

FILED²
SEP 23 1999

Exhibit No:

Issue: Rates

Witness: Kohly

Type of Exhibit : Rebuttal Testimony

Sponsoring Party: AT&T Communications of
the Southwest, Inc.

Case No: TT-99-428; TT-99-429;
TT-99-430; TT-99-431;
TT-99-432; TT-99-433
Consolidated

IN THE MATTER OF ALMA TELEPHONE COMPANY P.S.C. Mo. No. 2;
MoKAN DIAL, INC. P.S.C. Mo. No. 2; MID-MISSOURI TELEPHONE
COMPANY P.S.C. Mo. No. 2; CHOCTAW TELEPHONE COMPANY P.S.C.
Mo. No. 1; CHARITON VALLEY TELEPHONE COMPANY P.S.C. Mo. No.
2 AND PEACE VALLEY TELEPHONE COMPANY P.S.C. Mo. No. 2
FILINGS TO REVISE THEIR ACCESS SERVICE TARIFFS

REBUTTAL
TESTIMONY

OF

R. Matthew Kohly

Jefferson City, Missouri
September 23, 1999

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)	Case No. TT-99-428 Tariff No. 9900658
In the Matter of MoKan Dial, Inc.'s Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2)	Case No. TT-99-429 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)	Case No. TT-99-430 Tariff No. 9900712
In the Matter of Choctaw Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 1)	Case No. TT-99-431 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)	Case No. TT-99-432 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)	Case No. TT-99-433 Tariff No. 9900655

AFFIDAVIT OF R. MATTHEW KOHLY

STATE OF MISSOURI)

COUNTY OF COLE)

I, R. Matthew Kohly, of lawful age, being first duly sworn deposes and states:

1. My name is R. Matthew Kohly. I am a Manager for AT&T Communications of the Southwest, Inc. in its Law and Government Affairs organization.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


R. Matthew Kohly

Subscribed and sworn to this 23 day of September, 1999


Notary Public

My Commission Expires: 5/4/03

DAWN R. LAFFOON
Notary Public - Notary Seal
STATE OF MISSOURI
COLE COUNTY
My Commission Expires: May 4, 2003

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.
REBUTTAL TESTIMONY
OF
R. MATTHEW KOHLY

CASE NO. TT-99-428, ET AL

1 **I. INTRODUCTION AND QUALIFICATIONS**

2

3 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

4 A. My name is R. Matthew Kohly. My business address is 101 West McCarty Street,
5 Jefferson City, Missouri 65101.

6

7 **Q. HOW ARE YOU EMPLOYED?**

8 A. I am employed by AT&T in its Law and Government Affairs organization as Regulatory
9 Manager – Government Affairs. In this position I am responsible for assisting in the
10 development and implementation of AT&T's regulatory activities in Missouri.

11

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

13 A. I have completed a Master of Science in Agricultural Economics from the University of
14 Missouri as well as a Bachelor of Science in Business Administration also from the
15 University of Missouri.

16

17 **Q. WHAT IS YOUR PRIOR WORK EXPERIENCE?**

18 A. Prior to joining AT&T, I was employed by Sprint Communications Company L.P. as a
19 Manager, State Regulatory Affairs. My responsibilities included the development of
20 Sprint's regulatory policy focusing on issues surrounding competitive market entry such
21 as TELRIC costing of unbundled network elements, universal service, access charges,
22 and Section 271 proceedings.

23

24 Before that, I was employed at the Missouri Public Service Commission as a
25 Regulatory Economist in the Telecommunications Department and, later, on the
26 Commission's Advisory Staff. While in the Telecommunications Department, I assisted
27 in developing Staff's position on issues related to costing, local interconnection and

Rebuttal Testimony of
R. Matthew Kohly

1 resale, universal service and tariff issues. While serving on the Advisory Staff, I advised
2 the Commission on economic and competitive issues in the telecommunications industry
3 and assisted in the preparation of orders and opinions. Also, while employed at the
4 Commission, I participated on the Commission's Arbitration Advisory Staff assigned to
5 mediation and arbitration proceedings filed pursuant to the 1996 Federal
6 Telecommunications Act ("TA 96"). As part of the arbitration proceedings, I developed
7 an interconnection costing methodology and reviewed and recommended modifications
8 to the cost studies used to set permanent unbundled network elements in Missouri.

