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March 13, 2001

FILED[3]
MAR 13 2001
Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101

Re: Case No. TO-99-593

Dear Judge Roberts:

Enclosed please find an original and eight copies of the Reply Brief of Missouri Independent Telephone Company Group. A copy of this Brief and this cover letter have been served upon all attorneys of record. Thank you for seeing this filed.

Sincerely,

Craig S. Johnson

CSJ:tr
Enc.
cc: MITG Managers
Michael Dandino
Steve Minnis
Paul Lane/Leo Bub
Keith Krueger
Wm. England, III
James Fischer
Paul DeFord

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED[2]
MAR 1 3 2001
Missouri Public
Service Commission

In the Matter of the Investigation into Signaling Protocols, Call Records, Trunking Arrangements, and Traffic Measurement.	))))	**Case No. TO-99-593**

Reply Brief
<u>Missouri Independent Telephone Group</u>

The Missouri Independent Telephone Group (MITG) submits the following Brief in reply to the initial briefs of SWB, Verizon, Sprint, and Staff.

Signaling Protocols, call records, trunking arrangements, and traffic measurement are matters that constitute part of the "business relationship". The Commission does have jurisdiction over these matters.

The former PTCs (FPTCs) suggest that this docket does not concern the business relationship between the FPTCs and the former SCs (FSCs), or that the business relationship is beyond the scope of the issues presented in this docket[1]. This is an exercise in wordsmanship.

On the one hand the FPTCs claim that the Commission does not have jurisdiction to approve the access business relationship the FSCs propose. On the other hand the FPTCs insist that the business relationship *they* have established in their Interconnection Agreements (IAs) for local traffic should be approved for access traffic terminating to the FSCs. The FPTCs claim that their IAs, which required Commission approval, established business relationships between them and local competitors party to those IAs.

[1] Initial briefs Staff, pp 1-3, Verizon, pp 3-6. While Verizon and Staff suggest the Commission lacks the jurisdiction to consider business relationships, SWB seems to agree that this is within the Commission's jurisdiction but beyond the scope of issues in this case.

Not only do the FPTCs claim the IAs established business relationships, which they claim the PSC cannot do, they contend the business structure of the IAs should be ordered upon the FSCs that were not party to those agreements or proceedings approving them.

The FPTCs also ignore the fact that the FSC access tariffs previously approved by the Commission set forth the terms by which an IXC establishes an access business relationship by ordering access.

The FPTCs cannot have it both ways. Either the Commission has jurisdiction to consider the matters for which this docket was established, or it does not. The FPTC position is inconsistent and contradictory. It is illogical and inconsistent for Verizon to suggest the Commission cannot regulate business relationships while asking the Commission to adopt OBF Issue 2056.

The suggestion by Staff and the FPTCs that the Commission does not have the power to regulate the inter-carrier matters comprising the "business relationship" is a suggestion with troubling regulatory consequences. Such a suggestion, carried to its logical conclusion, would divest the authority of the Commission to regulate the interconnections, traffic exchange, traffic recording, record exchange, and intercompany compensation that are vital to the uninterrupted provision of telecommunications service in Missouri.

What matters does a "business relationship" between an IXC and a LEC entail for purposes of terminating access traffic? Does the Commission exercise regulatory authority with respect to such matters? An overview of Commission law and past decisions conclusively establish that the Commission does have such jurisdiction, and has actively exercised such jurisdiction over matters that constitute the business relationship.

First, there are the carriers and their interexchange and access services concerned. The Commission does have statutory jurisdiction over these carriers and these services. §§ 386.020(3), (23), (24), (25), and (26) RSMo define interexchange carriers (IXCs), and interLATA and intraLATA interexchange telecommunications services. §§ 386.020 (30) and (31) RSMo define local exchange carriers and local exchange services. § 386.020 (16) RSMo defines exchange access service as that service provided by the LEC enabling the IXC to enter the local exchange network to terminate interexchange service.

§ 386.320.1 RSMo states that the Commission

> "shall have the general supervision of all telegraph or telephone corporations, and telegraph and telephone lines, as herein defined, and shall have power to and shall examine the same and keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines and property, owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders and decisions of the commission and charter and franchise requirements."

The second aspect of the business relationship concerns the nature of telecommunications services each carrier provides. For purposes of this docket, IXC interexchange service necessitates that the IXC utilize originating and terminating exchange access services of LECs in order to provision interexchange service. These services are regulated by the Commission. § 392.190 RSMo provides that the provisions of 392.190 to 392.530--regulation under the state Public Service Commission law--shall apply to telecommunications service between one point and another within Missouri and to every telecommunications carrier. § 392.200.1 RSMo requires all telecommunications companies to furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable, and gives the

Commission the authority to approve and require adherence to those instrumentalities and services.

