

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

BPS Telephone Company, Cass County Telephone	)	
Company, Citizens Telephone Company of	)	
Higginsville, Missouri, Craw-Kan Telephone	)	
Cooperative, Inc., Fidelity Communications	)	
Services I, Inc., Fidelity Telephone Company,	)	
Grand River Mutual Telephone Corporation,	)	
Green Hills Telephone Corporation, Holway	)	
Telephone Company, Iamo Telephone Company,	)	
Kingdom Telephone Company, K.L.M. Telephone	)	
Company, Lathrop Telephone Company and	)	
Mark Twain Rural Telephone Company,	)	Case No. TC-2002-1077
	)	
Complainants,	)	
	)	
vs.	)	
	)	
VoiceStream Wireless Corporation, Western	)	
Wireless Corporation and Southwestern Bell	)	
Telephone Company,	)	
	)	
Respondents.	)	

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
INITIAL BRIEF**

Southwestern Bell Telephone Company,<sup>1</sup> respectfully submits this Initial Brief to the Missouri Public Service Commission (“Commission”) in support of its request that all of Complainants’<sup>2</sup> claims against Southwestern Bell be dismissed or denied.

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, will be referred to in this pleading as “Southwestern Bell” or “SWBT.”

<sup>2</sup>Petitioners in this case consist of BPS Telephone Company, Cass County Telephone, Citizens Telephone Company of Higginsville, Mo., Inc., Craw-Kan Telephone Cooperative, Inc., Fidelity Communications Services I, Inc., Fidelity Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, K.L.M. Telephone Company, Lathrop Telephone Company and Mark Twain Rural Telephone Company, they will be referred to in this Brief as the “Complainants.”

## **EXECUTIVE SUMMARY**

No authority exists for imposing terminating charges on a transit carrier like Southwestern Bell for traffic originated by VoiceStream and Western Wireless. Complainants' Wireless Termination Service tariffs, by their very terms, apply only to the originating wireless carriers. Nothing in those tariffs purports to impose any liability on transit carriers. And at no time did Complainants disclose to the Commission - - or to other parties - - any intent that the tariffs were to apply to transit carriers. When submitted to the Commission for approval, Complainants only represented that the tariffs were to apply to the wireless carriers. The Commission approved the tariffs on that basis and nowhere in the Commission's Order approving the tariffs was any liability, secondary or otherwise, imposed on transit carriers.

The only instance in which Complainants represented to the Commission that a transit carrier might be liable for another carrier's traffic under their tariffs was if the transit carrier refused a request to block traffic from a wireless carrier that failed to pay the tariff charges. Even if this was a valid basis for imposing liability on a transit carrier (which Southwestern Bell denies), that exception does not apply in this case as none of Complainants ever asked Southwestern Bell to block VoiceStream or Western Wireless' traffic.

Complainants' attempt to impose liability on a transit carrier like Southwestern Bell for this traffic violates accepted industry standards as expressed by the FCC, which call for the originating carrier to compensate all downstream carriers involved in completing the call. Although the Complainants support maintaining this industry standard before the FCC, they are taking a contrary position here in order to impose liability on Southwestern Bell. The Commission should not countenance such regulatory gamesmanship.

Southwestern Bell is not required by federal law or regulation to provide transit service. It receives little or no benefit from serving as a transit carrier and does not receive revenues from the originating carriers to pay terminating carriers like Complainants. Pursuant to Commission approved interconnection agreements, SWBT receives only \$.004 cents per minute to cover its transiting costs, and receives no revenue to recover the access charges (which are 12 to 16 times higher than SWBT's transit charges) which Complainants seek to impose here. It is inappropriate to impose any financial obligation on Southwestern Bell for such traffic. The Commission should dismiss or deny all claims against Southwestern Bell.

