BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Northeast Missouri Rural Telephone Company And Modern Telecommunications Company,	)	
Petitioners,	)	
v.	)	Case No. TC-2002-57, et al consolidated.
Southwestern Bell Telephone Company, Southwestern Bell Wireless (Cingular), Voicestream Wireless (Western Wireless), Aerial Communications, Inc., CMT Partners (Verizon Wireless), Sprint Spectrum LP, United States Cellular Corp., and Ameritech Mobile Communications, Inc.,	)	
Respondents.	)	

SOUTHWESTERN BELL TELEPHONE COMPANY'S
INITIAL BRIEF

Southwestern Bell Telephone Company,[1] respectfully submits this Initial Brief to the Missouri Public Service Commission in support of its request that Petitioner MITG Companies'[2] claim be denied.

EXECUTIVE SUMMARY

The Commission should deny the MITG Companies' Complaints. At the most fundamental level, their attempt to apply access charges to wireless traffic is patently unlawful.[3] Under longstanding FCC rules that go back to the mid-eighty's, access charges generally have

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[1] Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, will be referred to in this pleading as "Southwestern Bell" or "SWBT."

[2] Petitioners in this case consist of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, MoKan Dial, Inc., Mid-Missouri Telephone Company, Modern Telecommunications Company, Northeast Missouri Rural Telephone Company. As Petitioners refer to themselves as the Missouri Independent Telephone Group ("MITG"), they will be referred to in this Brief as the "MITG Companies" or "MITG."

[3] Southwestern Bell understands that three MITG Companies, Alma, Choctaw and MoKan Dial, currently have Commission approved wireless termination service tariffs and that their claim in this case originally consisted of claims for access charges on pre-tariff traffic and tariff charges on post-tariff traffic. Based on the testimony

not been permitted to be assessed on wireless traffic. The FCC's August 8, 1996, Local Competition Order continued this prohibition holding that traffic to or from a wireless carrier's network that originates and terminates within the same Major Trading Area (MTA) "is subject to transport and termination rates under Section 251(b)(5) of the Telecommunications Act of 1996 (the "Act"), rather than interstate and intrastate access charges." Consistent with this clear and controlling precedent, the Missouri Commission on two occasions rejected MITG tariffs seeking to apply their access rates to wireless traffic. The MITG Companies' attempt to once again impose intrastate access charges on intraMTA wireless traffic clearly violates this FCC rule and prior Missouri Commission Orders and requires rejection of the MITG Companies' Complaints.

Moreover, the MITG Companies' attempt to impose liability on transit carriers like Southwestern Bell and Sprint for this traffic violates accepted industry standards as expressed by the FCC, which call for the originating carrier to be responsible for compensating all downstream carriers involved in completing the call. Transit companies receive little or no benefit from serving as transit carriers and it is inappropriate to impose any financial obligation on them for such traffic. The Commission should relieve transit carriers of any secondary liability that the Commission may have previously established for this type of traffic.

This case has again demonstrated the MITG Companies' deliberate efforts to frustrate federal law and prior Commission orders that contemplate the negotiation of terminating compensation arrangements for wireless traffic. The record here shows that as the Commission intended, wireless carriers have continued to contact the MITG Companies seeking to negotiate

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presented at hearing, Southwestern Bell understands that all of the wireless carriers, with the exception of Voicestream/Western Wireless, have paid (or committed to pay) amounts due under Alma, Choctaw and MoKan Dial's wireless termination service tariffs. The other four Complainants' claims are based on their access charge tariffs.

appropriate termination arrangements for their traffic. But rather than negotiating in good faith as required by the Act and prior Commission orders, the MITG Companies have refused. Despite the wireless carriers' clear right under Section 251(a)(1) to establish and maintain "indirect" interconnections with the MITG Companies, MITG has, as a precondition to negotiation, demanded that the wireless carriers establish "direct" interconnections with MITG members, knowing full well that the costs of doing so for the wireless carriers would be prohibitive.

