Ineligible business customers pay \$52 (Tr. 107 at 6-9) or more, depending on the type of service at issue (Tr. 107 at l. 21-25).

SWBT claims that, absent the winback and win tariffs, SWBT appears "unresponsive and non-sensitive (sic) to the competitive forces of the marketplace" (SWBT Brief at 12). SWBT confuses the issue of responding to individual customers with an effective response in the competitive marketplace. The competitive marketplace consists of all customers—not segmentations that SWBT claims it can create at will. Contrary to SWBT's reading (Tr. 289-90 at l. 14-2), Missouri law intends to bring the benefits of competition to *all* customers and that LECs have the opportunity to price and

market telecommunications services to *all* prospective customers (392.200.4(2) RSMo 2000).

SWBT's reading of Section 392.200 is unreasonable as evident from its explanation at hearing regarding the classes that Missouri law theoretically permitted it to create. These classes included people living in brick houses or people having red hair or black skin (Tr. 417 at 3-7). On a more pointed note, but just as unreasonable, SWBT claims this Missouri law permits it to offer a package of specially priced features only to end users that are current SWBT customers and deny the package to customers currently with CLECs who might migrate to SWBT because of the availability of the specially priced features (Tr. 390 at 10-23).

SWBT's claim that the proposed tariffs create options is spurious and disingenuous. It states, "If customers are allowed to return to SWBT for local service without incurring a (sic) NRC, they have increased their options because they will be more likely to 'try' service from a CLEC." (SWBT Brief at 12).

Customers will try CLECs' services because, among other reasons, most CLECs, whose business plans permit, waive their installation NRCs across-the-board and not just to putative classes of customers. (Tr. 270 at 5-6). CLECs are always available as a provider option. If CLEC customers are dissatisfied enough with their providers' services they can migrate to other CLECs. But if they are dissatisfied sufficiently with CLECs' services as a whole, they will return to SWBT whether or not SWBT waives installation NRCs. SWBT's proposed NRC promotions simply "allow SWBT to selectively target its 'competitive response' to only the subset of customers being served by competitors or that are switching to a competitor (Ex. 10, Kohly Rebuttal at 4, l. 1-

3)”—i.e., serve as a means of raiding CLEC customer bases. CLECs do not need SWBT’s assistance under the guise of creating options.

B. SWBT’s Alleged Price Competition and Competitive Intensity

Again SWBT relies on the public interest standard that is required by Section 392.200.4 RSMo 200 but not Section 392.200.2 and 392.200.3. SWBT claims the proposed promotions create price competition and promote competitive intensity.

The winback offers, SWBT maintains, “encourage carriers to outbid each other for a customer’s business.” The obvious must be stated here: Most CLECs cannot outbid SWBT for a customer’s business when the SWBT promotion requires an installation charge of \$0.00, and the CLECs already charge \$0.00 for installation of their service. SWBT ballyhoos the availability of the promotion for resale (Ex. 4, Hughes Direct at 5, l. 20-22), but the practicality of how CLECs can benefit from the tariffs’ resale availability remains unknown (Tr. 578 at 19-25; Tr. 511 at l. 9-19). SWBT provided no insight. Availability for “resale” is a hollow offer, moreover, as most CLECs rely on unbundled network elements and/or own their facilities (Tr. 332-333 at 4-13).

For support of its competitive intensity justification, SWBT asserts the winback offers “increase the incentives for customers to leave SWBT to try a CLEC” and provides three reasons. (SWBT Brief at 13-14). SWBT’s argument stretches credulity. SWBT is devising reasons for customers to leave it? CLECs do not ask for or need SWBT’s assistance any more than the hens in the hen house need security assistance from the fox.

SWBT's claim that "only very rarely is [price cutting] detrimental to competition" (SWBT Brief at 13) is qualified by the Winback Order<sup>4</sup> of the Federal Communications Commission ("FCC") upon which SWBT relies as unqualified support for approval of its tariffs. Winback campaigns can promote competition and lower prices to consumers, but such "practices" can be condemned upon "a showing that they are truly predatory (Winback Order, ¶ 71)." The Winback Order expressly refers to "excessively low pricing and other exclusionary practices" and does not address predatory pricing (Winback Order, ¶ 71).

