

Exhibit No. :  
Issues :  
Witness : Donald D. Stowell  
Type of Ex. : Surrebuttal Testimony  
Sponsor : The Mid-Missouri Group  
Case No. : TT-99-428, et al.


**IN THE MATTER OF  
THE MID-MISSOURI GROUP'S  
FILING TO REVISE ITS ACCESS SERVICE TARIFF  
P.S.C. MO. NO. 2**

**SURREBUTTAL TESTIMONY  
OF  
DONALD D. STOWELL**

Jefferson City, Missouri  
October 4, 1999

In the matter of the Mid-Missouri )  
Group's Filing to Revise its Access ) Case No. TT-99-428, et al.  
Service Tariff, P.S.C. Mo. No. 2. )

STATE OF KANSAS                     )  
   )ss.  
COUNTY OF Miami                     )

  
Donald D. Stowell

NOTARY PUBLIC - State of Kansas  
ANNETTE M.J. PRETTYMAN  
My Appt. Exp. 1-14-2000

Annette M J Pottzman  
Notary Public

My Commission Expires: Jan 14, 2000

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1   **Q.**    Please state your name and address.

2   A.    Donald D. Stowell, 112 South Broadway, P. O. Box 429, Louisburg, Kansas.

3   **Q.**    Are you the same person who previously filed direct testimony in support of the tariff  
4       filings by certain MMG members in this proceeding ?

5   A.    Yes.

6   **Q.**    What is the purpose of your surrebuttal testimony ?

7   A.    The purpose of this testimony is to respond to the rebuttal testimony filed by the various  
8       parties in this case.

9   **Q.**    Do you have any general observations regarding the status of the testimony filed thus  
10       far ?

11  A.    Yes. First, the testimony demonstrates the difficulties encountered in attempting to establish  
12       compensation for "indirect" interconnection relationships. Second, it establishes that indirect  
13       interconnections have failed to create the establishment of reciprocal compensation  
14       agreements. Third, it appears that, three years after enactment of the Telecommunications  
15       Act of 1996, there remains a disagreement as to whether direct physical interconnection is  
16       necessary for carriers to enter into interconnection agreements providing for the transport and  
17       termination of telecommunications carriers.

18  **Q.**    What has transpired since the Commission visited this issue in its December 23, 1997  
19       Report and Order in TT-97-524 ?

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1     A.     The Commission found, at page 11 of that Order, that a distinction has not always been made  
2           between agreements for interconnection and agreements for reciprocal compensation. There  
3           remains a disagreement as to what rights and obligations the Act imposed upon carriers.

4           Direct physical interconnection has been created between former PTCs, primarily  
5           SWBT, and the CLECs/wireless carriers. This was the basis of the SWBT interconnection  
6           agreements. Because CLECs and wireless carriers are sending traffic destined for small  
7           ILECs, uncompensated traffic has been terminating in ILEC exchanges. Small ILECs such  
8           as the MMG have not received payment for termination for wireless traffic since February  
9           5, 1998. If there was wireless traffic passed to them prior to that date pursuant to  
10          interconnection agreement, they made not have been paid for that traffic either.

11          They have received no payment for termination of CLEC traffic whatsoever since  
12          the Act was enacted. They have received no records upon which to bill CLECs. The  
13          CTUSRs received from SWBT do not allow small ILECs to distinguish inter-MTA calls  
14          from intra-MTA calls. Wireless carriers have not paid bills sent them by the MMG.

15          The MMG is preparing to send the unpaid bills to SWBT for payment pursuant  
16          to SWBT's tariff indemnity obligations, but it is unsure what response SWBT will make.  
17          There apparently is not an indemnity obligation contained in all of SWBT's interconnection  
18          agreements. The CTUSRs provided by SWBT do not distinguish tariff traffic from  
19          interconnection agreement traffic. The MMG does not have the records or information  
20          necessary to bill CLECs, whether the calls should produce access or whether the calls are

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1 "local". Only SWBT, the wireless

2 In short, nothing has happened to improve the situation, despite the Commission's  
3 hope its Order would incent payment arrangements. In fact Aerial Communications has taken  
4 the position they do not have to pay ILECs anything for use of their terminating facilities  
5 until a reciprocal compensation agreement is entered into. Not only is Aerial violating its  
6 obligations under tariff or interconnection agreement not to send us traffic until an agreement  
7 is reached, they are saying they are entitled to free use of our facilities until an agreement is  
8 reached. The September 3, 1999 letter of Aerial is attached hereto as Attachment 1.