The MITG Companies' motive for deliberately preventing negotiations from even starting is obvious: its members would rather collect their full access rates on all wireless traffic instead of much lower cost-based rates prescribed by the Act for intraMTA traffic. MITG's goal is to have the Commission impose unlawful rates MITG knows it would never obtain through negotiation. The Commission should not tolerate such gamesmanship and reject the MITG Companies' inappropriate attempts to collect access charges on intraMTA wireless traffic from either the originating wireless carrier or the transiting LEC.

Recognizing the MITG Companies' continued intransigence, the Commission should provide guidance to the industry to make clear once and for all that:

(1) access charges do not apply to calls placed by a wireless carrier's customer that originate and terminate within an MTA, regardless of whether the originating wireless carrier and terminating LEC are directly or indirectly connected;

(2) compensation for the termination of intraMTA wireless calls is the responsibility of the originating wireless carrier (not the transit carrier) and must be negotiated between the originating wireless carrier and the terminating LEC as provided in Section 252(a)(1) of the Act;[4] and

[4] The fact that some of the MITG Companies currently have Commission-approved wireless termination tariffs does not relieve them of the obligation to negotiate under the Act.

(3) if such a terminating compensation arrangement cannot be reached, it should be brought to the Commission for arbitration pursuant to Section 252(b)(1) of the Act.

ISSUES PRESENTED TO THE COMMISSION

ISSUE 1 – TRAFFIC SUBJECT TO A WIRELESS TERMINATION TARIFF

1. For each Wireless Carrier Respondent named in the respective complaints, have each of the Petitioners with Wireless Termination Service Tariffs established that there are any amounts due and owing for traffic that was delivered after the effective date of any of the Wireless Termination Service Tariffs?

Southwestern Bell has not taken a position in this case on this issue.

ISSUE 2 – TRAFFIC NOT SUBJECT TO A WIRELESS TERMINATION TARIFF

2. In the absence of a wireless termination service tariff or an interconnection agreement, can Petitioners charge access rates for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks?

No. Complainants cannot charge access rates for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Complainants' respective networks. (Ex. 13, Hughes Rebuttal, pp. 14-15).

The FCC has unequivocally ruled that access charges may not be imposed on intraMTA traffic:

> We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5),[5] rather than interstate or intrastate access charges. [6]

Based on this preemptory ruling by the FCC, the Missouri Commission has twice concluded that access charges are inappropriate for terminating intraMTA wireless traffic:

[5] Section 251(b)(5) of the Act imposes on each local exchange carrier "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

> In the First Report and Order, the FCC made it abundantly clear that access charges do not apply to local traffic exchanged between LECs and CMRS providers. Traffic to or from a CMRS provider's network, the FCC held, that originates and terminates in the same MTA is subject to transport and termination rates under the Act but is not subject to interstate or intrastate access charges. In the present case, if its tariffs were approved, Alma would be allowed to apply access charges to traffic exchanged with CMRS providers within the same MTA. Such an action would clearly violate both the Act and the First Report and Order.[7]

Thus, to the extent that Petitioners' complaints seek the recovery of access charges on intraMTA traffic, the Commission should summarily deny such claims.

3. For each Wireless Carrier Respondent named in the respective complaints, does the record support a finding that the traffic in dispute is intraMTA wireless traffic?

Southwestern Bell has not taken a position in this case on this issue.

4. What compensation, if any, is due Petitioners without wireless termination service tariffs or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks after the date of an order by the Commission in this case?

Under Section 251(a)(1) of the Act, the appropriate compensation for wireless interconnection is to be set through negotiations. If a rate or compensation mechanism cannot be agreed to, the wireless carriers and the MITG company should ask the Commission to arbitrate the rate under Section 252(b)(1) of the Act. (Ex. 13, Hughes Rebuttal, p. 16).

