

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

BPS Telephone Company, Cass County Telephone	)	
Company, Citizens Telephone Company of	)	
Higginsville, Missouri, Craw-Kan Telephone	)	
Cooperative, Inc., Fidelity Communications	)	
Services I, Inc., Fidelity Telephone Company,	)	
Grand River Mutual Telephone Corporation,	)	
Green Hills Telephone Corporation, Holway	)	
Telephone Company, Iamo Telephone Company,	)	
Kingdom Telephone Company, K.L.M. Telephone	)	
Company, Lathrop Telephone Company and	)	
Mark Twain Rural Telephone Company,	)	Case No. TC-2002-1077
	)	
Complainants,	)	
	)	
vs.	)	
	)	
VoiceStream Wireless Corporation, Western	)	
Wireless Corporation and Southwestern Bell	)	
Telephone Company,	)	
	)	
Respondents.	)	

**SBC MISSOURI'S REPLY BRIEF**

SBC Missouri<sup>1</sup> respectfully submits this Reply to certain claims Complainants<sup>2</sup> make in their Initial Brief.<sup>3</sup> As explained below, Complainants have failed to establish that SBC Missouri has any liability in this proceeding. SBC Missouri therefore renews its request that the Missouri

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri." References to Southwestern Bell Telephone Company, the predecessor of Southwestern Bell Telephone, L.P., will be to "SWBT."

<sup>2</sup> Petitioners in this case consist of BPS Telephone Company, Cass County Telephone, Citizens Telephone Company of Higginsville, Mo., Inc., Craw-Kan Telephone Cooperative, Inc., Fidelity Communications Services I, Inc., Fidelity Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, K.L.M. Telephone Company, Lathrop Telephone Company and Mark Twain Rural Telephone Company. They will be referred to in this Brief as "Complainants."

<sup>3</sup> Matters not addressed in this Reply have already been adequately addressed in SBC Missouri's Initial Brief and will not be repeated here.

Public Service Commission (“Commission”) dismiss or deny all of Complainants’ claims against SBC Missouri.

### **ISSUES PRESENTED TO THE COMMISSION**

- 9. Has SWBT violated the terms of its Commission-approved interconnection agreements with VoiceStream and Western Wireless by allowing them to transit wireless-originated traffic to Complainants in the absence of a compensation or interconnection agreement?**

Complainants have failed to establish that SBC Missouri has violated any term of its Commission-approved interconnection agreements with either VoiceStream or Western Wireless. In an attempt to impose liability on SBC Missouri, Complainants merely point to isolated language in Section 3.1.3 of the SWBT interconnection agreements with VoiceStream and with Western Wireless and claim that:

Respondent SWBT has violated the terms of its Commission-approved interconnection agreements with VoiceStream and Western Wireless by allowing them to transit wireless-originated traffic to Complainants in the absence of an agreement . . . Respondents agree to “enter into their own agreements with Third Party Providers,” but SWBT, VoiceStream and Western Wireless have not done so. Instead, they have delivered wireless-originated traffic to Complainants’ exchanges and failed to pay for it.<sup>4</sup>

But Section 3.1.3 imposes no duty on SBC Missouri to block wireless originated traffic from transiting its network when the originating wireless carrier fails to compensate the terminating company. The full text of Section 3.1.3, quoted below, shows that it only sets out one party’s responsibilities when it transits traffic through the other party’s network:

Carrier and SWBT shall compensate each other for traffic that transits their respective systems to any Third-Party Provider, as specified in Appendix PRICING. The Parties agree to enter into their own agreements with Third-Party Providers. In the event that Carrier sends traffic through SWBT’s network to a Third-Party Provider with whom Carrier does not have a traffic interchange

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<sup>4</sup> Complainants’ Initial Brief, p. 15.

agreement, then Carrier agrees to indemnify SWBT for any termination charges rendered by a Third-Party Provider for such traffic.<sup>5</sup>

Complainants are also incorrect in their assertion that this section imposes a duty on SBC Missouri to enter into an agreement with them under the facts in this case. It is undisputed that the only traffic at issue in this case is traffic that VoiceStream and Western Wireless originated and transited through SBC Missouri's network.<sup>6</sup> No party even claims that SBC Missouri transits traffic through either VoiceStream or Western Wireless. As SBC Missouri sends no transit traffic through these carriers, the cited contractual language imposes no obligation on SBC Missouri to enter into traffic termination arrangements with third-party carriers like Complainants.