9 **Q. Staff witness Clark takes some issue as to whether access rates were believed by the**  
10 **Commission to incent reciprocal compensation arrangements. How do you respond ?**

11 A. I agree with him that, for wireless traffic, the Commission held that the indemnity structure  
12 would provide the incentive. That has not proved to be true, however. With respect to  
13 access rates being an incentive, the Commission's decision in the AT&T/MCI Arbitration  
14 Order, Case Nos. TO-97-40/TO-97-67, did find that paying access would provide an  
15 incentive to negotiate interconnection rates. The same logic applies to wireless carriers.

16 **Q. Mr. Clark also disagrees with your interpretation of the Circuit Court's decision in**  
17 **CV198-178/261 CC regarding the impact of the Commission's decision in the SWBT**  
18 **wireless tariff case on the MMG companies. How do you respond ?**

19 A. I read the Circuit Court's decision as saying the Commission's decision only applied to  
20 SWBT's tariff that was approved. I thought the Court was clear that the Commission's

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1 discussion of federal law regarding reciprocal compensation did not limit small ILEC rights  
2 to seek only "reciprocal compensation", and did not foreclose them from applying interstate  
3 or intrastate access tariffs. The Court's decision is not exactly a model of clarity. But I can  
4 understand the Court's limitation of the Commission approval to SWBT's tariff, and not to  
5 small ILEC tariffs.

6 **Q. The CLECs and wireless carriers indicate that interconnection agreements and**  
7 **compensation should be based upon an indirect relationship. Do you agree ?**

8 A. No. Section 251(a) (1) of the Act states that "(E)ach telecommunications carrier has the duty  
9 to interconnect directly or indirectly with the facilities and equipment of other carriers". The  
10 MMG companies are directly interconnected with their former PTC, primarily SWBT for  
11 purposes of this case. They are indirectly interconnected with every carrier SWBT  
12 interconnects with, and indirectly interconnected with carriers those carriers in turn directly  
13 interconnect with, and so on. The MMG members have fulfilled their indirect  
14 interconnection duty.

15 It is my view that it is the direct physical interconnection, and only the direct  
16 physical interconnection, that possesses the ingredients necessary for compensation to be  
17 structured successfully. When carriers decide to directly interconnect, there is a conscious  
18 decision it is in their business interest to do so. With indirect interconnection, there is no  
19 such decision. Indirect interconnection is only a result of being directly interconnected. It  
20 is not practical for reciprocal compensation to be developed with every carrier indirectly

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1 interconnected with. It is practical, and traditional, to develop compensation with carriers  
2 with whom you directly interconnect with.

3 In this case the wireless carriers were indirectly interconnected with all Missouri  
4 LECs prior to the 1996 Act, but they only had compensation arrangements with the carriers  
5 they directly interconnected with. When they ordered a direct physical interconnection with  
6 SWBT, either pursuant to tariff or interconnection agreement, they then became indirectly  
7 interconnected with the MMG companies. But they did not then obtain compensation  
8 arrangements with the MMG, as it was not necessary to do so to operate. When CLECs  
9 became directly interconnected with SWBT, they did not then obtain compensation  
10 arrangements with the MMG, as it was not necessary for them to operate.

11 **Q. Do the circumstances of this case illustrate your view ?**

12 A. Yes. When the CLECs and wireless carriers directly interconnected with SWBT, they made  
13 a conscious decision or choice that it was in their business interest to connect with SWBT.  
14 That is understandable, as SWBT is the dominant LEC in Missouri, owning most of the  
15 facilities necessary for termination of those calls in each Missouri LATA. Next they  
16 contacted SWBT and went about establishing the terms of that business relationship.

17 Through negotiations or purchasing from SWBT tariff offerings, together SWBT  
18 and the CLEC/wireless carrier determined the terms of their direct physical interconnection.  
19 They decided in what locations they would interconnect. They decided what facilities would  
20 be used to interconnect. They decided on the type, number, and capacity of trunks that

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1 would be necessary for the amount of traffic to be carried. They decided what signaling  
2 protocols would be used. They decided what types of traffic would be passed over that direct  
3 interconnection. They decided the type and amount of compensation to be paid for the  
4 traffic. They decided what traffic information would be recorded, at what traffic locations  
5 recordings would be made, who would record the information, what format it would be  
6 recorded in, to whom the information would be passed, and how bills would be rendered and  
7 paid. All of these decisions are made *before* the direct interconnection is made and traffic  
8 passed.

