

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
BRIAN K. BOGARD
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

March 29, 2002

Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

FILED³
MAR 29 2002

Re: Case No. TT-99-428, et al.

**Missouri Public
Service Commission**

Dear Mr. Roberts:

Enclosed for filing in above referenced matter, please find an original and eight copies of The MITG's and STCG's Proposed Findings of Fact and Motion for Additional Briefing, Supplemental Hearing, and Proposed Conclusions of Law.

Please see that this filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this matter, please direct them to me at the above number. Thank you in advance for your attention to and cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

BTM/da
Enclosures
cc: Parties of Record

FILED³

MAR 29 2002

BEFORE THE PUBLIC SERVICE COMMISSION, Missouri Public
OF THE STATE OF MISSOURI Service Commission

In the Matter of the Mid-Missouri)
Group's Filing to Revise its Access)
Services Tariff, P.S.C. Mo. No. 2.)

CASE NO. TT-99-428 et al.

THE MITG AND STCG'S PROPOSED FINDINGS OF FACT
AND MOTION FOR ADDITIONAL BRIEFING, SUPPLEMENTAL HEARING, AND
PROPOSED CONCLUSIONS OF LAW

On February 5, 2002, the Commission issued its *Order* directing the filing of stipulated facts in this case. Despite the good faith efforts of the parties to prepare a set of stipulated facts, agreement was not possible. Therefore, the MITG and the STCG offer the following proposed findings of fact and citations to the record. In addition, the MITG and the STCG renew their request for the Commission to schedule additional briefing, supplemental oral argument, and proposed conclusions of law.

ADDITIONAL BRIEFING, SUPPLEMENTAL HEARING,
AND PROPOSED CONCLUSIONS OF LAW

As explained more fully in the MITG's and the STCG's prior pleadings, additional briefing, supplemental oral argument, and proposed conclusions of law are especially appropriate in this case. Therefore, the MITG and the STCG respectfully renew their requests for additional briefing, supplemental oral argument, and proposed conclusions of law.

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PROPOSED FINDINGS OF FACT

1. Commercial Mobile Radio Service ("CMRS" or "wireless") telecommunications traffic has been and continues to be delivered to Missouri's small independent telephone companies for call completion (or "termination"). (Ex. 1, pp. 3-4) This wireless traffic is being delivered to the exchanges of the small companies in the absence of any compensation or interconnection agreements between the small companies and the wireless carriers to establish the rates, terms, and conditions of service. (*Id.*) Neither Southwestern Bell Telephone Company (SWBT) nor the wireless carriers are compensating the small companies for the wireless traffic that is "transited" to the small companies' exchanges via SWBT's facilities. (*Id.*)

2. Although there are direct connections between SWBT and the wireless carriers, there are no direct connections between the wireless carriers and the small companies. Thus, the wireless traffic is being delivered to the small companies over an indirect connection. (Ex. 3, p. 3) The wireless traffic is being delivered by SWBT over the same access connections as interexchange carrier ("IXC") traffic, and it is being commingled with traditional interexchange traffic from IXCs. (Ex. 1, p. 5; Tr. 89; 160-61) There is no change in the connections or facilities that are used to complete the wireless calls. Rather, the connections and facilities that are used to complete interexchange (i.e. toll) calls and the wireless traffic are identical. (Ex. 1, p. 5; Ex. 3, pp. 7-8; Tr. 160-61)

3. **IntraMTA and InterMTA Traffic.** Missouri is divided into two Major Trading Areas (MTAs): one that covers roughly the eastern part of the state, and one

that covers roughly the western part of the state. Not all telecommunications traffic delivered by the wireless carriers by SWBT is intraMTA traffic. Some of the wireless traffic that is delivered to the small companies is interMTA traffic. No one is providing records to identify or distinguish intraMTA traffic from interMTA traffic. (Ex. 2, p. 4; Tr. 275-76; Tr. 243-44) Due to the limitations of the interconnection between SWBT and the small companies, the small companies are not able to identify the originating carrier for this wireless traffic, identify the jurisdiction of the call (i.e. intraMTA or interMTA), apply the appropriate compensation rate, follow an established business procedure in order to obtain terminating compensation, or to prevent such calls from terminating. (Ex. 2, pp. 4-5, 8-9)

4. SWBT and the various wireless carriers exchange wireless traffic pursuant to the terms of SWBT's wireless interconnection tariff or via an interconnection agreement between SWBT and the wireless carriers. The small companies cannot distinguish whether the traffic delivered by SWBT is being delivered via SWBT's wireless interconnection tariff or via a wireless interconnection agreement. (Ex. 2, p. 4; Tr. 108)

5. **SWBT's wireless termination tariff.** Southwestern Bell Telephone Company has tariffed a wireless termination service for a number of years. SWBT's Wireless Interconnection Tariff contains a set of procedures, rates, and terms that are used in the absence of an approved interconnection agreement between SWBT and a wireless carrier. SWBT's wireless termination tariff states:

Wireless carriers shall not send calls to SWBT that terminate in an Other Telecommunication Carrier's network unless the wireless carrier has entered into an agreement with such Other Telecommunications Carriers to directly compensate that carrier for the termination of such traffic.