### **BACKGROUND**

This Complaint focuses only on calls originated by VoiceStream and Western Wireless' retail end-user customers that terminate to retail end-user customers in Complainants' exchanges. Southwestern Bell serves as the transiting carrier for these calls, meaning that Southwestern Bell switches and transports the calls from the wireless carriers' networks to the Complainants' networks.<sup>3</sup>

As the retail service providers, VoiceStream and Western Wireless, receive all retail revenue generated on calls at issue in this case. As a transit carrier, Southwestern Bell receives no compensation from the retail end-user customer making the call (it also receives no compensation from the retail end-user customer receiving the call). Pursuant to the terms and conditions in Commission-approved interconnection agreements with VoiceStream and Western Wireless, Southwestern Bell charges \$.004 per minute of use (significantly less than a penny

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<sup>3</sup> Hughes Rebuttal, p. 4. This rate has been reduced even further to \$.001999 per minute of use pursuant to the true-up provisions in the interconnection agreements.

per minute) for providing the transiting function.<sup>4</sup>

Although Complainants' claim that Southwestern Bell as a transit carrier should be secondarily liable for this traffic, the charges Complainants seek are over ten times greater than Southwestern Bell's transiting rate. Complainants' tariffed rates for terminating wireless traffic range from \$0.0509 per minute for Lathrop Telephone Company to \$0.0692 per minute for Grand River Mutual Telephone Corporation. The transit rates in the interconnection agreements with VoiceStream and Western Wireless do not provide compensation to Southwestern Bell for paying terminating compensation to other carriers like Complainants. Rather, these agreements place responsibility for terminating charges on VoiceStream and Western Wireless as the originating carrier and call for them to enter into agreements with third-party providers like Complainants for the termination of traffic.<sup>5</sup>

#### **ISSUES PRESENTED TO THE COMMISSION**

- 1. Since February 19, 2001 (for all Complainants excluding Grand River Mutual and Fidelity Communication Services), since September 20, 2001 (for Grand River), and since November 23, 2001 (for Fidelity Communication), has VoiceStream terminated wireless-originated traffic to the exchanges of Complainants via the transit services or facilities of SWBT?**
- 2. Since February 19, 2001 (for all Complainants excluding Grand River and Fidelity Communication), since September 20, 2001 (for Grand River), and since November 23, 2001 (for Fidelity Communication), has Western Wireless terminated wireless-originated traffic to the exchanges of Complainants via the transit services or facilities of SWBT?**

Yes. As Southwestern Bell indicated in its prefiled testimony, the calls that are subject of this Complaint are those originated by VoiceStream and Western Wireless' retail end-user customers and are terminated to Complainants' end-user customers.<sup>6</sup>

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<sup>4</sup> Id., p. 5.

<sup>5</sup> Id., pp. 5-6.

<sup>6</sup> Id., pp. 3-4.

3. **Has VoiceStream terminated such traffic in the absence of an agreement with Complainants regarding compensation?**

Southwestern Bell has not taken a position on this issue.

4. **Has Western Wireless terminated such traffic in the absence of an agreement with Complainants regarding compensation?**

Southwestern Bell has not taken a position on this issue.

5. **Has VoiceStream violated the terms of its Commission-approved interconnection agreement with SWBT by sending traffic to SWBT for termination in Complainants' exchanges without first obtaining a compensation or interconnection agreement?**

Southwestern Bell has not taken a position on this issue.

6. **Has Western Wireless violated the terms of its Commission-approved interconnection agreement with SWBT by sending traffic to SWBT for termination in Complainant exchanges without first obtaining a compensation or interconnection agreement?**

Southwestern Bell has not taken a position on this issue.

7. **Does VoiceStream owe compensation to Complainants for such traffic terminated during this time? What are the legal and factual bases for such compensation?**
8. **Does Western Wireless owe compensation to Complainants for such traffic terminated during this time? What are the legal and factual bases for such compensation?**

If any compensation is found to be due, such compensation is the responsibility of the originating carrier. As the FCC stated in its Unified Carrier Compensation Regime docket:

Existing access charge rules and the 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. Hence, these interconnection regimes may be referred to as "calling-party's-network-pays" (or "CPNP"). Such CPNP arrangements, where the calling party's network pays to terminate a call, are clearly the dominant form of

interconnection regulation in the United States and abroad.<sup>7</sup>

Nothing in the interconnection agreements between Southwestern Bell and VoiceStream/Western Wireless purports to vary from the dominant form of interconnection regulation. Nor has Southwestern Bell otherwise agreed to be responsible for payment of terminating compensation to Complainants on wireless calls originated by customers of VoiceStream/Western Wireless.