9 **Q. Does this opportunity to agree to interconnection terms present itself prior to an**  
10 **indirect interconnection being established ?**

11 A. No. When the CLECs and wireless carriers established their direct physical interconnection  
12 with SWBT, they automatically became indirectly interconnected with the MMG members  
13 SWBT directly interconnected with. The CLEC and wireless traffic would automatically  
14 terminate to the MMG when SWBT passed it over its direct physical interconnection with  
15 the MMG members.

16 There was no opportunity for the MMG members to establish the terms of  
17 interconnection, the passing of traffic, and compensation therefore with the CLECs and  
18 wireless carriers. Although the CLECs and wireless carriers had a responsibility not to send  
19 traffic to SWBT destined for the MMG, they have done so. It was their conscious decision  
20 to send that traffic to SWBT *without* having secured compensation arrangements with the



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1 MMG members that resulted in the MMG members being deprived of terminating  
2 compensation.

3 Although SWBT has language in its tariff and interconnection agreements  
4 attempting to protect its liability for this traffic, SWBT has made no effort to prevent them  
5 from sending this traffic. SWBT has not provided the MMG members with the information  
6 necessary to bill the CLECs and wireless carriers correctly for the traffic.

7 **Q. Do the CLECs and wireless carriers currently have any financial incentive to approach**  
8 **the MMG to address compensation ?**

9 A. Not really. Their only incentive, which has not been adequate thus far, is to abide their  
10 obligation under the interconnection agreements, or, in SWBT's wireless interconnection  
11 tariff, not to send the small ILECs this traffic. As they readily admit, they have consciously  
12 chosen to send this traffic anyway. They have been careful not to request *interconnection*  
13 *agreements* with us, but instead have requested *terminating* agreements. Or they have  
14 requested mutual "bill and keep", even though there is no reciprocal traffic coming from the  
15 MMG companies. In the meantime, they keep obtaining free termination. They have been  
16 very careful *not* to start the interconnection agreement process with small ILECs. They have  
17 not filed any request for arbitration with small ILECs before this Commission, although they  
18 have not hesitated to do so to compel direct physical interconnection agreements with  
19 SWBT. Because they received LATA-wide termination from SWBT, they have no need to  
20 come to the small ILECs.

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1           In its Order regarding SWBT's wireless interconnection tariff, the Commission  
2           found that imposing an indemnity obligation upon SWBT was the solution to the incentive  
3           issue. Unfortunately, it was not. Indemnity only applied to the tariff traffic, not  
4           interconnection agreement traffic. The MMG cannot ascertain which minutes the indemnity  
5           obligation applies to. There is no indemnification obligation in the interconnection  
6           agreements, either for wireless carriers or for CLECs. Furthermore, the Commission did not  
7           specify what MMG rate would apply for purposes of indemnity. The only rate in existence  
8           at the time of the Commission Order that could apply was switched terminating access rates.  
9           If nothing else, this tariff proceeding has alerted the parties and the Commission that the  
10          issue remains unsolved.

11   **Q.   The rebuttal testimony takes issue with your conclusion that only the CLECs and**  
12   **wireless carriers can compel interconnection agreements. Do you agree with their**  
13   **analysis ?**

14   **A.**   No. Although Section 251 (b) (4) of the Act imposes a duty to establish reciprocal  
15          compensation arrangements upon all local exchange carriers, that is not all of the analysis.  
16          First, unlike the process established for direct physical interconnection, this section  
17          establishes no mechanisms or affirmative steps that must be taken. Second, the FCC has  
18          determined that wireless carriers are not LECs subject to the obligations of Section 251 (b)  
19          and (c). Wireless carriers have no obligation to respond or negotiate in good faith to a  
20          request for interconnection.

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1           While CLECs are subject to the duty to establish reciprocal compensation, they  
2           are not subject to the duty imposed upon ILECs by Section 251 (c). Subsection (c) imposes  
3           upon the MMG members, as ILECs, the duty to negotiate reciprocal compensation  
4           arrangements in good faith. CLECs and wireless carriers only have the obligation to  
5           negotiate in good faith if they *request* interconnection: "(T)he requesting  
6           telecommunications carrier also has the duty to negotiate in good faith the terms and  
7           conditions of such agreements."

