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December 10, 1999

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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.

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Initial Brief.

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

Very truly yours,

Leo J. Bub /TM

Leo J. Bub

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, PSC Mo. No. 2.	))	Case No. TT-99-428, et al.

SOUTHWESTERN BELL TELEPHONE COMPANY'S
INITIAL BRIEF

Southwestern Bell Telephone Company respectfully submits this Initial Brief urging the Missouri Public Service Commission to reject the Mid-Missouri Group's[1] tariff filings through which its member companies inappropriately seek to impose access charges on all traffic, including wireless, that is transmitted directly or indirectly to them by any other carrier.

EXECUTIVE SUMMARY

The Commission should reject MMG's proposed access tariffs revisions on two primary grounds: First, as MMG itself has admitted, the language of the tariff does not clearly reflect the actual intent of MMG's members. As written, the tariff applies to "all traffic regardless of the type or origin, transmitted to or from [MMG facilities] by any other carrier directly or indirectly. . . ." Despite this language's broad applicability, MMG acknowledged at the hearing that it did not intend the tariff to apply to a transiting company that merely carries a call placed by a customer of another carrier (the originating carrier) to a MMG company (the terminating carrier); or to traffic covered by the MCA Plan; or to interstate intraLATA traffic. MMG admitted that there "might be some confusion" with the language it proposed and "could possibly agree" that it would be appropriate for the tariff to be modified to make it clear that it applies

[1] The Mid-Missouri Group (MMG) consists of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Mo-Kan Dial, Inc., and Peace Valley Telephone Company.

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only to the originating carrier, and not to the transiting carrier. (MMG, Stowell, Tr. pp. 87-93; Stowell Surrebuttal, p. 18).

Clearly, any attempt to impose access charges for wireless and CLEC traffic on a transiting carrier would violate the Commission's prior orders approving Southwestern Bell's wireless interconnection tariff and numerous interconnection agreements that call for the originating wireless carrier or CLEC to be the one responsible for paying termination charges, not the transiting carrier. Thus, at a minimum, the Commission should reject the tariff and in its order, indicate that the tariffs should be revised to make it clear that they only apply to the originating carrier, and not to the transiting carrier; and that they do not apply to traffic currently covered by the MCA Plan or to interstate, intraLATA traffic.

Second, even if the proposed tariffs are revised to reflect MMG's intent to apply them only to originating wireless carriers and CLECs (and not to transiting companies), MMG' proposal to apply access charges to all wireless traffic is unlawful. Under longstanding FCC rules, access charges have not been permitted to be assessed on wireless traffic. The FCC's Interconnection Order reinforced 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 Act, rather than interstate and intrastate access charges." MMG's attempt to impose intrastate access charges on intraMTA wireless traffic is in clear violation of this FCC rule and requires rejection of the proposed tariff filings.

In addition, the Commission needs to go further. This case has again demonstrated MMG's 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 MMG seeking to negotiate appropriate termination arrangements for their traffic. But rather than negotiating in good faith as required by the Act and prior Commission orders, MMG has refused. Despite the wireless carriers' clear right under Section 251(a)(1) to establish and maintain "indirect" interconnections with MMG companies, MMG has, as a precondition to negotiation, demanded that the wireless carriers establish "direct" interconnections with MMG members, knowing full well that the costs of doing so for the wireless carriers would be prohibitive. MMG's members then attempt to use these failed "negotiations" -- which they themselves have undermined -- to portray themselves as victims of wireless carriers who seek to have their traffic terminated for free and transiting carriers like Southwestern Bell who let it happen.

Nothing could be further from the truth. No carrier in this case is seeking to get anything for free and it is federal law that dictates the network arrangements that have been established. Section 251(a)(1) of the Telecommunications Act of 1996 imposes the obligation on every telecommunications carrier to permit another telecommunications carrier to directly connect with it. Section 251(a)(1) also allows Interconnecting carriers to use these direct connections to interconnect indirectly with the networks of other telecommunications carriers, in lieu of incurring the expense of establishing direct connections. The Commission has recognized and sanctioned this practice in its approval of Southwestern Bell's Wireless Interconnection Tariff and numerous individual interconnection agreements between LECs, and wireless carriers and CLECs.

In order to assist MMG establish terminating arrangements with wireless carriers that seek to send them traffic indirectly, Southwestern Bell long ago provided each MMG member with the names and contact information of the wireless carriers transiting traffic to them through

Southwestern Bell. And, since February, 1998, Southwestern Bell has been providing MMG with the number of minutes, by wireless carrier, terminating to each of their exchanges on a monthly basis (the "Cellular Transiting Usage Summary Report" or "CTUSR"). But until very recently, MMG has done absolutely nothing with this information.