Even with respect to the manner in which intraMTA versus interMTA traffic is identified, the FCC has provided clear direction that such matters are to be negotiated between the wireless carrier and the terminating LEC:

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[6] 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), para. 1043 ("FCC Local Competition Order").

[7] See, In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2, et al., Case No. TT-99-428, et al., Report and Order, issued January 27, 2000 at p. 12. See also, In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2, et al., Case No. TT-99-428 et al., Report and Order, issued April 9, 2002 at pp. 12-13 (reaching the same conclusion) (the "Alma decisions").

> CMRS customers may travel from location to location during the course of a single call, which could make it difficult to determine the applicable transport and termination rate or access charge. We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. This could complicate the computation of traffic flows and the applicability of transport and termination rates, given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges. We conclude, however, that it is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected. We conclude that the parties may calculate overall compensation amounts by extrapolating from traffic studies and samples. For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer. As an alternative, LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party.[8]

As the wireless carriers testified, the industry generally handles identification of intraMTA versus interMTA traffic in the manner suggested by the FCC: wireless carriers and terminating LECs negotiate interMTA factors (i.e., percentages) that identify, for inter-company compensation purposes, the percentage of traffic exchanged between them that is interMTA. And with respect to that traffic, the parties apply access charges rather than the reciprocal compensation rate.[9]

5. What compensation, if any, is due Petitioners without wireless termination service tariffs or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks prior to the date of an order by the Commission in this case?

Southwestern Bell has not taken a position in this case on this issue.

[8] FCC Local Competition Order, para. 1044 (emphasis added).
[9] See, e.g., Ex. 18, Pruitt Surrebuttal, p. 9.

6. For each Wireless Carrier Respondent named in the respective complaints, does the record support a finding that the traffic in dispute is interMTA traffic?

Southwestern Bell has not taken a position in this case on this issue.

7. To the extent that the record supports a finding that any of the traffic in dispute is interMTA traffic for each Wireless Respondent, what amount is due under Petitioners' applicable Intrastate Access Tariffs?

Intrastate interMTA wireless-originated traffic is subject to the Complainants' intrastate access tariff rates. The FCC has ruled, "traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges."[10]

8. Is it appropriate to impose secondary liability on transiting carriers for the traffic in dispute?

No. Accepted industry standards call for the originating carrier to be responsible for compensating all downstream carriers involved in completing the call. Companies like SWBT and Sprint receive little or no benefit from serving as transiting carriers and it is inappropriate to impose any financial obligation on them for such traffic. The Commission should relieve transiting carriers of any secondary liability that the Commission may have previously established for this type of traffic. (Ex. 13, Hughes Rebuttal, pp. 2, 4-10).

a. Imposing Liability on Transit Carriers Violates Accepted Industry Standards.

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

[10] FCC Local Competition Order, para. 1035.

> calling party's network pays to terminate a call, are clearly the dominant form of interconnection regulation in the United States and abroad.[11]

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. (Ex. 13, Hughes Rebuttal, pp. 10, 12)

The FCC's Common Carrier Bureau reaffirmed the continued appropriateness of this standard in a decision released only three months ago: in the Verizon-Virginia Arbitration with AT&T, Cox and WorldCom, the FCC Common Carrier Bureau specifically rejected imposing financial liability on the transit carrier for expenses associated with traffic originated by another carrier.[12]

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.[13]

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[11] 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).
[12] 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").
[13] FCC Verizon-Virginia Arbitration Order, paras. 107, 112 and 114.