8           So I continue to maintain that it is only the wireless carriers and CLECs who can  
9           compel interconnection agreements. It is only the ILECs who have an obligation to respond  
10          to a *requesting carrier*. CLECs and wireless carriers have no obligation to respond or  
11          negotiate in good faith to a request for interconnection from the MMG ILECs. As the Act  
12          implicitly recognizes, ILECs have no immediate need for interconnection with CLECs and  
13          wireless carriers. It is the CLECs and wireless carriers, as relatively new market entrants  
14          trying to benefit from increased competition, that have a need for enforceable interconnection  
15          rights. The MMG has not requested interconnection or reciprocal compensation from  
16          wireless carriers or CLECs, because they already have mechanisms in place to handle the  
17          traffic of MMG customers.

18   **Q.    Has there been confusion in the past as to how to distinguish between "interconnection"**  
19   **and "reciprocal compensation" ?**

20   **A.    Yes. As the Commission stated in its tariff Order, "(W)hether the FCC also intends for**

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1 reciprocal compensation arrangements to apply in situation where there is an indirect  
2 interconnection between a wireless carrier and a third party LEC, and consequently three  
3 carriers are needed to terminate the traffic, is an open question."

4 **Q. Do you interpret the Act to require reciprocal compensation over indirect**  
5 **interconnections ?**

6 A. No. This is perhaps the heart of the dispute. While carriers may voluntarily choose to  
7 establish reciprocal compensation agreements over an indirect interconnection, the Act only  
8 sets forth a process by which a non-incumbent can compel reciprocal compensation over a  
9 direct physical interconnection. Although I too am not an attorney, I will respond with my  
10 analysis of the provisions of the Act, FCC rules, and FCC decision.

11 The provisions of the Act that I believe are controlling are as follows:

12 Section 251 (b)(5): Each telecommunications carrier has the duty "(5)  
13 RECIPROCAL COMPENSATION.—The duty to establish reciprocal  
14 compensation for the *transport and termination* of telecommunications."  
15

16 Section 251 (c) (2): "ADDITIONAL OBLIGATIONS OF *INCUMBENT* LOCAL  
17 EXCHANGE CARRIERS.—In addition to the duties contained in subsection (b),  
18 each incumbent local exchange carrier has the following duties: ... (2)  
19 INTERCONNECTION.—The duty to provide, *for the facilities and equipment*  
20 of any *requesting carrier*, interconnection *with the local exchange carrier's*  
21 *network--* ... (B) at any technically feasible *point within the carrier's network*;"  
22  
23

24 To me, section 251(c)(2) deals with interconnection, and section 251(b)(5) deals  
25 with reciprocal compensation. With respect to interconnection, 251(c)(2) makes it clear that

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1 the ILEC duty to negotiate interconnection agreements applies when the wireless carrier or  
2 CLEC requesting interconnection desires its facilities to interconnect at a technically feasible  
3 point within the ILEC network. This is direct physical interconnection.

4 With respect to reciprocal compensation, 251(b) (5) makes it clear that these  
5 "arrangements" are for reciprocal compensation for the transport and termination of traffic.

6 I read the FCC rules and Interconnection Report and Order as also requiring a direct  
7 physical interconnection under this subsection.

8 **Q. Please explain the FCC rules and Order to which you refer ?**

9 A. The FCC has established rules specifically for purposes of 251(b)(5) reciprocal  
10 compensation. Rule 47 CFR 51.07(d) defines "transport" for purposes of reciprocal  
11 compensation as follows:

12 "Transport is the transmission and any necessary tandem switching of local  
13 telecommunications traffic subject to section 251(b)(5) of the Act *from the*  
14 *interconnection point between the two carriers* to the terminating carrier's end  
15 office switch that directly serves the called party, or equivalent facility provided  
16 by a carrier other than an incumbent LEC."  
17

18 This rule makes it clear to me that reciprocal compensation is, like interconnection  
19 agreements, intended for situations where the CLECs or wireless carriers want a direct  
20 physical interconnection with the small ILECs. Reciprocal compensation requires an  
21 interconnection point *between the two carriers*.