While some MMG members apparently just recently used these CTUSRs to bill wireless carriers, that billing has been at full intrastate access rates, in violation of FCC rules. And as the record here makes clear, MMG has not negotiated with the wireless carriers in good faith. Rather, MMG has rebuffed them at every turn and deliberately prevented negotiations from even starting. MMG's motive for doing so 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. With this proposed tariff, MMG's goal is to have the Commission impose unlawful rates MMG knows it would never obtain through negotiation. The Commission should not tolerate such gamesmanship and reject MMG's inappropriate attempts to collect access charges on intraMTA wireless traffic from either the originating wireless carrier or the transiting LEC. And recognizing MMG's 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 must be set out in an appropriate wireless interconnection tariff approved by the Commission or negotiated between the originating wireless carrier and the terminating LEC as provided in Section 252(a)(1) of the Act; and

(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 TO BE DETERMINED

ISSUE NO. 1: **Is the tariff proposed by MMG lawful as applied to wireless or CLEC traffic?**

No. As discussed below, the proposed tariff's purported application to transiting carriers like Southwestern Bell makes the tariff unlawful on its face because it is directly contrary to prior Commission orders approving numerous interconnection agreements as well as other Commission orders. In addition, the proposed tariff is unlawful because under FCC rules, wireless traffic that originates and terminates within the same MTA is local traffic and not subject to interstate or intrastate switched access rates. Access charges can only be applied to wireless traffic that is interMTA.

I. As Written, MMG's Proposed Tariff is Unlawfully Broad in Scope.

Although apparently not intended by MMG,[2] the tariff by its terms, appears to apply both to the carrier whose customer originates the call and to the carrier who transits the call from the originating carrier's network to the MMG company terminating the call. As a result, the proposed tariff is unlawful on its face because it violates numerous prior Commission orders approving various wireless carrier and CLEC interconnection agreements approved, as well as other Commission orders which place terminating compensation responsibility on the originating carrier.

A. The Proposed Tariff is Inconsistent with Prior Commission Orders Concerning Wireless Interconnection.

As required by Section 251(a)(1) of the Telecommunications Act, Southwestern Bell permits wireless carriers and CLECs to directly interconnect with it. Also pursuant to Section 251(a)(1), these carriers may use their direct connection with Southwestern Bell to establish

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[2] See, MMG Stowell Tr. pp. 87-93.

indirect connections with other carriers to whom Southwestern Bell connects. (Wireless carriers and CLECs have the right under the Act to set up similar connections with other carriers as well).

Wireless carriers interconnecting with Southwestern Bell have two options: they may either pass traffic to Southwestern Bell under Southwestern Bell's Wireless Carrier Interconnection Service Tariff,[3] or pursuant to individual interconnection agreements negotiated under the Act.[4] If Southwestern Bell and a wireless carrier have negotiated an interconnection agreement under the federal Act, and the Commission has approved the agreement, the traffic would be covered by the contractual terms of the interconnection agreement. It is only when an interconnection agreement has not been negotiated and approved that the tariff provisions apply.

Southwestern Bell's Wireless Interconnection Service Tariff does permit interconnecting wireless carriers to send their customers' calls through Southwestern Bell's network for termination on another telecommunications carrier's network. The tariff, however, sets out certain requirements the wireless carrier must meet in order to use Southwestern Bell's network in this fashion. The tariff provides that if a wireless carrier sends traffic through Southwestern Bell's network for termination to another telecommunications carrier's network, the wireless carrier must establish its own compensation arrangements with the other telecommunications carrier for the termination of that traffic. In addition, the wireless carrier must agree to indemnify, defend and hold Southwestern Bell harmless against any charges that another telecommunications carrier may bill Southwestern Bell for terminating that traffic. And when a wireless carrier uses this transiting function, Southwestern Bell charges only for transiting, not for termination.[5]

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[3] Southwestern Bell Wireless Carrier Interconnection Service Tariff, P.S.C. Mo.-No. 40.
[4] SWBT, Hollingsworth Rebuttal, pp. 4-5.
[5] SWBT, Hollingsworth Rebuttal, p. 5.

