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January 7, 2003

FILED³

JAN 07 2003

Missouri Public
Service Commission

Secretary
Missouri Public Service Commission
P. O. Box 360
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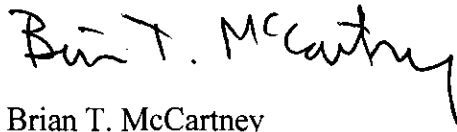
Re: Case No. TC-2002-1077

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of the Reply Brief of the Small Missouri Local Exchange Companies.

Please see that this filing is brought to the attention of the appropriate Commission personnel. I thank you in advance for your cooperation in this matter.

Sincerely,


Brian T. McCartney

BTM/da
Enclosure
cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

JAN 07 2003

Missouri Public
Service Commission

BPS Telephone Company,)
Cass County Telephone Company,)
Citizens Telephone Company of Higginsville,)
Missouri,)
Craw-Kan Telephone Cooperative, Inc.,)
Fidelity Communication Services I, Inc.,)
Fidelity Telephone Company,)
Grand River Mutual Telephone Corporation,)
Green Hills Telephone Corporation,)
Holway Telephone Company,)
Iamo Telephone Company,)
Kingdom Telephone Company,)
K.L.M. Telephone Company,)
Lathrop Telephone Company, and)
Mark Twain Rural Telephone Company,)

Complainants,)

vs.)

Case No. TC-2002-1077

VoiceStream Wireless Corporation,)
Western Wireless Corporation and)
Southwestern Bell Telephone Company.)

Respondents.)

REPLY BRIEF
OF THE SMALL MISSOURI LOCAL EXCHANGE COMPANIES

INTRODUCTION

Respondents T-Mobile and Western Wireless are originating wireless traffic that Respondent SWBT is delivering to Complainants' exchanges in the absence of a compensation agreement and in violation of Complainants' Commission-approved tariffs. T-Mobile and Western Wireless freely admit that they have not paid their bills. T-Mobile and Western Wireless offer nothing in the way of a defense other than an unabashed collateral attack of the Commission's decision in Case No. TT-2001-139 (the *Mark Twain Wireless Tariff* case).

In this case, Respondents are simply thumbing their noses at the Commission's decisions, and they are violating Missouri law. If T-Mobile and Western Wireless did not like Complainants' tariffs, then they could have participated in the case before the Commission and appealed the decision in Missouri courts. This is what AT&T Wireless, Cingular, and Sprint PCS have done.¹ Alternatively, they could have negotiated with Complainants and established agreements as Congress and the Commission intended. This is what Verizon Wireless has done.² All of the other major wireless carriers operating in the state of Missouri are paying for their traffic except for T-Mobile and Western Wireless.

¹ See *Sprint PCS v. Missouri Public Service Comm'n*, Missouri Court of Appeals, Western District Case No. WD 60928.

² See e.g. *BPS/Verizon Agreement*, Case No. IO-2003-0207; *Cass County/Verizon Agreement*, Case No. IO-2003-0210; *Grand River/Verizon Agreement*, Case No. IO-2003-0213; *Green Hills/Verizon Agreement*, Case No. IO-2003-0208; *Iamo/Verizon Agreement*, Case No. IO-2003-0209; *Kingdom/Verizon Agreement*, Case No. IO-2003-0201; *Lathrop/Verizon Agreement*, Case No. IO-2003-0214; *New Florence/Verizon Agreement*, Case No. IO-2003-0211.

ARGUMENT

I. Reply to T-Mobile and Western Wireless

A. Collateral Attack

T-Mobile and Western Wireless do not contest the fact that they have been using Complainants' facilities and services without payment and in violation of Commission-approved tariffs. Rather, they attack the tariffs themselves and argue that Complainants' wireless termination tariffs "should never have been approved."³ Respondents' collateral attack upon the Commission's *Mark Twain Wireless Tariff* decision violates Missouri law, and it should be rejected by the Commission.

Under § 386.270 RSMo 2000,⁴ rates and tolls established by the Commission are *prima facie* lawful and reasonable, and the Commission's orders are in effect until a court finds otherwise. Section 386.550 makes Commission decisions final and immune from collateral attack:

In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.

Thus, Commission orders are not subject to collateral attack. *State ex rel. Missouri Highway Comm'n v. Conrad*, 310 S.W.2d 871, 876 (Mo. 1958).

