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June 11, 2002

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

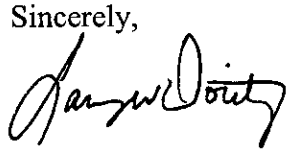
RE: Consolidated Case No. TC-2002-57

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter, please find an original and eight (8) copies of Southwestern Bell Wireless LLC's Rebuttal Testimony of William H. Brown.

This filing has been mailed or hand-delivered this date to all counsel of record. Thank you for your attention to this matter.

Sincerely,



Larry W. Dority

Enclosure
cc: Counsel of Record

Exhibit No:	
Issues:	Policy
Witness:	William H. Brown
Type of Exhibit:	Rebuttal Testimony
Sponsoring Party:	Southwestern Bell Wireless LLC
Case No.:	TC-2002-57 *et al.*

REBUTTAL TESTIMONY

OF

WILLIAM H. BROWN

ON BEHALF OF
SOUTHWESTERN BELL WIRELESS LLC

Atlanta, Georgia
June 6, 2002

BEFORE THE PUBLIC SERVICE COMMISION
STATE OF MISSOURI

Northeast Missouri Rural Telephone Company *et al.*	)	
Petitioners	)	
v.	)	Case No. TC-2002-57 (consol.)
Southwestern Bell Telephone Company, *et al.*	)	
Respondents.	)	

AFFIDAVIT OF WILLIAM H. BROWN

STATE OF GEORGIA	)	
	)	ss:.
COUNTY OF FULTON	)	

I, William H. Brown, being duly sworn or affirmed, depose and state:

1. My name is William H. Brown and I am presently Senior Interconnection Manager for Cingular Wireless.

2. Attached hereto and made part hereof for all purposes is my rebuttal testimony in the captioned case.

3. I hereby swear or affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

William H. Brown

Subscribed and sworn or affirmed
before me this 6th day of June, 2002.

Notary Public

My Commission expires:

Notary Public, Fulton County, GA.
My Commission Expires July 4, 2005

REBUTTAL TESTIMONY OF WILLIAM H. BROWN

ON BEHALF OF

SOUTHWESTERN BELL WIRELESS LLC

CASE NO. TC-2002-57 *et al.* (consolidated)

DATE: June 6, 2002

Q. Please state your name, address and occupation.

A. My name is William H. Brown. I am Senior Interconnection Manager for Cingular Wireless ("Cingular") and my office address is Glenridge Highlands Two, 1685D, 5565 Glenridge Connector, Atlanta, GA 30342. Cingular operates the licenses held in Missouri by Southwestern Bell Wireless LLC.

Q. Please briefly state your education and experience as it relates to the provision of telecommunications services generally and commercial mobile radio service in particular.

A. I have a Bachelor of Science Degree in Mathematics from North Georgia College and a Master of Business Administration Degree from the University of Alabama in Birmingham (UAB). I have been employed in the communications industry for thirty-six years and in wireless for twenty years. My work experience includes engineering, economic analysis, rate and tariff development and filings, and regulatory responsibilities. I have testified before a number of state commissions, including Georgia, Florida, Hawaii, Indiana, Wisconsin, Alabama, Louisiana, California, South Carolina, Massachusetts, Mississippi, Tennessee, Oklahoma and Kentucky.

Q. Have you ever before provided testimony to the Missouri Public Service Commission?

A. Yes. I provided testimony on behalf of Cingular in the *Mark Twain* wireless termination tariff cases, case no. TT-2001-139 *et al.* (consolidated).

Q. On whose behalf are you testifying?

A. Southwestern Bell Wireless LLC. ("SWBW"). In Missouri, Cingular is the parent of SWBW, which provides commercial mobile radio service ("CMRS") in this State. SWBW is a respondent in each of the Complaint cases consolidated into this docket.

Q. Has Cingular answered the Complaints filed in the dockets consolidated into this docket?

A. Yes.

Q. Can you characterize Cingular's answers?

A. Yes. Cingular states that it has terminated traffic to customers of each of the Complaining Carriers since 1998. However, Cingular has also attempted to negotiate interconnection agreements with each of the Complaining Carriers. Failing its ability to negotiate such interconnection agreements, the parties are operating under a *de facto* bill and keep arrangement.