22 When the FCC announced its interconnection rules promulgated pursuant to

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1       251(b) and 251(c), they made certain explanations which I believe support my interpretation.

2       The following paragraphs are taken from the August 8, 1996 First Report and Order in CC  
3       Docket Nos. 96-98 and 95-185:

4               ¶ 1033. We conclude, however, as a legal matter, that transport and termination of  
5       local traffic are different services than access service for long distance  
6       telecommunications.

7  
8               ¶ 1034. Access charges were developed to address a situation in which three  
9       carriers—typically, the originating LEC, the IXC, and the terminating LEC—  
10      collaborate to complete a long-distance call.... By contrast, reciprocal compensation  
11      for transport and termination of calls is intended for a situation in which *two carriers*  
12      collaborate to complete a local call.... We find that the reciprocal compensation  
13      provisions of section 251(b)(5) for transport and termination of traffic do not apply  
14      to the transport or termination of interstate or intrastate interexchange traffic.

15  
16              ¶ 1039. We conclude that transport and termination should be treated as two distinct  
17      functions. We define “transport”, for purposes of section 251(b)(5), as the  
18      transmission of terminating traffic that is subject to section 251(b)(5) from the  
19      interconnection point between *the two carriers* to the terminating carrier’s end office  
20      switch that directly serves the called party...

21  
22              ¶ 1040. We define “termination”, for purposes of section 251(b)(5), as the switching  
23      of traffic that is subject to section 251(b)(5) at the terminating carriers’s end office  
24      switch (or equivalent facility) and delivery of that traffic from that switch to the  
25      called party’s premises... we conclude in the interconnection section above that  
26      *interconnecting carriers* may interconnect at any technically feasible point. We find  
27      that this sufficiently limits LECs’ ability to disadvantage *interconnecting parties*  
28      through their network design decisions.

29  
30              ¶ 1042... Section 251(b)(5) specifies that LECs and *interconnecting carriers* shall  
31      compensate one another for termination of traffic on a reciprocal basis.

32  
33              ¶ 1043... Under our existing practice, most traffic between LECs and CMRS  
34      providers is not subject to interstate access charges, *unless it is carried by an*  
35      *IXC*.... we conclude that the new transport and termination rules should be applied to

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1           LECs and CMRS providers so that CMRS providers continue not to pay interstate  
2           access charges for traffic that currently is not subject to such charges, and are  
3           assessed such charges for traffic that is currently subject to interstate access charges.  
4

5           ¶ 1044...As an alternative, LECs and CMRS providers can use the *point of*  
6           *interconnection between the two carriers at the beginning of the call* to determine the  
7           location of the mobile caller or called party.  
8

9   **Q.   Under you interpretation, are CLECs, wireless carriers and ILECs forbidden from**  
10   **entering into "termination agreements" or "arrangements" for reciprocal**  
11   **compensation over an indirect interconnection ?**

12   A.   No. They can do so if both parties voluntarily so choose. However, if either party does not  
13   desire to do so, the only mechanism for which a procedure exists to compel reciprocal  
14   compensation is the direct physical interconnection mechanism.

15   **Q.   Does your interpretation make sense with respect to the normal considerations two**  
16   **carriers evaluate in establishing interconnection and compensation arrangements ?**

17   A.   Yes. If the CLECs and wireless carriers believed that ILEC access rates justify the facility  
18   and negotiation costs of a direct physical interconnection, they can initiate and even compel  
19   the process. During the process, small ILECs and these carriers would have the opportunity  
20   to exchange information, establish the interconnection location, establish the trunking  
21   capacities required, define what traffic is subject to reciprocal compensation, establish  
22   reciprocal compensation rates, establish signalling and traffic recording protocols designed  
23   to distinguish between local and non-local traffic, establish recording mechanisms, and

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1 compensation mechanisms. They could also establish provisions for penalties or even  
2 disconnection if payment is not made. The small ILECs would have the opportunity to do  
3 what SWBT and these carriers have already done.

4 **Q. What would be the consequences of the acceptance of the CLEC/wireless interpretation**  
5 **that all carriers can be compelled to enter into indirect reciprocal compensation**  
6 **agreements ?**

7 A. The result would be that all carriers could suffer from the same prejudice that the MMG  
8 members complain of in this case. The result would be that carriers directly interconnecting  
9 with SWBT, CLECs, wireless carriers, and small ILECs could suffer termination of calls  
10 originated by carriers all over the country, "transited" to them. They could not insist on  
11 compensation therefor from the carrier over which direct interconnection the traffic was  
12 terminated. In order for this concept to work, every carrier would have to have potentially  
13 hundreds of "termination agreements" to assure complete compensation.