A Commission order becomes final when the Commission "arrives at a terminal, complete resolution of the case before it," and it is no longer subject "to recall, revision

³ T-Mobile/Western Wireless Initial Brief, p. 10.

⁴ All references to Missouri statutes are to RSMo 2000 unless otherwise indicated.

or reconsideration by the issuing agency.” *State ex rel. Riverside Pipeline Co. v. Public Service Comm’n*, 26 S.W.3d 396, 400 (Mo. App. 2000). Accordingly, the Commission’s *Mark Twain Wireless Tariff* order is final, and Respondents may not collaterally attack it before the Commission in this proceeding. *State ex rel. Licata, Inc. v. Missouri Public Service Comm’n*, 829 S.W.2d 515 (Mo. App. 1992).

Unlike the other major wireless carriers operating in Missouri, T-Mobile and Western Wireless chose not to participate in the *Mark Twain Wireless Tariff* case or its subsequent appeal. Instead, they simply refused to comply with Commission-approved tariffs. T-Mobile and Western Wireless state:

The fact that several wireless carriers have either mistakenly or made payments under protest only means that those carriers chose not to challenge the tariffs. Western Wireless and T-Mobile chose to confront the issue directly by refusing to make the payments and presenting the issue to the Commission in this case.⁵

This argument completely contradicts the facts and the law.

The facts clearly show that T-Mobile and Western Wireless did not “confront the issue directly” or “present the issue to the Commission in this case.” Rather, it was Complainants that brought this issue before the Commission by filing the Complaint on May 13, 2002. Moreover, all of the other major wireless carriers operating in Missouri followed Missouri law and Missouri procedure by participating in the *Mark Twain Wireless Tariff* case before the Commission, filing timely appeals, and appearing before the Circuit Court and the Court of Appeals.

⁵ T-Mobile/Western Wireless Initial Brief, p. 15.

Respondents' refusal to comply with Complainants' tariffs is an unlawful collateral attack that violates Missouri law. T-Mobile and Western Wireless could have intervened in the *Mark Twain Wireless Tariff* case, but they chose not to participate in the case before the Commission or the subsequent appeals to the Cole County Circuit Court and the Court of Appeals. Therefore, T-Mobile and Western Wireless cannot collaterally attack the Commission's decision. *State ex rel. Ozark Border Electric Cooperative v. Public Service Comm'n*, 924 S.W.2d 597, 601 (Mo. App. 1996) ("Having chosen not to participate in the original proceeding, Ozark cannot collaterally attack the decision. . . . Otherwise, their complaint would amount to a collateral attack on the final order of the commission, which is prohibited.")

B. The Commission has authority to approve and enforce Complainants' Tariffs.

Notwithstanding the fact that Respondents' defense is barred as a matter of law, T-Mobile and Western Wireless argue that Complainants tariffs "should never have been approved" and challenge the Commission's "legal power to require the payments sought by the Complainants."⁶ Respondents' arguments have already been rejected by the Commission and the Circuit Court. State Commissions may impose requirements or prescribe regulations which are not inconsistent with the Telecommunications Act of 1996 ("the Act"). 47 U.S.C. § 261. The Act preserves state commission authority to enforce any regulation, order, or policy that establishes access and interconnection obligations so long as it is consistent with the Act. 47 U.S.C. § 251(d)(3).

⁶ T-Mobile/Western Wireless Initial Brief, p. 10.

Therefore, if wireless-originated traffic is being delivered to small rural telephone companies in the absence of an approved compensation or interconnection agreement under the Act, then the Commission may enforce existing wireless termination tariffs or approve new wireless termination tariffs. Likewise, the Commission may enforce SWBT's secondary liability obligations that were established in Case No. TT-97-524 and SWBT's subsequent interconnection agreements. See 47 U.S.C. § 252(e) and *Southwestern Bell v. Connect Communs. Corp.*, 225 F.3d 942 (8th Cir. 2000) ("This grant of power to state commissions necessarily includes the power to enforce the interconnection agreement.")

T-Mobile and Western Wireless cite outdated FCC decisions from the 1980's in support of their argument that Complainants' wireless tariffs are unlawful,⁷ but the decisions cited by T-Mobile and Western Wireless are no longer relevant because they were issued years before the Act. As a matter of law, the Act requires Complainants to negotiate when carriers want to use Complainants' facilities, and the Act also allows for mandatory arbitration if negotiations fail.⁸ Unfortunately, T-Mobile and Western Wireless have chosen to send traffic to Complainants' exchanges in the absence of a negotiated or arbitrated agreement. Respondents have abused their indirect interconnection with Complainants and refused to comply with Commission-approved tariffs. The Commission should put a stop to Respondents' unlawful free ride.

