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January 10, 2000

FILED²

JAN 10 2000

Missouri Public
Service Commission

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

Re: TC-2000-402

Dear Mr. Roberts:

Enclosed please find an original and fourteen copies each of Chariton Valley's Motion to Dismiss Complaint, an alternative Answer to the Complaint in the event the Commission does not rule upon the Motion to Dismiss within thirty days.

Also, please be advised that Chariton Valley is willing to have its case consolidated with TC-2000-325, and any other pending "maximizer 800 complaint" cases. Please be further advised that Chariton Valley is willing to attempt to mediate this complaint.

A copy of this letter and a copy of the enclosures have been served upon all attorneys of record. Thank you for seeing this filed.

Sincerely,

Craig S. Johnson
by *L. L. M. Inc.*
Craig S. Johnson

CSJ/dl

cc: Leo Bub
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Bill Biere
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 10 2000

Missouri Public
Service Commission

Southwestern Bell Telephone Company's)
Complaint Against Chariton Valley)
Telephone Corporation for Blocking)
Southwestern Bell's 800 MaxiMizer Traffic)
and Request for an Order Requiring)
Chariton Valley to Restore the Connection.)

Case No. TC-2000-402

MOTION TO DISMISS COMPLAINT

COMES NOW Chariton Valley Telephone Corporation, pursuant to 4 CSR 240-2.070(6), and hereby moves the Commission to dismiss SWB's December 30, 1999 Complaint for failure to state facts upon which relief can be granted, and submits the following:

1. 4 CSR 240-2.070 limits SWB's grounds for complaint to being aggrieved by a violation of any statute, rule, order, or decision within the Commission's jurisdiction. SWB does not cite any alleged violation of statute or rule. SWB cites an alleged violation of pages 7 and 8 of this Commission's June 10, 1999 decision in TO-99-254. A complete review of the Commission Orders in that docket reveals that those Orders terminated SWB's authority to originate the very traffic which is the subject of the Complaint.

2. In paragraph 4 of its Complaint, SWB characterizes the FGC/FGD issue in TO-99-254 as involving "all intrastate intraLATA traffic being transported in Missouri". This is an inaccurate expansion of the issue addressed by the Commission in its TO-99-254 decision. The FGC/FGD discussion at pages 7 and 8 of the Commission's June 10 decision dealt with system deficiencies in recording traffic terminating to the SCs. SCs

had proposed changes to their access tariffs requiring traffic terminated to them to be terminated over FGD facilities. For calls originating in SC exchanges after PTC exit, such traffic would be originated by IXC's on a FGD basis. It was understood by the Commission and all parties that, upon PTC exit from SC exchanges, there would no longer be FGC traffic originated in SC exchanges.

3. After PTC exit from SC exchanges, there will still be PTC toll traffic originated by PTC's in their own exchanges which would be terminating to SC exchanges. It was this traffic for which the SC's requested conversion to FGD. The Commission's decision at pages 7 and 8 was discussing traffic terminating to SC's. The Order did not address the continued right of SWB to originate FGC traffic in Chariton Valley's exchange.

4. The traffic at issue in this case is traffic that apparently SWB desires to continue to originate in Chariton Valley exchanges, even after termination of the PTC Plan. The PTC Plan was terminated in Chariton Valley exchanges effective July 22, 1999. As ordered by the Commission, SWB is no longer authorized to originate toll calls in Chariton Valley exchanges.

5. At the hearing in TO-99-254, SWB's principal witness William Bailey testified that SWB desired to exit SC exchanges, that SWB did not want to originate any toll using SC access facilities, and that SWB did not want to originate any traffic within SC exchanges. (T. Volume 11, pp. 1573-1575, 1619-1620, attached hereto).

6. On June 23, 1999 the Office of Public Counsel filed a request for clarification as to whether SWB would continue to offer OCA service in SC exchanges. At paragraph 2 of its July 6 response to OPC's Motion, SWB affirmatively represented

that, after termination of the PTC Plan, "Once the PTCs' responsibility for providing toll services in SC exchanges ends, the PTCs will no longer be offering any toll services, including OCA, in SC exchanges." At paragraph 3 of that pleading SWB affirmatively represented that "The evidence in this case makes it clear that with the elimination of the PTC Plan, the PTCs' toll services, including OCA, would no longer be available in SC exchanges."

7. The Commission accepted these representations. In its August 17, 1999 Order Regarding Request for Clarification, the Commission made the following clarification to the June 10 Report and Order: "Upon the termination of the PTC Plan, the PTCs will no longer provide any toll services, including OCA, in SC exchanges". The Commission has determined that SWB is not authorized to provide any toll service, including 800 maximizer, in Chariton Valley" exchanges. The Commission's decision was made in the very case SWB relies upon. As a public utility, SWB cannot pick and choose as to which intraLATA toll services it will provide in SC exchanges. If SWB desires to provide any intraLATA toll service, it must make all such services available.