It is obvious that with respect to exchange access service and interexchange telecommunications service, the Commission must have the authority to regulate the matters constituting the business relationship between the IXCs and LEC. Without this authority, the Commission is not in a position to assure the LECs and IXCs establish the inter-carrier relationships required for the continued operation of interexchange telecommunications service.

The relationship between the IXC and the LEC is set forth in the access tariff of the LEC[2]. The Commission has the authority, and has exercised that authority, to approve the exchange access tariffs setting forth the terms and conditions of the IXC obtaining exchange access. § 392.220.1 RSMo requires LECs to file for Commission approval tariffs for services, which includes exchange access service. This statute requires the tariff to contain the rates, rentals, and charges for service. It is axiomatic that the nature of the service must be defined as well, as does the small company Oregon Farmers tariff define exchange access service provided. The statute also requires the tariff to state all privileges or facilities granted or allowed and any rules or regulations or forms of contract which in any wise change, affect or determine any or the aggregate of the rates, rentals, or charges for the service rendered.

Third, there is physical interconnection between the interexchange facilities of the IXC and the local exchange facilities of the LEC. This interconnection is required to originate or terminate an interexchange call. This connection occurs via a trunk or access interconnection the IXC has ordered from the LEC. Engineering terms may refer to such interconnections as "trunking arrangements". The MoPSC does have jurisdiction over such interconnections. § 392.240.3 RSMo provides that the Commission can order such a physical connection between two or more telecommunications companies. This statute also provides that where such an interconnection has been made, but the companies have failed to agree as to the rates or charges for service over this connection, the Commission may establish same.

Besides the above items, the business relationship between the IXC and the LEC also includes the collection of call information identifying carriers, traffic jurisdiction, and applicable access rates. Engineering systems, which include "signaling protocols", are utilized for these purposes. The business relationship utilizes this information to create and exchange billing records and the payment for the IXC's use of the LEC's facilities. The Commission approved OF access tariff contains provision for these individual matters which also comprise a portion of the "business relationship" between the IXC and the LEC.

In the past the Commission has routinely entered Orders addressing the establishment or change of items constituting the "business relationship" between carriers[3]. There are reported cases affirming the Commission's exercise of jurisdiction over business relationship matters between companies and between end users.[4]

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[2] The Oregon Farmers Access tariff addresses the undertakings of the LEC furnishing access service, the obligations of the IXC purchasing access service, ordering options, service feature groups, rate regulations, determination of usage amounts, billing, collection, and disconnection of service.

[3] After divestiture the Commission has entertained dockets concerning pooling of toll revenues, division of toll revenues, the replacement of toll pools with the PTC Plan, the rejection of a terminating compensation arrangement between carriers, the replacement of MTS with MCA, OCA, and COS, which concerned the replacement of access by other non-tariffed forms of intercompany compensation, the determination that MCA non-access compensated interexchange traffic would be placed on toll trunks and access connections, the migration to FGD after intraLATA toll dialing parity, the use of category 11 records between FPTCs

The cases cited by Verizon at pages 3-4 of its initial brief do not address the Commission's jurisdiction over the business relationship between two carriers. Those cases holding that the Commission does not have management powers of the utility's resources address management decisions *internal* to the utility, not the terms of interconnection and intercompany relationships with *othe*r utilities. Those cases setting forth the proposition that the Commission lacks authority to alter the terms of an existing contract do not stand for the proposition that the Commission cannot regulate interconnections or the terms of the relationship between two or more telecommunications companies necessary for the continuous and uninterrupted transmission of telecommunications messages.

In prior proceedings the Commission has exercised jurisdiction over those things comprising the business relationship between FSCs and FPTCs

In its December 23, 1997 Order in SWB's wireless interconnection tariff, TT-97-524, the Commission directed that the FSCs accept a "transiting" business relationship from SWB, that they accept SWB's CTUSR as a billing record, made the wireless carriers primarily liable to the FSCs for terminating compensation for transited traffic, made

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and FSCs, requiring SWB to resell Local Plus to CLECs and IXCs, the determination that SWB must comply with FSC access tariffs when originating 800 calls, and approved numerous interconnection agreements. In all of these matters the Commission has assumed jurisdiction over inter-carrier matters such as interconnection, signaling protocols, call records, trunking arrangements, traffic recording, traffic measurement, and the terms of compensation between carriers. It is quite clear that in the past the Commission has assumed jurisdiction of many if not all components of the "business relationship" between carriers. In its COS decision in TO-90-232, the Commission specifically held that when LECs offering extra-exchange calling programs such as COS cannot agree on one plan to compensate one another, the Commission has jurisdiction to direct the LECs to do so under a plan of the Commission's own choosing, citing §§ 392.240(3) and 392.470 RSMo.