⁷ T-Mobile/Western Wireless Initial Brief, p. 13.

⁸ See 47 U.S.C. § 252.

C. Complainants are entitled to compensation for the use of their facilities and services.

Respondents admit that they are using Complainants' facilities and services, yet they refuse to pay the tariffed rates. Missouri law is clear that Complainants' tariffed rates apply. *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W.2d 658, 570 (Mo. App. 1997)(discussing the filed tariff doctrine). Although Missouri's other major wireless carriers have sought review of Complainants' wireless tariffs, the tariffs have not been stayed. Missouri's other wireless carriers are playing by the rules and paying Complainants' tariffed rates even as they pursue their appeal. The fact that T-Mobile and Western Wireless object to Complainants' tariffs does not change their duty to follow the law as it stands.

Respondents' complaints about a "lack of evidence of the give-and-take required by the Telecommunications Act"⁹ are absurd in light of the fact that Respondents are taking service without paying for it. In the *Mark Twain Wireless Tariff* case, all of the other major wireless carriers operating in Missouri agreed that Complainants were entitled to compensation, and the Commission observed, "It is noteworthy that both sides agree that the Filing Companies are entitled to receive compensation for the termination of wireless-originated traffic."¹⁰ Accordingly, the Commission approved Complainants' Wireless Termination Tariffs in order to ensure that Complainants were

⁹ T-Mobile/Western Wireless Initial Brief, p. 14.

¹⁰ *In the Matter of Mark Twain Rural Telephone Company's Wireless Termination Tariff*, Case No. TT-2001-139, *Report and Order*, issued Feb. 8, 2001, p. 7.

compensated for traffic that was delivered in the absence of a compensation agreement.

Even if there were no tariffs, Missouri law requires Respondents to pay for the facilities and services that they are using. In *Laclede Gas v. Hampton Speedway*, 520 S.W.2d 625, 630 (Mo. App. E.D. 1975), the court explained:

[W]here goods and services are knowingly accepted by the party receiving the benefit, there is an obligation to pay the reasonable value of such services and a promise to pay such reasonable value is inferred by either the conduct of the parties or by law under circumstances which would justify the belief that the party furnishing such service expected payment.

(emphasis added). The *Laclede Gas* court noted that by receiving the benefit and use of a regulated utility's service, "a promise to pay the lawful and reasonable charge of such service is implied." *Id.* at 631. Yet in this case, Respondents are knowingly and consciously refusing to pay anything for Complainants' services, and their arguments against Complainants' tariffs are simply an unlawful attempt to continue the free ride. Respondents have received the benefit of completing calls to the small company exchanges. Therefore, Respondents must pay Complainants' tariffed rates for the use of those facilities and services.

D. Inter-MTA and intra-MTA Traffic.

T-Mobile and Western Wireless state, "Complainants claim to believe that access charges should be applied to interMTA traffic,"¹¹ but the Commission has

¹¹ T-Mobile/Western Wireless Initial Brief, p. 6.

repeatedly ruled that interMTA traffic is subject to switched access charges.¹²

Respondents object that Complainants "rely on the Southwestern Bell CTUSRs, which they play no role in generating and which make no distinction between interMTA and intraMTA traffic,"¹³ yet Respondents also state that Complainants cannot determine this jurisdictional information.¹⁴ As a practical matter, Respondents are the only carriers that could produce jurisdictional information about their wireless-originated traffic, yet they have refused to do so. T-Mobile and Western Wireless should not be allowed to profit from their failure to provide necessary records and information.

The wireless Respondents state, "Complainants have assumed all traffic was intraMTA and have sought payment based on the per minute rates in their wireless termination tariffs."¹⁵ Although it is true that the majority of the Complainants calculated the bills based on the lower wireless termination tariff rates, this is only because Respondents have failed to produce any jurisdictional information (i.e. intraMTA versus interMTA amounts or percentages) about the traffic they are delivering to

¹² See e.g. *In the Matter of Alma Telephone Company's Filing to Revise its Access Services Tariff*, Case No. TT-99-428, *Amended Report and Order*, issued April 9, 2002 ("**Access rates are applicable to inter-MTA traffic** and toll traffic terminated to the Missouri Independent Telephone Group and other local exchange companies.")(emphasis added).