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 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.[14]

The Missouri Commission Staff concurs that it is inappropriate to impose secondary liability on transit carriers like Southwestern Bell and Sprint for the traffic in dispute. On the issue of whether it is appropriate to impose such secondary liability, Staff stated:

> No. The originating carrier (CMRS provider) is responsible for payment of traffic in dispute. Staff requests the Commission to find that wireless traffic may terminate on MITG network(s) absent an Interconnection Agreement (IA) between the CMRS provider and MITG companies consistent with Section 251(a)(1) of the Telecommunications Act of 1996. This recommendation is based on sound public policy and it is in the public interest to allow traffic to originate and terminate on CMRS providers and MITG companies networks with a compensation arrangement (e.g. Wireless Termination Tariff) in place if no IA between CMRS providers and MITG companies exist.[15]

As the FCC and Staff's position recognize, imposing liability on transit carriers for other carriers' traffic would be inappropriate, and inconsistent with industry standards under which the

[14] FCC Verizon-Virginia Arbitration Order, para. 119 (internal citations omitted).
[15] See, Staff's Statement of Positions, Case No. TC-2002-57, filed July 12, 2002, pp. 3-4.

calling party's network provider is the one responsible for paying any compensation that may be due on such traffic.

b. 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. Transit traffic only adds to the congestion on a carrier's network and brings its network facilities, which are a finite resource, closer to exhaust. (Ex. 13, Hughes Rebuttal, p. 4) It is therefore inappropriate to impose any liability, secondary or otherwise, on them 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 . . .[16]

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

[16] Ex. 13, Hughes Rebuttal, pp. 6-7, referencing Joint Decision Point List ("Joint DPL") filed May 3, 2001, in Case No. TO-2001-455, Exhibit II-E, Issue 8.

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.)[17]

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 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 . . .[18]

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 the tandem company, like Sprint, that serves the MITG Company). Thus, by establishing a direct connection with Southwestern Bell, wireless carriers can indirectly reach all other telephone companies in the LATA, including the MITG Companies. The alternative would be for the wireless carriers to physically build their

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[17] Ex. 13, Hughes Rebuttal, p. 7, referencing Joint DPL filed May 3, 2001, in Case No. TO-2001-455, Exhibit II-E, Issues 8 and 9.

[18] 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.

networks to all other carriers operating in the state, which wireless carriers have indicated would be inefficient for them.[19]

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. (Ex. 13, Hughes Rebuttal, p. 6)

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 statue, 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.[20]

While it is 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 will fulfill its obligations under those agreements. It is also apparent from the Commission's approval of these

[19]Ex. 13, Hughes Rebuttal, p. 8.

agreements and Staff's position in this case[21] 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.

If the Commission believes it appropriate, Southwestern Bell is still willing to handle transit traffic, provided that the transit carrier (1) is not made financially responsible for the terminating or other expenses associated with another carriers' traffic; (2) is permitted to charge a compensatory, market-based rate for handling the traffic; and (3) is permitted to establish reasonable limits on the amount of transit traffic it must handle.[22]

Further, SWBT charges between $0.003 and $0.004 per minute of use (significantly less than a penny per minute) for transiting traffic pursuant to interconnection agreements with wireless carriers. The Commission has approved interconnection agreements between SWBT and all of the wireless carriers listed in the complaint of the MITG Companies. Their proposed termination rates are over 10 times greater than SWBT's transiting rate. SWBT's transiting rates do not provide compensation for paying ILEC terminating charges. Four of the MITG Companies are billing terminating access pursuant to their access tariffs, while three of the MITG Companies are currently billing pursuant to their wireless interconnection tariffs. In either case, the rates they are seeking for terminating the wireless carriers' traffic is far greater than the rate SWBT charges the wireless carriers for transiting traffic. (Ex. 13, Hughes Rebuttal, pp. 3-4).

[20] Verizon-Virginia Arbitration Order, para. 117.
[21] See, Staff's Statement of Positions, Case No. TC-2002-57, filed July 12, 2002, p. 3-4.
[22] This is the same position Southwestern Bell has taken in Case No. TC-2002-1077, BPS Telephone Company et. al's. complaint against Voicestream and Western Wireless.

