

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

ATTORNEYS AT LAW  
MARMADUKE HOUSE  
700 EAST CAPITOL  
P.O. BOX 1438

JEFFERSON CITY, MISSOURI 65102-1438

TELEPHONE 573-634-3422

FAX 573-634-7822

EUGENE E. ANDERECK

TERRY M. EVANS

ERWIN L. MILNE

JACK PEACE

CRAIG S. JOHNSON

RODRIC A. WIDGER

GEORGE M. JOHNSON

BEVERLY J. FIGG

WILLIAM S. LEWIS

VICTOR S. SCOTT

COREY K. HERRON

MATTHEW M. KROHN

LANETTE R. GOOCH

SHAWN BATTAGLER

ROB TROWBRIDGE

JOSEPH M. PAGE

LISA C. CHASE

OF COUNSEL:

MARVIN L. SHARP

PATRICK A. BAUMHOER

GREGORY C. STOCKARD (1904-1993)

PHIL HAUCK (1924-1991)

July 17, 2000

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

**FILED**

JUL 17 2000

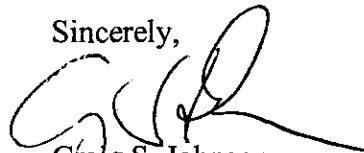
Re: Case No. TO-2000-667

Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed please find MITG's Reply Suggestions Regarding the Issues in This Case. A copy of this letter and the enclosures have been served upon all of attorneys of record.

Sincerely,



Craig S. Johnson

CSJ/mb

Enc.

c: All Attorneys of Record

TRENTON OFFICE  
9th AND WASHINGTON  
P.O. BOX 547  
TRENTON, MISSOURI 64683-0547  
660-359-2244  
FAX 660-359-2116

SPRINGFIELD OFFICE  
1111 S. GLENSTONE  
P.O. BOX 4929  
SPRINGFIELD, MISSOURI 65808-4929  
417-864-6401  
FAX 417-864-4967

PRINCETON OFFICE  
207 NORTH WASHINGTON  
PRINCETON, MISSOURI 64673  
660-748-2244  
FAX 660-748-4405

SMITHVILLE OFFICE  
119 E. MAIN STREET  
P.O. BOX 654  
SMITHVILLE, MISSOURI 64089  
816-532-3895  
FAX 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED

JUL 17 2000

Missouri Public  
Service Commission

In the Matter of the Investigation into the )  
Effective Ability for Resale of South- )  
Western Bell Telephone Company's )  
Local Plus Service by Interexchange )  
Carriers and Facilities-Based Comp- )  
etitive Local Exchange Companies. )

Case No. TO-2000-667

**MITG Reply Suggestions Regarding the Issues in This Case**

SWB, AT&T, and Staff have suggested that issues raised by the MITG and the STCG not be included within the scope of this docket. The basis for their suggestions are three: (1) the issues have not yet been included; (2) inclusion of the issues will result in delay; and (3) the issues are best left to another docket, TO-99-593. The MITG will briefly reply to each in turn.

**Small Company Issues were Included when Intervention was Granted**

Both the MITG and STCG applications for intervention set forth the small company issues in detail. At that time neither Staff nor SWB nor AT&T opposed these stated grounds for intervention. There was no timely objection raised that granting intervention would cause delay, or that these issues should instead be addressed in TO-99-593. The Commission Order granting intervention recognized the small company interests were different than that of the general public. Intervention was granted upon a finding the public interest would be served.

Under generally accepted practice and procedure, the granting of intervention constituted inclusion of the small company issues in this case. By accepting the MITG and STCG as parties, their issues were included as issues to be taken up in the case. It would be an unwarranted departure from past practice to subsequently reconsider what issues the parties will be allowed to address. To now preclude some parties from pursuing the claims they raised in the proceeding itself would raise serious and fundamental due process issues.

The MITG does not believe this to be a wise practice for the Commission to pursue. Initiating such a practice now could only invite similar requests and motions in all contested dockets. This would create an opportunity for "gamesmanship" in the form of attempts to preclude the presentation of issues a party desires to present. Normally the parties' opportunity to frame the issues comes in testimony and the statement of issues and positions. Rather than creating another opportunity to preclude issue presentation via unnecessary motions, briefs, and orders, the MITG believes the better practice is to address these issues at the time intervention is determined, at the time the issue list is presented, and at the time of the final Order in the case.