**9. Has SWBT violated the terms of its Commission-approved interconnection agreements with VoiceStream and Western Wireless by allowing them to transit wireless-originated traffic to Complainants in the absence of a compensation or interconnection agreement?**

No. Southwestern Bell has not violated any term of its Commission-approved interconnection agreements with either VoiceStream or Western Wireless. As Complainants have acknowledged, the only basis for their claim that a violation has occurred is Section 3.1.3 of Southwestern Bell's interconnection agreements with VoiceStream and with Western Wireless.<sup>8</sup> But this provision imposes no duty on Southwestern Bell to block wireless originated traffic from transiting its network when the originating wireless carrier fails to compensate the terminating company. Rather, it merely sets out compensation responsibilities with respect to transit traffic:

Carrier and SWBT shall compensate each other for traffic that transits their respective systems to any Third-Party Provider, as specified in Appendix PRICING. The Parties agree to enter into their own agreements

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<sup>7</sup> 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). Quoted at Hughes Rebuttal, pp. 12-13).

<sup>8</sup> See, Factual Stipulation in Case No. TC-2002-1077, filed October 10, 2002, para. 16, which states: “Complainants claim Southwestern Bell has violated its interconnection agreements with VoiceStream and Western Wireless by allowing them to transit wireless-originated traffic to Complainants in the absence of compensation or interconnection agreement. The contractual provision this claim is based on is Section 3.1.3 of the VoiceStream/Southwestern Bell and Western Wireless/Southwestern Bell interconnection agreements, both of which are quoted on page 10 of Complainants’ Complaint.”

with Third-Party Providers. In the event that Carrier sends traffic through SWBT's network to a Third-Party Provider with whom Carrier does not have a traffic interchange agreement, then Carrier agrees to indemnify SWBT for any termination charges rendered by a Third-Party Provider for such traffic.<sup>9</sup>

While this provision does include indemnity language benefiting Southwestern Bell, that language cannot be bootstrapped into some contractual duty to pay for or block traffic for which the originating party has not made appropriate arrangements to terminate.

**10. Is SWBT liable for Complainants' wireless tariff charges associated with the traffic VoiceStream and Western Wireless terminated to Complainants?**

No. Southwestern Bell should not be held liable for any charges associated with the traffic VoiceStream and Western Wireless terminated to Complainants. The Commission should dismiss or deny all claims against Southwestern Bell.

**a. No authority exists for imposing liability on transit carriers like SWBT.**

Complainants' Wireless Termination Service tariffs, by their very terms, do not authorize Complainants to impose terminating charges on transit carriers like Southwestern Bell. Rather, these tariffs apply only to the originating wireless carriers (which the tariffs reference as "Commercial Mobile Radio Service (CMRS) Providers"). The tariffs, under Section B (General), subsection 1, state: "This service is provided to Commercial Mobile Radio Service (CMRS) Providers licensed by the Federal Communications Commission." The tariffs further state, at Section E (Records and Billing), subsection 1:

The Telephone Company shall issue a bill to the CMRS Provider based on the best information available to the Telephone Company including, but not limited to records of terminating traffic created by the Telephone Company at its end office or tandem switch.<sup>10</sup>

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<sup>9</sup> See, Section 3.1.3 of the interconnection agreement between SWBT and VoiceStream, approved in Case No. TO-2001-489; and interconnection agreement between SWBT and Western Wireless, approved in Case No. TO-98-12, quoted on page 10 of Complainant' Complaint.

<sup>10</sup> See, Hughes Rebuttal, p. 7, quoting tariff language (emphasis added).

Nowhere do the tariffs state that Complainants will bill a transiting carrier.

In addition, subsection 5 of the Records and Billing section of the tariff states: “The CMRS Provider shall pay the Telephone Company for all charges in accordance with the rates set forth in this tariff. . . .”<sup>11</sup> Nowhere do the tariffs state that such charges are to be paid by a transiting carrier.

When Complainants presented these tariffs to the Commission approximately two years ago, Complainants did not disclose any intent that the tariffs would apply to transiting carriers. In fact, just the opposite occurred. In that case, Complainants represented the tariff as only applying to the wireless carriers. For example, Complainants’ witness Robert Schoonmaker stated:

The tariffs proposed that a single rate per minute be charged to the wireless carriers for terminating their traffic in the filing company’s operating areas.<sup>12</sup>

The Complainants’ counsel, during opening statements, similarly represented only that the tariff would apply to the wireless carriers. Referencing the tariffs his clients were proposing, Complainant’ counsel stated: “It will apply universally to all wireless carriers to seek to terminate intraMTA traffic.”<sup>13</sup> Nowhere in those remarks was any intent expressed that the charges contained in the tariff were ever to be imposed on transiting carriers.