[4] *State ex rel Rice v PSC*, 220 SW2d 61 (Mo banc 1949), ordering the division of toll revenues between two companies according to one company's Traffic Agreement; *State ex rel AT&T v PSC*, 701 SW2d 745 (Mo App 1985), charges between companies for complex inside wire; *State ex rel Intern. Telecharge v PSC*, 806 SW2d 680 (Mo App 1991), charges between companies for operator services; *State ex rel MoKan Dial v PSC*, 897 SW2d 54 (Mo App 1995), conversion of intercompany compensation underlying MTS to that underlying MCA; *State ex rel GTE v PSC*, 537 SW2d 655 (Mo App 1976, the propriety of charges for equipment between a company and its affiliate.

SWB secondarily liable, and provided that SWB would have indemnity rights. Undoubtedly these matters constitute part of the terms of the business relationship between SWB and the wireless carriers, between SWB and the FSCs, and between the FSCs and the wireless carriers.

In its March 12, 1998 Order regarding intraLATA presubscription and the PTC Plan, TO-97-217/TO-97-220, the Commission announced it would replace the PTC Plan with an Originating Responsibility Plan, that the PTCs would no longer be required to purchase billing and collection services from FSCs, and directed a technical committee to consider and report back to the Commission for approval consideration of such things as FGC versus FGD signaling between FPTCs and FSCs, the elimination of terminating to originating ratios in favor of actual terminating usage, interconnection points, and the continued use of a V&H database. These matters constitute terms of the business relationship.

In its June 10, 1999 Order regarding rehearing of PTC Plan elimination and intraLATA dialing parity, TO-99-254, the Commission again assumed jurisdiction over business relationship issues. That Order refused to require FPTCs to utilize FGD signaling protocols, refused to order changes in existing trunking arrangements, and ordered that the FPTC provide FSCs with category 11 terminating call records rather than category 92 records. That order also established this docket, T0-99-593, to investigate signaling protocols, call records, trunking arrangements and traffic measurement.[5]

[5] Ex 1, Schoonmaker direct, pp 4-5; Ex 2, Schoonmaker rebuttal, p 11; Ex 5, Jones rebuttal, pp11-12; Ex 6, Jones surrebuttal, pp 17-18.

In its July 18, 2000 Order in TC-2001-20, the Commission directed Mid-Missouri telephone company not to terminate SWB's access trunks, even though Mid-Missouri was not receiving compensation for 50% of the traffic terminating on those trunks.

In its August 8, 2000 Order in TT-2000-268, the Commission accepted a stipulation requiring Alltel to upgrade its network to provide FGD signaling protocols for IXC traffic.

In its September 26, 2000 Order in TC-2000-325, the Commission determined that SWB was required to comply with FSC access tariffs as any other IXC must do, and SWB must comply with the tariff requirement to originate interexchange traffic from these FSC exchanges utilizing FGD signaling protocols and facilities.

These cases indicate unequivocally that the Commission in the past has assumed, without challenge, jurisdiction over business relationship matters.

The parties necessary to the determination of the business relationship for terminating access traffic delivered by FPTCs to FSCs are the FPTCs and FSCs themselves, who are present in this case.

This case is an outgrowth of the prior PTC Plan dockets. The decision establishing this docket was the product of dispute between the FPTCs and the FSCs. The scope of this docket has always been intended to determine the signaling protocols, call records, trunking arrangements, traffic measurement, and compensation responsibility for access traffic placed across the access trunks between the FPTCs and the FSCs. The only parties originally contemplated to be necessary were the FPTCs and the FSCs.

After the effective date the PTC Plan ended, but before the conclusion of this docket, the FPTC unilaterally began placing access traffic originated by local competitors over the FPTC's access connections with the FSCs. The FSCs were powerless to stop the FPTCs from doing so. The FSCs were not asked to participate in the negotiations of these interconnection agreements. The FSCs were not part of their approval process. Federal law provides that the FSCs are not to be prejudiced by or discriminated against by any IA they were not party to. The FSCs never agreed that the FPTCs would not be responsible for this traffic. The Commission never absolved the FPTCs from responsibility for payment of this traffic.

