

case, Complainant would have had the burden of advising Defendant, the Bureau, and the Administrative Law Judge of the following information:

(h) In all cases in which recovery of damages is sought, it shall be the responsibility of the complainant to include, within either the complaint or supplemental complaint for damages filed in accordance with paragraph (e) of this section, either:

(1) 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; or

(2) an explanation of:

(i) the information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(ii) why such information is unavailable to the complaining party;

(iii) the factual basis the complainant has for believing that such evidence of damages exist;

(iv) a detailed outline of the methodology that would be used to create a computation of damages with such evidence.²

In its motion, Complainant ought to at least be held to the standard set out in the Commission's own rules and explain why such information is unavailable to it.

More importantly, however, Defendant's motion is not based on information or data in some telephone company cache. It came either from Complainant's own pleading (its Complaint) or other public records. Complainant should have at hand the information, or access to the information, necessary to address Defendant's Motion for Summary Decision.

Complainant claims that Defendant would not be prejudiced by the extension. It is simply untrue. Presently, Complainant has served the following 168 discovery requests, not counting subparts, on Defendant:

- First Set of Interrogatories: 35 interrogatories (not counting subparts);
- First Set of Requests for Production: 29 requests;

² Commission Rule § 1.722 (47 C.F.R. § 1.722).

- Second Set of Interrogatories: 35 interrogatories (not counting subparts);
- Second Set of Requests for Production: 18 requests;
- Requests for Admission: 51 requests.

In addition, although presently suspended, Complainant has two notices to depose Defendants corporate representatives on numerous topics. This discovery presents real costs to Defendant in terms of time, manpower, and effort — all of which translate into non-recoverable expenses. Indeed, Defendant's efforts to get reasonable limits on discovery in this case was recently rebuffed with the notation that

It would be more appropriate to address this argument in connection with Southwestern Bell Telephone Company's Motion for Summary Decision and Brief in Support Thereof, filed on July 17, 2001, by SWBT. Suffice it to say, however, that this contention, made at this juncture of the case, provides no legitimate basis for objecting to otherwise proper discovery requests."³

In short, in the face of judicial admissions by Complainant and without a shred of explanation or evidence, Complainant seeks to continue to force Defendant to spend thousands of dollars responding to worthless discovery requests. This constitutes real prejudice.

Defendant will not re-argue its Motion for Summary Decision here. But it should be enough to say that the motion is hardly frivolous and that, before Defendant is put to the task of responding to useless discovery requests, Complainant should be compelled to explain why it claims thousands of dollars in damages, from 1987 through 1997, when it admits that it did not pay EUCL charges during the recovery period and in fact sold its payphone assets to a third party in 1992, four months before it filed its formal complaint.

³ *In the Matter of C. F. Communications Corp., et al. v. Century Telephone of Wisconsin, Inc., et al.*, EB Docket No. 01-99, File No. E-93-49, *Memorandum Opinion and Order*, FCC 01M-25, footnote 1 (rel. July 25, 2001).

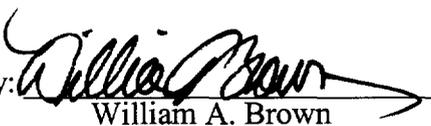
Conclusion

Complainant has not shown itself to be entitled to the relief it seeks in its motion and ought to be held to the requirements of the Commission Rules pertaining to motions for summary decision. Defendant respectfully requests that Complainant's motion be denied.

Respectfully submitted,

SOUTHWESTERN BELL
TELEPHONE COMPANY

Dated: July 27, 2001

By: 
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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 FOR SUMMARY DECISION AND BRIEF IN SUPPORT THEREOF**” 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 27 day of July, 2001, to each of the following persons:

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Washington, DC 20554
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