During the entire case, there was only one situation in which Complainants asserted that liability should be imposed on a transiting carrier (which the parties referred to as an “intermediate transport provider (ITP)” during the case). There, Complainants asserted that a

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<sup>11</sup> Ibid.

<sup>12</sup> See, Direct Testimony of Robert C. Schoonmaker, filed October 23, 2000 in Case No. TT-2001-139, et al., p. 23 (emphasis added), quoted in the Rebuttal Testimony of SWBT witness Hughes at p. 8.

<sup>13</sup> See, Opening Remarks in Case No. TT-2001-139, et al. from December 11, 2000, Tr. 29, quoted in the Rebuttal Testimony of SWBT witness Hughes, p. 9.



transit carrier should be held financially responsible for terminating charges under the tariff if it refused the Complainants' claim to block traffic from a wireless carrier that failed to pay the tariff charges. Under Issue 3(b),<sup>14</sup> Complainants stated:

The Filing Company must inform the intermediate transport provider (ITP) of the identity of the wireless carrier that is failing to pay for the traffic being terminated. The Filing Company should also inform the ITP that the terms and conditions of its tariff are being violated by the wireless carrier. It should therefore be the responsibility of the ITP to implement the necessary blocking measures. If the ITP does not block the traffic, then the ITP should be held responsible for the traffic.<sup>15</sup>

But as each Complainant has acknowledged, none of them have ever asked Southwestern Bell to block wireless traffic originated either by VoiceStream or Western Wireless pursuant to Section G(3) of their Wireless Termination Service tariffs.<sup>16</sup> Thus, even if this exception provided a basis for proposing liability on a transit carrier (which Southwestern Bell denies), it has no application here as none of the Complainants ever asked Southwestern Bell to block the traffic.<sup>17</sup>

Southwestern Bell would note that it participated in Case No. TT-2001-139, et al. as an intervenor, and did not oppose the proposed tariff rates because it understood that the rates would only apply to the originating wireless carriers, and not to transit carriers. The only issues Southwestern Bell raised pertain to the tariff's requirement the transit carriers' block wireless carriers' traffic at the Complainants request.<sup>18</sup>

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<sup>14</sup> Issue 3(b) as presented to the Commission in Case No. TT-2001-139, et al., stated: "What information must the Filing Company's provide the intermediate transport provider before the intermediate transport provider is required to implement such blocking?"

<sup>15</sup> See, Position Statement of Mark Twain Rural Telephone Company, et al., filed December 6, 2000 in Case No. TT-2001-139, et al., at p. 7 (emphasis added).

<sup>16</sup> See, Factual Stipulation, filed October 10, 2002, paras. 2-15.

<sup>17</sup> Hughes Rebuttal, p. 10.

<sup>18</sup> Id., p. 8.

Moreover, the Commission's Report and Order reflects that the charges were intended to apply only to the originating wireless carriers, and that if they did not pay, their traffic was to be blocked:

The proposed Wireless Termination Service tariffs that are the subject of this case make clear that the small ILECs must be compensated by the wireless carrier for this traffic or the traffic may be blocked.<sup>19</sup>

In approving Complainants' tariffs at their proposed rate levels, the Commission explained that it was doing so to create an incentive for the wireless carriers to negotiate agreements for the termination of their traffic with the Complainants:

As a matter of public policy, the solution selected here by the Commission is to be preferred over that suggested by Staff. The rates contained in the tariffs proposed by the Filing Companies are clearly higher than the Wireless Interveners would like. Thus, an incentive is created for the CMRS carriers to do what Congress expects them to do, namely, negotiate agreements with the small LECs. It is important to bear in mind, as the parties have unanimously advised the Commission, that the CMRS carriers can compel the small LECs to make an agreement, but the small LECs cannot compel the CMRS carriers to make an agreement. Thus, the solution must create an incentive for the CMRS carriers to act. The tariffs proposed by the Filing Companies will do that, while the alternative solution suggested by Staff will not.<sup>20</sup>

The Commission Order set out three mutually exclusive alternatives for the wireless carriers: they could (1) negotiate agreements for the termination of their traffic with the Complainants; (2) pay the rates contained in Complainants' Wireless Termination Service tariff; or (3) have their traffic blocked. If the payment obligation under the tariff simply defaulted to the transiting carrier, the same incentives envisioned by the Commission would not exist.

b. Imposing liability on transit carriers violates accepted industry standards.

