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February 3, 2000

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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, Consolidated with Cases TT-99-429, TT-99-430, TT-99-431, TT-99-432, and TT-99-433

Dear Mr. Roberts:

Enclosed for filing please find an original and 15 copies of an Application for Rehearing submitted on behalf of Alma, MoKan, Mid-Missouri, Choctaw, Chariton Valley, and Peace Valley in the above referenced, consolidated tariff proceeding.

A copy of this letter and a copy of the enclosed application has been served upon all attorneys 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

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.**

(consolidated with

TT-99-429-MoKan Dial,
TT-99-430-Mid-Missouri,
TT-99-431-Choctaw,
TT-99-432-Chariton Valley,
TT-99-433, Peace Valley).

APPLICATION FOR REHEARING

Come now Alma Telephone Company, MoKan Dial Inc., Mid-Missouri Telephone Company, Choctaw Telephone Company, Chariton Valley Telephone Corporation, and Peace Valley Telephone Company, Applicants, pursuant to § 386.500 RSMo, and hereby request rehearing of the Commission's January 27, 2000 Report and Order entered in TT-99-428, consolidated with case numbers TT-99-429, TT-99-430, TT-99-431, TT-99-432, and TT-99-433, hereafter "Report and Order". As grounds for rehearing, applicants state as follows:

1. Between March 9, 1999 and March 18, 1999, Applicants each filed modifications to their exchange access tariffs by which they proposed the following language be added thereto:

"APPLICABILITY OF THIS TARIFF

The provisions of this tariff apply to all traffic regardless of type origin, transmitted to or from the facilities of the Telephone Company, by another carrier, directly or indirectly, until and unless superseded by an agreement approved pursuant to the provisions of 47 U.S.C. 252, as may be amended."

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2. These tariffs had been suspended until the Commission's January 27, 2000 Report and Order finding that these tariffs are not lawful, thereby rejecting them.

3. Applicants filed these proposed tariffs pursuant to the Cole County Circuit Court's February 23, 1999 Findings of Fact, Conclusions of Law, and Judgment in consoldiated case Nos. CV198-178CC and CV198-261CC. That Judgment determined that a prior Commission Order of December 23, 1997 in TT-97-524 did not foreclose Applicants from access as being the appropriate means of compensation for terminating wireless traffic, and did not foreclose Applicants from applying their access tariffs to this traffic, and that the use of the term "reciprocal compensation" in the Commission's December 23, 1997 Order did not limit Applicants right to be compensated for such traffic only to "reciprocal compensation".

4. After the Commission decision in TT-97-524, wireless carriers and CLECs have delivered traffic to SWB and other ILECs that was destined for Applicants' exchanges. The actions of the wireless carriers and CLECs in delivering such traffic was in violation of Commission Orders and terms of interconnection agreements. It was the intent of the Orders and interconnection agreements for CLECs and wireless carriers to make arrangements for the termination and compensation for this traffic to Applicants before delivering any such traffic. It was known by the Commission, the CLECs and wireless carriers that Applicants have no ability to distinguish such traffic or prevent it from terminating. Despite their obligation not to do so, CLECs and wireless carriers have delivered such traffic which has terminated to Applicants.

5. The only lawful rate in effect for Applicants for the termination of this traffic is the switched access tariff of Applicants. CLECs and wireless carriers have refused to pay tariffed switched access rates. The other lawful form of compensation would be reciprocal compensation rates, which are the end result of negotiations for and approval of an interconnection agreement. CLECs and wireless carriers have refused to directly interconnect with Applicants, and have not requested arbitration before the Commission of reciprocal compensation rates, as only they are authorized to do. Even were reciprocal compensation rates to be applied to this traffic over an indirect interonnection, Applicants have no such rates in place. Applicants cannot compel wireless carriers or CLECs to enter into negotiations to develop such rates, and neither can this Commission. As a result Applicants have no rate other than tariffed access rates to apply to traffic which has been terminated to them since 1996, and which continues to be terminated in

increasing amounts. Even were Appliants successful in developing acceptable rates, there is no assurance these rates can be retrospectively applied.

