

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

Application of Missouri RSA No. 5 Partnership d/b/a)
Chariton Valley Wireless for Approval of a Direct)
Interconnection Agreement and for a Related Indirect) Case No. TK-2005-0447
Transiting Traffic Services Agreement with Southwestern)
Bell Telephone, L.P. d/b/a SBC Missouri, Pursuant to the)
Telecommunications Act of 1996.)

SBC MISSOURI'S¹ OPPOSITION TO MITG'S APPLICATION

The Missouri Public Service Commission ("Commission") should deny MITG's² "Application to Intervene, Alternative Application to Participate Without Intervention, and Alternative Application to Address an Issue as Amicus" ("Application") on the grounds that: (1) the Application is untimely; (2) the Application is an inappropriate collateral attack on the Commission's new Enhanced Record Exchange Rule; and (3) the Application provides no appropriate basis for the MITG's entry into this case.

1. MITG's Application is Untimely. In its Order Directing Notice and Making SBC Missouri a Party, the Commission provided Notice to all interexchange and local exchange telecommunications companies in the state that the interconnection and the transiting traffic services agreements had been filed for approval and directed that "any party wishing to request a hearing shall do so by filing a pleading no later than June 13, 2005."³ MITG's pleading, which

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri."

² The Missouri Independent Telephone Group or "MITG" consists of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company. MITG Application, p. 1.

³ Order Directing Notice and Making SBC Missouri a Party, Case No. TK-2005-0447 issued June 1, 2005, at p. 2.

attempts to raise a myriad of irrelevant issues, was not filed until 10 days later and it is therefore untimely.⁴

2. MITG's Application is an Improper Collateral Attack on the Enhanced Record Exchange Rule.⁵ While MITG attempts to portray its pleading as an “opposition to the basis for SBC Missouri’s objection”⁶ to the filing of the transit traffic services agreement, its pleading focuses instead on MITG’s views on transiting⁷ and its claim that a transit carrier should be responsible for paying terminating charges on other carriers’ traffic that crosses its network and terminates to third parties.⁸ The Commission fully addressed the subject of transit traffic in its Enhanced Record Exchange Rule and specifically rejected MITG’s (and other parties’) demands to hold the transit carrier liable for terminating charges on other carriers’ traffic: “this rule codifies a business relationship for LEC-to-LEC network traffic whereby the originating carrier, not the transiting carrier, is responsible for payment of call termination.”⁹

3. MITG's Application Provides No Basis for Its Entry Into the Case. On its face, MITG’s Application provides an insufficient basis to support the Commission’s granting either intervenor status or leave to file a brief as an *amicus curiae*. The Commission’s rules authorize it to permit intervention on a showing that:

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.¹⁰

⁴ Although specifying in the ordering clauses that the pleading must be filed by June 13, 2005, the body of the Order appears to provide “20 days from the issuance” of the Commission’s Order. But even under this extended period, MITG’s filing is untimely, as this expanded period extended only until June 21, 2005.

⁵ See, 4 CSR 240-29.010-140.

⁶ MITG Application, p. 1.

⁷ Id., pp. 3-10.

⁸ Id., p. 8.

⁹ Order of Rulemaking Adopting 4 CSR 240-29.040, Case No. TX-2003-0301, released May 11, 2005, at p. 5.

¹⁰ 4 CSR 240-2.075(4)(A)-(B).

Here, MITG has done neither. MITG merely claims that “the MITG’s interest in these transit agreements is different than that of the general public.”¹¹ Such a bare allegation is clearly insufficient. MITG’s Application fails to demonstrate any interest different than that of the general public which may be adversely affected by a final order in this case or how permitting it to intervene would serve the public interest. Similarly, MITG fails to show how granting it leave to file a brief as an *amicus curiae* would be “desirable” or that the issues it seeks to inject into this proceeding “are relevant to the determination of the case.”¹²