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<sup>19</sup> See, Report and Order, Case No. TT-2001-139, et al., issued February 8, 2001 at p. 11 (emphasis added).

<sup>20</sup> Id., p. 46 (emphasis added).

Under standards reflected by the FCC in its Unified Carrier Compensation docket, the originating carrier - - the one who has the relationship with the calling party - - is responsible for compensating all downstream carriers involved in completing the call:

Existing access charge rules and the 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. Hence, these interconnection regimes may be referred to as "calling-party's-network-pays" (or "CPNP"). Such CPNP arrangements, where the calling party's network pays to terminate a call, are clearly the dominant form of interconnection regulation in the United States and abroad.<sup>21</sup>

As the FCC made clear, the originating carrier is the party with the relationship with the end user who originated the call. It is through this relationship with the end user that the originating carrier is able to recover the cost of terminating calls.<sup>22</sup>

The Commission should note that although they are taking a different position in this case, Complainants are supporting the continuation of this industry standard at the FCC. In an effort to dissuade the FCC from implementing a "bill and keep" intercarrier compensation regime for all types of traffic, Complainants have taken the position that the existing intercompany compensation arrangements under which the originating party's network pays, has worked well and can continue to work well into the future:

While the MO STCG does not necessarily oppose the concept of a unified approach to intercarrier compensation, the Commission's proposal to implement a "bill and keep" intercarrier compensation regime is ill advised. The existing intercompany compensation regime known as Calling Party's Network Pays (CPNP) has worked well for a number of years and, with recent rulings by the Commission to address particular problems such as intercarrier compensation for ISP bound traffic, CPNP can continue to work well into the future. There is no need or reason for the Commission to "throw the baby out with the bath water" for a purely hypothetical regime which has not withstood any empirical analysis.<sup>23</sup>

<sup>21</sup> 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).

<sup>22</sup> Hughes Rebuttal, pp. 10, 12.

<sup>23</sup> See, Initial Comments of Missouri Independent Telephone Group, CC Docket No. 01-92, filed with the FCC on August 21, 2001 at p. 3 (emphasis added, internal citations omitted), a copy of this filing is appended as Attachment 1.

The FCC's Common Carrier Bureau reaffirmed the continued appropriateness of the Calling Party's Network Pays standard in a decision released only five months ago in the Verizon-Virginia Arbitration with AT&T, Cox and WorldCom. In its decision, the FCC Common Carrier Bureau specifically rejected imposing financial liability on the transit carrier for expenses associated with traffic originated by another carrier.<sup>24</sup>

There, WorldCom proposed interconnection agreement language that would have required Verizon to compensate WorldCom for all transit traffic that flowed through Verizon to WorldCom (i.e., as if the traffic were exchanged solely between WorldCom and Verizon). Under WorldCom's proposed language, Verizon would have been required to bill the originating carrier for reimbursement of those charges. Verizon objected to WorldCom's proposed language, which essentially required Verizon to act as a billing intermediary for transit traffic that WorldCom exchanges with third-party carriers.<sup>25</sup>

Consistent with the long-standing industry standard under which the calling party's network pays, the FCC Common Carrier Bureau specifically rejected WorldCom's proposal to make Verizon financially responsible for terminating expenses on transit traffic:

We also reject WorldCom's proposal to Verizon . . . WorldCom's proposal would . . . require Verizon to serve as a billing intermediary between WorldCom and third-party carriers with which it exchanges traffic transiting Verizon's network. We cannot find any clear precedent or Commission rule requiring Verizon to perform such a function. Although WorldCom states that Verizon has provided such a function in the past, this alone cannot create a continuing duty for Verizon to serve as a billing intermediary for the Petitioners' transit traffic. We are not persuaded by WorldCom's arguments that Verizon should incur the burdens of negotiating interconnection and compensation arrangements

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<sup>24</sup> 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").