¹³ T-Mobile/Western Wireless Initial Brief, p. 13; see also p. 10, fn 5.

¹⁴ "The LEC cannot determine the origin of the call (whether the calls comes [sic] from . . . the same or another MTA)." T-Mobile/Western Wireless Initial Brief, p. 5.

¹⁵ T-Mobile/Western Wireless Initial Brief, p. 7.

Complainants' exchanges.¹⁶ Therefore, bills were sent out at the lower amount. As soon as Respondents come forward with jurisdictional information, then Complainants will gladly amend their invoices to reflect the additional amounts that are owed by Respondents.

E. T-Mobile's *Petition for Declaratory Ruling* before the FCC.

T-Mobile and Western Wireless attached a copy of their *Petition for Declaratory Ruling* before the Federal Communications Commission (FCC) to their initial brief. This is the first time that T-Mobile and Western Wireless appear to have served the Commission with the *Petition* even though it seeks to annul a Commission decision and bypass Missouri law. After failing to participate in the *Mark Twain Wireless Tariff* case before the Commission or in Missouri courts, Respondents now seek to do an "end run" around the Commission's decision by having it annulled by the FCC. The *Petition* is nothing more than another collateral attack on the Commission's decision in the *Mark Twain Wireless Tariff* case.¹⁷

¹⁶ Although Respondents appear to concede that some of their traffic is interMTA traffic, they have not made any effort to identify this traffic or pay for it.

¹⁷ Moreover, the *Petition* itself is subject to dismissal at the federal level because it seeks to void a state Commission order and preempt state law in violation of the FCC's *ex parte* rules. The *Petition* is procedurally improper because it failed to comply with the both the notice and due process requirements of the FCC's rules. Specifically, T-Mobile seeks to invalidate the Commission's *Mark Twain* decision, but T-Mobile failed to serve the Commission (the agency that approved the tariffs) or the Complainants (the necessary parties that would be affected by a ruling) with a copy of its *Petition*. See *The Missouri STCG's Concurrence with Montana LEC Motion to Dismiss*, available electronically at: http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi in Proceeding No. 01-92.

The Commission has already held that Complainants' wireless tariffs are lawful under the Act. Moreover, the *Petition* was opposed by the majority of comments filed with the FCC,¹⁸ and the Missouri STCG filed detailed comments in opposition.¹⁹ If T-Mobile and Western Wireless truly wanted to establish agreements, then they could have done so years ago. It should be obvious to the Commission by now that Respondents simply wish to continue their free ride as long as possible.

II. Reply to Southwestern Bell

A. SWBT's Secondary Liability.

SWBT claims, "No authority exists for imposing terminating charges on a transit carrier like Southwestern Bell for traffic originated by VoiceStream and Western Wireless."²⁰ SWBT is wrong. As explained in Complainants' Initial Brief, the Commission's orders in Case Nos. TT-97-524 and TO-98-12, as well as the express

¹⁸ Opponents of T-Mobile's *Petition* include: the Alabama Rural Local Exchange Carriers, the California RTCS, the Rural Iowa Independent Telephone Association, the ICORE Companies, the Incumbent Rural Independent Telephone Companies, the Michigan Rural ILECs, the Minnesota Independent Coalition, the Missouri Independent Telephone Company Group, the Montana Local Exchange Carriers, the National Exchange Carrier Association, the National Telecommunications Cooperative Association, the Nebraska Rural Independent Companies, the Oklahoma Rural Telephone Companies, the Organization for the Promotion and Advancement of Small Telephone Companies, and TDS Telecommunications Corp.

¹⁹ The Missouri STCG's *Comments* and *Reply Comments* are available electronically at this web address: http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi in Proceeding No. 01-92.

²⁰ SWBT's Initial Brief, p. 2.

terms in SWBT's Interconnection Agreements, establish SWBT's secondary liability for the uncompensated traffic it continues to deliver to Complainants' exchanges.

In Case No. TT-97-524, the Commission approved the "transiting" relationship that SWBT desired, but with one condition: **SWBT would remain secondarily liable for uncompensated wireless traffic that it delivers to Complainants.** SWBT simply ignores the Commission's ruling and the express language in its interconnection agreements with T-Mobile and Western Wireless. For example, SWBT now claims, "It is inappropriate to impose any financial obligation on Southwestern Bell for such traffic."²¹ But the Commission has already determined that if the wireless carriers do not compensate Complainants, then SWBT is liable for the traffic.