The inequity of the FPTC position is patent. The FSCs were not necessary parties to the IAs of the FPTCs and the local competitors interconnecting with the FPTCs. By the same standard, those local competitors are not necessary parties to a docket considering the interconnection between the FPTCs and the FSCs.

It is an extremely dubious proposition for the FPTCs to claim that the new carriers whose traffic the *FPTCs* have delivered to the FSCs are necessary parties. The only necessary parties to this proceeding concerning the responsibility for traffic the FPTCs deliver to the FSCs are the FPTCs and FSCs.

Nevertheless, the local competitors interconnecting with the FPTCs were given notice and opportunity to participate. When this docket was initiated, general notice was effected notifying any CLEC, wireless carrier, or IXC of the docket. Some of these other carriers did participate, but dismissed themselves before hearing. Therefore, even assuming carriers other than the FPTCs or FSCs are necessary parties, they have received notice and due process, and cannot complain of any order entered in this docket.

If the Commission lacks authority to determine those aspects of the business relationship at issue, FSC access tariffs in effect will allow the FSCs to discontinue provision of FGC switching.

MITG and STCG access tariffs provide that when FGD switching is available, FGC switching will not be provided.[6] The tariff already contemplated that, with the implementation of intraLATA presubscription, the FGC signaling protocol in use for SWB, Verizon, Fidelity, and Sprint would then be terminated. The tariff already contemplated that, with intraLATA presubscription the business relationship used would be that in use by IXCs in the interLATA FGD jurisdiction. The FSCs are entitled by tariff to discontinue FGC switching and convert the terminating switching provided for FPTC trunks to a FGD signaling protocol.

In TO-99-254, the small companies pointed out that their access tariff required a FGD "business relationship" after presubscription. In its June 10, 1999 Order the Commission refused to require adherence to the tariff, and established this docket to review signaling protocols, call records, trunk arrangements, and traffic measurement.

If the Commission does not have jurisdiction over matters comprising inter-carrier business relationships, those portions of the June 10 Order were a nullity. If so, the FPTCs no longer have any justification *not* to have their terminating trunks converted to FGD switching. That would mean that this issue in TO-99-254, and this entire docket, are completely unnecessary. That would mean that the OF tariff has controlled these issues since elimination of the PTC Plan. Under the FGD network protocols, the FPTCs as IXCs will be responsible for all traffic terminated on their trunks. The record and billing relationships that will apply are those in use for FGD protocols. While these

[6] Ex 4, Jones direct, pp 7-9, Schedules 1-4; Ex 5, Jones rebuttal, pp 3-5, Schedules 1-2; Ex 6, Jones surrebuttal, pp 3-4.

differ for trunks terminating to a FSC access tandem versus a FSC end office, the relationships are the same as for other IXCs in the intraLATA and interLATA jurisdictions.

Originating Responsibility is not the standard terminating access relationship.

SWB claims that the Commission has consistently applied the principle that it is the originating carrier that is responsible for compensating downstream carriers. The FPTCs claim that "originating responsibility", whereby the originating IXC must pay originating access, transport, and terminating access, regardless of IXC delivered the terminating traffic to the terminating LEC, is the "standard" relationship for terminating access. This is not so.

The FPTCs do not contest that in the FGD environment it is the delivering IXC with access facilities to the terminating LEC that pays terminating access. That IXC pays all terminating access, even for traffic originated by other IXCs and delivered on the terminating IXC's trunk. This is true for interLATA FGD traffic, and for intraLATA FGD traffic. ORP is not the standard terminating business relationship in the interstate interLATA jurisdiction, in the interstate intraLATA jurisdiction, in the intrastate interLATA jurisdiction, or even in the intrastate intraLATA jurisdiction.

In the intrastate intraLATA jurisdiction during the PTC Plan years, the "FGD" terminating business relationship existed. ORP was not used. When SWB delivered access traffic originated by GTE/Verizon or Sprint to Mid-Missouri for termination, SWB paid Mid-Missouri for *all* traffic terminated, including that originated by GTE/Verizon and Sprint, and SWB collected compensation from GTE/Verizon and Sprint for transporting and terminating their traffic.

It is simply not a valid criticism of the small company proposal that it would make the FPTCs responsible to pay for traffic the FPTCs terminate to the FSC, *even if the traffic is identified as being originated from another carrier*[7]. This is not a new concept. This is the standard method used for terminating access compensation for the past 17+ years since divestiture. It is the FPTCs ORP proposal that attempts to impose a radical change from established terminating access compensation responsibilities.