9
10 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY?**

11 A. I have filed written testimony and/or testified before the Missouri Public Service
12 Commission, Montana Public Service Commission, Oklahoma Corporation Commission
13 and the Telecommunications Regulatory Board of Puerto Rico.

14
15 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS**
16 **PROCEEDING?**

17
18 A. The purpose of my testimony is to address AT&T's concerns about the Mid-Missouri
19 Group's ("MMG") proposed tariffs that would apply access rates to all traffic. AT&T
20 agrees that it is appropriate to apply access charges to interexchange traffic but believes it
21 is inappropriate to apply access rates to all other traffic. My testimony will deal with the
22 issue of applying access rates to traffic other than wireless traffic. AT&T's Witness Mr.
23 Maas will provide testimony related to the application of access rates to traffic originated
24 by wireless providers.

25
26 **Q. CAN YOU PLEASE SUMMARIZE YOUR CONCERNS WITH THE PROPOSED**
27 **TARIFFS?**

28 A. Yes. AT&T believes applying switched access rates to all traffic is overly simplistic, not
29 in the public interest, and that such a measure is premature and will not provide the

1 results that the MMG seeks. Further, the MMG's stated need for this tariff is based upon
2 the false premise that the MMG cannot request interconnection from CLECs. Applying
3 access rates to all traffic would conflict with FCC rules, prior Commission Orders, and
4 have widespread negative impacts on existing calling arrangements, such as on the MCA
5 calling plan and EAS arrangements. It is also premature to apply access rates to all
6 traffic until a process for exchanging records can be established, until the issues
7 surrounding the MCA are resolved, and until the issue of what access rates a CLEC may
8 charge are resolved. There are currently three active dockets before this Commission to
9 address these issues. Until these dockets are resolved, the approval of this tariff is
10 premature and will not provide the relief that the MMG seeks.

11 **Q. HOW IS THE PROPOSED TARIFF "OVERLY SIMPLISTIC"?**

12 **A.** Under the proposed tariff, access rates would apply to all traffic unless an agreement was
13 approved under Section 252 of the TA96. The proposed tariff language states:

14
15 **APPLICABILITY OF THIS TARIFF**
16 The provision of this tariff apply to all traffic regardless of type or
17 origin, transmitted to or from the facilities of the Telephone Company,
18 by any other carrier, directly or indirectly until and unless superseded by
19 an agreement approved pursuant to the provisions of 47 U.S.C. 252 as
20 may be amended.

21
22
23 To date, not a single interconnection agreement involving a SC has been
24 approved by the Commission under Section 252. Therefore, this proposed tariff would
25 apply to all traffic terminating to members of the MMG including local, interexchange,
26 or wireless regardless of what party originates that traffic unless superceded by an
27 agreement approved pursuant to Section 252 of the TA 96. This will have significant
28 impact beyond just CLEC originated and wireless traffic.

Rebuttal Testimony of
R. Matthew Kohly

1 As an example, the proposed tariff would apply to ILEC originated MCA traffic
2 that terminates in the MMG territories. This is a direct conflict to the Commission's
3 Order in Case No. T0-92-306, which determined that the MCA traffic exchanged
4 between LECs was jurisdictionally defined as "local" and that the compensation
5 arrangement was to be "bill-and-keep". Since these requirements were never
6 memorialized in an agreement approved pursuant to Section 252 of the TA96, the
7 compensation arrangement ordered by the Commission would conflict with the tariff
8 language.

9 If it was determined that the tariff superceded the Commission's Order in Case
10 No. TO-92-306, the bill-and-keep arrangement currently in place between the ILECs
11 would be replaced with terminating access and, most likely, lead other carriers to seek
12 compensation from the MMG and the other LECs for the MCA traffic they terminate.
13 Also, the proposed tariffs would also apply access rates to the existing EAS arrangements
14 in place between ILECs if those arrangements were not approved under Section 252 of
15 the TA96. This would certainly lead to significant changes in the provisioning of the
16 MCA and EAS and, possibly, to the demise of both calling plans.