Over five years ago, the Commission explained SWBT's responsibilities in Case No. TT-97-524:

In the event a wireless carrier refuses to pay a third-party LEC for such termination and the wireless carrier does not have a reciprocal compensation agreement with the third-party LEC, **SWBT will remain secondarily liable to the third-party LEC for the termination of this traffic, but will be entitled to indemnification from the wireless carrier upon payment of the loss.**²²

This language makes it clear that SWBT remains secondarily liable for any uncompensated wireless traffic that SWBT delivers to Complainants.

²¹ SWBT's Initial Brief, p. 3.

²² *In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Revise Its Wireless Carrier Interconnection Service Tariff, P.S.C. Mo.- No. 40, Case No. TT-97-524, 7 Mo. P.S.C. 3d 38, issued December 23, 1997 (emphasis added).*

The Commission explained SWBT's secondary liability again in an *Order Denying Motion for Clarification*.²³ After the *Report and Order* was issued in Case No. TT-97-524, SWBT filed a *Motion for Clarification* that requested the Commission "to state in a clarifying order that before its 'secondary liability' will arise, third-party local exchange companies (LECs) must first exhaust their remedies under the Telecommunications Act of 1996 (the Act) and before the Commission, including through requests for interconnection, arbitration, and the filing of tariffs."²⁴ SWBT also asked for "a clarification that secondary liability should not be imposed where the wireless carrier is insolvent."²⁵ The Commission rejected both of SWBT's requests for clarification in its *Order Denying Motion for Clarification*.²⁶

SWBT now claims that it has not "agreed to be responsible for payment of terminating compensation to Complainants on wireless calls originated by customers of VoiceStream/Western Wireless,"²⁷ yet SWBT voluntarily filed tariffs to comply with the Commission's decision in Case No. TT-97-524.

In Case No. TO-98-12, the Commission examined the interconnection agreement between SWBT and Western Wireless, and the Commission observed:

²³ *In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Revise its Wireless Carrier Interconnection Service Tariff*, Case No. TT-97-524, *Order Denying Requests for Rehearing or Clarification*, issued Jan. 28, 1998.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ SWBT's Initial Brief, p. 6.

In the event that Western sends traffic through SWBT's network to a third-party provider with whom Western does not have an interconnection agreement, Western will indemnify SWBT for any termination charges rendered by a third-party provider for such traffic.²⁸

Thus, the Commission clearly intended that SWBT enforce its interconnection agreements so that Complainants are compensated. Unfortunately, SWBT has not followed the Commission's *Orders* or enforced the provisions of its interconnection agreements. SWBT should not be allowed to ignore the Commission's *Orders*, unilaterally change the rules after an final *Order* has been issued, and continue to dump uncompensated traffic onto Complainants' networks.

B. The Commission's approval of SWBT's "transiting" scheme was conditioned upon SWBT's secondary liability to Complainants.

Under the guise that it was required to "transit" traffic for other carriers, SWBT has been dumping uncompensated wireless traffic on Complainants' network facilities. Yet in this case, SWBT now concedes that it is not required to "transit" traffic. For example, SWBT states "it now appears that the FCC has not imposed an obligation to carry transit traffic, particularly at TELRIC rates. . . . [I]t is now apparent that carriers do not have a general obligation to transit another carrier's traffic."²⁹

SWBT says its willingness to handle transit traffic after termination of existing agreements will be dependent upon "not being financially responsible for the

²⁸ *In the Matter of the Joint Application of SWBT and Western Wireless for Approval of an Interconnection Agreement*, Case No. TO-98-12, *Order Approving Interconnection Agreement*, issued Oct. 1997 (emphasis added).

²⁹ SWBT Initial Brief, p. 16.

terminating or other expenses associated with another carrier's traffic." As discussed above, SWBT's position directly contradicts the Commission's final decision in Case No. TT-97-524. Only when SWBT has some "skin in the game" will SWBT have the necessary incentive to police the unlawful use of its network. The Commission explained:

[I]f SWBT knows it will be secondarily liable to the third-party LECs, it will have **an incentive to enforce the provisions of . . . its interconnection agreements**, which require wireless carriers to enter into agreements with third-party LECs.³⁰

The Commission should affirm SWBT's clear obligations and put an end to Respondents' unlawful use of Complainants' facilities.

