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FILED³
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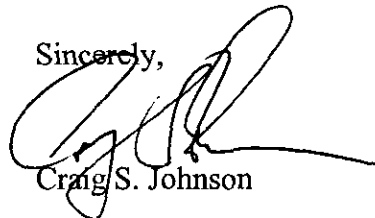
**Re: Mid-Missouri Tel Co v. Southwestern Bell Telephone Company
Case No.TC-2002-190**

Dear Secretary:

Enclosed please find an original and three (3) copies of the Response of Mid-Missouri Telephone Company to Staff's Final Investigation Report.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:tr

Enc.

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BEFORE THE
PUBLIC SERVICE COMMISSION OF MISSOURI

FILED³
NOV 25 2002

MID-MISSOURI TELEPHONE COMPANY,)

Missouri Public
Service Commission

Petitioner,)

vs.)

Case No. TC-2002-190

SOUTHWESTERN BELL TELEPHONE)
COMPANY,)

Respondent.)

**Response of Mid-Missouri Telephone Company
to Staff's Final Investigation Report**

Comes now Mid-Missouri Telephone Company and files the following response to Staff's Final Investigation Report of November 18, 2002. Mid-Missouri disagrees that any conclusions contained in Staff's Report are the result of any fair, thorough, final, or impartial analysis on Staff's part. Mid-Missouri disagrees that the activities described in Staff's report can be accurately characterized as an investigation. Mid-Missouri urges the Commission not to base any determinations on this supposed "investigation". Mid-Missouri requests that the report be rejected, that it not be considered by the Commission, that it not be accepted into evidence, that Staff not participate as a party at hearing, or alternatively that Staff's report be only accepted as part of the evidence to be reviewed at hearing.

Staff has failed to review over 16 months worth of Mid-Missouri switch data pertinent to the investigation Staff was to have conducted. All Staff has done is accept SWBT's unsubstantiated conclusions as to certain calls made within a single 24 hour

period occurring September 12, 2002. Staff's report is not "final", as it specifies further work has to be done to evaluate some calls included in the 24 hour period.

Mid-Missouri sets forth the following particulars:

SWBT's basis for suspending the procedural schedule was false.

1. This Complaint was filed on October 16, 2001. Mid-Missouri filed direct testimony on February 22, 2002. This testimony stated that, from May 17, 2001 SWBT had delivered traffic violating a prior Commission Order of July 18, 2000, and that the violation was ongoing. Mid-Missouri attached historical switch data summaries to this testimony as Schedules 3HC to 10HC.

2. In its March 18, 2002 Motions for Suspension and Access to Data, SWBT specified that it needed suspension of the procedural schedule and access to review Schedules 3HC to 10HC.

3. The Commission entered a March 28, 2002 Order granting SWBT's request to suspend the procedural schedule. That Order also directed Staff, which had enjoyed full access to the data attached to Mid-Missouri's direct testimony, to conduct an investigation to determine whether or not SWBT has Complied with the Commission's Order of July 18, 2000.

4. On July 9, 2002 the Commission entered an Order granting SWBT in-house employees access to the summary HC data attached to the February testimony.

5. In September of 2002 SWBT informed both Staff and Mid-Missouri that it could not investigate historical Mid-Missouri switch data, either summary data or individual call detail, even using its own in-house employees. Instead SWBT stated it needed to have its "business intelligence" recording systems turned on in order to make

its data recording contemporaneous with Mid-Missouri's switch recordings during some future period. As SWBT had no such data for the historical period then at issue, SWBT was unable to perform the investigation for which suspension of the procedural schedule was ordered.

6. Neither Staff nor SWBT have subsequently attempted to investigate the very data the Commission ordered investigated during the suspension of the procedural schedule. Staff's Report fails to inform the Commission that SWBT's original basis for suspension of the procedural schedule was false. Staff's Report fails to explain why Staff has not followed the Commission's' instruction to investigate Mid-Missouri's switch data. Staff's Report fails to explain if its conclusion in its Second Report—that prohibited traffic was being terminated by SWBT to Mid-Missouri—remains Staff's conclusion today.

Staff has not conducted an Investigation

7. In its Second investigation report of June 6, 2002, Staff stated it believed SWBT was delivering traffic in violation of the Order, but that Staff wanted the *historical* data attached to Mid-Missouri's testimony declassified for SWBT to review and analyze. The analysis Staff requested has not been performed. Staff has not received the analysis it requested in order to verify its initial conclusion that prohibited traffic was terminating. Yet in its Final Report Staff now states that a "preliminary" analysis of September 12, 2002 calls presents "no definitive evidence to support the complaint".