17
18 **Q. WHY DOES AT&T BELIEVE APPROVAL OF THE PROPOSED TARIFF IS**
19 **PREMATURE?**

20
21 **A.** Understandably, the MMG is attempting to be compensated for traffic terminated onto its
22 network and has voiced this frustration on numerous occasions. However, the proposed
23 tariff will not provide the relief they seek. To the extent that the MMG is not being
24 compensated for terminating interexchange traffic originated by CLECs, neither are
25 CLECs being compensated for terminating traffic originated by the MMG. AT&T
26 believes that the primary reason for this is a practical one, and that is there is no industry

Rebuttal Testimony of
R. Matthew Kohly

1 consensus on the type of traffic records to exchange, and it is not a deliberate attempt to
2 avoid paying access charges. The issue of the providing the appropriate records will be
3 dealt with in Case No. TO-99-593. Until the appropriate records are exchanged, the SCs
4 will not be able to bill for this traffic regardless of what rate they apply. Once those
5 records are exchanged and terminating compensation arrangements are put in place, the
6 proper compensation can be exchanged among all parties. Until then, the tariff alone will
7 not provide the relief the MMG seeks.

8 Additionally, the provisioning of the MCA in a competitive market, the role of
9 CLECs in the MCA, and the appropriate inter-company compensation for MCA traffic is
10 being considered in Case No. TO-99-483. Also, the appropriate access rates to be
11 charged by CLECs in being considered in Case No. TO-99-596. Until these issues are
12 resolved and given the wide ranging impacts of the proposed tariff, approval of this
13 proposed tariff would be premature and is therefore not in the public interest.

14 **Q. IS THE ISSUE OF TRAFFIC TERMINATING WITHOUT COMPENSATION**
15 **UNIQUE TO THE MMG GROUP?**

16 **A.** No, it is not. The testimony of MMG witness Stowell implies that only the MMG suffers
17 from companies terminating traffic onto its network without compensating them. That is
18 not the case. Some of the ILECs, including members of the MMG, are terminating
19 traffic to the CLECs and are not paying any terminating compensation to the CLECs.
20 For example, the ILECs participating in the Commission's MCA plan as set forth in Case
21 No. TO-92-306 are originating traffic that is jurisdictionally defined as local and
22 terminating that traffic to CLECs operating in the Central Zone 1, and Zone 2 of the
23 MCA as local traffic. Apparently, those ILECs are assuming the "bill-and-keep"
24 arrangement ordered in Case No. TO-92-306 applies to this traffic. However, CLECs

Rebuttal Testimony of
R. Matthew Kohly

1 have not been recognized as participants in the MCA. Until CLECs are recognized as
2 MCA participants, traffic terminating on their network is not governed by the "bill-and-
3 keep" arrangement order in Case No. TO-92-306 and CLECs could file tariffs to collect
4 termination charges for that traffic.¹ Since ILECs are recognized as participants in the
5 MCA calling plan, any traffic they originate under the MCA plan is "local" and the only
6 rates they may charge their end-users are those set forth in Case No. TO-92-306 and in
7 their tariffs. Further, the order in Case No. TO-92-306 and the ILEC's tariffs require
8 them to complete calls from their MCA subscribers to customers that include CLEC
9 customers. Even if they have to pay terminating compensation to CLECs, they are
10 required to complete MCA calls and to treat them as local for purposed of billing their
11 end-users. Since these calls are treated as local, the origination, transport, and
12 termination of this traffic is not governed by the PTC plan. The ILEC that originates that
13 traffic is responsible for that traffic and to the extent that access rates or other
14 compensation is applied to that traffic, the ILEC who originated it would be responsible
15 for paying those charges. To date AT&T is not receiving any compensation for MCA
16 traffic from the ILEC that originated it and it is doubtful that any other CLEC is being
17 compensated. Additionally, it is quite possible that the MMG's wireless affiliate, Mid-
18 Missouri Cellular, is terminating traffic to CLEC customers and it is doubtful that any
19 compensation is flowing for that traffic as well. Before the MMG cries foul, they should
20 consider what will happen if the terms of their proposed tariff are applied in a reciprocal
21 manner.

¹ One of the reasons that AT&T has not taken issue with termination of MCA traffic without compensation onto its network is because of AT&T's desire to be recognized as a participant in the MCA and not to disrupt the MCA in the interim.