Wireless carriers electing to interconnect with Southwestern Bell through an interconnection agreement must meet similar requirements. All of Southwestern Bell's wireless interconnection agreements contain language requiring wireless carriers that wish to use Southwestern Bell's transiting function to make terminating compensation arrangements directly with the third parties to whom they wish their traffic to be sent. Southwestern Bell currently has negotiated and completed wireless interconnection agreements with 12 wireless carriers: AT&T Wireless,[6] Ameritech Mobile,[7] Sprint Spectrum L.P.,[8] Western Wireless Corp.,[9] U.S. Cellular Corp.,[10] CMT Partners,[11] Alltel Mobile Communications,[12] Southwestern Bell Wireless, Inc.,[13] Dobson Cellular,[14] Aerial Communications,[15] TelWest,[16] and Missouri RSA No. 7 L.P.[17]

The Commission approved both Southwestern Bell's Wireless Interconnection Tariff[18] and all of the individual interconnection agreements reached with wireless carriers.[19] In doing so, the Commission specifically approved their placing responsibility to compensate terminating carriers on the wireless carrier whose customer placed the call. Because the proposed tariff filed by MMG is facially inconsistent with these prior Commission orders, it must be rejected.

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[6] Case No. TO-97-474, agreement approved July 16, 1997.
[7] Case No. TO-97-523, agreement approved August 27, 1997.
[8] Case No. TO-98-29, agreement approved October 15, 1997.
[9] Case No. TO-98-12, agreement approved January 7, 1997.
[10] Case No. TO-98-37, agreement approved October 16, 1997.
[11] Case No. TO-98-96, agreement approved November 25, 1997.
[12] Case No. TO-98-156, agreement approved January 6, 1998.
[13] Case No. TO-98-219, agreement approved February 19, 1998.
[14] Case No. TO-98-235, agreement approved February 25, 1998.
[15] Case No. TO-98-322, agreement approved April 29, 1998.
[16] Case No. TO-99-149, agreement approved January 6, 1999.
[17] Case No. TO-99-279, agreement approved June 3, 1999.
[18] See, In the Matter of Southwestern Bell Telephone's Tariff Filing to Revise its Wireless Carrier Interconnection Service Tariff, P.S.C. Mo.-No. 40, Case No. TO-97-524, Report and Order, issued December 23, 1997.
[19] SWBT, Hollingsworth Rebuttal, p. 6.

B. The Proposed Tariff is Inconsistent with Prior Commission Orders Concerning CLEC Interconnection.

Similarly, Southwestern Bell's interconnection agreements with CLECs contain language requiring the CLEC to make its own arrangements for the termination of traffic it seeks to send through Southwestern Bell's network to a third party's network. The Commission has reviewed and approved all of these interconnection agreements under the Act. In its review, the Commission specifically examined the issue of how traffic from CLEC customers destined for a third party LEC should be handled and the Commission consistently ruled that it is the responsibility of the carrier whose customer placed the call to make arrangements for compensating all other carriers involved in terminating its customer's call. For example, in its Report and Order approving the Dial U.S. Interconnection Agreement (which was the first interconnection agreement submitted for approval in Missouri), the Commission stated:

> When Dial U.S. becomes a facilities-based provider or a mixed-mode provider of basic local exchange service, then it must make arrangements with other LECs, such as Choctaw, to terminate calls to the other LECs' customers. Dial U.S. is prohibited by the agreement from sending to SWB traffic that is "destined for the network of a third party unless and until compensation arrangements acceptable to Dial U.S. and the third party have been reached. Interconnection Agreement at 15.XIII.A. The Commission finds that this provision protects other LECs and removes the potential for discrimination from the agreement. The agreement, therefore, does not discriminate against Choctaw.[20]

Similarly, the Commission in the AT&T/MCI Arbitration Order stated:

> Intermediate transport involves LSPs and independent LECs not a party to this case. For this reason, it is appropriate that AT&T and MCI must obtain compensation arrangements with the other LSPs or independent LECs. Until such compensation arrangements can be worked out with the independent LECs, the appropriate intrastate switched access rates should be used. The switched access rates are already used when toll traffic is passed between carriers and represents and existing business arrangement between the companies. Since LSPs and

[20] Case No. TO-96-440, issued September 6, 1996 at p. 7. (SWBT, Hollingsworth Rebuttal, p. 10).

independent LECs will both be paying non-cost based access rates, they all have an incentive to negotiate interconnection rates.[21]

While it may not be MMG's intent, its tariff language could possibly be read to make MMG access charges apply to tandem companies through which wireless carriers or CLECs elect to send their traffic to the MMG members. This would not be appropriate and would be contrary to both Southwestern Bell's wireless tariffs and its interconnection agreements with wireless carriers and CLECs. The Missouri Commission has, both in Case Nos. TT-97-524 and TO-99-254,[22] reaffirmed the standard industry practice under which the originating carrier is responsible for compensating all other carriers for the use of their facilities in carrying and terminating its customers' calls, not the transiting company. If the Commission is inclined to approve MMG's tariff revisions, it should in its Order indicate that the application of MMG members' access tariffs is to the originating wireless carrier or CLEC, not to any company that is only performing a transiting function.