8. There exist unexplained internal contradictions between the Second and Final reports. Staff has not explained on what basis it originally believed SWBT had delivered traffic in violation of the Order. Staff has not explained if or why its opinion

regarding the historical data changed after its "preliminary" analysis of only 24 hours of data. Staff has failed to provide any analysis of the switch data Mid-Missouri provided or made available pertaining to the sixteen or more months preceding September 12, 2002.

9. In its Report Staff states that Mid-Missouri only submitted data suggesting 1509 calls in a single one-month (May 17, 2001 to June 15, 2001) were improperly terminated in violation of the Order. This statement was based on Mid-Missouri's direct testimony. This statement is not true. The direct testimony of David Jones pointed out 1509 calls which were merely *examples* of prohibited calls found in only *one* of the 8 months of data attached the direct testimony. There are many other calls from that same month that were also violations. There are many, many, many other calls from the other months that were also violations. Staff needed only to apply the same methodology set forth in Mr. Jones' direct testimony in order to accurately tabulate the prohibited calls. Alternatively, Staff could have requested Mid-Missouri to identify the other prohibited calls, or tabulate the total. Staff did neither.

10. On September 26, 2002, Mid-Missouri provided Staff with data specifically identifying approximately 1,100 prohibited calls for a *single month* being September 15, 2001 to October 16, 2001. This was a month completely separate from the month for which Mid-Missouri set forth 1509 sample prohibited calls. Just as with the sample month of data attached to the direct testimony, Staff failed to investigate the September to October, 2001 data provided by Mid-Missouri. Mid-Missouri offered to provide this same data for the other 16 months between May of 2001 and September of 2002 to Staff. Staff failed to request this data.

11. Instead of conducting its own investigation, Staff has apparently chosen only to review a limited analysis made by SWBT of limited data. In its Report Staff adopted SWBT's analysis of only 24 hours of data. But Staff has done so without reviewing SWBT's supposed "business intelligence" system for extracting data regarding calls, without reviewing the data extracted by SWBT, and without reviewing SWBT's supplemental in-house investigation into that call data.

12. Staff has failed to analyze, or attempt to analyze, over 16 months of data provided or offered by Mid Missouri. Perhaps Staff wishes its "investigation" to consist only of a recommendation to the Commission as to whose analysis *Staff* believes. Such would not constitute a thorough and impartial investigation that Mid-Missouri believes the Commission intended. Such would only set Staff up as a preliminary judge of the facts, a role Staff is unauthorized to have. It is up to the Commission, not to Staff, to determine the credibility or weight of competing evidence. There is no need or place in the hearing for Staff to assume the role of credibility judge. If Staff does not intend to testify as to the results of its own investigation, Staff should not be a party to this proceeding.

Staff has not attempted to be Impartial

13. Staff has not allowed Mid-Missouri participation in the Staff investigation. On April 25, 2002 Mid-Missouri requested to be kept abreast of Staff's investigation. Mid-Missouri offered to review information Staff received from SWBT. On May 3, 2001 Staff informed Mid-Missouri that Staff needed to discuss the alleged traffic violations with SWBT. On June 6, after Staff's second report was filed, Mid-Missouri again offered to meet with Staff to discuss any analysis of data performed by SWBT. On

July 16, Mid-Missouri again offered to meet with both Staff and SWBT in order to have input into Staff's investigation. Staff did not provide Mid-Missouri with the limited participation Mid-Missouri requested.

14. In contrast, Staff has allowed extensive participation by SWBT in Staff's investigation. Staff and SWBT have had meetings and discussions regarding SWBT's analysis of Mid-Missouri switch data. Staff and SWBT have both reviewed and discussed Mid-Missouri's switch data. Staff has adopted SWBT's critique of Mid-Missouri data without review of SWBT's data extraction systems, SWBT's data, or SWBT's external investigation of the call information SWBT's systems apparently extracted.

15. On September 9 Staff conducted a conference call with SWBT and Mid-Missouri. Although Staff and SWBT had had discussions regarding SWBT's investigation prior to this call, Mid-Missouri had not been allowed to participate. Mid-Missouri was not notified of the subjects of the call in advance, and was not aware of the reason for the call.

16. During the call, SWBT informed that it could not evaluate the summary data, that it needed individual call detail, but that it could not evaluate *historical* call information, even individual call detail. Instead SWBT requested that Mid-Missouri separately record a future 24 period during which SWBT would turn on its "business intelligence" recording.

