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June 23, 2005

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JUN 23 2005
Missouri Public Service Commission

Secretary/Chief Administrative Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: In the Matter of the Application of Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless for Approval of a Direct Interconnection Agreement and for a Related Indirect Transiting Services Agreement with Southwestern Bell Telephone, L.P.. Case No. TK-2005-0447.

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of the Application to Intervene or Alternative Application to Address an Issue as Amicus and Opposition to the Basis for SBC's Objection.

Thank you for seeing this filed.

Sincerely,

Craig S. Johnson

CSJ:sjo

Enclosure

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless For Approval of a Direct Interconnection Agreement and For a Related Indirect Transiting Services Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri pursuant to Section 252(e) of the Telecommunications Act of 1996.	)))))))	Case No. TK-2005-0447

Missouri Independent Telephone Group
Application to Intevene or Alternative
Application to Participate without Intervention or Alternative
Application to Address an Issue as Amicus
And
Opposition to the Basis for SBC's Objection

Comes now the Missouri Independent Telephone Group (MITG), comprised of Alma Telephone Company, Chariton Valley Telephone Corp., Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company, and for its application to intervene, or to participate without intervention, or to participate as Amicus to address the issues raised by SBC in its Objection of June 14, 2005 Applicant Missouri RSA No. 5 Partnership, d/b/a Chariton Valley Wireless (Chariton Valley). This pleading will both set forth the grounds for participating, and set forth the basis of the MITG opposition to the "transiting" structures SBC is pursuing:

1. The MITG companies are all rural ILECs providing landline telecommunications services in Missouri. Except for MoKan, all MITG companies are directly connected to SBC.

2. There are serious issues raised by the prospect of SBC negotiating unapproved transiting agreements with every CLEC or CMRS provider that SBC directly interconnects with.

3. SBC does not have such agreements with ILECs such as the MITG companies that SBC directly interconnects with. SBC pursues such agreements with CLECs and CMRS providers. SBC apparently does not pursue them with ILECs. There is no basis to treat similarly situated carriers differently.

4. Experience has shown that, when SBC enters into such a transiting agreement with a CLEC or CMRS provider, it transits those carriers' traffic to other LECs without such an agreement with the LECs terminating the transited traffic.

5. The terms of the transit agreement address the transit of toll traffic as well as local traffic. The terms of the transit agreement suggests SBC intends to pursue the transit of toll and local traffic to terminating LECs, even though there are unresolved issues as to the proper basis for payment of terminating compensation.

6. As set forth herein, the MITG's interest in these transit agreements is different than that of the general public. Industry-wide issues such as these are not amenable to resolution on a generic basic in a 90 day interconnection agreement approval docket. The MITG recognizes that interventions, requests to participate without intervention, and requests to participate as Amicus are likewise not actions the 90 day interconnection agreement approval process contemplates.

7. Nonetheless, the MITG believes the issues raised in SBC's objection are of sufficient import to justify the MITG protecting its interests by being granted intervention, participation without intervention, or Amicus. Granting MITG intervention

for the sole purpose of addressing the issues set forth herein will allow the MITG companies to continue to participate as parties should the Commission's decision in this matter be appealed to the Courts.

7. It is apparent that SBC is going to pursue its theory that it is entitled to continue to pursue the negotiation of, and entry into, two-carrier transiting agreements without submitting them for Commission approval.

8. The MITG companies disagree with SBC's theory it is entitled to do so.

9. SBC suggests that the transit agreement is not subject to Commission approval pursuant to section 252 of the Act. In order to evaluate this claim it is necessary to evaluate these types of traffic that the transit agreement addresses. The traffic SBC proposes to transit includes the following types of "local" and "toll" traffic (See Section 2.14 of the Transit Traffic Service Appendix):

Toll: intraLATA toll

intraLATA interMTA

Local: 251(b)(5) traffic

Other: ISP bound traffic

Transit of Local Traffic

10. Interconnection agreements are only intended for local traffic, not for toll traffic. The transit traffic agreement in question inappropriately includes toll traffic.

11. It is the MITG's belief and position that a direct interconnection agreement between two carriers for the reciprocal transport and termination of local traffic is the only type of reciprocal compensation agreement that is expressly recognized by the Telecommunications Act of 1996, and the FCC reciprocal compensation rules.

See 47 CFR 51.701(e), which defines "reciprocal compensation" as an arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network. This conclusion is supported by the FCC definition of "transport" as the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party.

12. Giving the Act and FCC rules a strict construction, the only reciprocal compensation agreements contemplated by the act are those between two directly interconnecting carriers where each provides transport and termination to the other. Under this strict construction the transit service agreement constitutes an inappropriate attempt by SBC to impose "transiting" concepts onto the existing "carrier's carrier" market, as is more fully set forth below.