[21] AT&T/MCI Arbitration Order, Case No. TO-97-440, TO-97-67 issued December 11, 1996 at p. 44. (SWBT, Hollingsworth rebuttal, pp. 10-11).

[22] See, In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity, Case No. TO-99-254, et al., Report and Order, issued June 10, 1999, at pp. 13-14, where the Commission stated:

> Much of the traffic that is terminated to the SCs [like the MMG members] is carried over common trunk groups. Although the PTCs [like Southwestern Bell, GTE and Sprint] deliver this traffic, they do not originate all of it. Some of it is originated by other carriers up stream from the PTC, and it may be interstate or intrastate . . . Many of the SCs argue that they should be able to measure terminating minutes at the terminating end office, and bill the carrier that delivered that traffic [their PTC] to the terminating tandem or end office for any discrepancy between the minutes shown on the originating records and the measured minutes . . . However, there is a fundamental inequity in this residual billing scheme: Included in the minutes terminated to the SCs are some minutes of use for which the SCs are not entitled to be compensated. These include MCA traffic delivered over common trunks, interstate intraLATA traffic, and possibly Feature Group A traffic and calls that merely "transit" the PTC's network. Adopting this scheme would guarantee that some SCs will be overcompensated when there is little evidence that they are under compensated under the present scheme.

II. Under Longstanding FCC Precedent, Access Charges Generally are Inapplicable to Traffic Originated by Wireless Carriers.

A. Access Charges may not be Applied to IntraMTA Wireless Traffic.

The FCC's Interconnection Order[23] does not permit LECs to impose access charges for wireless traffic that originates and terminates within a Major Trading Area (MTA).[24] Rather, under paragraph 1036, such traffic is subject to reciprocal compensation rates for transport and termination under Section 251(b)(5) of the Act:

> . . . traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under Section 251(b)(5) rather than interstate and intrastate access charges.

The FCC has long held that access charges should generally not be applied to wireless carrier traffic. The FCC, in its "Policy Statement on Interconnection of Cellular Systems," which was released in 1986,[25] required LECs' interconnection rates for terminating cellular calls to be negotiated in good faith between the cellular operators and telephone companies, and it specifically prohibited LECs from applying access charges:

> The terms and conditions of interconnection depend, of course on innumerable factors peculiar to the cellular system, the local telephone network, and local regulatory policies; accordingly, we must leave the terms and conditions to be negotiated in good faith between the cellular operator and the telephone company.
>
> . . .
>
> 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 cost of interconnection, and establishments of rate centers. Such matters are properly the subject of negotiations between the carriers as well as state

[23] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket 96-98 (Released August 8, 1996) (the Interconnection Order).

[24] Missouri has been divided into two MTAs, one for the Kansas City side of the State and one for the St. Louis side of the State. (SWBT, Hollingsworth Rebuttal, p. 3).

[25] In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 1996 FCC LEXIS 3878, Appendix B, Paragraph 5, released March 5, 1986.

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.[26]

(SWBT, Hollingsworth Rebuttal, pp. 3-4). MMG's attempt to impose intrastate access charges on intraMTA wireless traffic is in clear violation of these FCC rules and requires rejection of the proposed tariff filing.

B. Congress and the FCC did not Intend to Limit Reciprocal Compensation Only to Traffic Exchanged Between Two Carriers.

MMG and STCG attempt to avoid the FCC's clear prohibition against imposing access charges on intraMTA wireless traffic by interpreting certain provisions of the Act and other parts of the FCC's Interconnection Order in nonsensical ways. For example, STCG points to Section 251(b)(5) of the Act (which imposes the duty to establish reciprocal compensation rates on LECs)[27] and claims since MMG and STCG do not carry any traffic from their landline end users to wireless carriers, the traffic flow is not "reciprocal" and the obligation to charge reciprocal compensation rates instead of access rates does not apply. (STCG, Schoonmaker Surrebuttal, p 9). However, the FCC's prohibition against charging access rates on intraMTA wireless traffic does not depend on the existence of a two-way traffic flow. In situations like those here where a LEC does not originate traffic to a wireless carrier (but instead has an IXC handle it), the established reciprocal compensation rate would simply not be used in the land to mobile direction. But a LEC cannot defeat the FCC's absolute prohibition against charging access rates on intraMTA wireless by electing not to handle its customers' land to mobile traffic.