To the extent MITG member companies might receive traffic transited to them from Missouri RSA No. 5 Partnership, d/b/a Chariton Valley Wireless (“Chariton Valley Wireless”) under the transit traffic services agreement, their interests will be adequately protected by the provisions of the Commission’s new Enhanced Record Exchange Rule.¹³ This rule sets out the general requirements under which telecommunications companies may originate, transit and terminate telecommunications traffic utilizing the LEC-to-LEC network and creates specific time frames for the exchange of records, invoices and payments for various types of traffic, including traffic they might receive from Chariton Valley Wireless on a transited basis.¹⁴ As the Commission itself explained in its Order of Rulemaking, these rules are intended to “provide the necessary guidance to reduce instances of traffic-recording and billing problems, and provide a forum for resolution of those problems when they do occur.”¹⁵

Moreover, the Commission should note that if individual MITG members have specific concerns regarding the traffic they might receive from Chariton Valley Wireless under the transit traffic services agreement, they now have the specific right under federal law to request

¹¹ MITG Application, p. 2.

¹² 4 CSR 240-2.075(6).

¹³ 4 CSR 240-29.010-140.

¹⁴ See, e.g., 4 CSR 240-29.080.

¹⁵ Order of Rulemaking Adopting 4 CSR 240-29.010, Case No. TX-2003-0301, issued May 11, 2001, at p. 9.

negotiations to establish an interconnection agreement under Section 252 of the Act with CMRS providers such as Chariton Valley Wireless. In the recent *T-Mobile Declaratory Ruling Order*, the FCC amended its rules to permit incumbent LECs like the MITG member companies to invoke the Section 252 negotiation and arbitration process, and to establish interim compensation arrangements, which are triggered by a request for negotiation from either carrier:

In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly, we amend section 20.11 of our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in Section 252 of the Act. A CMRS provider receiving such a request must negotiate in good faith and must, if requested, submit to arbitration by the state commission.¹⁶

These new rules apply not only to traffic exchanged directly with a wireless carrier, but also to traffic exchanged through the transiting services of another carrier, as the FCC in its Order adopting the rule recognized that wireless carriers typically interconnect and exchange traffic with smaller LECs on an indirect basis.¹⁷ Thus, if the MITG members are concerned about receiving appropriate compensation for traffic exchanged with Chariton Valley Wireless, they can compel Chariton Valley Wireless to engage in negotiations under Section 252 of the Act. As a practical matter, such negotiations should be simple to initiate, since Chariton Valley Wireless appears to be affiliated with one of the carriers seeking to intervene in this proceeding (Chariton Valley Telephone Corporation) and both Chariton Valley

¹⁶ In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile, et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92, 2005 FCC LEXIS 1212, *29, released February 24, 2005 at para. 16.

¹⁷ Id., para. 5. Specifically, the FCC stated:


As the Commission recognized in the *Intercarrier Compensation NPRM*, CMRS providers typically interconnection indirectly with small LECs via a Bell Operating Company (BOC) tandem. In this scenario, the CMRS provider delivers the call to a BOC tandem, which in turn delivers the call to the terminating LEC. The indirect nature of the interconnection enables the CMRS provider and LEC to exchange traffic even if there is no interconnection agreement or other compensation arrangements between the parties.

Wireless (which seeks Commission approval of the agreements filed in this case) and the MITG companies (which seek Commission rejection of those agreements) are represented by the same counsel of record.

WHEREFORE, SBC Missouri respectfully requests that the Commission deny MITG's Application to Intervene, Alternative Application to Participate Without Intervention, and Alternative Application to Address an Issue as Amicus.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454
MIMI B. MACDONALD	#37606

Attorneys for Southwestern Bell Telephone, L.P.
One SBC Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)
314-247-0014 (Facsimile)
robert.gryzmala@sbc.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on or about July 12, 2005.


Robert J. Gryzmala

GENERAL COUNSEL
MARC D. POSTON
MISSOURI PUBLIC SERVICE COMMISSION
PO BOX 360
JEFFERSON CITY, MO 65102
marc.poston@psc.mo.gov

PUBLIC COUNSEL
MICHAEL DANDINO
OFFICE OF THE PUBLIC COUNSEL
PO BOX 7800
JEFFERSON CITY, MO 65102
mike.dandino@ded.mo.gov

CRAIG S. JOHNSON
ANDERECK, EVANS, MILNE, PEACE &
JOHNSON, LLC
PO BOX 1438
JEFFERSON CITY, MO 65102
mjohnson@sonnenschein.com