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FILED<sup>2</sup>

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Missouri Public  
Service Commission

**HAND DELIVERY**

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

Re: **In the Matter of the Mid-Missouri Group's Filing to Revise its Access  
Services Tariff, P.S.C. Mo. No. 2**  
Case No. TT-99-428 *et al.*

Dear Secretary Roberts:

Enclosed for filing with the Commission are the following:

**Original and eight (8) copies of The Response of AT&T Wireless Services, Inc.,  
Sprint Spectrum L.P., Southwestern Bell Witeless, LLC and Southwestern Bell  
Telephone Company, to the Joint Motion for a Procedural Schedule**

If you have any questions, please contact me.

Thank you for your attention to this matter.

Very truly yours,

LATHROP & GAGE L.C.

By:

  
Paul S. DeFord

Enclosures

cc: All Parties of Record

Missouri Public  
Service Commission

charge access rates on wireless calls originating within the same MTA. For example, the Report and Order noted that:

In the present case, if its tariffs were approved, Alma would be allowed to apply access charges to traffic exchanged with CMRS providers within the same MTA.

Report and Order at 12. Similarly:

The Commission finds that the proposed tariffs are not lawful and must be rejected because they would allow Applicants to charge switched access rates for local traffic[, *i.e.*, "CMRS traffic to and from a wireless network that originates and terminates within the same MTA"].

Report and Order at 14.<sup>1</sup>

As the Wireless Carriers, SWBT and the Commission stated in their joint motion for rehearing in the Western District Court of Appeals, "there is nothing for the [Commission] to do on remand other than repeat its existing statements of the key fact, this time under the heading "Findings of Fact." See Joint Motion of Missouri Public Service Commission, and Wireless-Carrier Appellants for Rehearing and Alternative Applications for Transfer, With Suggestions in Support, filed with the Clerk of the Western District Court of Appeals, November 19, 2001.

Tellingly, although MITG and STCG expend more than eight pages of their pleading arguing various reasons for the Commission to re-open the record, *not one* of those reasons mentions any conflicting issue of fact on which the Commission failed to make a finding or any factual issue unsupported by substantial record evidence. Rather, those arguments repeat MITG's and STCG's tired recitations of legal and policy issues, nearly all of which have already

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<sup>1</sup> The Report and Order contains other non-disputed basic facts, such as the identity and operational character of the parties, the nature of traffic at issue and FCC's definition of what constitutes local traffic for wireless carriers. Out of an abundance of caution, the Commission may wish to restate these facts in the Findings of Fact section of its Revised Report and Order, as well. The Wireless Carriers and SWBT have identified these undisputed, relevant facts and will file them in compliance with the Commission's February 5, 2002 Order Directing Filing.

been placed before -- and rejected by -- the Commission.<sup>2</sup> See The Missouri Independent Telephone Company Group['s] and The Small Telephone Company Group's Joint Motion for Procedural Schedule at 3-10. Not even MITG or STCG have contended or could contend there are any factual issues that need to be determined by the Commission.

On February 11, 2002, MITG and STCG filed separate additional pleadings. See MITG Response to February 5, 2002 Order Directing Filing; The Small Telephone Company Group's Response to Commission *Order Directing Filing*.<sup>3</sup> Putting aside the doubtful procedural propriety of these filings, both argued for delay, claiming (MITG at pp. 3-6; STCG at pp. 4-9) that there are a number of factual issues that would impede the completion of a stipulation. None of those issues, however, have any bearing on the fact that the proposed tariff language rejected by the Commission in its Report and Order would have resulted in tariff access rates being imposed on local traffic. The Commission should see and reject MITG's and STCG's transparent attempt to create issues of fact where none exist.

Given the specific, limited and editorial nature of the change needed to comply with the Appellate Court's Order remanding this case, there is no basis for the Commission to re-open the record. Re-opening the record and setting the procedural schedule requested by MITG and

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<sup>2</sup> For example, the Commission considered and denied motions by MITG and STCG to rehear this proceeding. In its Order denying rehearing, the Commission stated that "[b]oth [MITG] and STCG have had full opportunity to argue their positions through the appropriate procedures and both have vigorously done so. Both [MITG] and STCG have failed to establish sufficient reason to grant either application for rehearing. Both Applications for Rehearing will be denied." *In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No.2*, Order Denying Rehearing, February 29, 2000, p. 2.

<sup>3</sup> In compliance with the February 5, 2002 Order Directing Filing, the Wireless Carriers have filed a proposed stipulation. For the reasons stated in this pleading, the Wireless Carriers do not believe that the Stipulation is necessary. Nonetheless, the Stipulation filed by the Wireless Carriers is fully consistent with the existing record evidence in this docket and with the position expressed herein that the only material fact necessary to support the Commission's Report and Order -- that the proposed tariff amendments would result in the imposition of access rates on local traffic -- is (a) already captured in the Report and Order, albeit not under the Findings of Fact and (b) not disputed by any party to case.

STCG would be inappropriate under the Appellate Court's Order and a waste of the Commission's time and resources, as well as the time and resources of the parties to this docket.

**There Is No Need or Basis to Assign a Regulatory Law Judge**

MITG and STCG also demand that the Commission assign a new Regulatory Law Judge ("RLJ") pursuant to Section 536.083 RSMo 2000. In the first instance there is no clear indication that the referenced statutory provision is even applicable to cases remanded to the Commission. In addition, the basis for their demand again overstates the scope of the Appellate Court's remand. Section 536.083 requires that "no person who acted as a hearing officer or who otherwise conducted the first administrative hearing involving any single issue shall conduct any subsequent administrative hearing or appeal involving the same issue and the same parties." The remand does not require any further administrative hearings and is not an "appeal" of the Commission's prior action. It would again be a waste of the Commission's time and resources to assign a new RLJ to do what the current RLJ could do far more efficiently, *i.e.*, edit the Commission Report and Order to include an explicit recitation of the undisputed facts under the heading "Findings of Fact."

**Conclusion**

The Western District Appellate Court remanded this case for a specific and limited purpose. The Appellate Court seeks an explicit recitation of the single, critical factual issue on which the Commission's prior Report and Order turns, *i.e.*, that the tariff amendments at issue would have the effect of imposing access charges on the termination of local (intraMTA) calls. The Commission can fulfill its obligations on remand through a simple editorial revision to the Report and Order. It does not require the re-opening of the record or even the re-arguing of case.


Therefore, there is no reason to re-open the record, to set a procedural schedule or to assign a new RLJ to this case.

The Commission should simply make the appropriate editorial revision to its Report and Order, which correctly bars the imposition of carrier access charges on the termination of local traffic.

Dated this 15<sup>th</sup> day of February 2002.

Respectfully submitted,

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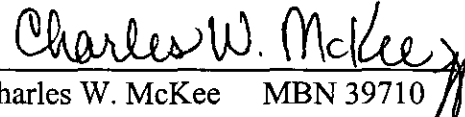
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to the following by first class mail or hand-delivery on this 15th day of February, 2002:

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