

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
April 9, 2002**

**CASE NO: TT-99-428, TT-99-429, TT-99-430, TT-99-431, TT-99-432, & TT-99-433
(consolidated)**

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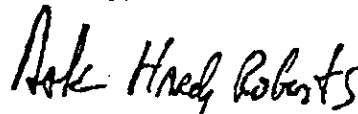
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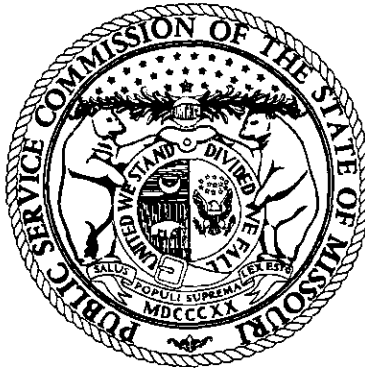
Enclosed find a certified copy of an AMENDED REPORT & ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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



In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	) ) )	<u>Case No. TT-99-428</u> Tariff No. 9900658
In the Matter of MoKan Dial, Inc.'s Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	) ) )	<u>Case No. TT-99-429</u> Tariff No. 9900656
In the Matter of Mid-Missouri Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	) ) )	<u>Case No. TT-99-430</u> Tariff No. 9900712
In the Matter of Choctaw Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 1	) ) )	<u>Case No. TT-99-431</u> Tariff No. 9900667
In the Matter of Chariton Valley Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	) ) ) )	<u>Case No. TT-99-432</u> Tariff No. 9900657

In the Matter of Peace Valley
Telephone Company's Filing to
Revise its Access Service Tariff,
P.S.C. Mo. No. 2.

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Case No. TT-99-433
Tariff No. 9900655

(Consolidated)

AMENDED REPORT AND ORDER

Issue Date: April 9, 2002

Effective Date: April 19, 2002

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

In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	)	<u>Case No. TT-99-428</u>
	)	Tariff No. 9900658
In the Matter of MoKan Dial, Inc.'s Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	)	<u>Case No. TT-99-429</u>
	)	Tariff No. 9900656
In the Matter of Mid-Missouri Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	)	<u>Case No. TT-99-430</u>
	)	Tariff No. 9900712
In the Matter of Choctaw Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 1	)	<u>Case No. TT-99-431</u>
	)	Tariff No. 9900667
In the Matter of Chariton Valley Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.	)	<u>Case No. TT-99-432</u>
	)	Tariff No. 9900657
In the Matter of Peace Valley Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2.)	<u>Case No. TT-99-433</u>
)	Tariff No. 9900655

(Consolidated)

APPEARANCES

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REGULATORY LAW JUDGE: **Bill Hopkins, Senior Regulatory Law Judge**

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AMENDED REPORT AND ORDER

I. PROCEDURAL HISTORY

All of the above-captioned cases involve proposed tariffs filed with the Missouri Public Service Commission (Commission) and suspended at the request of the Staff of the Commission (Staff). Unless otherwise indicated by the context, all of the applicants who filed the proposed tariffs will be collectively referred to as "Alma"¹ or "Applicants."

On March 9, 1999, Alma Telephone Company (Alma) filed a Second Revised Sheet No. 40.1, to replace the First Revised Sheet No. 40.1, for Alma, Missouri, in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

On March 9, 1999, MoKan Dial Inc. (MoKan) filed a Fourth Revised Sheet No. 7, to replace the Third Revised Sheet No. 7, for Freeman, Missouri, in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

On March 18, 1999, Mid-Missouri Telephone Company (Mid-Missouri) filed a Second Revised Sheet No. 5, to replace the First Revised Sheet No. 5, for all Missouri

¹ Although some of the pleadings in this case indicate they were filed on behalf of the "Mid-Missouri Group," the Commission notes that no such group is a party to these cases. The companies whose proposed tariffs are the subject of these cases do sometimes intervene as a part of the "Mid-Missouri Group," but did not so classify themselves in these cases. The Commission will treat any pleadings filed by the "Mid-Missouri Group" as though they were filed by Alma Telephone Company, MoKan Dial, Inc., Mid-Missouri Telephone Company, Choctaw Telephone Company, Chariton Valley Telephone Company, and Peace Valley Telephone Company, either individually or as a group, as the context requires. The Commission also acknowledges that a Notice of Group Name Change was filed by all the applicants on December 29, 1999, stating that "Mid-Missouri Group" has changed its name to "Missouri Independent Telephone Group." To avoid further confusion, that term will not be used in this report and order.

exchanges in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 22, 1999, and an effective date of April 21, 1999.

On March 11, 1999, Choctaw Telephone Company (Choctaw) filed a Second Revised Sheet No. 30, to replace the First Revised Sheet No. 30, Halltown, Missouri, in its P.S.C. Mo. tariff No. 1. The revised sheet had an issuance date of March 12, 1999, and an effective date of April 11, 1999.

