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January 3, 2000

FILED

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**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Chief Administrative Law Judge
MO Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

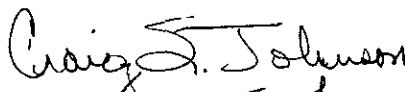
Re: TT-99-428, et al.

Dear Mr. Roberts:

Enclosed for filing please find an original and 15 copies of the Missouri Independent Telephone Group's Reply Brief. I have this date mailed copies of same to all counsel of record.

Thank you for seeing this filed.

Sincerely,


Craig S. Johnson

CSJ:skl

Enclosure

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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

JAN 3 2000

Missouri Public
Service Commission

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

REPLY BRIEF OF ALMA,
MOKAN DIAL, MID-MISSOURI, CHOCTAW,
CHARITON VALLEY, PEACE VALLEY

Comes now Alma, MoKan Dial, Mid-Missouri, Choctaw, Chariton Valley, and Peace Valley telephone companies (members of the Missouri Independent Telephone Group, formerly the Mid-Missouri Group), sometimes referred to herein collectively as "Applicants", for their Reply to the initial briefs of ATT Wireless, SWB Wireless, Staff, and SWB, and submit the following reply brief. This brief will attempt to concisely set forth why the initial briefs of the intervenors and staff are incorrect in their analysis.

The wireless carriers and CLECs fail to evaluate whether reciprocal compensation requires a direct physical interconnection

The intital brief of Alma, MoKan Dial, Mid-Missouri, Choctaw, Chariton Valley, and Peace Valley contained a very detailed evaluation of the statutory language of the Act, the FCC rules, and the FCC Order accompanying the rules. The initial brief explained in precise terms why § 251(b) providing for reciprocal compensation applies only to a direct physical interconnection between two carriers. The definition of "transport" as being from the interconnection point between *two* carriers was emphasized.

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The provisions of § 252(d) regarding pricing of reciprocal compensation was shown to apply to mutual and reciprocal transport and termination of traffic *between two carriers*. FCC rule 47 CFR 51.701(b) defining “local” traffic for purposes of reciprocal compensation was shown to be defined as traffic between *a* LEC and *a* CMRS provider.

The initial brief of Applicants explained why § 251(c)(2) setting forth interconnection agreement obligation are intended only for interconnection between two carriers, for the facilities of the requesting carrier at a point within the ILEC’s network.

The initial brief also pointed out the various paragraphs of the FCC’s Interconnection Order wherein the FCC made it clear that reciprocal compensation only applied for the *transport* and termination of traffic between *two* carriers, and that access still applies where three (or more) carriers collaborate to complete a call.

By contrast the initial briefs of the intervenors fail to engage in any analysis of the precise terms and meanings of these statutes, rules, and order. Instead Intervenor cavalierly take incomplete excerpts from the FCC Order. Their briefs are premised upon the overly broad assumption that, because the FCC Order said “reciprocal compensation applies to local traffic transmitted between the wireless carriers and Applicants”. In this regard they fail to cite the complete language of the Order, rules, or statutes. In this regard they fail to read the statutes, rules, and orders in harmony to arrive at a consistent meaning.

For example, SWB Wireless at page 3 of its initial brief cites ¶ 20 of the FCC Order for the proposition that “LEC’s reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers”. But SWBW fails to discuss the undeniable language of 251(b)(5) which unmistakably applies

to *transport*, which in turn is unmistakably defined by rule as being between only two carriers. SWBW fails to discuss the unmistakable language in the rule defining *local* as being between two carriers. SWBW fails to recognize that the FCC's use of the terms *reciprocal compensation* and *local* in ¶1041 were discussing those terms in the context of the definitions established by statute and rule. SWBW also fails to discuss or explain the other paragraphs of the FCC Order which make it rather clear that reciprocal compensation does not apply to any traffic which requires three or more carriers to collaborate in order to complete.

ATT Wireless is guilty of the same. At page 2 of its initial brief, ATTW states that "FCC Rule 51.701(b)(2) defines local CMRS telecommunications traffic as including telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates with the same Major Trading Area". But ATT fails to understand that the singular "a" in describing both the LEC and the CMRS provider refers only to traffic between two carriers in total. ATTW completely fails to discuss or apply the statutory definitions of reciprocal compensation and interconnection agreements, the statutory definitions applicable to reciprocal compensation pricing, and the rules defining "transport" for purposes of the transport and termination reciprocal compensation agreements are to apply to.

The wireless carriers fail to recognize or contend with the fact that there is no reciprocal traffic flowing to them from the LEC Applicants in this case. Without reciprocal traffic, how can there be reciprocal compensation? It is only with a direct interconnection that the prospect of reciprocal traffic arises.

Staff also errs in its interpretation of the applicable law. At page 6 of Staff's initial brief, Staff relies on witness Clark's testimony citing the provisions of 252(d)(2) regarding pricing standards for transport and termination for purposes of 251(b)(5), reciprocal compensation. As correctly cited in Staff's brief, § 252(d)(2)(A)(i) specifies that reciprocal compensation terms and conditions are not just and reasonable unless they provide for the *mutual* and *reciprocal* recovery by each carrier's costs associated with the *transport* and termination on *each* carrier's facilities of calls that originate on the network facilities of *the other carrier*. What Staff fails to grasp is that the emphasized language clearly applies to situations in which only two carriers are involved. Staff fails to apply the other statutes and rules that make it clear reciprocal compensation applies only when two carriers directly interconnect for the mutual and reciprocal exchange of local traffic.

Because reciprocal compensation requires *all of these components to be present*—two carriers, direct physical interconnection, mutual and reciprocal exchange of local traffic—if any component is missing the rules do not preclude the applicability of access charges. If more than two carriers collaborate, if there is no direct interconnection between two carriers, or if the traffic is not local, then access is the proper form of compensation.

The initial brief of SWB Telephone also makes the same sweeping assertions without analysis of the precise language of the statutes, rules, and order. SWB goes further at page 13 of its initial brief and discusses ¶ 1034 of the FCC Interconnection Order. The language of the FCC Order in ¶ 1034 supports Applicants' position. In that


paragraph the FCC made it clear that an IXC is not entitled to reciprocal compensation from the LEC when the IXC passes traffic to a LEC.

Well, if the IXC is not entitled to *reciprocal* compensation in that situation, then by definition the LEC also is not entitled to reciprocal compensation. As the FCC made clear in that situation the LEC is entitled to access compensation. In this case, when we are discussing traffic that originates with a wireless carrier, is handed off to SWB, and then is terminated to the LEC, SWB's role is not that of a LEC, *SWB's role is that of an IXC*. For the traffic at issue in this case, SWB is a carrier handling interexchange traffic that neither originated nor terminated in SWB's local exchange. SWB's role in regard to the traffic at issue in this case is no different than the role of an IXC that delivers interexchange traffic to a terminating LEC. Hopefully the Commission will be able to distinguish SWB's role as a LEC from its other long-standing role as an interexchange carrier.

Wherefore, on the basis of the foregoing and Applicants' Initial Brief, it is respectfully requested that the tariffs at issue herein be approved with the modification consented to in the Initial Brief.

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ATTORNEYS FOR APPLICANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 3RD day of January, 2000 to all attorneys of record.



Craig S. Johnson