(Ex. 16 – SWBT's Wireless Interconnection Tariff, P.S.C. Mo. No. 40, 5th Revised Sheet 16.02) SWBT's Wireless Interconnection Tariff allows SWBT to charge a rate for the termination of wireless traffic in the absence of an interconnection agreement. SWBT's tariffed wireless termination rates are neither forward-looking, nor are they reciprocal. SWBT's tariffed rates for the termination of wireless calls (roughly \$0.043) were based upon SWBT's access charges. (Ex. 16; Tr. 377-83, 386-88, 314-15)

6. **SWBT Interconnection Agreements.** Since 1996, the Commission has approved various interconnection agreements between SWBT and wireless carriers. These agreements set forth the terms and conditions by which wireless carriers interconnect with SWBT and exchange traffic. Following the approval of these interconnection agreements between SWBT and the wireless carriers, traffic that is originated by wireless carriers has been and continues to be terminated to the small companies' exchanges even though there is no approved interconnection agreement in place between these carriers and the small companies. Under these agreements, the wireless traffic is being delivered to the small companies regardless of whether or not the originating carrier is compensating the small companies. (Ex. 1, p. 7)

7. **The Proposed Tariffs.** A group of small companies proposed to add the following language to their access service tariffs: "The provisions of this tariff apply to all traffic regardless of type or origin, transmitted to or from the facilities of the

Telephone Company, by any other carrier, directly or indirectly, until and unless superseded by an agreement approved pursuant to the provisions of 47 U.S.C. 252, as may be amended." (Tr. 83-84) The small companies agreed that the tariff language did not apply to Metropolitan Calling Area (MCA) traffic. (Ex. 2, p. 18; Tr. 84-85, 149)

8. **Application of access charges to intraMTA traffic.** AT&T Wireless pays access compensation on some intraMTA traffic delivered to the small companies. When AT&T wireless delivers intraMTA traffic over the facilities of AT&T long distance, access compensation is paid to the LECs by AT&T long distance. (Tr. 245) Access is also paid on some of Sprint PCS' intraMTA traffic. (Tr. 345) SWBT applies access charges to intraMTA traffic which is delivered to SWBT's exchanges by IXC's. (Tr. 388)

9. **SWBT's wireless interconnection tariff rates.** The rate in SWBT's wireless interconnection tariff for termination of intraMTA wireless traffic is the same as SWBT's access rate. (Ex. 16; Tr. 314-15, 377-83, 386-88, 391-92)

10. **Access applied under the PTC Plan.** Until the elimination of the Primary Toll Carrier (PTC) Plan, SWBT paid terminating access compensation to wireless carriers for 1+ toll traffic originating in small company exchanges and transiting SWBT facilities. (Ex. 3, RCS-2)

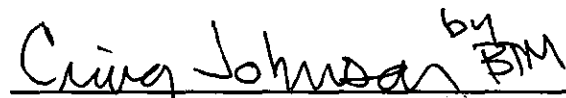
11. **IXCs pay access on 1+ wireline calls to wireless customers.** SWBT charges access rates to IXC's for terminating intraMTA wireless calls. (Tr. 306-314; 375-82; Ex. 16)

12. **Imbalance of Traffic.** The traffic between Missouri's small companies and the wireless carriers is not balanced. (Tr. 281-82; 365)

WHEREFORE, the undersigned parties respectfully request that the Commission adopt these proposed findings of fact in their entirety.

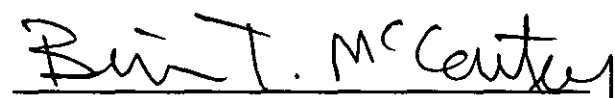
Respectfully submitted,

MISSOURI INDEPENDENT
TELEPHONE COMPANY GROUP


Craig S. Johnson MBN 28179
Lisa Chase MBN 51502
ANDERECK, EVANS, MILNE, PEACE,
& JOHNSON, L.L.C.
700 E. Capitol Avenue
Jefferson City, MO 65102
Telephone: (573) 634-3422
Facsimile: (573) 634-7822

Attorneys for the MITG

THE SMALL TELEPHONE COMPANY
GROUP


W. R. England, III Mo. #23975
Brian T. McCartney Mo. #47788
BRYDON, SWEARENGEN &
ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102
Telephone: (573) 635-7166
Facsimile: (573) 634-7431

Attorneys for the STCG

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 29th day of March, 2002, to:

Mike Dandino
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Marc Poston
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Leo Bub
Southwestern Bell Telephone Company
One Bell Center, Room 3518
St. Louis, MO 63101

Paul S. DeFord
Lathrop and Gage
2345 Grand Blvd
Kansas City, MO 64108


Larry Dority
Fischer and Dority P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101

Joseph Murphy
Meyer Capel P.C.
306 W. Church Street
Champaign, Illinois 61820

Thomas Pulliam
Ottsen, Mauze, Leggat & Belz, L.C.
112 S. Hanley
St. Louis, MO 63105

Lisa Creighton-Hendricks
Sprint Missouri, Inc.
5454 W. 110th Street
Overland Park, KS 66211

Charles McKee
Sprint Spectrum L.P.
6160 Sprint Parkway, 4th Floor
Overland Park, KS 66251



W.R. England, III/Brian T. McCartney