14 The administrative difficulties such a concept presents is severe. For example  
15 there could be 60 ILECs, CLECs, and wireless carriers operating in the Kansas City MTA.  
16 If each carrier had to have 60 termination agreements, theoretically there could be 3,600 such  
17 agreements to administer. This would only cover the western half of Missouri.

18 In their rebuttal, the CLECs and wireless carriers state they prefer not to have  
19 separate agreements for 30+ Missouri ILECs. Yet the "indirect interconnection agreement"  
20 system could result in many more.



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1   **Q.   The wireless carriers attack your position because some ILECs, Alltel, TDS affiliates**  
2       **Stoutland and Orchard Farms, Sprint/United, and Peace Valley have voluntarily**  
3       **entered into "termination agreements" without direct physical interconnection. Would**  
4       **you respond ?**

5   **A.   Yes. Under my interpretation, these carriers can voluntarily enter into an indirect**  
6       interconnection termination agreement. Also, Alltel, TDS, and Sprint have affiliates in the  
7       CLEC and wireless business. The have a competing interest other small ILECs do not have.  
8       Peace Valley countersigned the Sprint PCS termination agreement in 1997, before the  
9       company realized there was no reciprocal traffic from Peace Valley. Peace Valley plans on  
10      terminating the letter agreement after the conclusion of this docket.

11   **Q.   What would be the result of applying your interpretation to the direct interconnection**  
12      **provided by SWBT, and other former PTCs, to the CLECs and wireless carriers ?**

13   **A.   The result would be that all carriers on whose facilities traffic terminating from other carriers,**  
14      would look to the carrier directly physically interconnecting with them for compensation,  
15      unless they voluntarily agreed to a "termination agreement" with an indirectly interconnected  
16      carrier.

17   **Q.   Is this preferable to the chaotic situation you described earlier ?**

18   **A.   Yes. This situation leaves each carrier in charge of its own destination. If a wireless carrier**  
19      or CLEC believes it is paying excessive amounts for small ILEC termination, all it has to do  
20      is establish a direct physical interconnection over which to establish—even compel—

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1 reciprocal compensation for the transport and termination of local traffic. My interpretation  
2 is consistent with established carrier practices, where business relationships are built upon  
3 direct physical interconnections.

4 **Q. Have you come across any instances where CLECs or wireless carriers have expressed**  
5 **the same view ?**

6 A. Yes. I have personally heard CLECs state that by paying SWBT's "transiting charge" they  
7 believed they had already paid for termination to the small ILEC. Others in the MMG have  
8 reported similar statements from wireless carriers.

9 **Q. The CLECs criticize your position because it would not properly be applied to MCA**  
10 **traffic. How do you respond ?**

11 A. It was not our intent to have access tariffs apply to qualifying MCA traffic. Even though  
12 access tariffs remained in place after MCA creation, they have not been applied to MCA  
13 traffic. MCA traffic formerly was toll. The Commission, in creating MCA traffic,  
14 recognized that it was interexchange traffic traversing the same network as MTS toll, but  
15 classified it is "local" for ILEC intercompany compensation purposes. CLEC issues were  
16 not then present. Wireless carriers were specifically precluded from offering MCA service.  
17 Assuming the Commission addresses this issue in currently pending docket TO-99-483, and  
18 determines CLECs are entitled to participate in MCA on the same basis as ILECs, the MMG  
19 will not apply its access tariffs to MCA traffic, as that application would be superseded by  
20 Commission Order.

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ON BEHALF OF THE MID-MISSOURI GROUP  
CASE NO. TT-99-428, ET AL.

1

2   **Q.   Will the tariff language proposed have any benefit ?**

3   A.   Yes. By maintaining the applicability of switched access rates until and unless superseded  
4       by an improved interconnection agreement, the MMG tariff language is consistent with the  
5       Act of 1996 as I have interpreted it above. Any time three carriers collaborate to complete  
6       a call, access rates apply. It is only when two carriers collaborate to complete a local call  
7       over a direct physical interconnection between them that reciprocal compensation rates  
8       would be required. The tariff language proposed is consistent with the law. Approving the  
9       tariffs will make this clear to all carriers involved in either direct or indirect interconnections  
10      with the MMG companies.