Moreover, Complaining Carriers Alma Telephone, Choctaw Telephone and MoKan Dial, Inc. now have Commission-approved terminating wireless tariffs pursuant to Commission Order TT-2002-139 (consol.), the so-called *Mark Twain* case. Although Cingular respectfully disagrees with the Commission's Order approving those tariffs and is pursuing an appeal, Cingular is nonetheless paying the tariffed rates under protest.

Any attempt by those carriers or the other Complaining Carriers to institute a rate for past traffic constitutes retroactive ratemaking and is inappropriate for that reason.

Cingular believes that the Complaining Carriers' demands for access rates are no more than a recasting of their attempt to include wireless originated traffic in their access tariffs, which this Commission rejected in the cases captioned *In the Matter of the Mid-Missouri Group's Filing to Revise its Access Services Tariff, P.S.C. Mo. No.* 2 (the *Alma* case), Case No. TT-99-428 (Report & Order, iss'd January 27, 2000). The Commission ruled against the Complaining Carriers[1] in those dockets and it is inappropriate for Complaining Carriers to attack the Commission's Order through this docket.

The Commission's rejection of access rates is consistent with two recent federal district court decisions from Montana, each of which unequivocally concluded that access rates are inappropriate *Mid Rivers Telephone Cooperative Inc. v. Qwest Corporation*, (D. Mont. April 3, 2002); *3-Rivers Telephone Coop., Inc. v. U.S. West Communications, Inc.*, 125 F. Supp. 2d 417 (D. Mont. 2000). This Commission's rejection of access rates is also consistent with the Iowa Utility Board's recent decision in its Order Affirming Decision in it's Docket No. SPU-00-7 *et al., In Re: Exchange of Transit Traffic.*

Q. What is the purpose of your testimony here?

A. In addition to ensuring that the points above are part of the record in this proceeding, I am responding to the direct testimony filed by David Jones on behalf of Mid-Missouri Telephone Group and on behalf of Complaining Carriers generally. To the extent that testimony provided individually on behalf of the other Complaining Carriers

[1] It is my understanding that all of the Complaining Carriers in this docket except Northeast and Modern had proposed tariffs in the *Alma* cases.

raises other issues, I will also be responding to the Direct Testimony of William Biere on behalf of Chariton Valley Telephone Corporation, Gary Godfrey on behalf of Northeast Telephone Company and Modern Telecommunications Company, Donald D. Stowell on behalf of MoKan Dial, Inc. and Choctaw Telephone Company, and Oral Glasco on behalf of Alma Telephone Company.

Q. On pages 4 and 5 of his testimony, Mr. Jones discusses his understanding of what billings various carriers have paid. Do you have any comments on his assessment?

A. I can only speak for Cingular (which I understand Mr. Jones to be discussing when he uses the name "Southwestern Bell Wireless" and which I use interchangeably with "Southwestern Bell Wireless"). Cingular has paid and is paying all amounts properly billed under the wireless termination tariffs approved in the *Mark Twain* case until the Commission's order is overruled or vacated. Cingular's policy is not to pay bills for the termination of intraMTA traffic rendered pursuant to any carrier's access tariffs. I see that Mr. Jones, Mr. Biere, and Mr. Godfrey assert that Cingular has made some payments under Mid-Missouri's access tariffs. If it occurred, it occurred in error and was contrary to Cingular's policy.

The basis for each witness's statement about amounts due or that have been paid is hard to pin down. Cingular has requested specific information from each of the Complaining Carriers and has recently received in response what appears to be fairly raw data. Cingular may attempt its own internal reconciliation of accounts based on this information, but that reconciliation will not change Cingular's view as to what is due and owing.