With respect to the instant case, the Commission should reject the MITG Companies' attempt to impose liability on Southwestern Bell and Sprint for transit traffic. The imposition of such liability would violate long-standing industry standards as expressed by the FCC. And 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. The transiting rates charged by SWBT in its Commission approved interconnection agreements were not designed to recover the terminating rates of the MITG Companies for traffic originated by the Wireless Carriers and in no way provide SWBT any compensation for such a terminating expense. Southwestern Bell therefore respectfully requests the Commission to relieve transit carriers of any "secondary liability" it may have previously established for this type of traffic.

9. Does the record support a finding that Petitioners are barred from collecting compensation for traffic in dispute under the principles of estoppel, waiver, or any other affirmative defense pled by any of the Wireless Carrier Respondents?

Southwestern Bell has not taken a position in this case on this issue.

10. Are Petitioners obligated to negotiate interconnection agreements with wireless carriers on an indirect basis that provide for reciprocal compensation for traffic exchanged between their respective networks through a transiting carrier?

Yes. The interconnection obligations of the Act do not distinguish between direct interconnection and indirect interconnection. The Act defines the very first duty of all telecommunications carriers as the duty "to interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1) (emphasis added). Section 251(b)(5) obligates local exchange carriers to establish reciprocal compensation, and

Section 251(c)(1) requires local exchange carriers to engage in good faith negotiations to establish those arrangements. Nothing in the Act or the FCC's rules requires wireless carriers to directly interconnect as a prerequisite to negotiating an interconnection agreement.

11. What, if any, relevance do any of the terms and conditions of Southwestern Bell Telephone Company's Wireless Interconnection Tariff (PSC Mo. No. 40) have in connection with the determination of any of the issues in this proceeding?

None. Southwestern Bell handles virtually no traffic under its Wireless Carrier Interconnection Services Tariff. This tariff dates back to the early 1990s[23] and is not an access tariff. (Ex. 13, Hughes Rebuttal, p. 15).

Prior to the Act, the FCC permitted LECs to file state tariffs for wireless interconnection. But even then, it required that those rates be negotiated with the wireless carriers:

> Compensation arrangements. In view of the fact that cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal concern. We therefore express no view as to the desirability or permissibility of particular compensation arrangements, such as calling-party billing, responsibility for the costs of interconnection, and establishment of rate centers. Such matters are properly the subject of negotiations between the carriers as well as state regulatory jurisdiction. Compensation may, however, be paid under contract or tariff provided that the tariff is not an "access tariff" treating cellular carriers as interexchange carriers, except as noted in footnote 3.[24]

After the Act, the FCC promulgated regulations that recognized such pre-existing wireless interconnection arrangements and provided a safe-harbor for them as long as the LEC was willing to negotiate reciprocal compensation agreements:

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[23] With respect to traffic to third party carriers, the Commission approved SWBT's restructuring of its Wireless Carrier Interconnection Tariff to be a transiting only tariff on February 4, 1998, in Case No. TT-97-524. (Ex. 13, Hughes Rebuttal, p. 15).

[24] In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 1986 FCC LEXIS 3878, Appendix B, "Policy Statement on

Section 51.717 Renegotiation of existing non-reciprocal arrangements.

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.[25]

As the Commission is aware from the numerous interconnection agreements it has approved between SWBT and wireless carriers, SWBT has complied with this FCC requirement. Now, over 99% of all traffic that wireless carriers send to SWBT for transit or termination is via Commission approved interconnection agreements. None of the wireless carriers in this proceeding interconnect with SWBT via SWBT's Wireless Carrier Interconnection tariff. (Ex. 13, Hughes Rebuttal, pp. 15-16).

12. Who is responsible to pay compensation due, if any, to the Petitioners for *intraMTA* traffic terminated prior to the effective date of a Petitioner's Wireless Termination Tariff?

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 exiting 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."[26]

Interconnection of Cellular Systems," para. 5, released March 5, 1986 (the exception noted by the FCC in footnote 3 pertains to roaming cellular traffic).