11   **Q.   Does the MMG have any idea of the magnitude of usage the CLECs and wireless**  
12       **carriers are currently making of MMG facilities without compensation ?**

13   A.   We do have what SWBT has reported to us as the volumes of wireless usage involved, but  
14       we have no such information for CLEC usage. Based upon the information I have reviewed,  
15       for most MMG ILECs, the amount of wireless traffic being terminated is not that great.  
16       AT&T Wireless witness Maass indicates its volume at less than 5,000 minutes per month.  
17       At current MMG terminating access rates which range between 6 and 12 cents per minute,  
18       AT&T Wireless is failing to pay about \$ 300 to \$ 600 per month.

19   **Q.   At pages 6 through 14 of his rebuttal, Mr. Clark discusses the possibility that MMG**  
20       **members develop and file tariffs containing generic reciprocal compensation rates**

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1       **designed to operate in lieu of negotiated interconnection rates. What is your reaction**  
2       **to this proposal ?**

3       A.     First of all his proposal assumes that the interpretation of the Act I set forth is not correct.

4       Second, such tariffs could set the stage for claims of discrimination, as there would be no  
5       basis to distinguish different rates for different forms of traffic, which terminate the MMG  
6       companies' networks in exactly the same fashion. Third, if such rates were tariffed there is  
7       no indication the CLECs or wireless carriers would pay them. Instead they could merely  
8       continue to pay nothing, which would necessitate further proceedings. Alternatively the  
9       CLECs or wireless carriers could request direct physical interconnection and develop  
10      different rates by negotiation or by arbitration. Finally, I would be concerned that the rate  
11      differentiation would create an "arbitrage" situation, where CLECs and wireless carriers  
12      terminate traffic for other carriers who desire to pay less than access. With the limitations of  
13      the network in place between SWBT and the small ILECs today, there would be no ability  
14      to police against such arbitrage.

15      **Q.     With respect to CLEC traffic, Mr. Clark suggests that the tariff language not be**  
16      **approved because of the considerations involved in three scenarios he identifies. Please**  
17      **respond ?**

18      A.     I separately addressed the MCA scenario. I disagree with his analysis of the other two  
19      scenarios. There are no CLECs operating in small ILEC exchanges. As I understand it, it  
20      is up to the parties to an interconnection agreement to agree between themselves as to what

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1 calls they will classify as local or toll. This is what the wireless carriers and CLECs and  
2 SWB have done in their interconnection agreements. If SWBT and a CLEC define a local  
3 or EAS calling scope between them, that has no impact on small ILECs that are not party to  
4 the interconnection agreement. The Act is specific that interconnection agreements are not  
5 to prejudice non party carriers. There is no "EAS" between a CLEC and small ILEC unless  
6 they establish such is a local call between them. If a CLEC negotiates or arbitrates a direct  
7 interconnection agreement with a small ILEC, this issue will be resolved.

8 **Q. At page 2 of his rebuttal, AT&T witness Kohly states it is appropriate to apply access**  
9 **to interexchange traffic, but inappropriate to apply access rates to "all other traffic".**  
10 **Is this an accurate distinction ?**

11 A. No. This distinction is not helpful. The issue is when access can be applied, and when  
12 reciprocal compensation must be applied. It is clear access can apply to local interexchange  
13 traffic where three carriers collaborate to complete the call, and reciprocal compensation  
14 applies to "local" calls where two carriers collaborate. The concept of "interexchange" is not  
15 controlling.

16 **Q. Mr. Kohly also criticizes the proposed tariffs on the grounds they are premature. Do**  
17 **you agree ?**

18 A. No. The CLEC and wireless carrier affiliate of AT&T Mr. Kohly is testifying for have not  
19 been paying for traffic terminated, despite their obligation not to send this traffic. As the  
20 MMG members are having use made of their facilities without any compensation paid

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1           therefore, I disagree that the tariffs are premature. They may have no objection to indefinite  
2           free use of facilities, but we do.