[26] The exception noted by the FCC in footnote 3 pertain to roaming cellular traffic, which is not at issue here.
[27] Section 251(b)(5) imposes as an obligation on all LECs "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

MMG and STCG also try to obfuscate the application of reciprocal compensation rates for the transport and termination of traffic here claiming that the FCC defines "transport"[28] as something that only "takes place between two carriers":

> From the FCC's definition it is apparent that "transport" takes place "between two carriers" and begins at "the interconnection point between the two carriers." When indirect interconnection is involved it would appear that there is not "transport" taking place because more than two carriers are involved and because the first and third carriers have no point of interconnection between them from which the "transport" can be measured. (STCG, Schoonmaker Surrebuttal, pp. 9-10; see also, MMG Stowell Surrebuttal, p. 13).

This argument is disingenuous. In making this claim, MMG and STCG fail to explain to the Commission that when wireless carriers indirectly connect with them, all that is happening is that instead of the terminating LEC providing all of the transport, the transiting carrier is simply providing part of it (usually transporting the call from the meetpoint between the wireless carrier and the transiting LEC to the transiting carrier's tandem switch; switching the call there; and transporting the call on to the meetpoint between the transiting LEC and the terminating LEC). In such cases, the wireless carrier simply owes the terminating LEC less in transport charges because the transiting LEC carried the call for part of the route.

MMG and STCG also point to a passage from paragraph 1034 of the FCC's Interconnection Order as supporting their claim that when three carriers collaborate to complete a call under an indirect interconnection, reciprocal compensation does not apply. (MMG, Stowell Tr. p. 44, Stowell Surrebuttal, p. 14; STCG, Schoonmaker Surrebuttal, pp. 10-11). This claim, however, is based on a single isolated sentence from that paragraph, which states that

[28] The FCC, at 47 CFR Section 51.701(c), defines transport as:

> (c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC. [emphasis added]

"reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a call." From this phrase, they mistakenly infer that the Act and the FCC=s Rules only apply between carriers whose facilities "directly" interconnect.

This phrase, however, has been taken out of context. If read in context, it does not support MMG and STCG's claim. In paragraph 1034 of its Interconnection Order, the purpose of the FCC's discussion was not to make a distinction between carriers whose facilities directly interconnect versus those with facilities that indirectly interconnect. Rather, the FCC's purpose was to explain that IXCs are not entitled to reciprocal compensation from a LEC when a LEC passes an IXC a long distance call to carry. The FCC was simply providing examples to distinguish the application of access charges on long distance traffic from the application of reciprocal compensation under Section 251(b)(5) for transport and termination of local traffic (in fact the heading over paragraphs 1033 - 1038 states: "Distinction between 'Transport and Termination' and 'Access'):

> We disagree with Frontier's [an IXC] contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC collaborate to complete a long distance call. As a general matter, in the access charge regime, the long distance caller pays long distance charges to the IXC, and an IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.[29]

The FCC=s use of these simple examples was not meant to be exclusive. If it was and the FCC intended reciprocal compensation to apply only when two carriers "collaborated," and

[29] Interconnection Order, para. 1034 (emphasis added).

access <u>only</u> when three carriers "collaborated" (<u>i.e.</u>, a call originated by one LEC, carried long distance by an IXC, and terminated by another LEC) then MMG and STCG members would be precluded from applying their access charges in most situations. As STCG's witness acknowledged, most small Missouri LECs do not have tandems. Consequently, there need to be two LECs on the terminating end of a call, which would result in <u>four</u> LECs collaborating (one originating LEC, an IXC, and two terminating LECs). And he also indicated that there are often more than one interexchange carrier involved in handling a call which would result in <u>five</u> collaborating carriers (one originating LEC, two IXCs, and two terminating LECs). (STCG, Schoonmaker Tr. pp. 168-169). It is doubtful that MMG and STCG would support the logical result of their own interpretation of this passage. Certainly when the entire paragraph is read in context, it is clear that there was no intent by the FCC to limit reciprocal compensation to directly interconnected carriers.

There is also no such limitation in the Act. Section 251(b)(5) of the Act imposes the Aduty to establish reciprocal compensation arrangements for the transport and termination of telecommunications" on "<u>all</u> local exchange carriers." (emphasis added). It does not impose such duties only on directly interconnected carriers as MMG and STCG assert. Had Congress intended such a sweeping exclusion to restrict the application of Section 251(b)(5), it would have included explicit limiting language in the statute. But it did not.