Q. Have Mr. Jones and the other witnesses identified all relevant compensation?

A. No. By operating under a bill and keep regime instead of negotiating a reciprocal compensation agreement, the Complaining Carriers have not been paid by Cingular to terminate intraMTA calls originating with Cingular's customers (prior to the approval of the wireless termination tariffs), but the Complaining Carriers also have not paid Cingular to terminate intraMTA calls originated by the Complaining Carriers' customers, even though they incur only the originating cost and collect through their local service revenues the cost of originating *and* terminating the call. Of course, this is the very nature of bill and keep -- each company is compensated by *billing* its own customers and *keeping* the revenues for originating *and* terminating all calls.

Q. But doesn't a bill and keep arrangement require a balance of calling between the two companies?

A. The FCC has acknowledged that bill-and-keep is a legitimate reciprocal compensation arrangement. *See* 47 C.F.R. § 51.705. However, demonstrating that the traffic is balanced is only required for a Commission to impose bill-and-keep through an arbitration. *See FCC Interconnection Order* at ¶ 1111. Nothing prevents any carriers from agreeing to bill-and-keep where both conclude, explicitly or implicitly, that bill and keep is in their better interest than establishing a particular level of reciprocal compensation.

Q. Have these LECs shown that traffic is not balanced?

A. Again, while I don't think it is a necessary condition to a *de facto* bill and keep arrangement, these carriers have not shown the traffic is significantly out of balance. I have heard the Complaining Carriers assert that the traffic is not balanced. However, in

response to data requests, each of the Complaining Carriers advised us that they do not measure the traffic they send to NXXs associated with Cingular or any other wireless carriers. Their assertions about the imbalance in traffic are at best speculative and at worst baseless.

It is also worth noting that the Complaining Carriers get an added benefit from avoiding an affirmative reciprocal compensation agreement. Not only have they not paid or recognized the cost of terminating those wireline-to-wireless calls, they have actually *been paid* to originate them since it is their practice to hand all wireless-bound calls off to an IXC and to collect originating access. Given the relatively high average level of carrier access revenues the Complaining Carriers receive compared to the cost to them of recognizing or paying to terminate their own customers' calls to Cingular's customers, the Complaining Carriers have recognized a significant monetary benefit from operating under the *de facto* bill and keep arrangement. It would be wholly inappropriate for the Commission to assess any kind of terminating compensation against any wireless carrier without an offset for what these Complaining Carriers received by not paying to terminate their own customers calls and by being paid originating carrier access on those calls.

I would also note in passing that, while the Complaining Carriers focus on the assertion that wireless traffic is delivered to them by SWBT, logic suggests that a large portion of the land-to-wireless traffic that they originate goes to wireless customers physically located within their exchanges. As a result of the LEC's decision to hand this call of to an IXC, its customers are paying long distance rates to reach a wireless customer who may be in the same county, town or neighborhood.

Q. At pages 6 and 7 of his testimony, Mr. Jones discusses his understanding of how intercarrier compensation operates in light of the Telecommunications Act of 1996 ("TA96"). Do you have any comments on that?

A. I am not an attorney and I believe the strictly legal impact of TA96 is a legal question. However, my understanding of how intercarrier compensation works is different from what Mr. Jones describes. It is my understanding that the FCC, since the late 1980s, generally prohibited LECs from imposing access charges on wireless-originated traffic. TA96 and the FCC's rules implementing TA96 further reinforced this prohibition. In addition, TA96 clarified and reinforced the requirement for interconnection agreements that provide for reciprocal compensation. These are very different intercarrier compensation mechanisms than carrier access charges. One important difference is that reciprocal compensation arrangements recognize that CLECs and wireless carriers are not access customers like traditional IXCs. Rather, they are co-carriers. Therefore, while Mr. Jones explains (at pages 18 and 19 of his testimony) how the small LECs have built tandems with the goal of forcing wireless carriers into the same arrangements as IXCs, that goal fails to appreciate the difference between an access customer relationship and a co-carrier relationship.

Similarly, TA96 places the burden on incumbent LECs to negotiate reciprocal compensation arrangements rather than unilaterally imposing access charges. It may require incumbent LECs to change their traditional business methods and to be receptive to establishing business relationships with the wireless carriers operating in their MTAs. But, to my understanding, the intended result is that CLECs and wireless carriers are treated as equal players with incumbent LECs, and that incumbent LECs have mutual

obligations with CLECs and wireless carriers, rather than CLECs and wireless carriers having simply to conform themselves to the incumbent LECs network design.