#### **Small Company Issues Will Not Result in Undue Delay**

Inclusion of the small company issues will not result in undue delay. If Staff, SWB, AT&T, and Alltel were truly concerned with an expedited resolution of this docket, they would and should have agreed on a procedural schedule in accordance with the Commission's Order establishing a prehearing conference. However they have failed to propose a procedural schedule submitting this case in a more expeditious time frame than that suggested by the small companies. The small companies have proposed procedural schedules which are not much more protracted than that proposed by Alltel or AT&T. If the Commission rules on the scope of issues sufficiently early, the small company schedules can be concluded as quickly as that proposed by AT&T and Alltel. Staff and SWB have not even proposed a schedule, instead opting to delay the institution of a procedural schedule until inclusion of small company issues is "revisited".

The issues raised by the small companies must be resolved in order to preclude the small companies from being prejudiced by the decision in this proceeding. By the terms of Local Plus (LP), resellers are providing a calling scope which includes small company exchanges. Any carrier reselling LP should be apprised in this docket as to what obligations will be imposed upon them with respect to terminating compensation for traffic going to small LECs. If some amount of additional time is thereby required this does not constitute "undue" delay. The successful implementation of LP resale between SWB, IXCs, and CLECs has already been "delayed" or frustrated for quite some time.

### **TO-99-593 Will Not Protect Small Companies**

If the MITG could be assured that no resold LP traffic will terminate to them without the appropriate records and appropriate compensation being delivered until TO-99-593 is resolved, we would be willing to withhold our issues for that docket.

Unfortunately we have no indications or assurances that this is the case.

SWB has not represented that it will be responsible for every terminating LP minute--even those from a facilities based LP resellers, until resolution of TO-99-593. AT&T and Alltel have not indicated they will wait until completion of TO-99-593 before sending LP traffic to small companies. Nor have other CLECs or IXC's that may in the future resell LP. Without either of these two assurances the MITG can only protect its interest in this docket. This is the docket established to investigate the resale of LP, not TO-99-593.. This is the docket by which CLECs and IXC's reselling LP will have their resale obligations determined.

TO-99-593 was established only to review terminating traffic protocols between ILECs for ILEC to ILEC traffic. IXC's and CLECs are not participating in TO-99-593, and will not be bound by any decisions in that docket. Signalling protocols, record exchange, and terminating compensation between small LECs, IXC's, and CLECs will not be addressed in TO-99-593. The venue for considering how IXC's and CLECs interconnect with ILECs has been and will continue to be in interconnection agreement proceedings, not in TO-99-593.

Indeed the crux of the small companies' need to participate in this docket is due to the nature of interconnection agreements between SWB and other carriers. If CLECs and IXC's were required to directly interconnect with the small ILECs before there would be direct compensation responsibilities between them, there would be no need for small company intervention in this docket. However that has not been the case because the SWB interconnection agreements expressly apply to traffic destined for third party carriers such as the small companies.

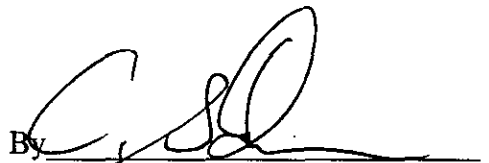
If SWB were responsible for all traffic delivered to small ILECs over its direct interconnection with them, there would be no need for small company intervention in this case. But SWB disclaims responsibility for traffic originated by any carrier other than itself, even though all traffic traverses the same interconnection.

For the small LECs this paradigm has resulted in an inability to monitor terminating traffic, and an inability to ensure that compensation is paid. Until this paradigm is changed it will be necessary for small companies to intervene or attempt to intervene in every docket involving the terms of interconnection which may include traffic destined for the small companies. Otherwise the small companies will be unable to protect their right to assure terminating compensation is paid for use of their terminating facilities.

TO-99-593 will not address LP issues between small ILECs, CLECs, and IXC's. Even were TO-99-593 somehow expanded to include all CLECs and IXC's reselling Local Plus, there is no assurance TO-99-593 will be completed prior to the receipt of resold LP traffic. If the Commission determines it appropriate to expand the scope of TO-99-593 to include traffic other than ILEC to ILEC traffic, there would be no reason to limit the additional scope of TO-99-593 to resold LP only. Instead the scope of TO-99-593 should also be expanded to include consideration of IXC traffic, CLEC traffic, and wireless traffic. The MITG does not believe such an expansion is practical at this time.

For the above reasons, the MITG respectfully requests that the scope of issues in this case include the small company issues.

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

By   
Craig S. Johnson MO Bar No 8179  
Capitol Law Center  
700 East Capitol  
Post Office Box 1438  
Jefferson City, Missouri 65102  
Telephone: (573) 634-3422  
Facsimile: (573) 634-7822

ATTORNEYS FOR MITG

**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 17 day of July, 2000, to all attorneys of record.

  
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Craig S. Johnson MO Bar No. 28179