The reason Congress did not limit the applicability of the duty to establish reciprocal compensation to directly interconnecting carriers is that Congress was aware that multiple LECs could be involved in terminating local calls and did not want to permit one of these companies to thwart the competitive process. MMG and STCG's position completely ignores that the Act itself not only contemplates, but <u>requires</u>, that all telecommunications companies interconnect directly and indirectly. Section 251(a)(1) provides that "each telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." (emphasis added). Given Congress' specific requirement that carriers indirectly interconnect with each other and its expectation that traffic would flow through such interconnections, any exclusion of such traffic from the Section 251(b)(5) reciprocal compensation obligation would need to be specific as well. The glaring absence of such an exclusion demonstrates that none was intended.

Similarly, if the FCC intended such a limitation to apply, it would have so stated in its discussion of reciprocal compensation obligations on wireless traffic. But it also did not, for exactly the same reason. For example, in Section X.B of the Interconnection Order (Section X is the Commercial Mobile Radio Service (CMRS) section) titled AReciprocal Compensation Arrangements Under Section 251(b)(5)," the FCC states:

> Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of 'telecommunications.'[30] Under section 3(43), A[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[31] All CMRS providers offer telecommunications. Accordingly, LECs are obligated, pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with **all** CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation set forth in Section XI.B., below. [32](emphasis added).

[30] 47 U.S.C. з 251(b)(5).
[31] 47 U.S.C. з 153(43).
[32] Interconnection Order, para. 1008. The FCC=s reference to Section XI.B of the Interconnection Order as containing its Arules governing reciprocal compensation≅ appears to be a typographical error. Section XI.B is entitled AAccess to Rights of Way≅ (e.g., to poles, ducts, conduits). The proper reference should have been to Section XI.A which is entitled AReciprocal Compensation for Transport and Termination of Telecommunications.≅

Nowhere in this discussion does the FCC even hint that it intended to exclude traffic between CMRS providers and LECs which utilizes other LEC networks to establish indirect interconnections. Rather, the FCC has been careful to explain that reciprocal compensation obligations apply to <u>all</u> local traffic (<u>i.e.</u>, within the MTA) transmitted between LECs and CMRS providers:

> Section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. Although section 252(b)(5) does not explicitly state to whom the LEC=s obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers. CMRS providers are telecommunications carriers and, thus, <u>LECs= reciprocal compensation obligations under section 251(b)(5) apply to **all** local traffic transmitted between LECs and CMRS providers</u>. (emphasis added).[33] (emphasis added).

MMG and STCG's claims here simply do not square with the language of the Act or the full text of the FCC's directives on reciprocal compensation arrangements for intraMTA wireless traffic. Given the clear unlawfulness of MMG's attempt to impose access charges on intraMTA wireless traffic, its proposed tariff should be rejected.

<u>ISSUE NO. 2</u>: If lawful, should the tariff proposed by MMG be approved?

The tariff should be rejected because, as admitted by MMG, it does not reflect MMG's intent. Rejection of this tariff, however, will not leave MMG without a remedy. No party contends that the individual MMG companies should not receive compensation at appropriate levels for terminating traffic originated by wireless carriers or CLECs, including those that would have to pay those charges. In fact, the wireless carriers have indicated their interest in negotiating terminating compensation arrangements with MMG. As the record makes clear, however, MMG has done its best to frustrate this process. If the MMG companies wishes to be

[33] <u>Interconnection Order</u>, para. 1041.

compensated for this traffic, it is incumbent on them to come to the table to negotiate as contemplated both by the Telecommunications Act and the Commission.

I. <u>The Proposed Tariff Should be Rejected for Ambiguity</u>.

MMG's own witness admitted at the hearing that the tariff as drafted does not clearly reflect MMG's intent. As written, the tariff applies to "all traffic regardless of the type or origin transmitted to or from [MMG facilities] by any other carrier directly or indirectly until superseded by an agreement approved pursuant to the provisions of 47 U.S.C. 242 as may be amended." (MMG, Stowell Direct, p. 4). This broad language would appear to make MMG's access charges apply not only to wireless carriers and CLECs whose customers place calls that terminate in MMG exchanges, but also to any intermediate carrier that merely transits those other carriers' calls to MMG's networks. The language would also appear to apply to traffic currently covered by the MCA Plan, which is bill and keep; and to interstate intraLATA traffic which is also bill and keep.

But despite this language providing for broad tariff applicability, MMG admitted that it did not intend the tariff to apply to a transiting company handling either wireless or CLEC originated calls. MMG's witness also acknowledged that the proposed tariff was not intended to apply to traffic covered by the MCA Plan or to interstate intraLATA traffic. He also conceded that there "might be some confusion" with the proposed language and "could possibly agree" that it would be appropriate for the tariff to be modified to make it clear that it applies only to the originate carrier, and not to the transiting carrier. (Stowell, Tr. pp. 87-93; Surrebuttal, p. 18). At a minimum, the Commission should reject the tariff and, in its order, indicate that the tariff should be revised to make it clear that it only applies to the originating carrier, and not to the transiting carrier.