On March 9, 1999, Chariton Telephone Company (Chariton) filed a Second Revised Sheet No. 14, to replace the First Revised Sheet No. 14, for all Missouri exchanges in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

On March 9, 1999, Peace Valley Telephone Company (Peace Valley) filed a Second Revised Sheet No. 13, to replace the First Revised Sheet No. 13, for Peace Valley, Missouri, in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

Motions to suspend the tariffs in all of these cases were filed by the Staff of the Missouri Public Service Commission on April 1, 1999. On April 8, 1999, the Commission granted all the motions, set the date of April 19, 1999, for the filing of a procedural schedule, and suspended the tariffs in each of the cases as follows: Alma – August 10, 1999; MoKan – August 10, 1999; Mid-Missouri – August 20, 1999; Choctaw – August 12, 1999; Chariton – August 12, 1999; Peace Valley – August 12, 1999.

On April 26, 1999, Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PCS) filed its application to intervene in all of the cases. On April 27, 1999, Southwestern Bell Telephone Company (SWBT) filed its application to intervene in all of the cases. On April 28, 1999, GTE Midwest Incorporated filed its application to intervene only in

TT-99-433, and the following entities filed their applications to intervene in all of the cases: AT&T Wireless Services, Inc. (AWS);² Southwestern Bell Wireless, Inc. (SWBW); and the Small Telephone Company Group (STCG).

A prehearing conference was held on April 29, 1999. On May 11, 1999, the Commission entered its order consolidating all of the cases for hearing purposes, making TT-99-428 the lead case, and also extending the date for filing a procedural schedule until May 21, 1999. On June 16, 1999, the Commission entered its show cause order, stating that Alma had until June 26, 1999, to explain why it had not complied with the Commission's order to file a procedural schedule by May 21, 1999, or show cause why the cases should not be dismissed.

On June 21, 1999, Alma filed its response to the show cause order and stated, *inter alia*, that it had never received a copy of the May 11, 1999 order of the Commission. On June 30, 1999, the Commission entered its order granting intervention and granting participation without intervention to the parties as set forth above. On the same day, the Commission entered an order setting the date of July 20, 1999, for the filing of a procedural schedule. On July 15, 1999, Alma filed a proposed procedural schedule. On August 3, 1999, the Commission entered its order overruling the motion to establish a procedural schedule on the grounds that the dates in the motion would fall after the statutory deadlines placed on the Commission. On August 5, 1999, Alma filed its new proposed procedural schedule which offered two alternatives: 1) to extend the tariff date so that the first procedural schedule would be acceptable to the Commission, or 2) that a

² AWS sometimes refers to itself in this case as AT&T Communications of the Southwest, Inc. However, this report and order will use AWS as its only reference.

single prefiled brief and oral arguments thereon would be allowed which would enable the case to be concluded within the statutory time.

On August 9, 1999, Sprint PCS filed its objections to Alma's data requests.

On August 10, 1999, the Commission entered its order consolidating all of the cases for all purposes, acknowledging the extension of the effective dates of the tariffs until December 15, 1999, and establishing a procedural schedule with, *inter alia*, dates for the prefiling of testimony and the dates of October 12 and 13, 1999, for an evidentiary hearing.

On August 13, 1999, Alma filed a motion for a protective order for discovery purposes for all the parties. On August 26, 1999, the Commission entered its protective order.

On September 15, 1999, Alma filed its motion to compel responses from SWBT, AWS, and SWBW. On September 27, 1999, the counsel for Alma did not file a pleading but did file a letter stating that SWBT had provided Alma with data responses that satisfied its motion to compel and thus Alma was withdrawing its motion to compel responses from SWBT. On September 28, 1999, SWBW filed its response to Alma's motion to compel.

The following parties filed position statements on October 4, 1999: Alma, STCG, SWBT, SWBW, AWS, Sprint PCS, Office of the Public Counsel (Public Counsel), and Staff.

On October 12, 1999, at the evidentiary hearing on this matter, SWBT filed and argued a motion to compel a response to its data requests. That motion was overruled by the Commission on the record on October 13, 1999.

On October 14, 1999, Alma filed its motion for approval of a post-hearing briefing schedule, which was approved by the Commission on October 26, 1999. Alma also noted in the same motion that it had extended its tariff effective date until February 15, 2000.

With the oral permission of the Commission granted at the evidentiary hearing, several parties filed written questions to be asked of one of AWS's witnesses in lieu of cross-examination because of the unavailability of that witness at the hearing.

On October 28, 1999, volume two of the transcript was filed and on November 1, 1999, volume three of the transcript was filed. On December 10, 1999, initial briefs were filed by all the parties. On January 3, 2000, Alma filed its reply brief. On January 4, 2000, reply briefs were filed by SWBW, Staff, STCG, AWS and SWBT. On January 4, 2000, Sprint PCS filed a motion to accept the late filing of its reply brief, which it also filed the same day. That motion will be granted.