SWBT's winback is predatory because it targets the customers of CLECs (Ex. 10, Kohly Rebuttal at 4, l. 1-3). Its winbacks also are predatory because SWBT appears to use prohibited Customer Proprietary Network Information ("CPNI"). The FCC's Winback Order prohibits the use of such information:

We conclude that section 222 does not allow carriers to use CPNI to retain soon to-be former customers where the carrier gained notice of a customer's imminent cancellation of service through the provision of carrier-to-carrier service. We conclude that competition is harmed if *any* carrier uses carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns, and consequently prohibit such actions accordingly. Congress expressly protected carrier information in section 222(a) by creating a duty to protect the confidentiality of proprietary information of other carriers, including resellers. Section 222(b) restricts the use of such proprietary information and contains an outright prohibition against the use of such information for a carrier's own marketing efforts. As stated in the *CPNI Order*, Congress' goals of promoting competition and preserving customer privacy are furthered by protecting competitively-sensitive information of other carriers, including resellers and information service providers, from network providers that gain access to such information through their provision of wholesale services. (Winback Order at ¶76, footnotes omitted).

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<sup>4</sup> *In The Matter of Implementation Of The Telecommunications act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information, and Other Customer Information*, CC Docket No. 96-115; *Implementation Of The Non-Accounting Safeguards of Sections 271 and 272 Of The Communications Act Of 1934, As Amended*, CC Docket No. 96-149, Released September 3, 1999 (Winback Order).

### III. SWBT's Proposed Offers ARE Discriminatory

#### A. Tariffs Violate Sections 392.200.2 and 392.200.3

In a circular argument, SWBT claims consistency with Sections 392.200.2 and 392.200.3 because it claims the classes it creates are composed of similarly situated customers (SWBT Brief at 14). Its support is the pronouncement that tariffs offered to similarly situated customers are permissible, pursuant to Section 392.200.2, and, consistent with Section 392.200.3, do not provided any undue or unreasonable preference. It also claims compliance because of the Commission's approval of similar tariffs (SWBT Brief at 15). As noted above, the Commission has not approved any SWBT winback tariffs in a contested proceeding, a fact SWBT concedes (Tr. 329 at l. 22-24). Moreover, the Commission is not bound by stare decisis (Report and Order at 15, Case Nos. TT-2002-108 and TT-2002-130).

SWBT's citation to Section 392.200.4—that the intent of SB 507 is to bring the benefits of competition to all customers and to ensure LECs have the opportunity to price and market service to customers in any geographic area in which they compete—is irrelevant to approval of these tariffs pursuant to Sections 392.200.2 and 392.200.3. Even pursuant to Section 392.200.4(2), the proposed tariffs do not bring the benefits of competition to all customers (Section 392.200.4(2)). “Only a targeted subset of customers will benefit . . . .” (Ex. 7, Meisenheimer Rebuttal at 8, l. 6). SWBT targets the customers of its competitors and denies the promotions to similarly situated consumers.

#### B. SWBT Admits It Does Not Seek Section 392.200.4 Approval

SWBT advises it does not seek Section 392.200.4 approval, although it claims “[t]hey are also permissible” under that section. WorldCom disagrees that SWBT's

tariffs meet the Section 392.200.4 requirements. SWBT points out that this section provides for exchange-specific pricing, for example, call waiting at a special price in only St. Louis or an area smaller than an exchange. (SWBT Brief at 16). SWBT's proposed tariffs do not address exchange-specific pricing, which arguably the statute requires apply to *all* customers in the exchange.

C. Prior-Approved Tariffs Are Not Winback Promotions

The examples SWBT provides to support its position that the Commission has approved other tariffs that set up classes of customers are the types of classes that are permissible pursuant to Sections 392.200.2 and 392.200.3: residential versus business (SWBT Brief at 16) or urban versus rural users (SWBT Brief at 19). These examples are not winback tariffs, however, nor are these classifications without a rationale basis (State ex rel. De Paul Hospital v. PSC, 464 SW 2d. 737 (Mo App. 1970)). SWBT's proposed tariffs have no rationale basis for the undue and unreasonable preference that the proposed NRC installation waivers provide former CLEC customers but are denied non-CLEC customers.

SWBT expounds at length about WorldCom and AT&T tariffs that charge different rates to different customers (SWBT Brief at 17-19). WorldCom and AT&T do not seek approval of their tariffs in this proceeding; the Commission, moreover, has approved the AT&T tariff SWBT offers for comparison. SWBT claims that if the CLECs tariffs do not unlawfully discriminate between classes of customers, neither do

SWBT's proposed tariffs. The fallacy with SWBT's argument is that the tariff it uses for comparison established a rational basis for the difference in treatment.<sup>5</sup>

SWBT disputes the need to provide a cost justification for the difference in prices, claiming the Intervenors do not cite any authority (SWBT Brief at 18). Then it concedes “[c]ost differentiation is simply one of a number of factors that may be considered.” (*Id.*) As one of the factors that may be considered, SWBT failed to provide any evidence of any cost differences that might justify SWBT's discriminatory treatment. SWBT concedes that it cannot recoup the waived NRC from an end user who purchases “just basic residential service and nothing else from us, no toll, no features, no anything else . . . .” (Tr. 303 at l. 2-7).