II. Proper Avenues Exist for MMG to Collect Appropriate Terminating Charges.

Even if MMG's proposed tariff is rejected, the MMG companies will not be left without a remedy to collect appropriate charges for terminating traffic originated by CLECs and wireless carriers. As MMG's own witness acknowledged, their present tariffs, without the proposed revision, already apply to CLEC originated toll traffic that comes to them via a transiting carrier like Southwestern Bell and terminates in a MMG exchange. (MMG, Stowell Tr. p. 95). He also conceded that they do not need this tariff revision to apply their access tariffs to CLEC originated toll calls. (MMG, Stowell Tr. pp. 97-98).

And with respect to wireless originated traffic, the Telecommunications Act provides the appropriate avenue for MMG to secure compensation: good faith negotiation. MMG and STCG continue to resist this statutorily provided process claiming that wireless carriers have no incentive to negotiate terminating compensation with them. (MMG, Stowell Surrebuttal, p. 9; STCG, Schoonmaker Surrebuttal, pp. 11-12).[34] The record, however, belies their claims. It clearly shows that the wireless carriers have indeed sought to reach appropriate arrangements with MMG, only to be stiff-armed. For example, Gene DeJordy, the Director of Regulatory Affairs for Western Wireless wrote Mid-Missouri Telephone in November, 1997 proposing a bill and keep compensation arrangement for the exchange of traffic between their companies, but indicating that he was open to other arrangements. Specifically, he stated that:

> If Mid-Missouri Telephone Company would prefer to establish transport and termination rates for the exchange of traffic, an interconnection agreement would need to be negotiated. Cellular One is willing to enter into an interconnection agreement with Mid-Missouri Telephone Co. if that is your preference. Should

[34] For example, STCG's witness stated:

> There is very little incentive for these parties to pursue interconnection contracts with the STCG and MMG companies at this point in time. Since their traffic is already being terminated to the ILECs as they desire, they have no need to ender into such an agreement. Since they currently are not paying anything for this termination and will likely have to pay something in the future, there is little further incentive to enter into negotiations. (MMG, Schoonmaker Surrebuttal, pp. 11-12).

you wish to enter into an interconnection agreement with Cellular One, I can provide you with a proposed draft agreement.

Mr. DeJordy wrote similar letters to Chariton Valley Telephone Company and Alma Telephone Company. (See, Schedules 3-1, 3-2 and 3-3 to SWBT Witness Hollingsworth Rebuttal Testimony).

In October, 1997 Mr. Richard Grove, the Director of Network Planning for Ameritech Cellular sent MMG's counsel a draft interconnection agreement to use to start negotiations with the independent telephone companies he represented for the exchange of traffic that transited another local exchange carrier. (See, Schedule 3-4 to the Rebuttal Testimony of SWBT Witness Hollingsworth). Also in October, 1997 Kirk Goldbach, Director of Finance and Administration for CMT Partners (which operates the Cellular One system in Kansas City and St. Joseph) Missouri wrote to Chariton Valley, Alma and Mo-Kan Dial proposing a bill and keep arrangement for the exchange of their traffic but also indicating that CMT was willing to discuss the matter further. (See, Schedules 3-7, 3-8 and 3-9 to the Rebuttal Testimony of SWBT witness Hollingsworth).

James Propst, Carrier Interconnection Management representative for Sprint PCS (and a witness in this case) indicated that after executing interconnection agreements with Southwestern Bell and GTE, Sprint PCS attempted to contact every independent LEC in Missouri to establish reciprocal compensation arrangements. (Sprint Spectrum, Propst Rebuttal, p. 1). He wrote Chariton Valley in August, 1997 indicating that it need to reach some form of agreement with Chariton Valley regarding the manner in which they would compensate one another for the exchange of traffic. Mr. Propst suggested a bill and keep arrangement and prepared a letter agreement to memorialize such an arrangement. (See, Schedules 3-11 - 3-12 to the Rebuttal Testimony of SWBT witness Hollingsworth). He wrote similar letters to Alma, Mo-Kan Dial, Mid-Missouri, Choctaw, and Peace Valley in November 1997. (See, Sprint Spectrum, Propst Rebuttal, pp. 1-2 and Schedule JP.1).