3   **Q.   Some of the wireless carriers indicate that the MMG members carry local traffic going**  
4           **to the wireless carriers, thus reciprocal compensation rates will be of some benefit to**  
5           **the ILECs. Do you agree with this point ?**

6   A.   No. The MMG ILECs only offer local calling within their exchanges. All interexchange  
7           traffic is handled by interexchange carriers, either PTCs (until October 20, 1999) or IXC.  
8           As we have had no direct physical interconnection requests, and have no interconnection  
9           agreements, we have not agreed to mutually exchange local with CLECs or wireless carriers.

10                If there were such reciprocal traffic, it could not be passed to the CLECs/wireless  
11           carriers via an "indirect interconnection". Unless there is a direct interconnection, the MMG  
12           member must hand the traffic off to an IXC, such as SWBT.

13   **Q.   Finally, the CLECs and wireless carriers intimate that the MMG members have not**  
14           **honored their obligation to negotiate interconnection agreements. Do you agree ?**

15   A.   No. The MMG has refused to agree to indirect reciprocal compensation, or  
16           indirect termination agreements. We have been steadfast in that position since November  
17           of 1997, when the wireless carriers first approached us. The partial correspondence attached  
18           to the rebuttal testimony reveals that the CLECs and wireless carriers have not requested  
19           direct physical interconnection.

20                More correspondence exists, but it is too voluminous to attach.

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1           If the MMG members had failed to honor such a request for a direct physical  
2           Interconnection agreement, the CLECs and wireless carriers have a ready remedy by taking  
3           the matter to binding arbitration before the Commission. That they have failed to do so  
4           indicates they are content to receive free termination, and are not interested in having the  
5           issue resolved. Their willingness to pay retroactive reciprocal compensation does not help  
6           resolve the basic issue either.

7   **Q.    Does this conclude your surrebuttal testimony?**

8   **A.    Yes.**



September 3, 1999

MoKan Dial Inc.  
P.O. Box 429  
112 S. Broadway  
Louisburg, KS 66053-0429  
Attn: Donald D. Stowell

Re: Termination of Traffic from  
Aerial Communications, Inc.

Dear Donald D. Stowell:

Aerial Communications, Inc. ("Aerial") is in receipt of invoices from your company for the termination of Aerial's mobile-to-land traffic on your company's local exchange network. Since Aerial has not entered into a mutual compensation arrangement with your company and since there apparently is no CMRS tariff in place, Aerial does not have an obligation to pay MoKan Dial Inc. for the transport and termination charges reflected in the invoices.

It is Aerial's view that under federal law, Local Exchange Carriers ("LEC's") must enter into reciprocal compensation agreements with CMRS providers in order to receive compensation for the transport and termination of intraMTA traffic. Specifically, Sections 251(b)(5) and 252(d)(2) of the Telecommunications Act of 1996 require MoKan Dial Inc. to negotiate and enter into a "reciprocal compensation arrangement" for the transport and termination of "local telecommunications traffic."

Based on federal law, it is clear to Aerial that there must be an agreed upon payment mechanism in place before parties can receive compensation for terminating traffic. The payment mechanism could be either through a tariff for terminating local CMRS traffic filed by MoKan Dial Inc. and approved by the state Public Utility Commission or through a reciprocal compensation contract. If MoKan Dial Inc. has a tariff for terminating local CMRS telecommunications traffic on file with the PUC, please provide Aerial with a copy of the applicable termination rates. Any traffic that originates and terminates within the Kansas City MTA is considered local for purposes of the FCC's rules and regulations. In the absence of tariffed local termination rates that are applicable to CMRS providers, a reciprocal compensation contract would be an appropriate compensation mechanism. To resolve this matter, MoKan Dial Inc. and Aerial may enter into "local termination" billing negotiations retroactive to an agreed upon date.

It is also clear to Aerial that the rates for transport and termination must be just, reasonable and cost based. Pursuant to Section 252(d)(2) of the Act, carriers are required to compensate one another on "just and reasonable" terms for the costs of transporting and terminating local telecommunications traffic which originate on a carrier's network. Under Section 252(d)(2), the basis for determining reciprocal compensation rates are the costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. Unless an applicable PUC approved local termination tariff


Attachment 1



exists for MoKan Dial Inc. Aerial does not intend to pay the transport and termination charges reflected in the invoices until we have negotiated a local termination agreement that include cost based transport and termination .

Please contact Latrice Kirkland at (773) 399-8846 to arrange negotiations for a reciprocal compensation contract.

Sincerely,



Stephen Crane  
Manager, Fixed Network Design