II. ISSUES

At the prehearing conference, the parties attending agreed that there were no disputed facts and that the only issue in this case was whether the local telephone companies involved are allowed to amend their tariffs so that they can apply their switched access rates to traffic originating on a commercial mobile radio service (CMRS) that terminates in their territory. In their position statements filed, all of the parties agreed that the issue should be subdivided into two questions: (1) Is the tariff proposed by Alma lawful as applied to wireless or competitive local exchange company (CLEC) traffic? and, (2) If lawful, should the tariff proposed by Alma be approved?

As discussed below, the Commission has determined that: (1) the tariff proposed by Alma is not lawful as applied to wireless or CLEC traffic and, thus, (2) the tariff proposed by Alma should not be approved.

III. DISCUSSION

A. Is the tariff proposed by Alma lawful as applied to wireless or CLEC traffic?

In their position statements filed by the parties, Alma, Public Counsel, and STCG all agreed that the tariffs proposed by Alma were lawful both as applied to wireless traffic and CLEC traffic. In their position statements, Staff, AWS, SWBT, and Sprint PCS all agreed that the tariffs were unlawful both as applied to wireless traffic and CLEC traffic. SWBW stated that the tariffs were unlawful as applied to wireless traffic, but took no position concerning CLEC traffic.

The resolution of this issue clearly revolves around geography, not the number of carriers involved in a telephone call.

Alma filed this case to make the following addition to its access tariff:

APPLICABILITY OF THIS TARIFF

The provisions of this tariff apply to all traffic regardless of type or origin, transmitted to or from the facilities of the Telephone Company, by another carrier, directly or indirectly, until and unless superseded by an agreement approved pursuant to the provisions of 47 U.S.C. 252, as may be amended.

Alma testified that its current tariff applies access rates to traffic which, for example, originates from a CLEC, transits SWBT's network and terminates in an Alma exchange. The proposed tariff language, however, would enable Alma to charge access rates to wireless carriers, as well as CLECs, that originate calls that ultimately terminate in an Alma exchange.

Alma has maintained throughout the proceedings that a telephone call that involves only two carriers should be billed by the reciprocal compensation method, but that when three carriers are involved, access charges apply. This, Alma maintains, is true whether the call is local or long distance. However, the emphasis on the number of carriers

involved, instead of the jurisdictional nature of the call, is simply incorrect when determining the compensation obligations of the parties.

In its *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, August 8, 1996 (First Report and Order), the Federal Communications Commission (FCC) implemented, *inter alia*, the interconnection requirements of the Telecommunications Act of 1996 (the Act) as they pertained to local exchange carriers (LECs) and CMRS providers. The FCC explicitly determined that the LECs' reciprocal compensation obligations under Section 251(b)(5) of the Act apply to all local traffic transmitted between LECs and CMRS providers. The FCC's largest authorized CMRS provider territory is a Major Trading Area (MTA).³ Clarifying what traffic is considered "local," the FCC decided that the MTA serves as the most appropriate definition for a local service area for CMRS traffic when calculating reciprocal compensation under the Act.

In the First Report and Order, the FCC made it abundantly clear that access charges do not apply to local traffic exchanged between LECs and CMRS providers. Traffic to or from a CMRS provider's network, the FCC held, that originates and terminates in the same MTA is subject to transport and termination rates under the Act but is not subject to interstate or intrastate access charges. In the present case, if its tariffs were approved, Alma would be allowed to apply access charges to traffic exchanged with CMRS

³ The FCC defines a "major trading area" as an area whose boundaries have been determined by Rand McNally. Rand McNally apparently determined the boundaries of these trading areas after studying such factors as physiography, population distribution, newspaper circulation, economic activities, highway facilities, railroad service, suburban transportation, and field reports of sales analysts.

providers within the same MTA. Such an action would clearly violate both the Act and the First Report and Order.

Alma relies, in part, on the FCC's use in the First Report and Order of a "three carrier" example for access charges and a "two carrier" description for reciprocal compensation. The FCC, however, never made the simplistic rule that said that if two carriers were involved in a telephone call, that reciprocal compensation was required and three carriers required access charges. To the contrary, the FCC clearly explained its rationale:

We disagree with Frontier's contention that section 251(b)(5) entitles an IXC [interexchange carrier] to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.

None of the parties to this case dispute that an inter-MTA call is charged under the applicable access rate, because no party disputes that such a call is indeed a long distance call. However, Alma's contention that intra-MTA calls should also be charged under the access rate when three carriers are involved is not persuasive.

For these reasons, the Commission finds that the tariff proposed by Alma is not lawful as applied to either wireless or CLEC traffic.