SWB cites Commission decisions in TT-98-524, its wireless interconnection tariff, in TO-96-440, the Dial US Interconnection Agreement, and in TT-98-351, SWB's Local Plus tariff case, for the proposition that this Commission has approved ORP for access traffic. None of these decisions stand for such a proposition.

The Dial US decision involved an interconnection agreement between SWB and Dial US for the mutual exchange of *local* traffic and the routing of exchange service and exchange access service for access traffic to or from Dial US. No former SC was a party to this agreement or decision. The agreement was not to bind carriers not parties. All the Order stated was that, when Dial US becomes a facility-based provider *of basic local service*, it must make arrangements with other carriers such as Choctaw to terminate calls to the other LEC's customers.

The Dial US decision only covered local traffic. The decision stated that before Dial US could exchange local traffic with Choctaw, it would to make its own interconnection agreement with Choctaw. The Dial US decision did not predestine ORP for access traffic. There is no hint in this decision that the Commission concluded Dial US could send *access* traffic to Choctaw delivered by SWB to Choctaw, and that Choctaw would have to look to Dial US rather than to SWB for terminating

[7] See Verizon initial brief, p 6.

compensation for this traffic. The decision does not state that where SWB functions as a carrier's carrier for Dial US, SWB would not pay Choctaw terminating access compensation, and collect sufficient compensation from Dial US to cover its costs. There is nothing in the Dial US decision indicating the Commission contemplated diverging from the standard access relationships.

SWB's reliance upon the Commission decision approving the offering of Local Plus service is also misplaced. In TT-98-351, the Commission determined that SWB's LP traffic would be access traffic for compensation purposes. The Order also made it clear that SWB was responsible to pay terminating access on LP traffic SWB delivered on its access connection to other LECs. There is nothing about the LP Order that indicated ORP was displacing the existing system in place for terminating access compensation.

TT-98-524 was SWB's tariff for wireless interconnection service. The Commission decision in that proceeding considered wireless originated traffic as intraMTA, or *local*, non-access traffic. The Commission attempted to apply reciprocal compensation principles of the TCA '96 to this traffic because of intraMTA traffic's definition as local for compensation purposes. Although the MITG continues to believe that that aspect of this decision superseding FSC access tariffs without a direct interconnection between the wireless carrier and the FSC for the mutual exchange of local reciprocal traffic is erroneous (and has successfully maintained this position in court[8]), it is clear the Commission intended this decision to concern *local* traffic, not

[8] See the November 1, 2000 Cole County Circuit Court judgment in Case No. 00CV32379, reversing the Commission's January 27, 2000 decision in TT-99-428.

access traffic. This tariff decision does not amount to a Commission-authorized departure from the standard terminating access business relationships.

The FPTCs erroneously suggest that reciprocal compensation structures must be applied to terminating access business relationships.

In its Initial Brief, the MITG went to some length to explain why it is inappropriate to apply two-carrier local reciprocal compensation concepts to access traffic. That initial brief set forth why reciprocal compensation provisions of the TCA '96 were not designed to replace, and did not replace, the standard terminating compensation relationship for terminating *access* traffic. It is access traffic, not local traffic, which is the subject matter of this case.

The FPTCs suggest that the business relationship contained in their IAs should also be used for access traffic delivered to the FSCs. This suggestions fails to maintain the distinction that the TCA '96, and the FCC, has preserved between local and interexchange traffic. It is only local traffic that is subject of a 251(c) interconnection agreement. Existing compensation relationships for interexchange or access traffic are not displaced by the TCA '96.

251(c) interconnection agreements were only designed for two carrier exchanges of local traffic. Each carrier was responsible to pay the other for transport and termination. Obviously this is "originating responsibility", as each carrier pays the other for transport and termination of traffic each carrier originates. But the FPTCs would unduly expand 251(c) interconnections to cover access traffic in a manner not intended by the Act.

The Act did not intend for IAs to address traffic to third party LECs, at least not without their participation and consent. The Act did not intend for the approval of a

251(c) agreement to displace access, or to replace terminating access compensation responsibilities with ORP.

