BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Northeast Missouri Rural Telephone Company and Modern Telecommunications company,	)	
Petitioners	)	
v.	)	
Southwestern Bell Telephone Company, Southwestern Bell Wireless (Cingular), Voicestream Wireless (Western Wireless),Aerial Communications, Inc., CMT Partners (Verizon Wireless), Sprint Spectrum LP, United States Cellular Corp., and Ameritech Mobile Communications, Inc.	)	Case No. TC-2002-57
Respondents	)	

SBC MISSOURI'S REPLY CONCERNING
NON-UNANIMOUS STIPULATION

SBC Missouri[1] respectfully submits this reply to MITG[2] concerning SBC Missouri's objection to the Non-Unanimous Stipulation between Mid-Missouri Telephone Company and Sprint PCS.[3]

1. Basis of SBC Missouri's Objection. MITG is incorrect in claiming that SBC Missouri's objection to the Mid-Missouri/Sprint PCS interMTA factor conflicts with an SBC Missouri data request answer. MITG claims that SBC Missouri's objection that the factor was "[in]sufficiently" substantiated conflicts with SBC Missouri's acknowledgement that it did not

[1] Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri" or "SBC."
[2] Mid-Missouri Telephone Company and the Missouri Independent Telephone Company Group will collectively be referred to as the "MITG."
[3] Sprint Spectrum L.P. d/b/a Sprint PCS will be referred to as "Sprint PCS."

possess call detail records, traffic studies or traffic analyses for the wireless traffic originated by Sprint PCS and terminated by Mid-Missouri Telephone.[4]

2. MITG, however, has completely missed the point. As the Complainant in this proceeding, MITG must meet the burden of proving every element of its Complaint before the Missouri Public Service Commission may award it relief. On the narrow issue of interMTA traffic, MITG must meet its burden of proving that traffic is interMTA in order to be entitled to impose its members' higher switched access rates on that traffic.

3. When SBC Missouri filed its objection, MITG had submitted nothing in support of the Non-Unanimous Stipulation, other than the bare fact that Mid-Missouri had reached agreement on one number (i.e., a proposed interMTA factor) with Sprint PCS. SBC Missouri has a right to inquire into the basis of the proposed factor and will be sending discovery requests seeking any data or analysis that support the factor. MITG's allegations of bad faith are simply misplaced.

4. Complainants Have Made the InterMTA Factor Into a Contested Case Issue. If this negotiated factor was presented as part of a negotiated interconnection agreement under the federal Telecommunications Act, only a minimal showing would be necessary to allow the Commission to approve it.[5] However, that is not the situation here.

5. MITG has made the interMTA factor into a contested case issue by continuing to claim that transit carriers like SBC Missouri are liable for terminating charges on this traffic

[4] MITG Response, p. 2.
[5] Under Section 252(e)(2) a state commission is permitted to reject an agreement (or any portion thereof) adopted by negotiation under Section 252(a) if it finds that "(i) the agreement (or any portion thereof) discriminates against the telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity. . . ."

simply because they transited the traffic. MITG continues to press this baseless argument despite the fact that:

- Accepted industry standards, as expressed by the FCC, call for the originating carrier to be responsible for compensating all downstream carriers involved in completing the call: "existing access charge rules and a majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC or CMRS, to compensate the called party's carrier for terminating the call . . . 'calling-party's-network-pays' . . ., where the calling party's network pays to terminate a call, are clearly the dominate form of interconnection regulation in the United States and abroad.[6]

- The FCC in the Verizon-Virginia arbitration with AT&T, Cox and WorldCom specifically rejected imposing financial liability on the transit carrier for expenses associated with traffic originated by another carrier.[7]

- The Missouri Commission Staff concurs that it is inappropriate to impose secondary liability on transit carriers like SBC Missouri for the traffic in dispute: . . . the originating carrier (CMRS provider) is responsible for payment of traffic in dispute . . . ."[8]

- And in an Order released barely over a month ago, the FCC reaffirmed the continued appropriateness of the "calling-party's-network-pays" standard in its decision in the Verizon-Virginia arbitration with Cavalier Telephone. Specifically referencing transit traffic, the FCC stated that it agreed that the "originating party is the appropriate party to be billed for the traffic it originates."[9]

[6] In the Matter of Developing a Unified Carrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, released April 27, 2001, para. 9 ("Unified Carrier Compensation NPRM")(emphasis added).
[6] In the Matter of Developing a Unified Carrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, released April 27, 2001, para. 9 ("Unified Carrier Compensation NPRM")(emphasis added).
[7] In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia Inc., and for Expedited Arbitration, et al., CC Docket No. 00-218, et al., Memorandum, Opinion and Order, released July 17, 2002 ("FCC Verizon-Virginia Arbitration Order") (the FCC's Common Carrier Bureau served as the arbitrator because the Virginia Commission declined jurisdiction).
[8] See, Staff's Statement of Positions, Case No. TC-2002-57, filed July 12, 2002, pp. 3-4.
[9] In the Matter of Petition of Cavalier Telephone L.L.C. Pursuant to Section 252(e)(5) of the Telecommunication Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration, WC Docket No. 02-359, Memorandum, Opinion and Order, released December 12, 2003, para. 49. The FCC's Wireline Competition Bureau served as the arbitrator because the Virginia Commission declined jurisdiction. In its decision, the FCC indicated that in deciding the unresolved issues presented, it applied "current Commission rules and precedence, including those most recently adopted in the Triennial Review Order," Id., at para 2.

7. Thus, having chosen to ignore well-settled authority and included the transit carriers in this complaint case, all elements of MITG's claim, including the appropriate interMTA factor, are subject to the standard of proof applicable to complaint cases. MITG is not entitled to the deferential standard of review that would otherwise apply to an interMTA factor negotiated under the Act.

8. The Sufficiency of the CTUSR. MITG points to one isolated situation involving Aerial, T-Mobile (formerly VoiceStream) and Western Wireless and questions the sufficiency of the CTUSR. MITG states that the "CTUSR did not correctly identify the responsible wireless carrier."[10]

9. MITG, however, fails to disclose that VoiceStream and Western Wireless previously were part of the same company and later split into two separate companies in 1999. And that in 2000, Aerial was acquired by VoiceStream. When SBC Missouri introduced the CTUSR in 1997, it explained that it developed the CTUSR to be "used by other telecommunications carriers and wireless carriers to facilitate their compensation negotiations."[11] Here, despite the confusion caused by the Aerial, VoiceStream and Western Wireless corporate ownership changes, the CTUSR accomplished its objective: it facilitated MITG, Aerial, VoiceStream and Western Wireless' determination of the responsible wireless carrier for the reported traffic. But as the record in this case amply reflects, terminating LECs routinely use the CTUSR to bill terminating charges to the originating wireless carrier without incident (assuming

[10] MITG Response, p. 2.
[11] See, Direct Testimony of SWBT witness Debra Hollingsworth in Case No. TT-97-524, filed August 1997, at p. 9.

no underlying dispute as to the appropriate and lawful rate to be applied -- which of course is the central issue in this case).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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