Where I differ most greatly with Mr. Jones is in his suggestion that his carrier access charge model should apply in all cases until an affirmative interconnection agreement is executed and approved. Carrier access is not and never has been an appropriate default for reciprocal compensation. TA96 clarified and reinforced the requirement that, for local calling, reciprocal compensation is the only available intercarrier compensation. In other words, it is not *optional* for incumbent LECs to chose whether to cooperate in the negotiation of interconnection agreements.

In my experience, however, the negotiation of reciprocal compensation arrangements has not presented a major obstacle. In some instances, the parties have concluded that the cost of negotiating and approving an agreement, measuring and recording usage, and generating appropriate invoices is greater than the value that a party would receive through balancing payments at a reasonable reciprocal compensation rate. In those cases, the result is a *de facto* bill and keep. Most of Cingular's attempts to establish reciprocal compensation arrangements have been resolved through negotiation without the need for arbitration. However, that has not been the case in Missouri.

Q. At page 8 of his testimony, Mr. Jones states his belief that the Commission believed that interconnection agreements would become the vehicle for inter-company compensation between wireless carriers and the Complainant companies. Do you agree?

A. I can't speak for the Commission's beliefs, but I think it would have been reasonable for the Commission to expect the wireless carriers and the small LECs to

establish interconnection agreements. After all, TA96 and the FCC Order that implemented it require that the parties negotiate interconnection agreements. CMRS Providers and LECs all across the nation have successfully negotiated interconnection agreements pursuant to those requirements year after year since 1996. Even before TA96, interconnection agreements were being successfully negotiated between wireless carriers and traditional telephone companies. The first FCC Order establishing the regulations governing cellular mobile telephone service in 1981 required such negotiations, established the co-carrier relationship, and provided for mutual compensation. So far, it hasn't worked out that way in spite of our efforts to negotiate with the small LECs in Missouri.

In Missouri, Cingular has met with a relatively steadfast refusal by some small LECs to negotiate a reciprocal compensation agreement other than on the pre-condition that Cingular establish a direct interconnection and pay access charges for traffic predating the agreement. While Cingular remains willing to negotiate an appropriate interconnection agreement, the cost of establishing direct interconnection to most small LECs is economically prohibitive and contrary to requirements of TA96. Moreover, the *FCC Interconnection Order*[2] specifically precludes the application of access charges to traffic exchanged between LECs and CMRS Providers. There is no legal basis that requires Cingular or any CMRS Provider to pay access charges on a going-forward or retroactive basis.

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[2] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*; FCC No. 96-325, 11 FCC Rcd 15499; 1996 FCC LEXIS 4312 (rel. Aug. 1, 1996) (the "*FCC Interconnection Order*").

Q. Mr. Jones discusses SWBT's wireless interconnection tariff and, in particular changes that were made to that tariff in 1998. What bearing does SWBT's wireless interconnection tariff have on Cingular's traffic?

A. None whatsoever. As I am sure Mr. Jones is aware through his involvement in prior Commission proceedings and as a result of the answers he received to the discovery his company propounded, Cingular has had an interconnection agreement with SWBT since October of 1997. Moreover, to the best of my knowledge, every major wireless carrier operating in the State of Missouri has had an interconnection agreement with SWBT since February of 1998. Therefore, I would be surprised if any wireless carrier operating in Missouri was affected by SWBT's tariff amendment or the Commission's Orders in that regard.

I also note that Mr. Jones is flatly incorrect when he asserts at page 12 of his testimony that "SWBT is still authorized to charge access rates on [intraMTA wireless] traffic." Those rates were approved by the Missouri Commission as a wireless carrier interconnection service, not an access service. As stated earlier, the FCC Order prohibits the use of access charges for intercarrier compensation between CMRS providers and LECs for intraMTA traffic. But regardless of how those tariff rates are characterized, they are not applicable to any major wireless carrier operating in the State of Missouri, and therefore have no relevance today.