17. On September 10 Mid-Missouri offered to provide the 24 hour period data. Contrary to the statement in Staff's report, this single 24 hour's worth of data was

not agreed to be provided by Mid- Missouri in order to “resolve the dispute”. Staff’s statement to that effect is incredible.

18. The Order Mid-Missouri contends was violated was entered in July of 2000, over 2 years ago. SWBT’s obligation to comply has been and remains continuing. It has existed for over 26 months. SWBT and Staff know that SWBT does not possess the data to disprove the call violations contained in Mid-Missouri’s switch data for the entire period prior to September 12. Mid-Missouri nevertheless offered to provide data for the 24 hour period because it was relevant to the Complaint, discoverable, and the failure to provide the data SWBT requested could result in more delay.

19. It is extremely one-sided for Staff to suggest that it has conducted an investigation consisting of merely adopting SWBT’s unsubstantiated analysis of a single day’s worth of data that SWBT specially requested because it was *unable* to investigate the 800 preceding days.

20. In fact Mid-Missouri sent to SWBT and Staff correspondence in which Mid-Missouri specifically setting forth that by providing the September 12 data requested by SWBT “Mid-Missouri does not agree that reviewing the data from some future period would constitute the appropriate investigation in this case.” Further, during an October 2 conference call between Mid-Missouri, SWBT, and Staff, Staff agreed that the data for the 24 hour period was *not* to be considered review of all data relevant to the complaint.

21. Given this history, Staff’s intimation that the September 12 data was agreed to be provided in order to “resolve the dispute” is grossly inaccurate and biased.

22. On September 26 and 27, 2002, Mid-Missouri provided Staff and SWBT with data specifically identifying approximately 1,100 prohibited calls for a single month

being September 15, 2001 to October 16, 2001. Mid-Missouri subsequently offered to provide this same data for the other 15 or more months. Staff and SWBT failed to analyze the single month of provided data. Staff and SWBT failed to request the additional 15 months' of data offered.

23. On October 29, Mid-Missouri provided SWBT with data regarding approximately 35 calls violating another category of prohibited calls made during the September 12 24 hour data period. SWBT has thus far failed to analyze this data. Staff thus far has failed to address this data.

24. On October 29, Mid-Missouri requested from SWBT the actual data output from its "business intelligence" system during the September 12 24 hour period. Mid-Missouri also requested the information SWBT obtained externally during its in-house investigation of the calls. To Mid-Missouri's knowledge, Staff has failed to request or obtain this information from SWBT.

25. On the one hand Staff refused to evaluate Mid-Missouri switch data provided to Staff, and refused to accept Mid-Missouri's analysis of this data, even when SWBT has admitted it cannot disprove Mid-Missouri's analysis. On the other hand Staff has tentatively accepted SWBT's analysis of a mere 24 hours worth of data without reviewing the data itself, or SWBT's external investigation of individual calls, even though Mid-Missouri is attempting to refute same. Then Staff attempts to bootstrap SWBT's uncorroborated analysis of a single day's worth of data into an agreement for resolution of the dispute.

26. Staff appears willing to accept SWBT's identification of a call as being wireless-originated, without any substantiation. Yet Staff refuses to accept as industry

standard SS7 information captured and provided by Mid-Missouri's switch identifying the traffic as landline originated.

27. Staff's actions do not comport with the actions of a fair or impartial investigation.

Staff's "final" report is not truly final

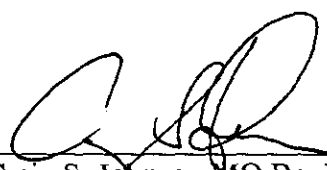
28. In Staff's report its mentions that it anticipates "final" conclusions will be reached when testimony is filed in this proceeding. Staff's report also specifies that other information, if available, must be reviewed. Staff's report concludes by saying the report is an investigation "to date".

29. Further, Staff's "final" report indicates that, accepting SWBT's description of some calls as being originated by landline customers, and call forwarded by wireless customers, there remains a question of whether such calls are wireless originated or landline originated. It is apparent to Mid-Missouri that such calls are landline originated, consistent with historical treatment of such calls. However, even by the terms of Staff's "final" report, further evaluation must be done.

WHEREFORE, on the basis of the foregoing, Mid-Missouri requests that Staff's report be rejected, that it not be accepted into evidence, that Staff not participate as a party at hearing, or alternatively that if Staff's report is accepted into evidence, that it be accepted only as part of the evidence to be reviewed at hearing.

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By


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ATTORNEYS FOR Mid-Missouri Tel. Co.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 25 day of November, 2002, to all attorneys of record in this proceeding.


Craig S. Johnson MO Bar No. 28179