13. Giving the Act and FCC rules a more liberal construction in light of the duty to indirectly interconnect, the MITG believes that, where all carriers party to an indirect interconnection path agree to exchange local reciprocal compensation traffic over that indirect interconnection path, it is a defendable interpretation to say that in this situation the "transiting" of traffic called for by such an agreement is a Section 251(b)(5) agreement subject to Commission approval.

14. The MITG directs the Commission to the FCC's March 12, 2004 decision in FCC 04-57, 19 FCC Rcd 5169, in the Matter of Qwest Corporation Apparent Liability for Forfeiture, wherein the FCC found Qwest liable for a forfeiture of Nine Million Dollars for failing to submit a multitude of agreements to state commissions for approval

in violation of §252 of the 1996 Act. Included in the agreements upon which the forfeiture was based were "transit record exchange" agreements. If transit record exchange agreements are subject to § 252 approval, it would seem obvious that transit traffic agreements are also subject to § 252 approval. At paragraph 4 of that decision the FCC, reciting its earlier Local Competition Order, recognized that the filing and approval requirements were necessary for permitting state commissions to assure the terms of interconnection are just, reasonable, and nondiscriminatory. It makes sense that every agreement by which Section 251(b) (5) local reciprocal compensation traffic is exchanged should be subject to Commission approval. The Commission has a duty under Section 252 to assure the agreements do not discriminate, and that they are in the public interest. If they are not filed for approval, the Commission has no way to perform its duty.

15. Let's assume all three (or more) carriers, the originator, the transitor(s), and the terminator, have agreed to jointly provision the transport and termination function essential for reciprocal compensation under Section 251(b)(5). In order to ascertain that such a transit agreement is not contrary to the public interest, and does not discriminate against non-party carriers, it must be submitted for approval pursuant to Section 252.

16. The transit agreement before the Commission is only between one CMRS provider and SBC as a transit carrier. This type of agreement does include all of the necessary carriers to meet the definitions of reciprocal compensation and of transport and termination. The agreement should be rejected as, by definition, a transit agreement between two carriers fails to include the parties necessary to transport and terminate a local call.

17. The MITG has a conceptual problem with SBC's claim that it is entitled to access rates for its transit of local reciprocal compensation traffic. If the call is a local call between the originating and terminating carriers, the function that SBC performs as transiting carrier is "transport" of a local call. This transport would be part of the "transport and termination" essential to reciprocal compensation. The MITG disagrees that SBC would be entitled to access on transport of a local call the originating and terminating carriers would receive reciprocal compensation.

18. If the Commission determines it will permit three (or more) carrier reciprocal compensation agreements, the price for SBC's transit/transport function must be at local reciprocal compensation rates, and will be subject to arbitration and approval under the FCC reciprocal compensation standards. If SBC refuses to participate in transiting traffic on this basis, it should not attempt to negotiate any such agreements.

Transit of Toll Traffic

19. With respect to toll traffic, the "transit" relationship SBC proposes should not be permitted. It is clearly inappropriate for toll traffic, yet SBC's transit agreement purports to include toll traffic within its ambit.

20. There already exists a "carrier's carrier" role which since divestiture has successfully handled the transit of toll calls.

21. The toll "transit" role SBC proposes constitutes an unnecessary and counterproductive deviation from the normal or industry standard "carrier's carrier" role.

22. In its transit agreements SBC refuses to be responsible to pay terminating compensation for toll traffic as carrier's carriers do. This is not appropriate. The Commission should inform SBC that toll transit agreements are not permissible. After

nine years' experience with the issues created by the Telecommunications Act of 1996, there is no justification to allow "transiting" roles to replace "carrier's carrier" roles.

23. SBC's pursuit of an unregulated "transit" role for toll traffic contained in negotiations with carriers that need local reciprocal compensation agreements should be terminated. SBC's unregulated transit role should be rejected in favor of the traditional carrier's carrier regime. The current "carrier's carrier" role (sometimes referred to as an "IXC or "wholesale" role) has been in use since divestiture, and is far superior from a public policy standpoint than SBC's "transit" role.

24. The justification for a "transiting" role SBC originally proffered for the transit role was limited to local traffic. SBC then stated it was required by the 1996 Act to transit local traffic. SBC indicated it was obligated to transit traffic at forward looking TELRIC rates, which did not provide sufficient revenues for SBC to pay termination charges on this transit traffic.

25. Now SBC says it has no obligation to transit *any* traffic. Now SBC says it will voluntarily transit traffic, but only if it can charge market based rates. Yet SBC insists it will not voluntarily transit traffic unless it is released from the obligation to pay terminating compensation.

26. The original justification for transiting is completely gone. Now SBC wants to transit toll traffic, even though the original justification applied only to local. Now SBC says it wants to be released from the obligation other IXCs have to pay terminating compensation, even though SBC is performing the same role, and SBC is just as capable as any IXC, in a market based environment, of paying terminating compensation just as its competitor IXCs do.

27. For toll traffic, the transit role should be rejected in favor of the carrier's carrier role. There are many policy reasons why SBC's proposed toll transiting role should be rejected in favor of a carrier's carrier role.