Q. Mr. Jones comments that the Complaining Carriers have encountered difficulties identifying the proper defendants in these actions because of changes in ownership of different wireless carriers. What is your reaction?

A. In his testimony, Mr. Jones has a regrettable habit of attributing to all wireless carriers any problem that he encounters with any one of them. I am not aware that he has had any substantial issue regarding successorship of any entities that preceded Cingular.

Moreover, the problem that he describes regarding a lack of business relationship is not properly addressed by imposing access tariffs. While he claims that access tariffs create a business relationship today, that "relationship" made it less clear, not more clear, against what carriers his company's claim lie. By comparison, the negotiations of a reciprocal compensation agreement would clearly identify the carriers involved, as well as the appropriate processes for assignment of the obligations in case of a change of ownership. That is not the case where charges are assessed from a tariff. I believe that encouraging the establishment of interconnection agreements will provide more benefit to the Complaining Carriers than encouraging their continued attempts to apply access.

Q. At pages 11 and 12 of his testimony, Mr. Jones describes his belief that access is appropriate because traffic is delivered to the Complaining Carriers by an IXC. Do you agree with his analysis?

A. No. First, I need to point out that Mr. Jones is simply incorrect in characterizing Southwestern Bell Telephone Company and Sprint-Missouri, Inc. as IXCs, simply because they allow wireless carriers to send traffic across the LEC network to other carriers. Based on my experience in the industry, which includes negotiating

interconnection arrangements with LECs across the country on Cingular's behalf, LECs provide this transiting function as LECs. They are not IXCs.

More importantly, the FCC has specifically disallowed access charges as a basis for local reciprocal compensation, which, between LECs and CMRS carriers, includes all intraMTA traffic. For example, at paragraph 1036 of the *FCC Interconnection Order* (emphasis added; footnotes omitted), the FCC stated:

> . . . in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5). Different types of wireless carriers have different FCC-authorized licensed territories, the largest of which is the "Major Trading Area" (MTA). Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, *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.*

After reiterating the propriety of treating as local intraMTA calling to and from CMRS carriers, paragraph 1043 of the *FCC Interconnection Order* (emphasis added; footnotes omitted) concludes:

> Based on our authority under section 251(g) to preserve the current interstate access charge regime, 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.

There can be no question that these LECs are prohibited from applying access charges to CMRS traffic for intraMTA traffic. *See In the Matter of Alma Telephone Company,* Case No. TT-99-428 (Report & Order, iss'd January 27, 2000); *Mid Rivers Telephone Cooperative Inc. v. Qwest Corporation*, (D. Mont. April 3, 2002); *3-Rivers Telephone Coop., Inc. v. U.S. West Communications, Inc.*, 125 F.Supp. 2d 417 (D. Mont. 2000). Iowa Utility Board Docket No. SPU-00-7 *et al.*, *In Re: Exchange of Transit Traffic.* Rather, the FCC requires that the charges for terminating traffic be based either on forward-looking costs or on bill-and-keep. 47 C.F.R. § 51.705.

If one follows the Mr. Jones suggestion to its natural conclusion, it would be in direct conflict with the FCC's direction. Specifically, Mr. Jones defines any carrier that carries traffic across wireline exchange boundaries as an interexchange carrrier or an IXC. Both of Missouri's MTAs (in fact, all MTAs nationwide) encompass multiple wireline exchanges. Therefore, a significant number of intraMTA calls must be carried across wireline local exchange boundaries every day to be delivered from the wireless carrier's switch to the LEC switch and, by Mr. Jones' definition, are therefore carried by IXCs. Using Mr. Jones' reasoning, a large portion of wireless traffic would be subject to access charges in direct contradiction to the FCC's pronouncements in this area.

Q. At pages 13 and 14, Mr. Jones discusses interconnection negotiations he has participated in. Do you have any observations about his answer?