<sup>25</sup> FCC Verizon-Virginia Arbitration Order, paras. 107, 112 and 114.

with third-party carriers. Instead, we agree with Verizon that interconnection and reciprocal compensation are the duties of all local exchange carriers, including competitive entrants. Accordingly, we decline to adopt WorldCom's proposal for this issue.<sup>26</sup>

The Missouri Commission Staff also concurs that it is inappropriate to impose secondary liability on transit carriers like Southwestern Bell for the traffic in dispute. In its testimony filed in this case, Staff stated: "Staff does not agree that SWBT is secondarily liable for any unpaid amounts by VoiceStream and Western Wireless."<sup>27</sup>

As the FCC and Staff recognize, imposing liability on transit carriers for other carriers' traffic would be inappropriate, and inconsistent with industry standards under which the calling party's network provider is the one responsible for paying any compensation that may be due on such traffic.

c. Transit Carriers Receive No Benefit from Transiting Other Carriers' Traffic and Should Have No Financial Responsibility for it.

Companies receive no special privilege or benefit from serving as transit carriers. The ability to transit traffic benefits the end-user retail customers of the originating and terminating carriers, not the end-user retail customers of the transit carrier. Transit traffic only adds to the congestion on the transit carrier's network and brings its network facilities, which are a finite resource, closer to exhaust.<sup>28</sup> Moreover, the rates for performing this transiting function are designed to help recover only the cost of transiting the traffic,<sup>29</sup> and do not recover any of the costs of termination. Thus, unless the desired result is that transit service not be available, it is

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<sup>26</sup> FCC Verizon-Virginia Arbitration Order, para. 119 (emphasis added, internal citations omitted).

<sup>27</sup> See, Staff witness Scheperle Rebuttal testimony at p. 8.

<sup>28</sup> Hughes Rebuttal, pp. 15 - 16.

<sup>29</sup> Southwestern Bell does not agree that the transiting rate even recovers the true cost of transiting.

inappropriate to impose any liability, secondary or otherwise, on transit carriers for another carrier's traffic.

Because facilities at its tandem offices were prematurely approaching exhaust, Southwestern Bell previously asked the Commission to allow limits on the amount of traffic carriers could transit through Southwestern Bell's network to other telecommunications carriers. In its last arbitration with AT&T (in its capacity as a CLEC, including its affiliate TCG), Southwestern Bell proposed contract language that would have required AT&T/TCG to establish a direct trunk group to another LEC, CLEC or wireless carrier when AT&T/TCG's traffic to that other carrier reached a threshold of 24 voice grade trunks:

- 5.1 When transit traffic through the SBC-13STATE Tandem from CLEC to another Local Exchange Carrier, CLEC or wireless carrier requires 24 or more trunks, CLEC shall establish a direct End Office trunk group between itself and the other Local Exchange Carrier, CLEC or wireless carrier . . .<sup>30</sup>

During the arbitration, Southwestern Bell explained that it proposed the 24-trunk threshold because that is the same standard it applies to itself in determining when to establish direct trunks. And the application of the standard to interconnecting carriers would extend the life of its tandems and would allow additional capacity for other interconnecting carriers. (Although this language would have required AT&T/TCG to provide their own direct trunking when their traffic reached this threshold, Southwestern Bell indicated that it was still willing to accept their overflow traffic in order to help prevent disruption of their traffic flows.)<sup>31</sup>

The Commission, however, denied Southwestern Bell's request stating:

AT&T objects to SWBT's language, arguing that it essentially allows SWBT to design AT&T's network, it permits SWBT to impose a business

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<sup>30</sup> Hughes Rebuttal, pp. 19-20, referencing Joint Decision Point List ("Joint DPL") filed May 3, 2001, in Case No. TO-2001-455, Exhibit II-E, Issue 8.

<sup>31</sup> Hughes Rebuttal, p. 20, referencing Joint DPL filed May 3, 2001, in Case No. TO-2001-455, Exhibit II-E, Issues 8 and 9.

plan on AT&T, it permits SWBT to evade its interconnection obligations under the Act, and that the 24-trunk threshold is too low. AT&T proposes language at Part A, Section 1.0, that asserts AT&T's right to interconnect with SWBT at any technically feasible point . . . The Commission will resolve these DPs [Decision Points] by directing the parties to adopt the positions and language suggested by AT&T. SWBT is obligated to interconnect with AT&T at any technically feasible point, without regard to traffic volume. AT&T is free to design its network and to capitalize on any competitive advantages conferred by its network architecture in conjunction with SWBT's interconnection duty . . .<sup>32</sup>

