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February 7, 2000

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

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

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter, please find an original and fourteen copies of an Application for Rehearing. Please see that this filing is brought to the attention of the appropriate Commission personnel. Copies of the enclosed document are being provided to counsel of record. I thank you in advance for your cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

BTM/da
Enclosure
cc: Counsel of Record

FILED²
FEB 7 2000
Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
FEB 7 2000

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.

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CASE NO. TT-99-428 et al.

APPLICATION FOR REHEARING

Comes now the Small Telephone Company Group ("STCG" or "Applicants"), pursuant to § 386.500 RSMo 1994, and applies to the Missouri Public Service Commission ("Commission") for rehearing of its *Report and Order* issued January 27, 2000, because said *Report and Order* is unlawful, unjust and unreasonable on the following grounds:

1. Insufficient Findings of Fact and Conclusions of Law. The Commission's *Report and Order* fails to make sufficient findings of fact and conclusions of law. In a contested case, the Commission is required to make findings of fact and conclusions of law.¹ "[I]f judicial review is to have any meaning, it is a minimum requirement that the evidence, along with the explanation thereof by the witnesses and the Commission itself, make sense to the reviewing court."² In the present case, the Commission's findings of fact and conclusions of law fail to offer any explanation or insight as to how the Commission arrived at its ultimate conclusions. Moreover, the Commission's *Report and Order* is inconsistent with the Commission's prior findings in Case No. TT-97-524, and it fails to offer an explanation for the fact that other companies are currently charging and paying access on intraMTA wireless traffic.

¹ *Deaconess Manor v. Missouri Public Service Com'n*, 994 S.W.2d 602, 612 (Mo. Ct. App. 1999)

² *State ex rel. Capital Cities Water Co. v. Missouri Public Service Com'n*, 850 S.W.2d 903, 914 (Mo. Ct. App. 1999)

2. Compensation. Under Southwestern Bell Telephone Company's ("SWBT's") transiting structure, either embodied in its tariffs or pursuant to interconnection agreements, SWBT has been delivering traffic originated by commercial mobile radio services ("CMRS" or "wireless") carriers and competitive local exchange companies ("CLECs") to the STCG companies for termination. However, the STCG companies are not being compensated for the CLEC and wireless traffic that is being transited and terminated to them. The Commission's *Report and Order* continues this unreasonable situation to the benefit of the wireless carriers and CLECs and at the expense of the STCG, and the *Report and Order* provides no incentive for the wireless carriers and the CLECs to begin compensating the STCG for this traffic.

3. CLEC Traffic. The Commission's *Report and Order* makes no finding whatsoever regarding traffic originated by CLECs, even though the parties generally agreed that CLEC traffic outside of a local calling scope is subject to access rates. The Commission's *Report and Order* also fails to offer any explanation of what CLEC traffic should be considered local.

4. Interconnection Agreements. The Telecommunications Act of 1996 ("the Act") requires carriers to allow both direct and indirect interconnection to their networks, and it requires all local exchange carriers to establish "reciprocal compensation arrangements for the transport and termination of telecommunications." However, the Act also makes it quite clear that interconnections should occur *pursuant to interconnection agreements between the involved carriers*. Nowhere does the Act allow for indirect interconnection without such an interconnection contract, and an ILEC which has not been requested to negotiate interconnection may adopt access rates for any traffic terminated to it. This comports with public policy, since otherwise ILECs would be forced to stand idle and allow carriers to terminate traffic for free.

5. Access Applies when Three Carriers Collaborate to Complete a Call. In Case No. TT-97-524,³ the Commission approved SWBT's transiting structure for wireless traffic. At this time, the Commission recognized that the FCC's Interconnection Order⁴ "does not appear to consider a situation in which three carriers are needed to complete a local call, as may be the case where interconnection is indirect rather than direct." The Commission stated:

Whether the FCC also intends for reciprocal compensation arrangements to apply in situations where there is an indirect interconnection between a wireless carrier and a third-party LEC, and consequently three carriers are needed to terminate the traffic, is an open question. The parties have not cited to any FCC order or rule which addresses the question, nor have the parties provided the Commission with legal support for the proposition that it has jurisdiction to initially decide the issue in the absence of an FCC directive on the matter . . . [T]he Commission is not in a position to decide the issue, since the Commission does not have jurisdiction to declare federal law.