A. I have two observations. My first observation relates to the very first element that Mr. Jones discusses on his list, *i.e.*, his demand that wireless carriers establish direct connections as a condition of obtaining an interconnection agreement. That demand, which to the best of my understanding each of the Complaining Carriers insist on, has the

effect (and perhaps the goal) of preventing a negotiated agreement for reciprocal compensation. Direct interconnection is not required by TA96. In fact, TA96 specifically requires the LEC to provide both direct and indirect interconnection. In addition, a requirement for direct interconnection to all small LECs is contrary to the design of the network and is economically infeasible for any wireless carrier.

TA96 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). A direct connection from the CMRS provider's switch to the LEC's switch is not a prerequisite to exchange traffic under Section 251(a). Nor is it a prerequisite to the LEC's duty under Section 251(b)(5) to establish reciprocal compensation arrangements or the incumbent LEC's obligation under 251(c) to negotiate a reciprocal compensation agreement. Therefore, the text of TA96 provides no basis for the assertion that direct interconnection is a precondition for negotiating a reciprocal compensation agreement.

Consistent with this interpretation, the FCC stated the following in the *FCC Interconnection Order* (at paragraph 997) establishing the rules for interconnection between LECs and CMRS carriers under TA96:

> For example, section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers.

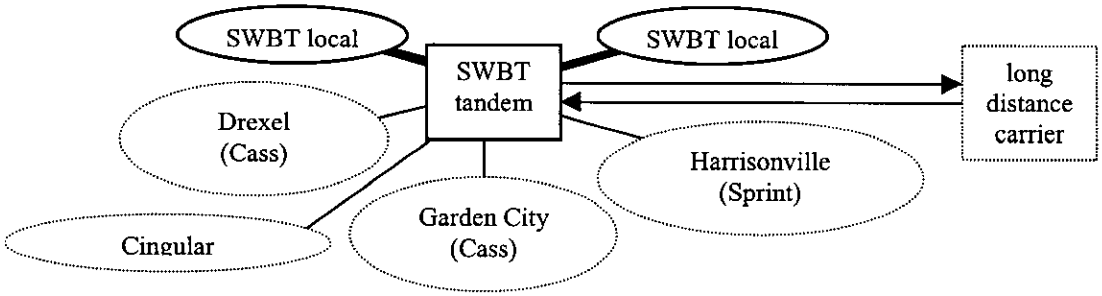
Thus, the FCC, which is charged with interpreting TA96, agrees that *direct* or *indirect* interconnection has no bearing on an incumbent LEC's obligations under Section 251(c). The duty to negotiate reciprocal compensation arrangements for the

transport and termination of telecommunications is one of the enumerated duties of the incumbent LEC under Section 251(c).

If these LECs choose to litigate this issue as far as the courts will allow them an appeal, that is their business. But they cannot rely on this baseless argument as an excuse to refuse to negotiate and simultaneously complain that they are not receiving the compensation that negotiation would bring them.

Direct connections are inconsistent with basic network design, which is built on a hub and spoke model where most carriers are connected primarily through regional tandems. Tandem switches form the "hub" of the hub-and-spoke pattern that makes up the telephone network. Rather than directly interconnecting the hundreds of local offices in Missouri (or any other state), all carriers connect their local offices to a far more limited set of tandem switches. The following illustrates an example of how the network is configured.

ILLUSTRATION 1



Historically, in Missouri, the tandem switches have been owned by the larger local exchange carriers such as Verizon (formerly GTE and Contel), Sprint (formerly United) and SWBT. The tandem arrangement represents a more efficient network arrangement than an end-office-to-end-office arrangement. In fact, no carriers have direct end office connections to all end offices of all carriers in the state. Carriers direct

connect end offices only when the actual traffic volume between these end offices warrants the establishment of direct trunking.

Direct interconnection would be prohibitively expensive and would force wireless carriers into a far less efficient network design than other carriers in the State of Missouri. I would also note that the Complaining Carriers insist that it is the unilateral duty and cost of the wireless carriers to establish the direct connection, despite the fact that it would presumably serve to carry traffic in *both* directions and support the *mutual* obligations of both carriers. The FCC Order, however, requires that the cost of such facilities be shared between the LEC and CMRS Provider in proportion to the traffic exchanged in each direction. Nevertheless, the Complaining Carriers have insisted on -- and continue to insist on -- direct interconnection as a precondition for negotiating reciprocal compensation.

