

**ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.**

**ATTORNEYS AT LAW**

**P.O. BOX 1438**

**700 EAST CAPITOL**

**EUGENE E. ANDERECK**

**TERRY M. EVANS**

**ERWIN L. MILNE**

**JACK PEACE**

**CRAIG S. JOHNSON**

**RODRIC A. WIDGER**

**GEORGE M. JOHNSON**

**BEVERLY J. FIGG**

**WILLIAM S. LEWIS**

**VICTOR S. SCOTT**

**COL. DARWIN MARMADUKE HOUSE**

**JEFFERSON CITY, MISSOURI 65102-1438**

**TELEPHONE 573-634-3422**

**FAX 573-634-7822**

**COREY K. HERRON**

**MATTHEW M. KROHN**

**LANETTE R. GOOCH**

**SHAWN BATTAGLER**

**ROB TROWBRIDGE**

**JOSEPH M. PAGE**

**LISA C. CHASE**

**OF COUNSEL:**

**MARVIN L. SHARP**

**PATRICK A. BAUMHOER**

**GREGORY C. STOCKARD (1904-1993)**

**PHIL HAUCK (1924-1991)**

**April 26, 2001**

Mr. Dale Hardy Roberts  
Secretary/Chief Administrative Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**Re: Case No. TA-99-47  
Tariff File 200100925**

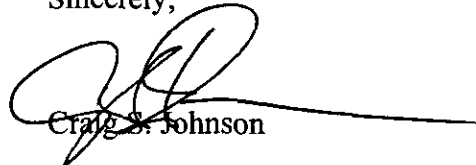
**FILED**<sup>3</sup>  
**APR 25 2001**  
**Missouri Public  
Service Commission**

**FILED**<sup>3</sup>  
**APR 26 2001**  
**Missouri Public  
Service Commission**

Dear Mr. Roberts:

Enclosed please find an original and eight (8) copies of the Missouri Independent Telephone Group's Additional Motion to Suspend and/or Reject Tariffs in this matter. A copy of this letter and a copy of the enclosed Motion have been served upon all counsel of record.

Sincerely,

  
Craig S. Johnson

CSJ:tr

Enc.

cc: MITG Managers  
Office of Public Counsel  
Office of General Counsel  
Larry W. Dority  
Kenneth A. Schiffman  
Carl J. Lumley/Leland B. Curtis  
Paul S. Deford  
W. R. England, III/Sonda B. Morgan  
Mary Ann (Garr) Young  
Richard S. Brownlee, III  
Edward J. Cadieux

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

In the Matter of the Application of )  
Southwestern Bell Communications )  
Services, Inc., d/b/a Southwestern Bell )  
Long Distance, for a Certificate of )  
Service Authority to Provide Inter- )  
exchange Telecommunications Service )  
within the State of Missouri. )

Case No. TA-99-47  
(Tariff file 200100925)

~~FILED<sup>3</sup>~~  
~~APR 25 2001~~ PB  
~~Missouri Public~~  
~~Service Commission~~

FILED<sup>3</sup>  
APR 26 2001  
Missouri Public  
Service Commission

Additional Motion to Suspend and/or Reject Tariffs

Comes now the MITG, previously granted intervention, and for grounds for this Motion to Suspend and/or Reject the Tariffs, or portions thereof filed by Applicant on or about March 7, 2001, states as follows:

1. The MITG has previously been granted intervention in this docket as the "Mid-Missouri Group" of local exchange companies by Order of September 9, 1998. This motion is filed to assure that all Missouri customers, residential and business, urban or rural, residing in Southwestern Bell Telephone Company (SWBT) exchanges or residing in the exchange of any other Missouri LEC, receive the full benefits of local and toll competition introduced by the Telecommunications Act of 1996.
2. On or about March 7, 2001, Applicant reactivated this docket by filing proposed tariffs in complex tariff sheets approximately 240 in number.
3. On or about March 16, 2001, the MITG filed a motion to suspend said tariffs stating as grounds therefore concerns as to how Applicant would utilize its toll

39

facilities, that of underlying carriers, and how IXC traffic would originate from and terminate to MITG exchange areas.

4. Upon a complete review of said tariffs, the MITG now believes the proposed tariffs contain provisions violating federal and state laws providing for the geographic averaging of rates. This subject has been the topic of extensive litigation concerning AT&T's Overlay tariff in TT-2000-22, which after review before the Circuit Court of Cole County, Case No. 00CV324464, has been reversed finding that the proposal of an IXC to charge different (lesser) toll rates to customers residing in Southwestern Bell Telephone Company exchanges than that IXC charges elsewhere, are in violation of law. Some provisions of the tariff at issue here are believed to suffer from the same legal infirmity, and should be suspended and ultimately rejected.