8. With respect to maximizer 800 service, SWB has modified its tariffs so that customers residing in Chariton Valley exchanges cannot subscribe to the service after July 22, 1999. But SWB now wants its 800 subscribers to be able to receive calls from their customers residing in Chariton Valley exchanges, even though SWB is no longer authorized to originate such calls.

9. The PTC Plan is now terminated. Apart from Chariton Valley's access tariff, the PTC Plan was SWB's sole authority to interconnect with Chariton Valley for the exchange of traffic. SWB no longer has authority under the PTC Plan to originate toll

in Chariton Valley exchanges. Chariton Valley's approved tariff has the force and effect of law and is the sole recourse of SWB if it wants to originate traffic in Chariton Valley exchanges. The Commission does not have the jurisdiction in a Complaint proceeding to authorize something which contradicts Chariton Valley's tariff.

10. If SWB now wants to enter the Chariton Valley exchanges to originate maximizer 800, all it must do under Chariton Valley's access tariff is submit an Access Service Request (ASR). This is a standard industry document used to make changes, additions, or deletions from existing access facilities and service. There would be single non-recurring charge of \$ 204.88 per line or trunk connection, and there would be no monthly recurring charge other than switched access rate usage. SWB was informed that it could avoid service interruption by submitting an ASR, but SWB refused to take the lawful steps under Chariton Valley's access tariff to assure uninterrupted service.

11. There is no impediment to SWB's doing so. The trunks exist with sufficient capacity. Upon making the ASR, Chariton Valley will obtain the information necessary to program the information into its switch necessary to capture, identify, distinguish, record, and bill SWB for SWB's traffic, and only SWB's traffic. The SBC / SWB entity group has now been assigned or has available a carrier identification code or codes from the North American Numbering Plan Administrator.

12. Chariton Valley cannot continue to allow SWB to originate maximizer 800 calls on the "OOOO" default or "no-CIC" basis that extended under the PTC Plan. Contrary to SWB's assertions as paragraph 13 of its complaint, if ILECs such as SWB, Sprint/United, and GTE are allowed to continue to originate 800 calls on a "OOOO" or "no-CIC" basis, Chariton Valley will not be able to distinguish one carrier's traffic from

another's. While this worked in the PTC Plan environment when one and only one PTC was assigned Chariton Valley exchanges, it will not work in a post-PTC Plan environment where a multitude of PTCs may originate such traffic. Chariton Valley could not distinguish SWB traffic from that of GTE or Sprint/United.

13. If Chariton Valley allows any IXC to originate 800 traffic on a FGC basis, it will be subject to claims that it has an obligation to allow all IXCs to do so, which would result in a complete inability to record, distinguish, and be paid compensation appropriately from the responsible carrier.

14. SWB is no longer a PTC. SWB is no longer an ILEC authorized to originate toll in Chariton Valley exchanges by virtue of the PTC Plan. SWB is merely an IXC that is not authorized to offer service in Chariton Valley exchanges. As an IXC SWB is obligated to abide the tariff of Chariton Valley, just as AT&T, MCI, Sprint/United, GTE, or any other IXC must abide. There are no special rules that operate to require Chariton Valley to give preference to SWB or SWB services that other IXCs cannot receive.

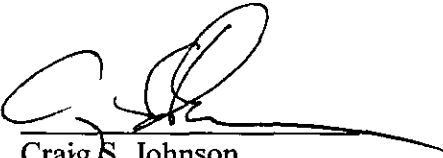
15. Chariton Valley did not "cut off" this traffic. Chariton Valley did reroute the traffic to SWB operators, who at first completed these calls, but later refused to complete these calls. It is SWB, not Chariton Valley, that prevented these calls from completing.

WHEREFORE, on the basis of the foregoing, Chariton Valley respectfully requests that the Complaint be dismissed on the grounds that Chariton Valley is not in violation of the Commission decision as SWB complaints, and therefore SWB is

aggrieved by nothing other than its failure to abide the lawfully tariffed access services of
Chariton Valley.

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

By:

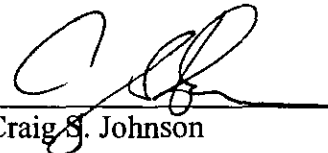


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ATTORNEYS FOR
CHARITON VALLEY
TELEPHONE CORP.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 10 day of January, 2000, to Dan Joyce, MoPSC General Counsel, and Martha Hogerty, Office of Public Counsel, Paul Lane, Leo Bub, Anthony K. Conroy, and Katherine C. Swaller.



Craig S. Johnson