Mr. Propst also stated that after receiving bills at access rate levels from both Mid-Missouri Telephone Company and Chariton Valley Telephone Company, he again contacted these companies asking if they would be willing to enter into a reciprocal compensation agreement for the exchange of traffic. Mr. Propst testified that "Mid-Missouri Telephone again responded with a definitive, no" and that Chariton Valley indicated "that it would only accept an arrangement in which Sprint PCS agreed to pay access charges for this traffic." (Sprint Spectrum, Propst Rebuttal, p. 6; see also, Schedules JP.11, JP.12 and JP.13).

Southwestern Bell Wireless also sought to negotiate with MMG and had sent MMG's counsel a proposed draft interconnection agreement providing for the reciprocal compensation for the termination of traffic. By letter, MMG responded that since their companies did not originate calls to Southwestern Bell Wireless, symmetrical and reciprocal compensation is not appropriate. MMG further indicated that they were only willing to negotiate a reciprocal compensation agreement with Southwestern Bell Wireless if it established a direct physical connection with the MMG companies. (SWBW, Dreon Rebuttal, pp. 1-2).

And in November, 1997 James Naumann, Director Network Planning and Procurement of U.S. Cellular wrote MMG's counsel indicating that it would be sending traffic to MMG via its interconnection through Southwestern Bell and proposed three alternatives for handling compensation on the exchange of this traffic. (See, Schedules 3-15 - 3-16 to the Rebuttal Testimony of SWBT witness Hollingsworth).

But what these wireless carriers met with, by MMG's own admission, was a flat refusal to deal:

> The MMG has refused to agree to indirect reciprocal compensation, or indirect termination agreements. We have been steadfast in that position since November of 1997, when the wireless carriers first approached us. The partial correspondence attached to the rebuttal testimony reveals that the CLECs and wireless carriers have not requested direct physical interconnection. More correspondence exists, but it is too voluminous to attached. (MMG, Stowell Surrebuttal, p. 22; see also, Schedules JP.6, JP.7 and JP.8 to the Rebuttal Testimony of Sprint Spectrum witness Propst).

The terms the wireless carriers have sought to negotiate do not appear to be unusual or unreasonable. This is evidenced by the fact that these carriers have concluded numerous such agreements with LECs across the country, and with various LECs in Missouri. For example, Sprint Spectrum's witness Propst indicated that he personally negotiated approximately 140 interconnection and reciprocal compensation agreements covering mutual exchange of wireless traffic with LECs in 46 states on behalf of Sprint, and concluded agreements specifically in Missouri with Southwestern Bell, Sprint Missouri, Inc., GTE, New London Telephone Company, Orchard Farm Telephone Company, Stoutland Telephone Company and Peace Valley Telephone Company. (Sprint Spectrum, Propst Rebuttal, p. 1).

Southwestern Bell Wireless has concluded interconnection agreements with the following LECs in Missouri, all of which have already been approved by the Commission: Southwestern Bell Telephone Company, United Telephone Company of Missouri d/b/a Sprint, and GTE Midwest, Incorporated. It also recently concluded negotiations and is in the process of executing interconnection agreements with ALLTEL and with TDS Telecommunications Corporation (whose subsidiary LECs in Missouri are Orchard Farm, New London and Stoutland Telephone Companies). Southwestern Bell Wireless testified that it is willing to enter into similar agreements with MMG companies and to apply the agreed-upon reciprocal compensation rate retroactively.[35]

Since most of the wireless carriers have now sought negotiations on an agreement to terminate their wireless traffic, the law is clear that MMG has concrete rights and remedies under the Telecommunications Act of 1996. Under Section 252(b)(1), MMG has the right to petition the Commission for compulsory arbitration:

> During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under the section, the carrier <u>or any other party to the negotiation</u> may petition a state commission to arbitrate any open issues. (emphasis added).

Section 252(a)(2) of the Act also gives MMG the right to ask the Commission, at any point in the negotiation, to participate in the negotiation and to mediate any differences. In addition, MMG could file an appropriate tariff establishing rates for completion of wireless calls would transit another LECs network. This rate would be billed by MMG to the wireless carriers until such time as a wireless carrier seeks to exercise their rights under Sections 251 and 252 of the Act to negotiate appropriate interconnection rates.

No party is contending that MMG should not be compensated at appropriate rate levels for terminating wireless traffic. But at every turn, MMG has impeded the wireless carriers' efforts to put appropriate arrangements in place. MMG's conduct simply reflects their desire to collect only their full access rates on this wireless traffic in violation of FCC rules. If MMG

[35] SWBW, Dreon Rebuttal, pp. 2-3.

wishes to receive appropriate compensation for this traffic, it is incumbent on its member companies to come to the table and negotiate as provided in the Act and the FCC's rules.

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 December 10, 1999.

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