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Missouri Public Service Commission

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

Re: TT-99-428, et al.

Dear Mr. Roberts:

Enclosed please find an original and eight (8) copies of The MITG's Reply to AT&T Wireless, et al., and Staff Responses.

A copy of this letter and copy of the enclosures have been served upon all counsel of record. Thank you for seeing this filed.

Sincerely,

Craig S. Johnson

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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

The MITG's Reply to AT&T Wireless, et al, and Staff Responses

The MITG companies submit the following Reply to the Response of AT&T Wireless, et al, and to the Response of Staff, to the Joint Motion of the STCG and MITG for a procedural schedule:

1. The MITG concurs completely with the Small Telephone Company Group's Reply to AT&T, et al, and Staff's Responses.

2. In addition to the matters pointed out in the STCG's Reply, it is apparent that Staff and the wireless carriers have forgotten, or want the Commission to forget, the actual issue giving rise to the tariff filings at issue in this case. The issue here is not whether it would be lawful for an interconnection agreement to apply access rates. The issue in this case is: *Is it lawful to apply existing tariffed rates in the absence of, or until an interconnection agreement is approved.*

3. Prior to enactment of the Telecommunications Act of 1996, there were generally two types of mechanisms for intercompany, or intercarrier compensation. These two mechanisms were (1) approved tariffs and (2) contracts between the carriers. Both of these mechanisms had a process to be undergone before they were effective. A tariff had to be filed, subject to suspension and hearing, and ultimately approved. A contract had to be negotiated and consented to by the involved carriers. Once a tariff was effective, it was a mechanism or vehicle

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which authorized the carrier providing facilities and/or services to charge another carrier using those facilities or services. It was also a vehicle or mechanism which obligated the other carrier to pay for facilities used and services rendered. The same is true for contracts. Once executed the contract becomes the vehicle or mechanism authorizing a carrier to charge another and obligating the other to pay.

4. The Telecommunications Act of 1996 established a new vehicle or mechanism—Interconnection Agreements. This Act opened up local competition. It established a new form of compensation for local traffic—reciprocal compensation. This new vehicle required both contractual consent (or mandatory arbitration), and regulatory approval. Once approved, for the signatory carriers thereto the Interconnection Agreement became the vehicle by which carriers were authorized to bill, and obligated to pay, reciprocal compensation. The Act was signed into law on February 8, 1996.

5. The Act also established a procedure for requesting, negotiating, arbitrating, and approving interconnection agreements. 47 USC 252 provides a minimum period of 135 days after requesting interconnection before arbitration can be requested. State Commission decisions on arbitrations are due not later than 9 months after the interconnection request is received. Congress gave the FCC 6 months after February 8, 1996 in which to establish the regulations necessary to implement local competition and interconnection agreements. The FCC on about August 6, 1996 entered its Interconnection Order and interconnection agreement/reciprocal compensation rules found at 47 CFR Part 51 .

6. The first point the MITG makes is that the enactment of the Telecommunications Act effective February 8, 1996 did not automatically make it unlawful to apply tariffs to intra-

MTA traffic. As cited in earlier motions, pleadings, and briefs, the Act preserved the access regime existing on February 8, 1996.

7. The second point the MITG makes is that the 1996 Act and FCC rules set up a specific set of rules containing both procedures to obtain an Interconnection Agreement, and standards to be applied to the negotiation and approval of an Interconnection Agreement. These standards and procedures are found at 47 CFR Part 51, Subparts A through I. Until those standards and procedures are applied, and an approved Interconnection Agreement results, there is and can be no vehicle or mechanism authorizing or obligating the payment of reciprocal compensation.

8. Staff and the wireless carriers do not grasp the issue causing this docket. The issue here is not whether it would be lawful for an interconnection agreement to apply access rates. The issue in this case is: *Is it lawful to apply existing tariffed rates in the absence of, or until an interconnection agreement is approved.*

9. The Commission in TT-97-524 told the small companies that no cellular traffic should terminate to them until an Interconnection Agreement containing reciprocal compensation rates was in effect. That did not happen. In the absence of the interconnection agreements, the small companies billed their tariffed rates—the only vehicle or mechanism available to bill for the use of their facilities and services. The wireless carriers did not honor those bills, and they did not obtain approval of any interconnection agreements. This tariff proceeding was then initiated in order to clarify that the tariffs of the small companies *do* apply in the absence of an interconnection agreement. What the tariffs in this case asked for was in essence the same determination that This Commission itself made in its decision in TT-2001-139:

> "Thus, it is apparent from the Act that reciprocal compensation arrangements are a mandatory feature of agreements between the CMRS carriers and the small LECs.

However, the record shows that there are no such agreements between the parties to this case. The Act does not state that reciprocal compensation is a necessary component of the tariffs of LECs or ILECs. Therefore, the Commission concludes that Section 251(b)(5) of the Act simply does not apply to the proposed tariffs herein at issue. The Act obligates the Filing Companies to negotiate interconnection agreements, which must include reciprocal compensation arrangements for local traffic; where agreement cannot be reached through negotiation, the Filing Companies are subject to mandatory arbitration under the Act. Presumably, if there are aspects of these tariffs which the CMRS carriers do not like, they will take advantage of these provisions of the Act." (emphasis added)

10. The earlier decision in this case, that access tariffs cannot be applied to intra-MTA traffic, is only a correct statement if it is limited in applicability to the terms of Interconnection Agreements. It is not a correct statement applicable in the absence of interconnection agreements. It is Staff's failure to understand this distinction between an abstract issue and the issue presented here that places the Commission in the position of irreconcilable decisions. The Commission can best reconcile these decisions by recognizing that its prior decision in this case contained a correct statement of law, but one not applicable to the issue presented in this case.

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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 20 day of February, 2002, to all attorneys of record in this proceeding.

Craig S. Johnson MO Bar No. 28179