Finally, as is evident from the contractual language itself, the indemnity in Section 3.1.3 imposes no additional contract duties or obligations on SBC Missouri. In fact, it does just the opposite. It attempts to provide some measure of protection to SBC Missouri when it serves as a transit carrier. And contrary to Complainants' claims, the language they quote from the Commission's Order Approving Interconnection Agreement merely recites the fact that SBC Missouri has a right to indemnification from the originating carrier:

With respect to Third Party-Providers, Western and SWBT agree to compensate each other for traffic that transits their respective systems to any Third-Party Provider. The parties also agree to enter into their own agreements with Third-Party Providers. In the event that Western sends traffic through SWBT's network to a Third-Party Provider with whom Western does not have an interconnection agreement, Western will indemnify SWBT for any termination charges rendered by a Third-Party Provider for such traffic.<sup>7</sup>

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<sup>5</sup> See, Section 3.1.3 of the interconnection agreement between SWBT and VoiceStream, approved in Case No. TO-2001-489; and interconnection agreement between SWBT and Western Wireless, approved in Case No. TO-98-12, quoted on page 10 of Complainants' Complaint.

<sup>6</sup> See, e.g., Complainants' Complaint, filed May 13, 2002 at para. 21; and Respondent Voicestream and Western Wireless' Answer, filed July 16, 2001 at para. 6. See also, Complainants' Initial Brief, pp. 2, 4..

<sup>7</sup> In the Matter of the Joint Application of SWBT and Western Wireless for Approval of An Interconnection Agreement, Case No. TO-98-12, Order Approving Interconnection Agreement, issued October 7, 1997 at p. 4.

This Order does not impose secondary liability on SBC Missouri and Complainants cannot bootstrap this language -- or the language in Section 3.1.3 -- into some contractual duty to pay for or block traffic for which the originating party has not made appropriate arrangements to terminate.

**10. Is SWBT liable for Complainants' wireless tariff charges associated with the traffic VoiceStream and Western Wireless terminated to Complainants?**

Complainants have failed to establish that SBC Missouri has any liability in this case. Complainants predicate this Complaint on their wireless termination tariffs and seek to recover charges contained in those tariffs. Yet they have failed to cite even one provision from their tariffs authorizing them to impose and collect such charges from SBC Missouri as a transit carrier. But this should not be surprising. As detailed in SBC Missouri's Initial Brief,<sup>8</sup> Complainants' Wireless Termination Service tariffs, by their very terms, do not authorize Complainants to impose terminating charges on transit carriers like SBC Missouri. Their tariffs only authorize them to direct a transit carrier to block transited traffic for which they are not being paid.<sup>9</sup> And as each of Complainants have admitted, none of them requested SBC Missouri to block the traffic at issue here.<sup>10</sup>

Unable to support their claims with specific citations to their tariffs, Complainants claim that "the terms of SWBT's interconnection agreements and the language of the Commission Orders approving those agreements both indicate that SWBT is secondarily liable for the uncompensated wireless traffic that it delivers to Complainants' exchanges."<sup>11</sup> Complainants,

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<sup>8</sup> See, SWBT's Initial Brief, pp. 2, 7-10.

<sup>9</sup> See, Section G (Refusal and Discontinuance of Service), Subsection 3 of Complainants' Wireless Termination Service Tariffs.

<sup>10</sup> See, Factual Stipulation, filed October 10, 2002, paras. 2-15.

<sup>11</sup> Complainants' Initial Brief, p. 16.

however, cite no pertinent authority for imposing such secondary liability. The only citation provided that discusses secondary liability is the Commission's Report and Order in Case No. TT-97-524, the case in which the Commission approved revisions to SBC Missouri's wireless termination tariff.