My second observation relates to Mr. Jones stated reason for not seeking arbitration in his earlier negotiations. In his words (at page 14):

> Mid-Missouri believed it was entitled to compensation pursuant to its access tariffs for traffic delivered in the absence of an Interconnection Agreement. Mid-Missouri has been striving to obtain that determination but it was not final during those conversations with the wireless carriers.

Each of the other Complaining Carrier witnesses specifically concurred in this statement. I believe Mr. Jones observation clearly captures why wireless carriers have been unable to negotiate reciprocal compensation arrangements with incumbent LECs like Mid-Missouri. If Mid-Missouri can establish an entitlement to access charges in the absence of an interconnection agreement, they will have no incentive to negotiate

reciprocal compensation. They have chosen to pursue their claimed entitlement rather than negotiate.

Q. Mr. Jones and Mr. Stowell suggest that it would be appropriate to assess access charges because SWBT's records do not differentiate between intraMTA traffic (which the FCC deems to be local) and interMTA traffic which is appropriately subject to access charges. Do you agree?

A. No. First of all, the Complaining Carriers are, through this statement, trying to avoid their burden of proof. If they are asserting their complaint on the theory that the traffic is interMTA, they have the burden of proof to demonstrate that. Mr. Jones's assertion is no more than an admission that they cannot meet that burden. Moreover, based on how Cingular routes its traffic, substantially all traffic that Cingular delivers to SWBT for transport is intraMTA traffic.

Q. Have the Complaining Carriers established a claim for wireless termination tariff charges or access charges?

A. Cingular does not dispute the claim for wireless termination tariff charges and does not believe that is a real issue in this docket. As to access charges, the Complaining Carriers bring nothing new to the table. This Commission has already ruled -- consistent with FCC rules -- that access charges cannot be applied to this traffic. Moreover, any attempt to impose access charges to prior traffic constitutes retroactive ratemaking and is inappropriate for that reason as well. Finally, the Complaining Carriers have been receiving compensation as the result of "keeping" revenues they otherwise would have been obligated to pay Cingular for terminating local traffic that originated on the Complaining Carrier's network and was terminated by Cingular. The Complaining

Carriers have also received compensation by collecting originating access on traffic that they otherwise would have had to pay to terminate.

Q. What do you believe the impact would be of a Commission order awarding the Complaining Carriers access charges for traffic delivered in the absence of an approved interconnection agreement?

A. I believe that it would greatly increase the difficulties and further reduce the likelihood of Cingular or any other wireless carrier being able to negotiate a reciprocal compensation arrangement with any of the Complaining Carriers. As evidenced by the testimony of Mr. Jones, if the Complaining Carriers establish an entitlement to access charges in the absence of an interconnection agreement, they have absolutely no incentive to negotiate reciprocal compensation rates that comply with the FCC's requirement that they reflect the forward looking economic cost of terminating traffic.

Moreover, I think that awarding the Complaining Carriers access charges would be a slap in the face to those carriers that filed terminating wireless tariffs. (While I don't agree that those tariffs are appropriate, they are a step forward from demanding full access.) If the Commission indicates that access charges are appropriate in the absence of an interconnection agreement, there will be no reason for any other small carriers even to maintain their wireless access tariffs when they can withdraw those tariffs and collect higher access charges. Tellingly, in response to a data request, each of the Complaining Carriers could indicate no reason that Complaining Carriers Alma, MoKan Dial or Choctaw would not withdraw their wireless termination tariffs if the Commission found in their favor in this docket.

Q. What do you believe the Commission should do in this docket?

A. I believe that the Commission should reject any claim for access charges, no matter how it is couched. Moreover, it should reject any attempt by the Complaining Carriers to engage in retroactive ratemaking. The Commission should not reward the Complaining Carriers' intransigence and should unequivocally reject their attempt to impose higher, one-way charges on wireless carriers through stonewalling.

Q. Does that conclude your rebuttal testimony?

A. Yes.