In its initial brief, Verizon points to § 251(c)(2) of the Act in an attempt to bolster its position. That section imposes upon ILECS:

> "the duty to provide, for the facilities and equipment of the requesting carrier, interconnection with the local exchange carrier's network-
>
> (A) for the transmission and routing of telephone exchange service and exchange access"

Verizon cites this language as support for the proposition that the TCA '96 changed the terminating access compensation responsibilities predating the Act. Verizon's thought is incorrect. Using the direct physical interconnection between local competitors for the *routing* of exchange and access service does not mean that access structures are displaced. § 251(c)(2) is designed to facilitate *local* competition between local competitors, not to displace any aspect of existing access charge structures.[9]

When a CLEC or wireless carrier directly interconnects with an ILEC to exchange local traffic, that interconnection *can* also be used by the new competitor for the origination or termination of toll traffic to or from its customers, as well as to route telephone exchange (local) service of the new competitor.

Once a CLEC markets away an ILEC customer, the CLEC is entitled to establish the boundaries of its exchange that customer can reach. The CLEC is also entitled to originating and terminating access for calls an IXC originates from or terminates to the CLEC customer. Thus the connection can be used for the exchange of local traffic, the routing of traffic within the CLEC's exchange, and for the routing of originating or

[9] See the FCC Interconnection Order of August 8, 1996, FCC 96-325, CC Dockets No. 96-98/95-185, at paragraph 176 wherein the FCC specifically held that 251(c)(2) referred only to the physical linking of two

terminating interexchange/access traffic. The fact the connection can be used in this way does not mean that the terminating compensation structures of the access market are changed.

The Act did not intend that carriers of interexchange/access traffic could utilize 251(c) interconnections to displace terminating access compensation structures. The FCC addressed this beginning at paragraph 176 of its Interconnection Order. Paragraphs 186 and 191 of the FCC Interconnection Order clearly concluded that a carrier could not obtain interconnection solely for the purpose of terminating interexchange traffic:

> "We tentatively concluded in the NPRM that interexchange service does not appear to constitute either "telephone exchange service" or "exchange access". "Exchange access is defined in section 3(16) as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." We stated that **an IXC that requests interconnection to originate or terminate an interexchange toll call is not "offering" access services, but rather is "receiving" access services."** (¶ 186)

> "We concluded, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2)...A telecommunications carrier seeking interconnection only for interexchange services is **not within the scope of this statutory language** because it is not seeking interconnection for the purpose of providing telephone exchange service....**We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service...**" (¶ 191)

In this case the FPTCs have an existing interconnection with the FSCs. It is an access interconnection, and has never been agreed or approved for use as a 251(c)(2) interconnection. The FPTCs are not offering access service to the FSCs, they are *receiving* access services. The FCC has made it clear that IXCs such as the FPTCs

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networks for the mutual exchange of traffic, and that access charges were not affected by 251(c)(2) or the cannot have a 251(c) interconnection to terminate interexchange traffic. The request the FPTCs make in this docket to apply local ORP principles contained in 251(c) to their access connections with FSCs is "not within the scope of this statutory language".

Under the small company proposal, FPTCs will only be required to pay terminating access for interexchange traffic originated by other carriers *if* the FPTCs agree to carry this traffic.

The small company proposal does not attempt to force the FPTCs to pay for the termination of interexchange traffic originated by other IXCs. This will be a decision the FPTCs make. Under the small company proposal the FPTCs will have the right to choose whether or not to carry traffic of other IXCs. The FPTCs are not required to carry traffic originated by other IXCs.[10] The FPTCs bear full responsibility for the risk that their assumption, unsupported by FSC consent or Commission sanction, that ORP would apply to access traffic. It was the FPTCs, without FSC input or Commission sanction, that decided not to obtain compensation covering the cost of terminating access traffic of other IXCs they agree to deliver to the FSCs.

Nevertheless the small companies have proposed a transition period for the FPTCs to change or develop compensation mechanisms to recover the cost of terminating another carrier's traffic.[11] This is a favorable concession in view of the fact that the FPTC IAs should not have addressed access traffic, and should not have addressed traffic to the FSCs without FSC consent thereto.

FCC rules implementing that section.

[10] The single exception to this will be where a FPTC has committed its tandem to serving an FSC end office. However in this situation under the small company proposal the FPTC will be responsible only to provide billing records, which the FSC will use to bill the IXC responsible for traffic on that IXC's trunk terminating to the FPTC tandem.

[11] See MITG initial brief, pp 32-34.

WHEREFORE, on the basis of this brief and its initial brief, the MITG respectfully requests that the Commission adopt the small company terminating compensation proposal.

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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 13th day of March, 2001, to all attorneys of record in this proceeding.

____
Craig S. Johnson MO Bar No. 28179