

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
C.F. COMMUNICATIONS CORP., *et al.*,
Complainants,
VS.
CENTURY TELEPHONE OF WISCONSIN
INC. *et al.*,
Defendants.

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EB Docket No. 01-99
File No. E-93-49

**TO: Arthur I. Steinberg, Administrative Law Judge
Federal Communications Commission, 445 12th Street, S.W., Room 1-C861,
Washington, DC 20554**

**DEFENDANT SOUTHWESTERN BELL TELEPHONE COMPANY'S
MOTION TO DISMISS CASE OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY**

Southwestern Bell Telephone Company (Southwestern Bell) files this motion requesting an order dismissing Complainant's case for failure to file answers to "Defendant Southwestern Bell Telephone Company's First Set of Interrogatories to Complainant" (Discovery) or, in the alternative, an order compelling Complainant Millicom Services Company to respond to Southwestern Bell's Discovery, showing as follows:

FACTS

1. On June 13, 2001, Southwestern Bell served Complainant with Discovery. A true and correct copy of that Discovery is attached at Exhibit A. Discovery was due on or before June 27, 2001.
2. On several occasions, Complainant's attorney, Charles V. Mehler III, inquired about an extension of time, and counsel for Southwestern Bell indicated that it was amenable to an extension and he invited counsel to contact him about formalizing the request.

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3. With the end of discovery looming (August 3) and proposed pending depositions,¹ Southwestern Bell was forced to demand that Complainant provide its responses straight away when Complainant's repeated promises of answers did not materialize. On July 17, 2001, counsel for Southwestern Bell, William A. Brown, called Complainant's attorney, Mehler, and advised that, Southwestern Bell would be forced to seek a order compelling discovery if Complainant failed to respond to Southwestern Bell's interrogatories on Tuesday, July 17, 2001. Counsel for Southwestern Bell asked Mehler to call him as soon as possible to discuss.

4. On Tuesday, July 17, 2001, in the afternoon, Mehler called Brown to discuss his call. Mehler advised that the responses were not yet complete but that Complainant would provide as much of the response as it had "first thing in the morning," which Brown understood to mean at least before noon on July 18, 2001 if not earlier. As of the date and time of this motion, Complainant has failed to provide any answers to Southwestern Bell's Discovery.

5. The time for Complainant to assert any objections to Southwestern Bell's Discovery has passed and there are no grounds upon which Complainant can oppose Southwestern Bell's legitimate discovery in this case.

6. Complainant has completely and without exception refused to provide any answers to Southwestern Bell's Discovery.

WHEREFORE, Southwestern Bell requests that an order be entered dismissing Complainant's case for damages with prejudice or, in the alternative, directing Complainant to fully respond and answer all of Southwestern Bell's Discovery within a date certain. Should the case not be dismissed, then Southwestern Bell would request that the order compelling discovery direct that the time for discovery in this case be extended from August 3, 2001 to and including

¹ There are numerous motions pending concerning discovery in this case. Among them, Southwestern Bell has filed motion seeking to quash Complainant's Notices of Deposition. Southwestern Bell has also filed a Motion for Summary Decision.

August 24, 2001, to allow Southwestern Bell sufficient time to make use of the discovery responses provided.

Respectfully submitted,

SOUTHWESTERN BELL
TELEPHONE COMPANY

Dated: July 18th, 2001

By: 
William A. Brown

William A. Brown
Davida M. Grant
SBC Telecommunications, Inc.
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Its Attorneys

CERTIFICATE OF SERVICE

I, William A. Brown, the undersigned attorney of record, do hereby certify that I have caused copies of the foregoing "**DEFENDANT SOUTHWESTERN BELL TELEPHONE COMPANY'S MOTION TO DISMISS CASE OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY**" to be served in accordance with 47 C.F.R. § 1.735(f) via hand delivery or via facsimile transmission, followed by regular U.S. mail delivery, postage prepaid, this *8th* day of July, 2001, to each of the following persons:

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554
Via Hand Delivery

Arthur I. Steinberg, Administrative Law Judge
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William A. Brown