In fact, SWBT explanation of some cost factors, such as availability of facilities and/or knowledge of SWBT products, fails under scrutiny. While all winback customers have received service from SWBT and SWBT “can be reasonably certain” facilities exist to the end user, by SWBT's own admission facilities apparently do not always exist—or SWBT would be definitively certain—and certainly such is not the case for win customers. Win customers have never had SWBT service (Tr. 253 at l. 10-16; Tr. 271 at l. 1-16) and, thus, have no knowledge of the SWBT services that allegedly facilitate provision of service to the CLEC customers that constitute SWBT's favored class. SWBT conveniently fails to address these discrepancies.

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<sup>5</sup> The Findings of Fact in Case No. TT-2002-129, *In the Matter of AT&T Communications of the Southwest Inc.'s Proposed Tariff to Establish a Monthly Instate Connection Fee and Surcharge*, state, “Because AT&T's proposed rate increase of \$1.95 applies only to a competitive service, consumers are free to obtain service from an alternative provider if they object to the rate. AT&T's proposed tariff sheets exempt low-income and low-volume users of telecommunications, which, if ‘discriminatory,’ is ‘reasonable discrimination’ as a matter of public policy.” Order Approving Tariff at 4.

D. Market Actions Cannot Overcome Offerings' Discrimination

At this section of its brief (SWBT Brief at 19-21), SWBT proposes several competitive markets—all unregulated—that SWBT suggests “the Commission should look to . . . for guidance as to whether a proposed tariff is unduly or unreasonably preferential or prejudicial (SWBT Brief at 19).” The suggested markets—cable TV service, computer software, magazine subscription, or Internet access—are all irrelevant to this proceeding for two reasons: (1) none of the markets sells its services pursuant to tariffs; and (2) none of the markets has oversight by a commission with statutory obligations as to those tariffs (392.200.1 RSMo 2000).

The long distance telecommunications market, which SWBT also raises (SWBT Brief at 20), is equally irrelevant as it, unlike the Missouri local market, *is* a competitive market with no one provider monopolizing the market. (Tr. 477 at l. 1-6; *see* also footnote 5).

E. Solely SWBT's Winback Tariffs Are At Issue

Assuming *arguendo* that Sections 392.200.2 and 392.200.3 apply to all telecommunications providers,<sup>6</sup> no tariffs except SWBT's are at issue in this proceeding. The proceeding was not noticed as addressing any issues that would apply to any party except SWBT. SWBT's arguments regarding the applicability of Sections 392.200.2 and 392.200.3 to all telecommunications providers and that the Commission “may not approve winback or win tariffs for any telecommunications company” (SWBT Brief at 22) are irrelevant to a determination of the two issues adopted by the Commission in this

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<sup>6</sup> SWBT relies on responses from WorldCom's Don Price to questions from SWBT counsel (Tr. at 465, l. 9-16). Mr. Price is not a lawyer, however, and SWBT's questions call for legal conclusions.

case: whether the Commission should approve SWBT's proposed residential and business tariffs.

F. Federal Law—Even If Similar—Is Not Applicable To Proposed Tariffs

Despite any similarities between the federal statutes and Missouri law, the Commission is required to approve or reject tariff filings pursuant to state law. (392.200.1 RSMo 2000).

IV. SWBT's Proposed Winback Tariffs ARE Anti-Competitive

A. Waiving Installation NRCs For CLEC Customers Will Harm Competition

SWBT's antitrust argument is a red herring that the Commission should ignore. It insists the only appropriate definition of anticompetitive must be a "recognized legal or economic definition of anticompetitive (SWBT Brief at 24)," further asserting that no party has presented credible evidence that its proposed offerings are anticompetitive (*Id.*).

Opponents of the proposed tariffs use the term "anticompetitive" in the ordinary sense of the word, as suggested by Commissioner Lumpe (Tr. 556 at 4-25): "discourage competition in a given marketplace (Ex. 6, Thomas Rebuttal at 6)." This definition is consistent with that in the Merriam Webster Dictionary: "Tending to reduce or discourage competition."<sup>7</sup> The American Heritage Dictionary of the English Language<sup>8</sup> similarly defines anticompetitive as "[t]hat discourages competition among businesses" and provides as an example "anticompetitive foreign trade restrictions."

B. Are SWBT's Tariffs Predatory?

Contrary to SWBT's allegations (SWBT Brief at 26-31), during the hearing no party—except SWBT—applied the term "predatory" in the economic definition of the

<sup>7</sup> Merriam Webster Dictionary at [www.m-w.com/home.htm](http://www.m-w.com/home.htm).