1 **Q. IF THIS TARIFF IS APPROVED, WHAT ACTIONS WILL AT&T, AND**
2 **POSSIBLY OTHER CLECs, CONSIDER?**

3 A. If AT&T, or any other CLEC, is required to pay access on all traffic, including local
4 traffic, terminating to the MMG, then they should also be allowed to require the MMG to
5 pay reciprocal compensation for traffic they terminate to AT&T. To accomplish this,
6 AT&T or other CLECs could file a similar tariff to require the ILEC's to pay reciprocal
7 compensation equal to each individual ILEC's switched access rates for all local traffic
8 terminated to them. The affect of this tariff would be to apply a rate equal the ILEC's
9 terminating access rate to all MCA and EAS traffic terminating to AT&T.

10
11
12
13 **Q. DOES THE PROPOSED TARIFF RESOLVE THE PROBLEM OF TRAFFIC**
14 **TERMINATING WITHOUT COMPENSATION?**

15 A. No, this tariff will not resolve the problem of traffic terminating without compensation.
16 At this time, there is no mechanism for the exchange of records that will allow either
17 ILECs or CLECs to bill for all terminating traffic. For example, even if AT&T had
18 approved tariffs that would allow it to receive compensation for terminating MCA traffic,
19 there is not a process for AT&T to receive records to bill the appropriate LEC for that
20 traffic. This is an industry issue and is not unique to traffic terminating to AT&T or to
21 the MMG.

22 MMG's witness Mr. Stowell acknowledged the proposed tariff will not provide
23 the relief they seek when he answered the question of "How will the approval of this

tariff assist the MMG member in collecting terminating access, or in incenting requests for interconnection?" by saying "There is no guarantee the tariff will result in either"²

Q. LASTLY, CAN THE SCS REQUEST INTERCONNECTION FROM THE CLECs?

A. Contrary to MMG's Witness Donald D. Stowell's belief, an LEC can request interconnection from another LEC. Section 251(a)(1) states that "Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers". Section 251(b) states that "Each local exchange carrier has the following duties: (5) Reciprocal compensation — The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Further, the FCC rules 45 C.S.R. § 51.703 (a) states that "Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier." Clearly, each LEC has the ability to request interconnection from another LEC.

It is important to note that under the TA96, there is one possible exception to this requirement. Under Section 251(f)(2), rural carriers may petition the state Commission for the suspension or modification of the requirements of Section 251(b) and Section 251(c). Under this section, the members of the MMG could use the proposed tariff to apply access rates to all traffic and then seek to suspend the requirements to establish reciprocal compensation arrangements. Regardless of their ability to request an exemption, the MMG is certainly free to request negotiation from any CLEC.

² Case No. TT-99-428, Direct Testimony of Donald D. Stowell, page 8.

Rebuttal Testimony of
R. Matthew Kohly

1 Q. WHAT ACTION DO YOU RECOMMEND THE COMMISSION TAKE REGARDING
2 THIS TARIFF?

3 A. I recommend that the Commission reject the proposed tariff. Additionally, the
4 Commission should direct the parties to use bill-and-keep compensation for the exchange
5 of local traffic until any party requests another compensation arrangement. As set forth
6 in the TA96, the parties can negotiate and, if necessary, arbitrate the compensation
7 arrangement. If the parties arbitrate the issue, the Commission can determine the
8 appropriate intercompany compensation according to 47 C.S.R. § 51.705(a).
9

10 Q. CAN YOU PLEASE SUMMARIZE YOUR TESTIMONY?

11 A. Certainly. AT&T believes applying switched access rates to all traffic is overly broad,
12 not in the public interest, and that such a measure is premature and will not provide the
13 results that MMG seeks. Currently, the industry is in a state of transition from a
14 monopoly environment to a competitive environment. Thus far, the compensation
15 arrangement between CLECs and ILECs that do not have an interconnection agreement
16 has been a de-facto bill-and-keep arrangement. It is important to keep in mind that not
17 being compensated for terminating traffic has been and will continue to be a two-way
18 street. Rather than begin a series of tariff filings that will only add to the confusion
19 surrounding from the transition, we should resolve the issues in Case Nos. TO-99-483,
20 TO-99-593, and TO-99-596 as quickly as possible. Once those dockets are decided,
21 there should be no need for a blanket application of access rates to all types of traffic.

22 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

23 A. Yes, it does.
24
25