C. SWBT's transiting rate is irrelevant. Respondents note that SWBT's transiting rate is less than Complainants' wireless termination charges.³¹ This information is irrelevant and misleading because SWBT also charges wireless carriers for terminating traffic to SWBT exchanges (in addition to its "transiting" rate). Thus, comparing Complainants' terminating rates to SWBT's "transiting" rate rather than SWBT's tariffed termination rates is inappropriate and misleading. The Commission should not be fooled by Respondents' irrelevant "apples-to-oranges" comparison.

³⁰ *Id.* (emphasis added).

³¹ T-Mobile/Western Wireless Initial Brief, pp. 5-6; SWBT Initial Brief, p. 3.

III. The Motion to Strike Should be Denied.

Pursuant to §386.410.1, the Commission is not bound by the technical rules of evidence. However, even if the technical rules are applied, the statements being challenged by Respondents are not being offered for the truth of the matters asserted in the statements, and, as such, are not inadmissible hearsay statements. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted in the statement. *State v. Parker*, 886 S.W.2d 908, 925 (Mo. banc 1994). “[A]ll out-of-court statements are not hearsay which must be excluded unless shown to fall within a recognized exception” to the hearsay rule. *State of Missouri v. Foust*, 920 S.W.2d 949, 954 (Mo. App. 1996).

A statement is not hearsay unless the statement is being offered to prove the truth of the matter asserted. “Where the evidence is offered only to show that the statement has been made without regard to the truth or falsity of the statement itself, the evidence is primary and is not hearsay.” *Hunt v. National Super Markets*, 809 S.W.2d 157, 160 (Mo. App. 1991). If the proponent of a statement can demonstrate that the statement is logically relevant on any other theory, the statement is nonhearsay and should not be excluded. For example, a statement offered to explain subsequent conduct is not inadmissible hearsay. *State v. Leisure*, 796 S.W.2d 875, 880 (Mo. banc 1990). Statements that explain subsequent conduct are admissible as supplying relevant background. *State v. Dunn*, 817 S.W.2d 241, 243 (Mo. banc 1991). Statements to prove the basis of a belief may be offered into evidence as well. *Replogle v. Replogle*, 350 S.W.2d 735, 737-38 (Mo. 1961). In this case, the fact of the

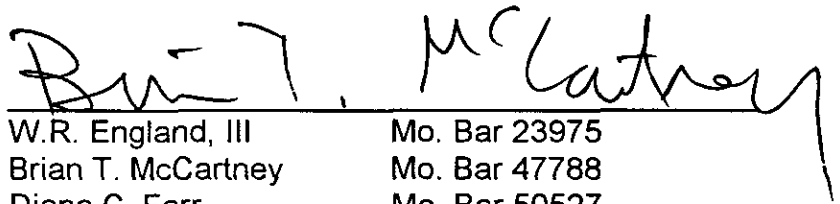
statements being challenged by Respondents is logically relevant to the issue of the steps taken by Complainants to resolve the dispute with Respondents prior to filing a Complaint; the actual truth of the facts contained within the statements is irrelevant. Further, the statements explain the actions of Complainants in sending certain letters and bills to Respondents.

Although logically relevant to explain Complainants' subsequent actions and to provide a basis for Complainants' beliefs, as a practical matter the challenged statements and documents are not essential to Complainants' case. Regardless of the existence of these statements and Complainants' subsequent actions, the fact remains that Respondents have refused to comply with Complainants' tariffs. The central issue in this case is Respondents' refusal to pay for the facilities and services which they are using. Thus, even if the Commission chooses to strike the testimony which details Complainants' repeated efforts to resolve this dispute without filing a Complaint, that does not change the fact that T-Mobile and Western Wireless are still liable under Complainants' Commission-approved wireless termination tariffs.

CONCLUSION

Respondents offer nothing more than unlawful collateral attacks on the Commission's prior decisions in the *Mark Twain Wireless Tariff* and *SWBT Wireless Tariff* cases. Complainants are clearly entitled to compensation for the use of their facilities and services, and Respondents are clearly liable for the interMTA and intraMTA traffic that is being originated and delivered to Complainants' exchanges.

Respectfully submitted,



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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 January, 2003 to:

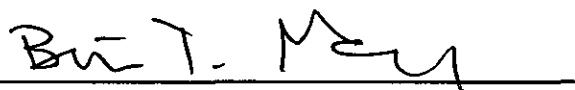
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