6. The intent of the tariff filing at issue in this case was to have the Commission make a determination that, until superseded by an approved interconnection agreement's reciprocal compensation rates, switched access rates apply to this traffic. The intent of the tariff language was to make it clear that Applicants' terminating access rates applied to terminating wirless traffic and to terminating CLEC traffic, until a wireless carrier or CLEC requested, obtained, and had approved an interconnection agreement pursuant to 47 USC 252, at which time the reciprocal compensation rates contained in the approved agreement would supersede the access tariff rates.

7. This tariff proceeding was initiated because, due to the actions of the CLECs and wireless carriers in sending this traffic in violation of Orders and interconnection agreements, combined with their refusal to request or compel interconnection agreements, the CLECs and wireless carriers were receiving free termination, and would have received free termination indefinitely into the future.

8. Instead of resolving this long-standing issue, the Commission's January 27 Report and Order leaves Applicants in exactly the same position as they were in. The Report and Order rewards the wireless carrier and CLEC actions in sending traffic in violation of Orders and interconnection agreements. The Report and Order provides Applicant with no enforceable method of obtaining any form of compensation from the wireless carriers and CLECs. The result of the Report and Order is that the Commission continues to allow other carriers to confiscate the use of facilities of Applicants without paying any compensation therefore.

9. The essential basis for the Report and Order is that "local traffic is not subject to switched access charges", and "CMRS traffic to and from a wireless netowrk that originated and terminates within the same MTA is local traffic, regardless of the number of carriers involved". Applicants agree that traditionally, prior to the telecommunication act of 1996, the jurisdiction of a call was determined by the originating and terminating locations of the call. The intercompany compensation methodology has never been exclusively determined by call jurisdiction.

With the enactment of the telecommunications Act of 1996, the federal government has injected the additional factor of negotiated interconnection agreements into the analysis. Reading the Act, the FCC rules adopted pursuant thereto, and the FCC Report and Order

accompanying those rules, the interconnection agreement is now the focal mechanism by which the parties thereto directly connect for the mutual exchange of reciprocal traffic. The interconnection agreement is where the competitive carriers and the ILECs define, between themselves, what will be local. It is then up to the Commission to approve the local calling scope contained in the interconnection agreement. For interconnection agreements with wireless carriers, the FCC has mandated the MTA as the local callings scope. But the FCC has not usurped the requirement of an interconnection agreement between the wireless carrier and the ILEC before the MTA local calling scope applies.

This is the essential error of the Commission's Report and Order. The Commission fails to interpret and apply the law of interconnection agreements. By this failure, the Commission rewards the wireless carrier and CLEC actions in sending traffic in violation of Orders and interconnection agreements, provides Applicant with no enforceable method of obtaining any form of compensation from the wireless carriers, with the result that wireless carriers are allowed to continue to confiscate the use of facilities of Applicants without any compensation whatsoever therefore.

10. The Commission's January 27, 2000 Report and Order found that switched access charges do not apply to local traffic, do not apply to CMRS traffic to and from a wireless network that originates and terminates within the same MTA as that traffic is local, and therefore the tariffs are unlawful and must be rejected. The authority relied upon by the Commission for these conclusions was selected excerpts from the FCC's First Report and Order, CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, hereafter referred to as "First Report and Order".

11. With respect to traffic sent to Applicants by CLECs, the Report and Order is unlawful and unreasonable because there is no Interconnection Agreement between any CLEC and any of the Applicants defining any local calling scope between them. For purposes of CLEC traffic, the language of the proposed tariff was not unlawful, and the Report and Order failed to address CLEC traffic whatsover.