3. "Identify" or "identity" when used in reference to a document, data compilation, or other tangible thing means to give a sufficient description to satisfy an information designation for documents, data compilation, and tangible things set out in Commission Rule 1.721(a)(10)(ii). If such information is not available, you should give some other means of identifying it and its present location, and the identity of each person presently having possession, custody or control of the document, data compilation, or other tangible thing or any copies thereof.
4. "Identify" or "identity" when used in reference to a natural person means providing sufficient information to facilitate and effectuate the identification and location of that person. At a minimum, this information should be sufficient to satisfy an information designation for persons with firsthand knowledge set out in Commission Rule 1.721(a)(10)(i).
5. "You" or "your" or "Complainant" and any synonyms thereof refer to the Complainant named in this matter, to any other persons or entities whatsoever who claim a right to damages from the defendant in the above-referenced formal complaint case in the place of the Complainant named in this matter, and their agents, employees, servants, and legal representatives, as well as any affiliated or subsidiary companies and successors and assigns.
6. If copies of documents, data compilations, or other tangible things are supplied in lieu of any answers, the copies must be complete, with no portions deleted during copying or otherwise, fully legible, and must be specifically identified with the interrogatory number for which the copies are being supplied.
7. The terms "information," "facts," and "circumstances" are not limited to information that is or may be admissible in evidence or that is based on personal knowledge.
8. When used in these interrogatories, the terms "documents," "data compilations," and "tangible things" are intended to and shall embrace and include everything that is included in the meaning of those terms as those terms are used in the Commission's Rules. In any case, such terms do not mean any less than the terms "documents" and "tangible things" as used in Fed. R. Civ. P. 34.

9. The terms "Defendant" or "Southwestern Bell" or "SWBT" and any synonyms thereof refer to Southwestern Bell Telephone Company, to SBC Communications Inc., to any of its subsidiary corporations, and to their directors, officers, agents, attorneys, employees, servants and legal representatives.
10. As used in these interrogatories, the term "EUCL" shall mean "End User Common Line charge" that you claim was wrongfully assessed and/or for which you seek damages in this formal complaint case.
11. As used in these interrogatories, the term "public payphone" means "[a] pay telephone . . . used to provide public telephone service when a public need exists, such as at 'an airport lobby, at the option of the telephone company and with the agreement of the owner of the property on which the phone is placed.'" See, *Hearing Designation Order*, DA 01-1044, ¶ 4 (rel. April 24, 2001) (*HOrder*), citing *MTS and WATS Market Structure*, Order on Reconsideration, 97 FCC 2d 682, 704, n.41 (1983) ("*First Reconsideration Order*").
12. As used in these interrogatories, the term "semi-public payphone" means "[a] pay telephone . . . used to provide semi-public telephone service when there is a combination of general public and specific customer need for the service, such as at a gasoline station or pizza parlor." See, *HOrder*, ¶ 4.
13. The term "LEC" means local exchange carrier.
14. The terms "Commission" and "FCC" mean the Federal Communications Commission.
15. Unless otherwise expressly stated in the interrogatory, the relevant time period for these interrogatories is from and including the earliest date on which you seek to recover damages in this formal complaint case through and including the present.

II. Instructions

1. Where answers to the interrogatories are supplied upon information and belief, please so state and specifically identify and describe all sources of such information and belief. If you are unable to answer any interrogatory or any portion thereof either by actual knowledge or upon

information and belief, please state so and describe in detail your efforts to obtain such knowledge or information.

2. If you object to any interrogatory on any ground, please set forth all reasons therefor, including a detailed statement of the factual basis for any claim of privilege.
3. Each requested document, data compilation, and other tangible thing is to be produced in its original form (along with all drafts thereof) in its entirety, without abbreviation or expurgation. Documents, data compilations, and tangible things shall be produced as they are kept in the usual course of business, or organized and labeled to correspond with the individual interrogatory by which identification or production is sought.
4. These interrogatories shall be deemed continuing, so as to require you to supplement answers with additional information that you acquire after the date of your original responses.
5. Every answer, objection, or other response to any interrogatory must be preceded by the question or request to which the response pertains.

III. Interrogatories

1. Please give the following:

- (a) the identity of the person or persons answering these interrogatories;
- (b) the identify of all persons consulted in answering these interrogatories, including the individual number or numbers of interrogatories as designated herein with regard to which each such person was consulted.

ANSWER:

2. (a) Please state your full legal name or names, as well as any aliases, trade names, or other DBAs (names under which you do business); and,
- (b) if a natural person or persons, please state your complete street address, telephone number, and Social Security Number; or
- (c) if a business entity or entities, please state the complete business street address and main telephone number for your principal place of business.