[25] 47 C.F.R. section 51.717

[26] Unified Carrier Compensation NPRM, at para. 9 (emphasis added).

13. Should SWBT block uncompensated wireless traffic for which it serves as a transiting carrier?

No. Without a specific order from the Commission, a transiting carrier has no authority to block transiting wireless traffic at the request of a terminating carrier when it is having a dispute with the originating carrier.[27] From a practical perspective, transiting carriers are not in a position to know the status of the relationship between the originating wireless provider and the terminating company, or whether there are appropriate grounds for stopping the flow of traffic. Moreover, without a specific order from the Commission, transit carriers have expressed serious concerns about the possibility of incurring liability to the originating carrier for cutting off its traffic. (Ex. 13, Hughes Rebuttal, p. 20).

In the event the Commission authorizes such blocking, the LEC requesting the blocking should be responsible for the transiting carrier's cost of implementing the blocking, consistent with the Commission's Order in Case No. TT-2001-139, in which it stated, "the requesting small LEC must pay SWBT the cost of blocking the traffic."[28]

Not only is such cost recovery appropriate, it is essential. The rates received by transiting companies only help recover the cost of providing the transiting function. They do not cover any of the costs that would be incurred to modify the network to block a particular originating carrier's traffic to a particular terminating carrier's exchanges. Because this type of work is not in any carrier's normal mode of operation, transit companies would be required to divert their resources away from other activities such as central office conversions, NPA relief, large

[27] In Case No. TC-2001-20, the Commission ordered SWBT to block certain traffic destined for Mid-Missouri. SWBT complied with the Commission's order. (Ex. 13, Hughes Rebuttal, p. 21).
[28] See, Report and Order in Case No. TT-2001-139, issued February 8, 2001 at p. 43.

customer requests for services such as Centrex and establishing interconnection trunks for CLECs. Blocking is a detailed process that requires numerous hours of switch translations work to complete and there is currently no means to recover these costs. (Ex. 13, Hughes Rebuttal, pp. 21-23).

If an ILEC is not being compensated for completing a carrier's calls, ultimately blocking may be appropriate. However, it should be a last resort, as customers of both the wireless carrier and the ILEC would be adversely affected by having the traffic blocked. Requiring a specific Commission order would help insure that blocking was justified under the circumstances and that the costs of implementing such blocking are appropriately recovered from the requesting carrier. (Ex. 13, Hughes Rebuttal, p. 23)

COMMISSION QUESTIONS FROM THE BENCH

Southwestern Bell respectfully submits the following responses to the questions posed by Deputy Chief Regulatory Law Judge Thompson during the course of the hearing in this case:

1. **Can the Commission order negotiations between telecommunications carriers?**[29]

2. **Can the Commission order companies to have interconnection agreements?**[30]

The Act does not specifically grant state Commissions the authority to order telecommunications carriers to enter into negotiations under Section 252 of the Act or to have interconnection agreements.

In this case, however, there is no dispute that most of the wireless carriers have actually requested the MITG Companies to negotiate interconnection agreements (and many have

[29] Tr. 754.

[30] Tr. 754-755.

indicated that they continue to stand ready to negotiate).[31] There also is no dispute that the MITG Companies rejected those overtures, insisting that the wireless carriers establish direct interconnections with the MITG Companies as a prerequisite to negotiations.[32]

The Commission should make clear that the MITG Companies' position is neither tenable nor consistent with federal law. Under Section 251(a)(1) of the Act, all telecommunications carriers have the duty to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." As Staff has explained, this statutory provision obligates the MITG Companies to accept the wireless carriers' traffic, even if it is sent indirectly through another carrier's (like SWBT's or Sprint's) network. [33] Accordingly, the Commission should clarify that a direct interconnect is not necessary before negotiations are to take place under the Act, and that a party's insistence on a direct interconnection as a prerequisite to such negotiations constitutes a failure to negotiate in good faith in violation of Section 251(c)(1).[34]