B. If lawful, should the tariff proposed by Alma be approved?

In their position statements, Alma and Staff agreed that the tariffs proposed by Alma, if lawful, should be approved. Public Counsel and STCG agreed that the tariffs proposed by Alma, if lawful should be approved if modified. Public Counsel and STCG stated that the tariffs should be modified to clarify the scope of the tariff to exclude traffic exchanged under other approved agreements.

The Commission finds that this question is moot since the Commission is declining to approve the tariff proposed by Alma, after finding such tariffs unlawful.

IV. FINDINGS OF FACT

On October 30, 2001, the Missouri Court of Appeals (Western District) remanded this case to the Commission so that the Commission could make findings of fact, i.e., a factual basis for deciding this case. (The Supreme Court of Missouri denied transfer of this case on January 22, 2002.) The findings, the Court ordered, needed to be in compliance with Sections 386.240, which sets forth the technicalities of the hearing itself that the Commission must follow, and 536.090, which requires a decision by the Commission to be in writing and to include a separate findings of fact.

The pertinent part of the latter statute states:

Every decision and order in a contested case shall be in writing, and...the decision...shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.

Thus, the Commission's view of the facts follows below.

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in

making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Missouri Independent Telephone Group and the Small Telephone Carrier Group are incumbent local exchange companies providing telecommunications services in a number of Missouri exchanges.

AT&T Wireless, Sprint PCS, and Cingular are Commercial Mobile Radio Service providers operating in the state of Missouri under licenses granted by the Federal Communications Commission as wireless carriers.

The Missouri Independent Telephone Group proposes to add the following language to their access service tariffs: "The provisions of this tariff apply to all traffic regardless of type or origin, transmitted to or from the facilities of the Telephone Company, by any other carrier, directly or indirectly, until and unless superseded by an agreement approved under the provisions of 47 U.S.C. 252, as may be amended." If approved, this tariff revision would mandate application of access charges to all traffic exchanged between the Missouri Independent Telephone Group and the wireless carriers in Missouri, unless superseded by an agreement.

For Commercial Mobile Radio Service traffic, the FCC has determined that calls that originate and terminate in a single major trading area are local calls.

Access rates are applicable to inter-MTA traffic and toll traffic terminated to the Missouri Independent Telephone Group and other local exchange companies.

The wireless carriers acknowledge that they originate intra-MTA traffic, which terminates in the Missouri Independent Telephone Group's service territories.

The Federal Telecommunications Act of 1996 prohibits the imposition of access charges for the termination of local traffic, because 47 U.S.C. 251(b)(5) states that all local exchange carriers have "[t]he duty to establish...reciprocal compensation arrangements for the transport and...termination of telecommunications [services]."

V. CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

1. Local traffic is not subject to switched access charges.
2. CMRS traffic to and from a wireless network that originates and terminates within the same MTA is local traffic, regardless of the number of carriers involved.
3. The proposed tariffs are not lawful and must be rejected because they would allow Applicants to charge switched access rates for local traffic.
4. The Federal Telecommunications Act of 1996 prohibits the imposition of access charges for the termination of local traffic, because 47 U.S.C. 251(b)(5) states that all local exchange carriers have "[t]he duty to establish...reciprocal compensation arrangements for the transport and...termination of telecommunications [services]."

IT IS THEREFORE ORDERED:

1. That Sprint Spectrum L.P. d/b/a Sprint PCS's motion to late file its reply brief is granted.
2. That any motions which have not been previously ruled upon, if any, are hereby denied.

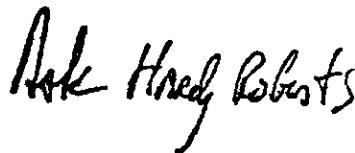
3. That any objections which have not been previously ruled upon, if any, are hereby overruled.

4. That the proposed tariffs filed by Alma Telephone Company, MoKan Dial Inc., Mid-Missouri Telephone Company, Choctaw Telephone Company, Chariton Telephone Company, and Peace Valley Telephone Company, are rejected.

5. This Report and Order will become effective on April 19, 2002.

6. That this case may be closed on April 20, 2002.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Lumpe and Forbis, CC.,
concur and certify compliance with the
provisions of Section 536.080, RSMo 2000.
Gaw, C., not participating
Murray, C., absent

Dated at Jefferson City, Missouri,
on this 9th day of April, 2002.

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ALJ/Secretary: Hopkins/Boyce

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Date Circulated

TT-99-428
CASE NO. thru
433

KS
Simmons, Chair

absent
Murray, Commissioner

S. L. 014
Lunpe, Commissioner

TV6 - NP (NP)
Gaw, Commissioner

OP
Forbis, Commissioner

4-9
Agenda Date

Action taken: 3-0-1 NP GAW

Must Vote Not Later Than _____

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 9th day of April 2002 .

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

