

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**  
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 635-0427

DEAN L. COOPER  
MARK G. ANDERSON  
GREGORY C. MITCHELL  
BRIAN T. MCCARTNEY  
BRIAN K. BOGARD  
DIANA C. FARR  
JANET E. WHEELER

OF COUNSEL  
RICHARD T. CIOTTONE

April 3, 2002

Secretary  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102

**FILED**

APR 03 2002

**Re: Case No. TT-99-428 et al.**

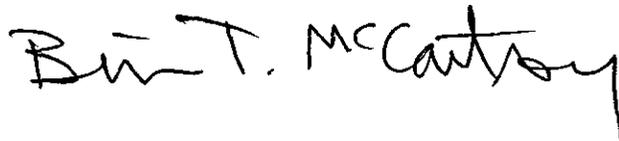
Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in above referenced matter, please find an original and eight copies of the MITG's and STCG's Response to the Nonunanimous Stipulation of Facts and Request for Hearing.

Please see that this filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this matter, please direct them to me at the above number. Thank you in advance for your attention to and cooperation in this matter.

Sincerely,



Brian T. McCartney

BTM/da  
Enclosures  
cc: Parties of Record

FILED

APR 03 2002

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

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.

**THE MITG'S AND STCG'S  
RESPONSE TO THE NONUNANIMOUS STIPULATION OF FACTS AND  
REQUEST FOR HEARING**

COME NOW the MITG and the STCG, pursuant to 4 CSR 240-2.115, and state  
as follows:

**SUMMARY**

1. On March 29, 2002, AT&T Wireless, Cingular Wireless, Sprint PCS, Southwestern Bell Telephone Company, and the Commission's Staff filed a *Nonunanimous Stipulation of Facts*.
2. The MITG and STCG object to the *Nonunanimous Stipulation* because it does not provide the Commission with all of the necessary facts to make an informed decision in the case.
3. The MITG and STCG also object to the *Nonunanimous Stipulation* because many of the proposed "facts" are not really facts at all. Rather, they are recitations of the wireless carriers' interpretation of federal law.
4. The MITG and STCG do not object to paragraphs one (1), two (2), or five (5) of the *Nonunanimous Stipulation*.
5. The MITG and STCG request a hearing pursuant to 4 CSR 240-2.115.

101

## ARGUMENT

6. **The *Nonunanimous Stipulation's* proposed "facts" do not provide the Commission with all of the necessary information to make an informed decision in the case.** Rather, the *Nonunanimous Stipulation's* "facts" simply ignore any record evidence in this case which contradicts the wireless carriers' position. For example, the *Nonunanimous Stipulation* ignores the evidence which shows that access rates can and do apply in the absence of a compensation or interconnection agreement. Paragraphs eight (8) through eleven (11) the STCG's proposed findings of fact contain examples and citations which demonstrate that access rates can and do apply in the absence of a compensation or interconnection agreement.

7. In short, the *Nonunanimous Stipulation* fails to provide the Commission with enough details or facts to issue a decision that will comply with Missouri law.

8. **Many of the *Nonunanimous Stipulation's* "facts" are not really facts at all.** For example, paragraph seven of the *Nonunanimous Stipulation* is not a fact. Rather, it is a legal conclusion. The MITG and STCG disagree with this interpretation of the law, and the Missouri Court of Appeals specifically requires that "findings of fact shall be stated separately from the conclusions of law." *AT&T v. Missouri Public Service Commission*, 62 S.W.3d 545, 547 (Mo. App. WD 2001). Therefore, it is not appropriate to present paragraph seven to the Commission as a "fact."

9. The MITG and STCG do not object to paragraphs one (1) and two (2) of the *Nonunanimous Stipulation*. Furthermore, the MITG and STCG agree with paragraph five (5) of the *Nonunanimous Stipulation* which states, "All parties agree that

access rates are applicable to inter-MTA traffic and toll traffic terminated to the MITG and other LECs.”

10. **Request for Hearing.** When a *Nonunanimous Stipulation* is filed, the Commission’s rules, 4 CSR 240-2.115, entitle non-signatory parties like the MITG and STCG to a hearing:

(1) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all parties and where one (1) or more parties requests a hearing of one (1) or more issues. If no party requests a hearing, the commission may treat the stipulation and agreement as a unanimous stipulation and agreement.

(2) ***If a hearing is requested, the commission shall grant the request.***

(emphasis added) Therefore, the MITG and STCG request a hearing on the *Nonunanimous Stipulation* and specifically on paragraphs four (4) and seven (7) of the *Nonunanimous Stipulation*.

WHEREFORE, the MITG and STCG respectfully request that the Commission:

(1) decline to adopt the *Nonunanimous Stipulation*; and (2) grant the MITG’s and STCG’s request for a hearing.

Respectfully submitted,

MISSOURI INDEPENDENT  
TELEPHONE COMPANY GROUP

Craig Johnson <sup>by BM</sup>

Craig S. Johnson Mo. #28179  
Lisa Chase Mo. #51502  
ANDERECK, EVANS, MILNE, PEACE &  
JOHNSON, L.L.C.  
700 E. Capitol Avenue  
Jefferson City, MO 65102  
Telephone: (573) 634-3422  
Facsimile: (573) 634-7822

Attorneys for the MITG

THE SMALL TELEPHONE COMPANY  
GROUP

Brian T. McCartney

W. R. England, III Mo. #23975  
Brian T. McCartney Mo. #47788  
BRYDON, SWEARENGEN &  
ENGLAND P.C.  
312 East Capitol Avenue  
Jefferson City, MO 65102  
Telephone: (573) 635-7166  
Facsimile: (573) 634-7431

Attorneys for the STCG

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 3rd day of April, 2002, to:

Mike Dandino  
Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Marc Poston  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Leo Bub  
Southwestern Bell Telephone Company  
One Bell Center, Room 3518  
St. Louis, MO 63101

Paul S. DeFord  
Lathrop and Gage  
2345 Grand Blvd  
Kansas City, MO 64108

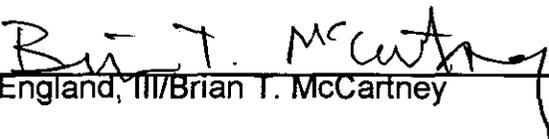
Larry Dority  
Fischer and Dority P.C.  
101 Madison Street, Suite 400  
Jefferson City, MO 65101

Joseph Murphy  
Meyer Capel P.C.  
306 W. Church Street  
Champaign, Illinois 61820

Thomas Pulliam  
Ottsen, Mauze, Leggat & Belz, L.C.  
112 S. Hanley  
St. Louis, MO 63105

Lisa Creighton-Hendricks  
Sprint Missouri, Inc.  
5454 W. 110<sup>th</sup> Street  
Overland Park, KS 66211

Charles McKee  
Sprint Spectrum L.P.  
6160 Sprint Parkway, 4<sup>th</sup> Floor  
Overland Park, KS 66251

  
W.R. England, III/Brian T. McCartney