ANSWER:

3. In its Complaint filed with the FCC in this formal complaint case, Millicom Services Company asserted that it was “a New York partnership with its principal place of business at 555 63rd Street, Brooklyn, New York 11220” With respect to that allegation, please identify all of the partners of Millicom Services Company and, with each individual partner, please provide the following:

(a) If a natural person, the identity of that person;

(b) If a legal entity, the identity of that entity and

(1) If all or some of the partners are corporations, then for each such partner the state of incorporation, its principal place of business, and the identity of its principal officers (president, secretary, and treasurer);

(2) If all or some of the partners are other partnerships, then the identity of each partner in each such partnership.

ANSWER:

4. In its Complaint filed with the FCC in this formal complaint case, Millicom Services Company asserted that it was “the successor in interest to Millicom Telecommunications Services, Inc., who provided independent public payphones in defendant’s territory,” With respect to this allegation, please state all facts, information, and circumstances by which Millicom Services Company became the “successor in interest to Millicom Telecommunications Services, Inc.”

ANSWER:

5. If you are a corporation or corporations, please state:

(a) State of incorporation;

(b) Date of incorporation;

(c) The identity of the president, secretary, treasurer, and agent for service of process.

ANSWER:

6. If you are a partnership, please:

(a) Identify all the partners;

(b) State the name of the state whose laws govern the partnership; and

(c) State whether there is a written partnership agreement governing the partnership.

ANSWER:

7. If you contend that the present Complainant is "New York City Telecommunications Company, Inc." (NYCTC) then please state the following:

(a) All facts, information, and circumstances that you believe support or tend to support your contention that NYCTC is entitled to assert claims for damages in this formal complaint case for or in the place of Millicom Services Company;

(b) The identity of all persons with knowledge of any such facts, information, and circumstances;

(c) The identity of all documents and/or tangible things that support or tend to support your contention that NYCTC is entitled to assert claims for damages in this formal complaint case in the place of Millicom Services Company.

ANSWER:

8. If you contend that the present Complainant is "New York Telecommunications" (NYT) then please state the following:

(a) All facts, information, and circumstances that you believe support or tend to support your contention that NYT is entitled to assert claims for damages in this formal complaint case for or in the place of Millicom Services Company;

(b) The identity of all persons with knowledge of any such facts, information, and circumstances;

(c) The identity of all documents and/or tangible things that support or tend to support your contention that NYT is entitled to assert claims for damages in this formal complaint case in the place of Millicom Services Company.

ANSWER:

9. With respect to your claim for damages in this formal complaint case, please identify each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge, providing, among other things, the name, address, and position of each such individual. *See, Commission Rule 1.721(a)(10)(i).*

ANSWER:

10. With respect to your claim for damages in this formal complaint case, please provide a description of all documents, data compilations, and tangible things in your possession, custody, or control, that are relevant to that claim. Such description shall include for each document:

- (a) The date it was prepared, mailed, transmitted, or otherwise disseminated;
- (b) The author, preparer, or other source;
- (c) The recipient(s) or intended recipient(s);
- (d) Its physical location; and
- (e) A description of its relevance to the matters contained in the complaint. *See,*

Commission Rule 1.721(a)(10)(ii).

ANSWER:

11. (a) Please provide either a computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; (b) or an explanation of the information not in your possession that is necessary to develop a detailed computation of damages; why such information is unavailable to the complaining party; the factual basis the complainant has for believing that such evidence of damages exists; and a detailed outline of the methodology that would be used to create a computation of damages with such evidence. *See, Commission Rule 1.722(c).*

ANSWER:

12. Please disclose the identity of each and every person who may be used at the hearing or otherwise in this formal complaint case to present evidence in any format under Fed.R.Evid. 702, 703, or 705 (e.g., any and all expert witnesses) and, with respect to each one individually, please provide the following:

- (a) a complete statement of all opinions to be expressed and the basis and reasons therefor;
- (b) the data or other information considered by the witness in forming those opinions;
- (c) any exhibits to be used as a summary of or support for those opinions;
- (d) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- (e) the compensation to be paid for any study and for the testimony of the witness; and
- (f) a listing of any other cases in which the witness has testified at trial or by deposition within the preceding four years. *See, Fed.R.Civ. P. 26(a)(2).*

N.B.: In addition to any witness who has been retained or specially employed to provide expert testimony in this matter, such persons shall include any present or former employees of the Complainant whose duties as an employee of the Complainant either regularly involved or do regularly involve giving expert testimony.