Clearly, any benefits from transiting flow to carriers seeking to use the transit carrier's network, as it allows those carriers to gain efficiencies for themselves and their customers. For example, Southwestern Bell's network has been in place for years and extends to nearly every other telephone company in the state (in cases where SWBT does not directly connect with a particular telephone company, SWBT connects with another tandem company, like Sprint, that also serves as a transit carrier). Thus, by establishing a direct connection with Southwestern Bell, wireless carriers can indirectly reach all other telephone companies in the LATA, including Complainants. The alternative would be for the wireless carriers to physically build their networks to all other carriers operating in the state, which wireless carriers have indicated would be inefficient for them.<sup>33</sup>

Until the FCC Common Carrier Bureau's decision in the Verizon-Virginia arbitration, Southwestern Bell generally believed that it was required to carry this traffic. Consistent with this understanding, it entered into interconnection agreements (that were subsequently approved by the Commission) with most of the wireless carriers that operate in the State, under which Southwestern Bell would transit their traffic to third-party carriers.<sup>34</sup>

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<sup>32</sup> In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-2001-455, Arbitration Order, issued June 7, 2001 at p. 42, quoted in SWBT witness Hughes Rebuttal Testimony at pp. 20-27.

<sup>33</sup> Hughes Rebuttal, pp. 15-16.

<sup>34</sup> *Id.*, p. 16.

But in light of the FCC Common Carrier Bureau's decision in the Verizon-Virginia arbitration, it now appears that the FCC has not imposed an obligation to carry transit traffic, particularly at TELRIC rates. In that decision, the Bureau rejected the various CLECs' attempt to require Verizon to handle an unlimited amount of transit traffic:

We reject AT&T's proposal because it would require Verizon to provide transit service at TELRIC rates without limitation. While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's rules implementing section 251(c)(2), the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find a clear Commission precedent or rules declaring such a duty. In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the act to provide transit service would not require that service to be priced at TELRIC.<sup>35</sup>

While it is now apparent that carriers do not have a general obligation to transit another carrier's traffic, Southwestern Bell recognizes that it has Commission-approved interconnection agreements that call for Southwestern Bell to provide transiting service, and it will fulfill its obligations under those agreements. Staff recognizes that Southwestern Bell is acting as a transiting carrier for wireless originated traffic.<sup>36</sup> Staff also states that Southwestern Bell should not be secondarily liable for any unpaid amounts by VoiceStream and Western Wireless.<sup>37</sup> It is also apparent from the Commission's approval of these agreements and Staff's position in this case that the Commission and Staff view transiting (regardless of who provides it) as an important service through which the various networks in the state are connected.

While existing interconnection agreements require Southwestern Bell to transit wireless traffic, there does not appear to be an obligation to do so under the Act after these agreements

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<sup>35</sup> Verizon-Virginia Arbitration Order, para. 117, quoted in SWBT witness Hughes Rebuttal Testimony, at p. 17..

<sup>36</sup> See, Staff witness Scheperle Rebuttal Testimony, p. 4.

<sup>37</sup> See, Staff witness Scheperle Rebuttal Testimony, p. 9.



expire. Southwestern Bell's willingness to handle transit traffic after termination of existing agreements will be dependent on (1) not being financially responsible for the terminating or other expenses associated with another carrier's traffic; (2) the ability to charge a compensatory, market-based rate for handling the traffic; and (3) the ability to establish reasonable limits on the amount of transit traffic it must handle.<sup>38</sup>

### **CONCLUSION**

The Commission should reject the Complainants' attempt to impose liability on Southwestern Bell for transit traffic. Complainants' tariffs do not authorize them to impose terminating charges on transit carriers and doing so would violate long-standing industry standards as expressed by the FCC. The transiting rates charged by SWBT in its Commission approved interconnection agreements were not designed to recover the terminating rates of the Complainants for traffic originated by the Wireless Carriers and in no way provide SWBT any compensation for such a terminating expense. Given the absence of any benefit to transit carriers for allowing their networks to be used by other carriers, and the Commission's refusal to allow limits to be placed on the amount of such traffic that must be handled, it would be inappropriate and unfair to impose any financial obligation for this traffic on transit companies. Southwestern Bell therefore respectfully requests the Commission to dismiss or deny all of the claims Complainants have made against Southwestern Bell.

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<sup>38</sup> Hughes Rebuttal, pp. 18-19.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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                    /s/ Leo J. Bub                      
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