



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
SHEILA LUMPE
STEVE GAW
BRYAN FORBIS

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

April 29, 2002

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. PRENGER
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

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

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 THE MITG'S AND STCG'S JOINT APPLICATION 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
(573) 751-8701
(573) 751-9285 (Fax)

MP/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

APR 29 2002

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.

**STAFF'S RESPONSE TO THE MITG'S AND
STCG'S JOINT APPLICATION FOR REHEARING**

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

On April 18, 2002, the Missouri Independent Telephone Group and the Small Telephone Company Group ("Applicants" jointly) filed a Joint Application for Rehearing of the Commission's April 9, 2002 *Amended Report and Order*. MITG and STCG argue three points to support their request to have the Commission rehear this case. First, Applicants argue that the Commission's *Amended Report and Order* is procedurally unlawful. Second, Applicants argue that the Commission's *Amended Report and Order* lacks sufficient findings of fact. Finally, the Joint Application for Rehearing argues that the Commission erroneously interprets federal law. The Staff disagrees with the Applicants on all three claims.

The Applicants have changed their approach in their most recent motion for rehearing from the motions for rehearing filed by the companies in February 2000. In the previous motions, the Applicants argued that the Commission's rejection of the tariff was unlawful because access charges apply to situations where three carriers collaborate to complete a call. The weaknesses in that argument apparently caused the Applicants to change tactics. The Applicants now ignore their previous argument by arguing that access charges apply in the absence of an interconnection agreement. Just as the earlier argument failed, the latest argument

should fail because it does not support the claim that the FCC intended to add an exception to its conclusion that access charges do not apply to intra-MTA traffic.

The Applicants first point in their motion for rehearing claims that the Commission's decision is procedurally unlawful because the Commission's new Order "put the cart before the horse." This analogy suggests that the Commission's decision to reject the tariff occurred before it issued its findings in the April 9, 2002 *Amended Report and Order*. This argument also implies that in order to put the cart before the horse, the Commission's January 27, 2000 *Report and Order* must contain the Commission's decision and the *Amended Report and Order* must contain the findings of fact. The Applicants fail to recognize that the recent decision to reject the tariff is not based upon the previous decision to reject the tariff, but is in fact an entirely new order that considers all relevant facts and independently makes the determination to reject the tariff. In fact, the appointment of three new Commissioners indicates that the *Amended Report and Order* rejecting the tariff followed an independent review of the evidence and arguments in the case. The Applicant's argument would suggest that whenever a case is remanded back to the Commission due to inadequate findings of fact, that the Commission is required to conduct an entirely new evidentiary hearing on the matter. The Applicants additional claim that a new judge is required under Section 536.083 RSMo 2000 is also without merit because it only applies if the Commission holds a new evidentiary hearing. *Ruffin v. City of Clinton*, 849 S.W.2d 108 (Mo. App. W.D. 1993).

The Applicants argue that the Commission's request for an agreed upon set of facts triggers the Commission's rule 4 CSR 240-2.155. This is a misinterpretation of the Commission's rule regarding an agreement between the parties that attempts to resolve the issues in a case. The rule in question does not address a situation where the Commission asks the

parties to stipulate to a common set of facts following the conclusion of an evidentiary hearing. This is especially true in the present case where an evidentiary hearing *was* held.

The Applicants second claim, that the Commission's *Amended Report and Order* lacks sufficient findings of fact, is also without merit. The Commission's *Amended Report and Order* follows the Court's directive on remand and clearly abides by the procedural requirements of Chapter 536 RSMo 2000. The Applicants offer no support for their argument that the Commission was obligated to separately address each and every question raised by Applicant in their motion for rehearing. This is an attempt to hide the true issue of the case – whether a proposed tariff is lawful. The parties agreed upon a list of issues and filed those issues on October 4, 1999. That list did not include all of the issues that the Applicants now wish to include in the case.

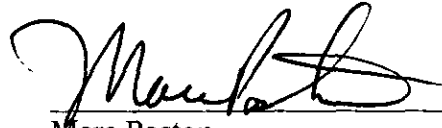
Finally, the Applicants argue that the Commission erroneously interprets federal law. The Applicants want the Commission to believe that the FCC established an exception to their decision making it unlawful to apply access charges to intra-MTA traffic. However, the Applicants cite to no authority that supports this claim.

This case represents the Commission's review of a proposed change to the tariffs of several small incumbent local service providers. The Commission reviews proposed tariffs and either approves the tariffs as proposed, or rejects the tariffs as proposed if they are found to be unlawful. The Commission had little choice but to reject the tariff since the language of the tariffs clearly apply access charges in a manner that the FCC concluded was unlawful.

WHEREFORE, the Staff respectfully requests that the Commission deny the Applicant's motion for rehearing because they have failed under Section 386.500.1 RSMo. 200 to show sufficient reason therefore.

Respectfully submitted,

DANA K. JOYCE
General Counsel



Marc Poston
Senior Counsel
Missouri Bar No. 45722

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)
e-mail: mposton@mail.state.mo.us

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 29th day of April 2002.



**Service List for
Case No. TT-99-428
Verified: April 29, 2002 (lb)**

**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102**

**Paul S. DeFord
Lathrop & Gage, L.C.
2345 Grand Blvd., Suite 2800
Kansas City, MO 64108**

**Jeanne A. Fischer
Southwestern Bell Wireless, Inc.
13075 Manchester Road, 100N
St. Louis, MO 63131**

**Charles W. McKee
Sprint PCS
6160 Sprint Parkway, Building 9
MS: KSOPHIO414
Overland Park, KS 66251**

**Joseph D. Murphy
A professional Corporation
306 West Church Street
Champaign, IL 61820**

**Craig S. Johnson
Andereck/Evans/Milne/Peace/Baumhoer
301 E. McCarty, P.O. Box 1438
Jefferson City, MO 65102**

**W.R. England, III
Brian T. McCartney
Brydon, Swearengen & England P.C.
P.O. Box 456
Jefferson City, MO 65102-0456**

**Paul Lane/Leo Bub
Anthony Conroy/Diana Harter
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101**

**James M. Fischer
Attorney at Law
101 West McCarty Street, Suite 215
Jefferson City, MO 65101**