28. The first policy reason is administrative efficiency. In the carrier's carrier regime, the carrier delivering the call to the terminating access tandem is responsible to pay terminating charges for traffic terminating to LECs that subtend that tandem. Traffic measurement and billing records are performed at the terminating tandem. Currently, when AT&T, Sprint LD, MCI, Global Crossings, or another "carrier's carrier" delivers traffic other carries originated they pay the termination charges based on records created at the terminating tandem. Compensation works efficiently pursuant to tariff. This is the way it works for traffic IXCs deliver to SBC. It should work the same way when SBC, acting as an IXC, delivers traffic to other LECs.

29. The transiting role SBC pushes for requires each carrier connecting with SBC to have separate agreements with *every other* carrier connecting with SBC. It does not rely upon tariff at the terminating end of a call. Thus, if there are 100 ILECs, CLECs, and CMRS providers connecting with SBC in Missouri, this would require 10,000 separate agreements. Under the carrier's carrier system, even if all 100 connecting carriers chose SBC (as opposed to AT&T, MCI, Sprint LD, Global Crossings, etc.) as their carrier's carrier, only 100 agreements would be required.

30. The second policy reason is unfair economic advantage. If SBC is allowed to price transit services without being responsible for terminating costs, SBC will have an unfair advantage over traditional IXCs performing carrier's carrier functions.

There is no reason to believe SBC isn't just as capable as traditional IXCs in negotiating competitive carrier's carrier rates, and being responsible for terminating compensation. There is no justification for allowing SBC to negotiate on a basis different from that of other carrier's carriers.

31. The third policy reason is that existing tariffs state that SBC is to be treated the same as any other interexchange carrier. The Commission has so held.[1] In the interexchange market, the interexchange carrier pays termination charges. Even CMRS providers are entitled to be paid terminating compensation by the interexchange carrier for traffic that interexchange carrier delivered.[2] SBC's transit role is at odds with established carrier's carrier roles.

32. The fourth policy reason is that, with respect to traffic terminating to LECs, the last 9 years' experience in Missouri has established that attempting to replace the carrier's carrier role with a "transit" role creates the likelihood of disputes that do not occur within the carrier's carrier system. These disputes include the following:

a. disputes as to providing and passing call information;

b. disputes as to financial responsibility for traffic;

c. disputes as the causes of, and responsibility for, unidentified or "phantom" traffic;

d. disputes as to measuring and recording the traffic;

e. disputes as to what billing record systems to apply;

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[1] See the Commission's September 26, 2000 Report and Order in TC-2005-325, et al., Southwestern Bell's Complaint Against Mid-Missouri, Goodman, Seneca, and Chariton Valley, holding that after the end of the PTC Plan, as a former PTC SBC was thereafter an interexchange carrier that must comply with Respondents's access tariffs and utilize Feature Group D facilities.

[2] See the FCC's July 2, 2002 Declaratory Ruling in the Matter of Petitions of Sprint PCS and AT&T for Declaratory Ruling Regarding CMRS access charges.

f. disputes as to whose traffic measurements are to be used;

g. disputes as to where traffic is measured.

33. The fifth policy reason is that it would not be wise to create a new transit role in this era of increasing dominance of RBOCs over the rest of the industry. RBOCs have facilities dominance. RBOCs have economic and bargaining advantages over CMRS providers, CLECs, and smaller ILECs.

34. The RBOCs are engaged both horizontal and vertical acquisitions giving them presences in markets that the 1983-1984 divestiture separated the RBOCs from. At divestiture, when competition in the toll market was to increase, there were approximately eight or more RBOCs, including GTE. Through mergers and acquisitions now there are 3 RBOCs, and Verizon.

35. These large carriesr are in the process of acquiring interexchange carriers. SBC is acquiring AT&T. Verizon may be acquiring MCI. Similar acquisitions could occur in the future.

36. It would not be wise to permit the conversion of a carrier's carrier system into a transiting system when the RBOCs are acquiring the carrier's carriers. This would give the large carriers undue advantage and control over traffic exchange, compensation obligations, call information, and billing record systems.

37. The sixth policy reason is that the transit structure SBC proposes would have intercarrier compensation removed from state oversight. Allowing the "transit" structure to exist outside of any regulated model is bad public policy. Missouri has never relinquished control of carrier-to-carrier relationships.

38. The seventh policy reason is that this is not an opportune time to consider permitting a transit relationship to usurp the carrier's carrier relationship. When the FCC is considering a unified carrier compensation regime, adding another wrinkle to the existing fabric is not productive. The FCC's task is difficult enough now with the differing traffic relationships that currently exist.

For all of the above reasons, the MITG request that they be permitted to intervene as parties, or to be permitted to participate without intervention, or that they be permitted to participate as Amicus, and that the Commission reject the transit agreement for all of the reasons set forth above.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was hand delivered or mailed, via U.S. Mail, postage prepaid, this 23 day of June, 2005, to the following parties:

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