

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 634-7431
E-MAIL: WREBSE@AOL.COM

CHARLES E. SMARR
DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
RACHEL M. CRAIG
BRIAN T. MCCARTNEY
DALE T. SMITH

OF COUNSEL
RICHARD T. CIOTONE

February 16, 2000

FILED²

FEB 16 2000

Missouri Public
Service Commission

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 the Small Telephone Company Group's Response to Southwestern Bell Telephone Company's Suggestions in Opposition to 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 16 2000

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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.

THE SMALL TELEPHONE COMPANY GROUP'S RESPONSE
TO SOUTHWESTERN BELL TELEPHONE COMPANY'S
SUGGESTIONS IN OPPOSITION TO REHEARING

Comes now the Small Telephone Company Group ("STCG") and for its response to the Southwestern Bell Telephone Company's ("SWBT") suggestions in opposition to rehearing, states to the Missouri Public Service Commission ("Commission") as follows:

1. Newly Alleged Facts. SWBT accuses the STCG of supporting its Application for Rehearing with "newly alleged 'facts' that some wireless carriers have paid access charges to terminate their cellular traffic."¹ However, there is nothing new about the fact that access is currently being used, and even a cursory reading of STCG's Application for Rehearing reveals that these facts were raised by the STCG during the hearing:

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"). (Tr. 245) 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. **See Ex. 16 – excerpts from SWBT's Access Services Tariff and SWBT's Wireless Carrier Interconnection Services Tariff.** 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.

¹ SWBT Suggestions in Opposition, p. 7.

86

(p. 5) (emphasis added)

2. Evidence at the Hearing. The fact that access is currently being used was not "newly alleged" by the STCG.² Rather, this fact was brought out during the hearing on October 13, 1999. For example, counsel for the STCG cross-examined SWBT witness Hollingsworth about SWBT's wireless carrier interconnection service tariff:

Q. And I'm also correct in understanding that your outside the local calling scope rates are basically identical to your access rates?

A. Um, yes. These are rates that are wireless interconnection service tariff rates, but they do correspond to, I believe, the tariff that you pulled out, this access tariff.³

* * *

A. . . . These rates that are in here are wireless carrier interconnection service rates that were negotiated with wireless carriers.

Q. Okay. They are also identical to your intrastate access rates, are they not?

A. They are.⁴

² Ironically, it is SWBT that actually seeks to add "newly alleged facts" in this case. See SWBT's Suggestions at p. 5 ("And in other jurisdictions, Southwestern Bell's affiliate Pacific Bell was the one that initiated *arbitration with wireless carriers in California.*") (emphasis supplied) This statement is unsupported by the record in this case, which references only Southwestern Bell's *CLEC arbitrations* in California with Brooks. (See Tr. 405)

SWBT's 'new fact' is also misleading because the arbitration provisions of the Telecommunications Act of 1996 are triggered only during the period from the 135th to the 160th day after an incumbent local exchange carrier *receives* a request for negotiation under the Act. (See Section 252(b)) Thus, until an ILEC receives a request for negotiation under the Act, the ILEC may not initiate arbitration under the Act.

³ Tr. 377

⁴ Tr. 382

Ms. Hollingsworth also conceded during the hearing that SWBT applies access charges to wireless calls originating within the MTA that are delivered via an IXC:

- Q. So even if that wireless-originated call was within the MTA, when it's delivered to you by an IXC, you believe access charges apply?
- A. I believe that's what is happening.

(Tr. 388) Thus, the Commission's finding that access rates cannot apply to intra-MTA traffic contradicts the evidence in this case and the reality of what is currently taking place in Missouri.

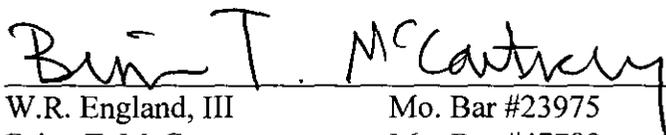
3. Access Rates Are Nothing Novel. During the course of this case, the STCG has repeatedly pointed out that intra-MTA wireless traffic being terminated to SWBT exchanges under SWBT's wireless interconnection services tariff is being charged the same rate as SWBT's access rates.⁵ The STCG should be afforded the same rights as SWBT to charge access rates unless and until other arrangements are negotiated with the wireless carriers.

4. SWBT Can't Have It Both Ways. If SWBT can charge the same rates as access, then the Commission should allow the STCG to do the same thing. But if the STCG is prohibited from charging access for this traffic, then SWBT should also be prohibited from doing so. Accordingly, if access rates cannot apply to intra-MTA traffic, then SWBT should no longer be allowed to charge the exact same rates as its access rates for its wireless interconnection tariff and the Commission should initiate an investigation into SWBT's wireless interconnection services tariff to determine its lawfulness.

⁵ See Tr. 377, 382, 387-88; see also 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,



W.R. England, III Mo. Bar #23975
Brian T. McCartney Mo. Bar #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102-0456
(573) 635-7166

Attorneys for the Small Telephone Company Group

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 16th day of February, 2000, to:

Mike Dandino
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Marc Poston/Julie Kardis
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Craig S. Johnson
Andereck, Evans, Milne, Peace & Baumhoer
P.O. Box 1438
Jefferson City, MO 65102

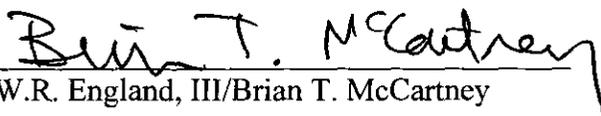
David Evans
GTE
601 Monroe Street, Suite 304
Jefferson City, MO 65101

Paul Lane/Leo Bub
Southwestern Bell Telephone Company
One Bell Center, Room 3518
St. Louis, MO 63101

Paul S. DeFord
Lathrop and Gage
2345 Grand Blvd
Kansas City, MO 64108

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

Charles W. McKee
Sprint PCS
4900 Main, 12th Floor
Kansas City, MO 64112


W.R. England, III/Brian T. McCartney