ANSWER:

13. Please identify each and every payphone for which you contend that an EUCL charge was unlawfully assessed by Southwestern Bell and, with respect to each such payphone individually, please provide the following information:

- (a) The telephone number assigned to that phone;
- (b) The location of that phone;
- (c) The identity of the premises owner where the phone was located;
- (d) Whether you contend the phone was a "public payphone" or a "semi-public payphone," stating the facts, information and circumstances that you contend support or tend to support your assertion;
- (e) The date of installation and, if applicable, discontinuance of service to that payphone by Southwestern Bell.

ANSWER:

14. Please describe your relationship to and/or business dealings with the following entities, including, but not limited to, any dealings with them at any time from and including November 1990 through the present:

- (a) Millicom, Inc.;
- (b) Cointel Communications, Inc.
- (c) Peoples Telephone Company, Inc.
- (d) Millicom Telecommunications Service
- (e) ETS Payphones, Inc.
- (f) New York City Telecommunications Company, Inc.
- (g) New York Telecommunications.

ANSWER:

15. For the period from and including November 1, 1990 through and including April 30, 1997, please identify each and every person or entity that owned pay telephone equipment in Texas and/or purchased telephone service from Southwestern Bell for the provisioning of pay telephone service for whom or on whose behalf you seek to recover damages against Southwestern Bell in this formal complaint case, giving the applicable periods of ownership and/or purchase for each such person or entity.

ANSWER:

16. With respect to your allegation that Millicom Services Company had “approximately 200 IPP stations in the State of Texas” (*see, Complaint, p. 3*), please state whether the same IPP stations were sold to Peoples Telephone Company, Inc. and, if so, the date of that sale.

ANSWER:

17. By letter addressed to Mr. Charles Scharnberg, dated September 20, 2000, your attorney, Charles V. Mehler, III, advised defendant that your “revised estimate of EUCL charges imposed by SBC [presumably Southwestern Bell] on New York Telecommunications (Millicom)” was \$120,708.13. With respect to this assertion, please:

(a) state whether this figure is still your current, best estimate of the EUCL charges assessed by SWBT and, if not, what the new figure is; and

(b) give all facts, circumstances, and information supporting your claim of the total amount of EUCLs assessed by SWBT, explaining how this figure was arrived at.

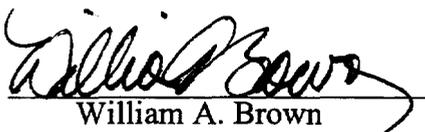
ANSWER:

18. In your attorney's letter of September 20, 2000, addressed to Mr. Charles Scharnberg, attorney for Southwestern Bell, you were identified as "New York Telecommunications" and in your attorney's letter to Judge Arthur I. Steinberg, dated June 1, 2001, you were identified as "New York City Telecommunications Company, Inc." With respect to these two letters, please whether you are "New York Telecommunications" or "New York City Telecommunications Company, Inc." or whether you have any other legal or trade names or names under which you do or have done business (DBAs).

ANSWER:

SOUTHWESTERN BELL
TELEPHONE COMPANY

Dated: June 13, 2001

By: 
William A. Brown

William A. Brown
Davida M. Grant

SBC Telecommunications, Inc.
1401 I Street, N.W., Suite 1100
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(202) 326-8904 — Voice
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Its Attorneys

CERTIFICATE OF SERVICE

I, William A. Brown, the undersigned attorney of record, do hereby certify that I have caused copies of the foregoing "**DEFENDANT SOUTHWESTERN BELL TELEPHONE COMPANY'S FIRST SET OF INTERROGATORIES TO COMPLAINANT**" to be served in accordance with 47 C.F.R. § 1.735(f) via hand delivery or via facsimile transmission, followed by regular U.S. mail delivery, postage prepaid, this 3 day of June, 2001, to each of the following persons:

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Federal Communications Commission
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Washington, DC 20554
Via Hand Delivery

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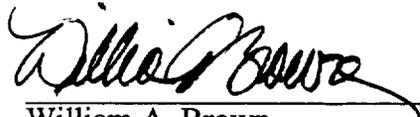
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