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February 15, 2002

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

FILED³

FEB 15 2002

**Missouri Public
Service Commission**

RE: Case No. TT-99-428, et al.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S RESPONSE TO JOINT MOTION FOR REHEARING**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Marc D. Poston
Senior Counsel
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MP/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
FEB 15 2002

Missouri Public
Service Commission

In the Matter of the Alma Telephone)
Company's Filing to Revise it's Access)
Service Tariff, P.S.C. Mo. No. 2, et al.)

Case No. TT-99-428, et al.

STAFF'S RESPONSE TO JOINT MOTION FOR REHEARING

COMES NOW the Staff of the Missouri Public Service Commission and states:

1. The Commission's January 27, 2000 Report and Order found that the proposed tariff would unlawfully apply access charges to local traffic. That decision was eventually appealed to the Missouri Court of Appeals, Western District. Before the Court of Appeals, the Commission argued that its Report and Order contained sufficient findings of fact and conclusions of law, and that the Commission's decision rejecting the tariff was lawful.

2. The Court of Appeals did not address the substantive issue of whether the rejection of the tariff was lawful. The Court instead remanded the case back to the Commission stating, "the Commission provided the court with no factual basis in this case." On January 22, 2002, the Commission's application to transfer the appeal from the Court of Appeals to the Supreme Court of Missouri was denied. On January 24, 2002, the Missouri Court of Appeals remanded the case to the Commission "with instructions that it enter findings of fact and conclusions of law in compliance with §§ 386.420 and 536.090."

3. The Missouri Independent Telephone Company Group (MITG) and the Small Telephone Company Group (STCG) filed a joint motion that requested a rehearing of the proposed tariff. The Commission has the option of either rehearing the case or issuing a new

order based upon the facts already in the record.¹ The Staff believes that a rehearing of the case is unnecessary, especially since the reasons for rejecting the tariff remain unchanged. As proposed, the tariff would unlawfully apply access charges to local traffic. The Commission determined in its Report and Order that the tariff was unlawful, and the Commission argued on appeal before the Court of Appeals and in the application for transfer to the Supreme Court that the tariff was unlawful. The Commission heard all relevant evidence during the evidentiary hearing portion of this case, and considered all relevant evidence when it rejected the tariff.

4. The Court of Appeals remanded the case back to the Commission for one purpose only – to reenter new findings of fact and conclusions of law. The reasons for the remand appear to be based on the condensed Findings of Fact and the Conclusions of Law sections of the Report and Order, regardless of the fact that the necessary findings and conclusions can be found in other sections of the Report and Order. All the facts needed to reenter a new Report and Order with sufficient findings of fact and conclusion of law, in compliance with §§ 386.420 and 536.090, are in the record. A rehearing would be a considerable burden on the time and resources of the Commission, the Staff, and the wireless carriers in the case. MITG and STCG sought a rehearing of the Commission's Report and Order, and the Commission denied their request when the Commission held:

Both Alma and STCG have had a full opportunity to argue their positions through the appropriate procedures and both have vigorously done so. Both Alma and STCG have failed to establish sufficient reason to grant either application for rehearing. Both Applications for Rehearing will be denied.²

The Commission should deny the current applications for rehearing for the same reasons the Commission denied the earlier applications for the same. All parties had a full opportunity to

¹ Ruffin v. City of Clinton, 849 SW2d 108 (Mo.App. 1993); Century State Bank v. State Banking Board of Missouri, 523 SW2d 856 (Mo. App. 1975).

² *Order Denying Rehearing*, February 29, 2000.

argue their positions through the appropriate procedures and have vigorously done so. MITG and STCG have failed to establish sufficient reason to grant their second attempt for a rehearing. Although MITG and STCG claim that new legal developments have occurred, even the case cited in the STCG's Response to the Commission's Order Directing Filing has no bearing on the Commission's determination that the proposed tariff is unlawful due to its application of access charges to local traffic.³

5. The Staff strongly disagrees with the position that new Commissioners are a reason to rehear a case. The record in the case contains sufficient evidence to allow the current Commission to issue a new order.⁴ Granting a rehearing on these ground could potentially open the door to a wave of applications to rehear past Commission decisions.

WHEREFORE, the Staff respectfully requests that the Commission deny the application for rehearing.

³ The Small Telephone Company Group's Response to the Commission's Order Directing Filing, February 11, 2002.

⁴ In Medley v. Missouri State Highway Patrol, 776 SW2d 405, (Mo.App. 1989), the Missouri Court of Appeals, Eastern District, held that it is not necessary for a member of an agency who participates in a decision to have participated in the hearing. Acting on the basis of the written record alone is sufficient.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 15th day of February 2002.



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Case No. TT-99-428
Verified: February 15, 2002 (lb)

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