<sup>8</sup> American Heritage Dictionary of the English Language, Fourth Edition, 2000, at [www.bartleby.com/61/](http://www.bartleby.com/61/).

word to SWBT's proposed tariffs. Neither did they allege that SWBT engaged in predatory pricing (SWBT Brief at 26). Opponents of the offerings assert they are anticompetitive in the ordinary dictionary definition of anticompetitive. This SWBT argument is irrelevant.

C. FCC Qualifies Its Winback Comments

SWBT glosses over two critical qualifications of the FCC's Winback Order that SWBT quotes so extensively at this section of its brief (SWBT Brief at 31-32). The FCC, as a matter of policy (Tr. 441 at l. 1-4), notes that the use of CPNI for winbacks does not *per se* violate the section 201 of the Communications Act, as amended, nor the antitrust laws. It cautions of two conditions, however, that are at the heart of these tariffs:

Assuming incumbent LECs have sufficient market power to engage in predatory strategies, [1] they are constrained in their ability to raise and lower prices by our tariff rules and non-discrimination requirements. Because winback campaigns can promote competition and lower prices to consumers, we will not condemn such practices [2] absent a showing that they are truly predatory." (Winback Order, ¶ 71, numbers added.)

Consistent with Missouri—not federal law, this Commission is the constraint on the ability of this ILEC to revise its rates indiscriminately. Opponents have presented evidence that SWBT's segmentation is discriminatory and predatory, because they target solely the customers of CLECs, and threatens the fragile nature of the competitive Missouri local service marketplace. WorldCom has raised questions regarding SWBT's possible use of CPNI in its winback program. SWBT's economic expert agrees that backoffice activity could be harmful to competition and would require redress (Tr. 58 at 9-11, 18-19).

D. Winback Offerings Threaten Fragile State of CLEC Competition

SWBT's statistics for the increase in lost lines, E-911 listings, and UNE-P lines (SWBT Brief at 32-35) is countered by evidence that the total CLEC market share has declined from 15 percent, the figure used in last year's Docket To-2001-467, to a minimum 12 percent, the figure propounded by SWBT in this proceeding (Tr. 372 at l. 2-24).

That SWBT targets solely those providers it considers threaten its monopoly is evidenced by the fact that, although it decries the loss of customers to various providers including wireless carriers (SWBT Brief at 35), SWBT's proposed residential tariff is not available to former SWBT customers who migrated to wireless carriers (Tr. 317 at l. 18-24).

Despite testimony to the contrary, SWBT mischaracterizes "WCom's Neighborhood" plan as the lone available service (SWBT Brief at 36). Available also, for a monthly \$31.99 rate excluding taxes and surcharges, is the Neighborhood Choice which includes unlimited local calling, unlimited toll calling in the United States to other MCI end users, a seven cents per minute charge for all toll charges in the United States to non-MCI customers, and a number of vertical features (Tr 469 at l. 5-21). Like SWBT, WorldCom seeks to provide its customers a complete array of telecommunications services (Tr. 303 at l. 11-15).

The Commission's determination that the Missouri local market is open to CLECs and competition (SWBT Brief at 39-40) is not synonymous with the Missouri markets being competitive. The Commission has found that solely four Missouri markets are competitive. Effective competition exists in St. Louis and Kansas City exchanges for

business consumers and in the Harvester and St. Charles exchanges for residential customers. (Ex. 7, Meisenheimer Rebuttal at 8, l. 15-16; *Id.* at 10, l. 3-6; Tr. 296 at l. 15-20). In these markets, viable options to SWBT's monopoly service are available.

"If the local market were truly competitive, SWBT would be waiving the non-recurring installation charges for all new customers and not just former customers served by CLECs." (Ex. 10, Kohly Rebuttal at 18, l. 19-21).

### CONCLUSION

SWBT provides no credible evidence that its proposed class of current CLEC customers is a reasonable segmentation or that waiving the local service installation NRCs for CLEC customers but not non-CLEC customers does not violate Section 392.200.2 RSMo 2000 and Section 392.200.3 RSMo 2000. Its rationale for promoting competition by facilitating consumers' ability to try CLEC services is spurious and does not address the Section 392.200.2 and 392.200.3 standards that it must overcome for approval.

"SWBT's tariffs are designed to foreclose the normal operations of a competitive marketplace by allowing it to effectively stem market share losses." (Ex. 8, Price Rebuttal at 13, l. 17-18.)

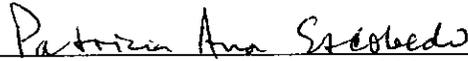
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#### Certificate of Service

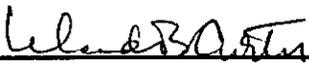
A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 28th day of October, 2002, by e-mail and by placing same in the U.S. Mail, postage paid.

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