But this decision has no application here because it -- as Complainants must and do concede -- "addressed SWBT's wireless tariff rather than specific interconnection agreements."<sup>12</sup> There is no dispute that all of the VoiceStream and Western Wireless traffic in dispute was transited under these carriers' interconnection agreements with SBC Missouri, not under SBC Missouri's wireless termination tariff.<sup>13</sup> Moreover, Complainants must also concede that the Commission decided SBC Missouri's wireless tariff case more than five years ago<sup>14</sup> -- and much has happened in those intervening five years:

Since the issuance of the Report and Order in Commission Case No. TT-97-524, the Commission approved twenty-nine (29) wireless termination tariffs (in its Report and Order in Commission Case No. TT-2001-139) and there is nothing in those tariffs suggesting SWBT should be liable for traffic transited. In fact, the tariffs contemplate traffic blocking by SWBT.<sup>15</sup>

As Staff explained, the Commission's approval of Complainants' wireless termination tariffs represented a significant departure from the Commission's approach in Case No. TT-97-524. Instead of trying to create indirect incentives by placing secondary liability on the transit carrier, the Commission created a very straight-forward set of incentives under which terminating charges were intended to apply only to the originating wireless carriers. And as the

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<sup>12</sup> Complainants' Initial Brief, p. 16, fn. 15.

<sup>13</sup> In their Initial Brief, at p. 4, Complainants acknowledge that "SWBT provides these 'transit' services or facilities pursuant to interconnection agreements entered into between SWBT and VoiceStream in Case No. TO-2001-489, and between SWBT and Western Wireless in Case No. TO-98-12."

<sup>14</sup> Complainants' Initial Brief, p. 16.

<sup>15</sup> Staff Initial Brief, p. 10.

Commission made clear in its Order, if those carriers did not pay for their traffic, it was to be blocked:

The proposed Wireless Termination Service tariffs that are the subject of this case make clear that the small ILECs must be compensated by the wireless carrier for this traffic or the traffic may be blocked.<sup>16</sup>

In approving Complainants' tariffs at their proposed rate levels, the Commission explained that it was doing so to create an incentive for the wireless carriers to negotiate agreements for the termination of their traffic with the Complainants:

As a matter of public policy, the solution selected here by the Commission is to be preferred over that suggested by Staff. The rates contained in the tariffs proposed by the Filing Companies are clearly higher than the Wireless Interveners would like. Thus, an incentive is created for the CMRS carriers to do what Congress expects them to do, namely, negotiate agreements with the small LECs. It is important to bear in mind, as the parties have unanimously advised the Commission, that the CMRS carriers can compel the small LECs to make an agreement, but the small LECs cannot compel the CMRS carriers to make an agreement. Thus, the solution must create an incentive for the CMRS carriers to act. The tariffs proposed by the Filing Companies will do that, while the alternative solution suggested by Staff will not.<sup>17</sup>

The Commission Order set out three mutually exclusive alternatives for the wireless carriers: they could (1) negotiate agreements for the termination of their traffic with the Complainants; (2) pay the rates contained in Complainants' Wireless Termination Service tariff; or (3) have their traffic blocked. If the payment obligation under the tariff simply defaulted to the transiting carrier, as Complainants now contend, the same incentives envisioned by the Commission would not exist.

### **CONCLUSION**

The Commission should reject Complainants' attempt to impose liability on SBC Missouri for transit traffic. Complainants' tariffs do not authorize them to impose terminating

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<sup>16</sup> See, Report and Order, Case No. TT-2001-139, et al., issued February 8, 2001 at p. 11 (emphasis added).

<sup>17</sup> Id., p. 46 (emphasis added).

charges on transit carriers. Doing so would violate long-standing industry standards as expressed by the FCC. Having failed to establish any other grounds for imposing liability on SBC Missouri, Complainants' claims against SBC Missouri should be dismissed or denied.

Respectfully submitted,


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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on January 7, 2003



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