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January 3, 2000

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

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

FILED²
JAN 04 2000
Missouri Public
Service Commission

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case are an original and 14 copies of Southwestern Bell Wireless's Reply Brief. Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanne A. Fischer".

Jeanne A. Fischer

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 04 2000

Missouri Public
Service Commission

In the Matter of Alma Telephone Company's)
Filing to Revise its Access Service Tariff,)
PSC Mo. No. 2)

Case No. TT-⁹⁹~~99~~428, et al.

REPLY BRIEF OF SOUTHWESTERN BELL WIRELESS, INC.

Southwestern Bell Wireless, Inc. (SWBW) respectfully submits this Reply to the Initial Briefs filed by other parties in this case, particularly the Mid-Missouri Group (MMG) and the Small Telephone Company Group (STCG).

SWBW will not attempt to reply to each contention made by the MMG and STCG in their Initial Briefs. Failure to address an issue raised by these Parties does not signify acquiescence in their position; rather SWBW believes the issue has been adequately addressed in the Initial Briefs.

As has been stressed repeatedly, the issues raised by the MMG tariff filings are legal issues, primarily questions of federal law. The MMG tariff revisions would apply access charges to all traffic exchanged between the MMG local exchange carriers (LECs) and Commercial Mobile Radio Service (CMRS or wireless) carriers, even when the traffic is local, or within a Metropolitan Trading Area (MTA). The tariff directly contradicts unambiguous requirements set forth by the FCC in its Interconnection Order.¹ As discussed in the Initial Briefs of virtually all of the parties besides the MMG and STCG,² in paragraphs 1036, 1041 and 1042 of the Interconnection Order, the FCC states that reciprocal compensation under section 251(b)(5) of the Telecommunications

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, released August 8, 1996 (the Interconnection Order), para. 1036.

² See Initial Briefs of SWBW, pp. 2-5; AT&T Wireless Services, Inc. and AT&T Communications of the Southwest, Inc. (AT&T), pp. 2-3; Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint), pp. 3-4; Southwestern Bell Telephone Company (SWBT), pp. 10-16; Staff of the Missouri Public Service Commission (Staff), p. 3. The remaining party, Office of Public Counsel (OPC), did not address the Interconnection Order in its Initial Brief.

Act of 1996 (the Act) applies to local traffic exchanged between LECs and wireless carriers, that access charges do not apply, and that traffic within an MTA is local.

The MMG and STCG provide creative interpretations of selective portions of FCC Orders and Rules, but they are unable to explain away the FCC's clear direction that reciprocal compensation—not access charges—applies to intraMTA traffic exchanged between LECs and wireless providers. The requirement is absolute; the FCC offers no exceptions. The tariff revisions proposed by the MMG are not lawful and this Commission must reject them.

This case raises the issue of whether the MMG tariff revisions are lawful, and the answer clearly is that they are not. The Commission need go no further in deciding whether to reject or approve the tariffs. In its Initial Brief, however, the MMG makes a number of allegations that demand a response. The MMG's charges of betrayal of trust and lack of business ethics on the part of wireless carriers are simply preposterous. The foundation for these charges is that wireless carriers "have been sending this traffic to third party ILECs, without agreement, without payment, without offer to pay, without apology" and that wireless carriers "are satisfied with the free ride for termination of traffic on small ILEC facilities that indirect interconnection provides." (MMG Initial Brief, p. 11) In making these sweeping accusations, MMG blatantly ignores all the evidence submitted in this case that demonstrates efforts by wireless carriers to commence negotiation with LECs of agreements for reciprocal compensation for the termination of traffic. This evidence, summarized in the Initial Brief of SWBT, shows the wireless carriers have tried to act in compliance with the Act, the Interconnection Order, and this Commission's rulings.³ (SWBT Initial Brief, pp. 18-21)

³ See In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Revise Its Wireless Carrier Interconnection Service Tariff, P.S.C. Mo.-No. 40, Case No. TT-97-524, Report and Order, issued December 23, 1997.

The MMG LECs, and most of the STCG LECs,⁴ have flatly refused to negotiate with the wireless carriers. They have invented an exception to the requirement that reciprocal compensation applies to intraMTA traffic exchanged between the LEC and wireless carrier, claiming the Act requires them to negotiate a reciprocal compensation agreement only if the LEC and wireless carrier interconnect directly. The wireless carriers' attempts to negotiate agreements for reciprocal compensation have been futile. (SWBT Initial Brief, pp. 18-21; Sprint Initial Brief, pp. 5-6; SWBW Initial Brief, pp. 4, 7)

The LECs' complaints about not being paid for termination of calls from wireless carriers are equally specious. Despite having the usage records since February, 1998 from which a bill could be generated, a number of LECs just recently, in the summer of 1999, sent wireless carriers bills charging access charges for the termination of wireless traffic. (SWBT Initial Brief, p. 4) In the absence of bills, how could wireless carriers have been paying the LECs? And, more important, in the absence of an agreed upon rate, which the LECs refuse to negotiate, how can the LECs unilaterally decide to impose non-cost based rates and expect the wireless carriers to pay? SWBW's desire to pay the appropriate amount owed to the LECs is evidenced by its inclusion of a clause in its draft reciprocal compensation agreements, calling for retroactive application of the negotiated rate. (SWBW, Dreon Rebuttal, p. 3)

MMG also directly and blatantly contradicts the evidence in the record with its assertion that, with indirect interconnection, wireless carriers would be paid twice for calls terminating to them, by both the originating LEC and the transiting carrier. (MMG


⁴ Three of the STCG LECs—Stoutland, Orchard Farm and New London Telephone Companies—have entered reciprocal compensation agreements for the termination of intraMTA traffic with wireless carriers in Missouri with which they “indirectly” interconnect. (Sprint Initial Brief, pp. 4-5; SWBW, Dreon Rebuttal, pp. 2-3) The existence of these agreements, and agreements with other LECs in Missouri and elsewhere in the country, prove that MMG is wrong when it asserts that “[w]ithout a direct physical interconnection, reciprocal compensation does not work.” (MMG Initial Brief, p. 15)

Initial Brief, p. 14) Wireless carriers made clear at the hearing that double recovery could and would be avoided, by taking into account during the negotiation of the reciprocal compensation agreement any compensation received by the wireless carrier from the transiting carrier. (SWBW Initial Brief, p. 8)

Wireless carriers have shown their willingness to enter agreements with the MMG and STCG companies using a negotiated, cost-based, per minute of use rate for transport and termination of local traffic, similar to the agreements reached with other telephone companies in Missouri. (SWBW, Dreon Rebuttal, pp. 1-3; Sprint Initial Brief, p. 6) This renders irrelevant the MMG and STCG companies' complaints and concerns about bill and keep arrangements; if they dislike using a bill and keep arrangement, they should negotiate a reciprocal compensation rate with the wireless carriers. Arguments that the Commission should approve the tariffs to give wireless carriers incentive to negotiate with the LECs are convoluted; conversely, approval of the tariffs would eliminate incentive on the part of the LECs to negotiate reciprocal compensation rates with the wireless carriers. (Sprint Initial Brief, p. 7; Staff Initial Brief, p. 5)

The MMG tariff revisions are not lawful. They violate federal law, as well as prior Commission orders concerning wireless interconnection. For this reason the Commission must reject the tariffs. The Commission must disregard allegations made by the MMG companies that not merely are unsupported by the record, but actually directly conflict with the evidence in this case.

Respectfully submitted,


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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on January 3, 2000.

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