5. Applicant proposes to offer service on a statewide basis. Although Applicant is an affiliate of Missouri's dominant LEC, RBOC Southwestern Bell Telephone Company (SWBT), Applicant is an IXC formed to provide statewide in-region interLATA services to customers in the entire state of Missouri, and as such must abide the rules regarding averaged rates in order to avoid undue competitive advantage over other interLATA IXCs.

6. Applicant proposes to provide a wide array of toll services, including Message Toll, Standard Message Toll, Consumer Long Distance Winback, Simple Solutions, Long Distance II, Domestic Saver, Long Distance Block of Time, Customer Business High Volume, Business Long Distance 2000, Long Distance for Business, Total Solutions Plus, Business Long Distance 50, Custom Customer Services, and Simple Solution 2500, and perhaps others.

interexchange calls offered to rural and high-cost customers are no higher than those paid by urban customers.....We will not, however, permit states to establish special rate zones within states because we believe that would result in geographically deaveraged rates in violation of Section 254(g). Section 254(g) requires that rates be no higher in *any* rural or high-cost area than they are in *any* urban area. To the extent that AT&T proposes to associate some, but not all, rural areas with certain urban areas, we presume that some rural areas will experience higher rates than some urban areas, in violation of the statute. Because AT&T has not addressed this apparent flaw in its proposal for rate "zones", we reject the proposal."

Applicant's proposed tariff is in violation of this federal law in that some services will not be available on a statewide basis, but can only be obtained by residential or business customers which are customers of Applicant's affiliate, Southwestern Bell Telephone Company.

15. Applicant's proposed tariff is also in violation of the following state laws:

§ 392.200.5 RSMo

This statute prohibits Applicant from charging a different price per minute for one interexchange service than it charges for the same, substitutable, or equivalent interexchange service. This statute incorporates in part the same policy goals as does 47 USC 254(g), and in logic tracks the Report and Order of the FCC. For example, the statute expressly provides, in its last sentence, that it does not apply to reasonable price discounts based on the volume of service provided, *so long as such discounts are non-discriminatory and offered under the same rates, terms and conditions throughout a telecommunications company's certificated or service area*. As Applicant's service area is statewide, its proposal to offer a price discount solely to that part of its service area comprised of SWB exchanges fails to comply with 392.200.5.

§ 392.200.2 RSMo

§ 392.200.2 prohibits a company from applying a special rate by which it charges some more or less for a service than it charges others for the same service under the same or substantially the same circumstances.

§ 392.200.3 RSMo

This statute prohibits Applicant from making or giving any undue or unreasonable preference based upon locality. The purpose of the tariffs referenced above appear to be to give a rate preference to customers residing in SWBT exchanges. The qualification for the preference is simply one confined to location or locality--residing in a SWB exchange.

§ 392.200.4 RSMo

This statute prohibits a service from being defined differently based upon geographic area or other market segmentation unless Applicant establishes, by clear and convincing evidence, that such is reasonably necessary to promote the public interest and policies of Chapter 392 RSMo. The analysis under 392.200.4 will be very similar to that of 392.200.5.

Additionally, 392.200.4(2) references "to promote the goals of the federal Telecommunications Act of 1996". It goes without saying that if any proposed service would violate the geographic rate averaging requirements of 47 USC 254(g), 47 CFR 64.1801, and the FCC's accompanying Report and Order, this statutory goal has also been violated. Indeed, states have been preempted from permitting geographic deaveraging prohibited by the federal government, and the state's role has been limited to enforcing the federal geographic averaging requirement.

WHEREFORE, on the basis of the foregoing, MITG respectfully requests that the tariffs of Applicant be suspended for hearing on these issues, and ultimately rejected, or alternatively on the basis of the precedent contained in appeal of AT&T's Overlay tariff, that the tariff be rejected outright.

ANDERECK, EVANS, MILNE,  
PEACE & JOHNSON, L.L.C.

By 

Craig S. Johnson MO Bar No. 28179  
700 East Capitol  
Post Office Box 1438  
Jefferson City, Missouri 65102  
Telephone: (573) 634-3422  
Facsimile: (573) 634-7822

ATTORNEYS FOR MITG

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 26 day of April, 2001, to all attorneys of record.

  
Craig S. Johnson MO Bar No. 28179