Curiously, the Commission now concludes that "CMRS traffic to and from a wireless network that originates and terminates within the same MTA is local traffic, regardless of the number of carriers involved."⁵ However, a close examination of the Act, the FCC's Rules and the FCC's Interconnection Order indicate that access applies:

A. The Act. As discussed previously, ILECs are not subject to the requirements of Section 251 until they receive a request for interconnection. Thus, the FCC does not prohibit an ILEC which has not been requested to negotiate interconnection from applying access rates to

³ In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Revise Its Wireless Carrier Interconnection Service Tariff, *Report and Order*, issued Dec. 23, 1997.

⁴ CC Docket No. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, rel. Aug. 8, 1996

⁵ *Report and Order*, p. 14

any traffic terminated to it.

B. The FCC's Rules. The FCC's rules defining "local telecommunications traffic" and "transport and termination" only contemplate traffic between two carriers, not three. The FCC defines "transport" as "the transmission and any necessary tandem switching of local telecommunications traffic subject to section 252(b)(5) of the Act from the interconnection point *between the two carriers . . .*"⁶ Likewise, "local telecommunications traffic" is defined as traffic between a single LEC and a CMRS provider, not as traffic between multiple LECs and a CMRS provider or as CMRS traffic that is transited through a LEC or some other carrier to another LEC.⁷ Thus, the FCC's Rules do not address the situation in which three carriers collaborate to complete a local call. Regardless of whether this is a "local" call or not, since it does not fit the definition of "transport and termination," it cannot fit under the reciprocal compensation clause.

C. The FCC's Interconnection Order. The FCC's Interconnection Order, which established the rules for interconnection, specifically recognized that access charges were developed for the cases where three carriers collaborate to complete a call:

Access charges were developed to address a situation in which three carriers – typically, the originating LEC, the IXC, and the terminating LEC – collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. **By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call.** In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.⁸

⁶ 47 CFR §51.701(c) (emphasis added)

⁷ See 47 CFR §51.701(b)

⁸ First Report and Order in CC Docket No. 96-325, ¶ 1034. (emphasis added)

Here, the FCC expressly recognizes that access charges are appropriate when three carriers collaborate to complete a call. This situation is directly analogous to the present situation where an originating CMRS carrier, a transiting carrier such as SWBT, and a terminating small LEC collaborate to complete a call.

Although the Commission quotes this paragraph in its *Report and Order*, the Commission offers no explanation of how the paragraph supports the Commission's ultimate conclusion that access cannot apply. Moreover, the Commission offers no explanation of why the same Interconnection Order that did "not appear to consider a situation in which three carriers are needed to complete a local call, as may be the case where interconnection is indirect rather than direct" in Case No. TT-97-524 is now "abundantly clear" on that issue.

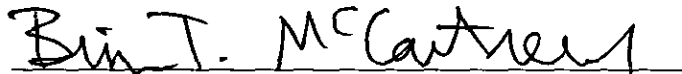
6. Access Is Currently Being Used. The Commission's *Report and Order* also fails to discuss the fact that access rates are presently being applied to intra-MTA traffic in Missouri by other telecommunications carriers. AT&T Wireless ("AWS") admitted during the hearing that access charges are presently being paid when AWS delivers traffic to small LECs via an interexchange carrier ("IXC").⁹ Thus, IXCs are currently paying access on intraMTA traffic from wireless carriers. Also, intraMTA wireless traffic being terminated to SWBT exchanges under its wireless interconnection services tariff is being charged the same rate as SWBT's access rates.¹⁰ The STCG should be afforded the same rights as SWBT to charge access rates unless and until other arrangements are negotiated with the wireless carriers.

⁹ Tr. 245

¹⁰ See Ex. 16 – excerpts from SWBT's Access Services Tariff and SWBT's Wireless Carrier Interconnection Services Tariff.

WHEREFORE, the Small Telephone Company Group respectfully requests that the Commission issue its Order Granting Rehearing in the above-referenced matter and for such other orders as are reasonable in the circumstances.

Respectfully submitted,

A handwritten signature in cursive script, reading "Brian T. McCartney". The signature is written in dark ink and is positioned above a horizontal line.

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 7th day of February, 2000, to:

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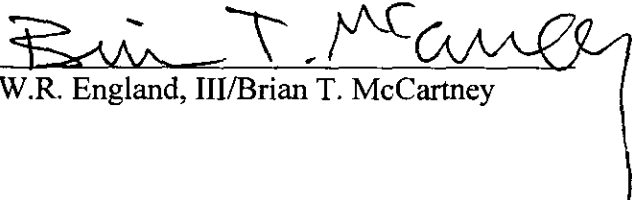
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