3. Can the Commission order a company to adopt a wireless termination tariff? [35]

No. The Commission cannot require a company to file a wireless termination tariff. The decision of whether to offer a particular service should be left to the individual carrier. While the powers of regulation delegated to the Commission are comprehensive, the courts have held that

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[31] See e.g., Exhibit 49 (1999 letter from Cingular requesting negotiations for Interconnection and attaching draft agreement as a starting point); and Tr. 1212 (Cingular's commitment of its continued willingness to participate in the negotiation of an Interconnection Agreement and, if necessary, Arbitration of the matter with Complainants). See also Exhibit 17, Pruitt rebuttal, pp. 12-13, Schedules E, G and I (reflecting Sprint's effort to negotiate an Interconnection Agreement with Mid-Missouri Telephone Company).

[32] See, e.g., Exhibit 50 (MITG Companies rejection of Cingular's request to negotiate). See also, Exhibit 17, Pruitt Rebuttal, pp. 12-13, Schedules F, H and I (reflecting Mid-Missouri's rejection of Sprint's requests indicating that "unless Sprint wants to establish a direct physical interconnection with Mid-Missouri, there will be no basis upon which to establish reciprocal compensation.")

[33] See, Staff's Statement of Positions, Case No. TC-2002-57, filed July 12, 2002, pp. 3-4.

[34] Section 251(c)(1) of the Act imposes on incumbent local exchange carriers "the duty to negotiate in good faith in accordance with Section 252 the particular terms and conditions of agreements to fulfill the duties prescribed in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements."

those powers "do not clothe the Commission with the general power of management incident to ownership" and that the Commission "has no authority to take over the general management of any utility."[36]

In this case, however, the Commission may outline the parties' obligations under federal law. The Commission should make clear that indirect interconnections between wireless carriers and the MITG Companies are permitted and that a request for negotiation of an interconnection agreement must be honored, regardless of whether the interconnection between the carriers is direct or indirect.

4. Can the Commission unilaterally modify tariffs?[37]

No. The Commission is required to follow Section 392.240, RSMo. (2000). Under this statutory provision, the Commission can order modifications to a tariff only after determining "after a hearing had upon its own motion or upon complaint," that a rate is "unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of law . . . or insufficient to yield a reasonable compensation for the service rendered;"[38] or that a rule, regulation or practice is "unjust or unreasonable."[39]

5. What authority prohibits wireless companies from filing tariffs?[40]

6. Can wireless carriers file landline-originated traffic termination tariffs in Missouri?[41]

No. While the Commission's jurisdiction extends to all intrastate "telecommunications facilities and services" and to the "telecommunications companies" providing them,[42] it does not

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[35] Tr. 755.
[36] State ex rel. Public Service Comm. v. Bonacker, 906 S.W. 2d 896, 900 (Mo. App. 1995); State ex rel. Laclede Gas Co. v. P.S.C., 600 S.W.2d 222, 229 (Mo. App. 1980).
[37] Tr. 755.
[38] Section 392.240(2) RSMo. (2000).
[39] Section 392.240(1) RSMo. (2000).
[40] Tr. 1103.
[41] Tr. 1104.

extend to the services offered by wireless carriers. Section 386.020 (53)(c) RSMo (2000) specifically excludes services offered by wireless carriers from the definition "telecommunications service." That section states that "telecommunications service" does not include "the offering of radio communications services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations."

CONCLUSION

No party is contending that the MITG Companies should not be compensated at appropriate rate levels. However, their attempt to extract access charges on intraMTA wireless traffic from either the originating wireless carrier or the transit carrier violates controlling FCC rules and long-standing industry standards. And the MITG Companies have impeded the wireless carriers' efforts to put appropriate arrangements in place. If the MITG Companies wish to receive appropriate compensation for this traffic, it is incumbent on them to come to the table and negotiate as provided in the Act and the FCC's rules.

[42] Section 386.250(2) RSMo. (2000).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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