12. With respect to wireless traffic sent to Applicants, the Report and Order relies on a single excerpt from paragraph 1034 of the FCC's First Report and Order. The Report and Order fails to address the statutory provisions of 47 USC 251-252, the FCC Rules at 47 DFR 51.701, and other equally applicable paragraphs of the "First Report and Order". In so doing the

Commission has failed to comprehensively consider the law applicable to this issue, and have failed to advance this issue in Missouri past the point the Commission left it in its December 23, 1997 Report and Order in TT-97-524. In that Order the Commission attempted to examine the statutes, rules, and First Report and Order. In so doing the Commission then recognized that "the FCC's order does not apear to consider a situation in which three carriers are needed to complete a lcoal call, as may be the case where interconnection is indirect rather than direct."

The January 27, 2000 Report and Order does nothing to advance the analysis done two years prior. The Report and Order does nothing to resolve the issues presented by "indirect interconnection".

13. In looking at paragraph 1034 recited at page 12 of the January 27 Report and Order, the FCC in comparing reciprocal compensation to access compensation, stated:

> "By contrast, reciprocal compensastion for transport and termination of calls is intended for a situation in which **two** carriers collaborate to complete a local call."

This is clear language that reciprocal compensation applies when two carriers, over a connection between them, collaborate to originate, transport, and terminate a call. Under the terms of SWB's interconnection agreements with the wireless carriers, this language applies to calls from the wireless customer to SWB's customers. It is subject to a direct connection and interconnection agreement between two carriers.

But when the wireless originated call is destined for a customer of Applicants and is delivered by SWB, the logic of the law indicates access is the appropriate form of compensation. Now there are three carriers required to originate, transport, and terminate the call. Now there is no direct connection between the originating and terminating carrier. Now there is no transport as defined by federal rule. It is only when there is a direct interconnection between the wireless carrier and the terminating LEC that reciprocal compensation can work. The logic of the interconnection agreement/ reciprocal compensation regime introduced by the Act was that access rates provided the incentive for carriers to interconnect to achieve lower reciprocal compensation rates. That was their incentive in interconnecting with SWB. That should also be their incentive in deciding whether to interconnect with other LECs. Applicants have just as much rights under the law as SWB to apply reciprocal compensation over a direct physical interconnection.

At hearing it was undisputed that if the wireless carrier contracted with an IXC to deliver the call to one of the Applicant, that access applies. For the same call routed over SWB facilities to one of the Applicants, there is no difference. There is no reason access should not apply. SWB is nothing more than an IXC insofar as calls from wireless customers to Applicants over an "indirect interconnection" is concerned.

At hearing it was undisputed that in an indirect interconnection situation Applicants have no reciprocal traffic going to wireless carriers. All of this traffic goes to IXCs, and the FCC Order is clear that access applies.

14. CLECs and wireless carriers do not deliver traffic destined for SWB until a request for interconnection has been submitted, negotiated, approved, and facilities established between those two connecting carriers. The approval of such interconnection agreements by law cannot discriminate against or prejudice the equal rights of Applicants. 47 USC 252(e). Yet the Commission continues to prejudice the rights of Applcants under the guise that Applicants are subject to reciprocal compensation via an indirect interconnection where three carriers are required to collaborate to complete a call. The rights of Applicants as ILECs have not been lost, and are not to be destroyed by the development of interconnection agreements with dominant ILEC SWB. SWB should not be heard to espouse "indirect interconnection" obligations of small ILECs with whom SWB is a potential competitor. As ILECs, Applicants have the right to determine interconnection terms. If wireless carriers and CLECs are going to deliver traffic destined for Applicants' networks vial SWB, they they are responsible for requesting and negotiating interconnection agreements. The arrangments are to be negotiated. Neither the wireless carriers, CLECs, SWB, nor this Commission has the right to dictate that we must exchange traffic with CLECs and wireless carriers over an indirect interconnection using SWB's facilities. Applicants are entitled not to be restricted to the limitations of the SWB network that make it impossible for Applicants to measure their own terminating usage.

15. The Commission's January 27, 2000 Report and Order is unlawful and unreasonable for failing to correctly interpret and apply the law regarding interconnection agreements, access compensation, and reciprocal compensation concepts on the following grounds:

a. the Commission failed to consider and apply 47 USC 251(b)(5), which, in establishing the obligation of ILECs to establish reciprocal compensation, indicates that

reciprocal compensation is for the transport and termination of telecommunications, and 47 CFR 51.701(c) defines "transport" as taking place from **the interconnection point between the two carriers**";

b. the Commission failed to consider and apply 47 USC 252(d), which, in setting forth pricing standards for charges for transport and termination of traffic under reciprocal compensation, specifies that such terms and conditions are for the **mutual** and **reciprocal** recovery by **each** carrier of costs associated with the **transport** and termination on each carrier's network facilities of calls that originate on the network facilites of **the other carrier**, again indicating that reciprocal compensation is intended only for two carrier collaborations;

c. the Commission failed to consider and apply 47 USC 251(c)(2), which, in defining interconnection agreements ILECs can be compelled to enter into for reciprocal compensation purposes, defines the interconnection duty as one to provide, for the requesting carrier, interconnection at a point **within the ILEC's network**, again indicating reciprocal compensation is intended for a direct physical interconnection between two carriers. See also *Comptel v FCC,* 117 F.3d 1068 (8th Circuit Court of Appeals 1997), which held that the term "interconnection" in section 251(c)(2) refers to a physical linking between the requesting carrier and the ILEC;

d. the Commission failed to consider and apply 47 CFR 51.701(b), which, in defining "local" for purposes of reciprocal compensation, defnies local for purposes of wireless traffic as between **a** wireless carrier and **a** LEC that originates and terminates within the same MTA, again indicating reciprocal compensation is intended only for two carrier collaborations;

e. the Commission failed to consider and apply 47 CFR 51.701(b), which, in defining "local" for purposes of reciprocal compensation, defnies local for purposes of CLEC landline traffic as between **a** LEC and **a** telecommunications carrier other than a CMRS (wireless) provider that originates and terminates within a local service area as established by the state commission, again indicating reciprocal compensation is intended only for two carrier collaborations;

f. the Commission failed to consider and apply the guidance contained in the FCC's First Report and Order, at the following enumerated paragraphs, which again indicate that reciprocal compensation is intended only for two carrier collaborations and access is intended for three carrier collaborations:

¶ 1033. We conclude, however, as a legal matter, that **transport and termination** of local traffic are different services than access service for long distance telecommunications.

¶ 1034. 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.... By contrast, reciprocal compensation for **transport and termination** of calls is intended for a situation in which ***two carriers*** collaborate to complete a **local** call....We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.

¶ 1039. We conclude that transport and termination should be treated as two distinct functions. We define "transport", for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from **the** interconnection **point** between ***the two carriers*** to the terminating carrier's end office switch that directly serves the called party...

¶ 1040. We define "termination", for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carriers's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises... we conclude in the interconnection section above that ***interconnecting carriers*** may interconnect at any technically feasible **point**. We find that this sufficiently limits LECs' ability to disadvantage ***interconnecting parties*** through their network design decisions.

¶ 1042... Section 251(b)(5) specifies that LECs and ***interconnecting carriers*** shall compensate one another for termination of traffic on a reciprocal basis.

¶ 1043...Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges, ***unless it is carried by an IXC***....we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

¶ 1044...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.

This language confirms that reciprocal compensation applies where two carriers directly interconnect for the mutal and reciprocal exchange of local traffic. In indirect or "transiting" situations where three carriers collaborate to originate, transport, and terminate a call, exchange access remains the appropriate form of intercompany compensation.

17. Subsequent to the hearing in this case there have been further discussions regarding compensation between Applicants and wireless carriers. As a result of these discussions some wireless carriers, notably Ameritech and U.S. Cellular, have paid bills for terminating traffic to Applicants or other LECs within the MITG at billed access rates.

Wherefore, Applicants request the Commission to enter an Order granting rehearing and ultimately for an Order correcting the errors of the January 27, 2000 Report and Order, and ultimately approving the tariff language at issue, with the modification for MCA traffic consented to at hearing and in post hearing briefing.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 3 day of February, 2000, to all counsel of record.

_____
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