LATHROP & GAGE L.C.
LAW OFFICES

2345 GRAND BOULEVARD
SUITE 2500
KANSAS CITY, MISSOURI 64108-2684
816-292-2000, FAX 816-292-2001

1050/40 CORPORATE WOODS
9401 INDIAN CREEK PARKWAY
OVERLAND PARK, KANSAS 66210-2007
816-292-2000, FAX 913-451-0875

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Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65101

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

Dear Judge Roberts:

Attached for filing with the Commission is the original and fifteen (15) copies of AT&T Wireless Services, Inc.'s Initial Brief in the above referenced matter.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

LATHROP & GAGE, L.C.

By: Paul S. DeFord
Paul S. DeFord

Attachment

cc: All Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Alma Telephone Company=s Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2	)))	Case TT-99-428, et al.

INITIAL BRIEF OF AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC.

COMES NOW AT&T Wireless Services, Inc. ("AWS") and AT&T Communications of the Southwest, Inc., (collectively "AT&T") and for their initial brief in the above-captioned matter state as follows:

INTRODUCTION

This case was initiated when six members of the Mid-Missouri Group (MMG) filed proposed tariffs that would impose their respective switched access rates on all traffic that is transited to them directly or indirectly, until superceded by an approved interconnection agreement pursuant to the Telecommunications Act of 1996 ("the 1996 Act"). The purported reason for filing the tariffs was that the MMG members were not being compensated for wireless or Competitive Local Exchange Carrier (CLEC) originated traffic that terminated in their exchanges.

The parties have agreed that only two issues are presented for Commission resolution in this proceeding. Those issues are;

1) Is the tariff proposed by the MMG lawful as applied to wireless or CLEC traffic?

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2) If lawful, should the tariff proposed by the MMG be approved?

AT&T believes the proposed tariffs are patently unlawful and as such must be rejected.

DISCUSSION

AWS has acknowledged that some small amount of intra-MTA traffic, originated by it, is terminated to companies such as those constituting the MMG. Ex. 7 at p2. Similar small volumes of intra-MTA traffic are originated from the exchanges of the MMG companies and terminated to AWS. Id. AWS neither pays nor receives compensation for this type of traffic. Because this type of intra-MTA traffic is "local" in nature, this defacto bill and keep relationship is wholly appropriate. In fact a bill and keep relationship is one of the three options available to States commissions in establishing compensation arrangements between CMRS providers and incumbent LECs. State commissions are required to establish incumbent LECs rates for transport and termination of local traffic on the basis of: 1) the forward looking economic cost of such offerings using a cost study pursuant to 47 CFR Sections 51.505 and 51.511: 2) the default proxies as provided in 47 CFR Section 51.707 or 3) a bill and keep arrangement as provided in 47 CFR Section 51.713.

The FCC has unequivocally determined that the appropriate CMRS local calling area is based upon where the call originates and terminates. FCC Rule 51.701(b)(2) defines local CMRS telecommunications traffic as including "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area". ("MTA"). In concluding that the MTA is the appropriate CMRS local

calling area, the FCC specifically stated that such intra-MTA traffic is not subject to access charges.

> "Traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges." FCC First Report and Order, ¶1036

The MMG apparently contends that the absence of an approved interconnection agreement changes the character of traffic originated by CMRS providers so that it no longer must be treated as local traffic. The MMG argues that unless there is a direct physical interconnection between CMRS providers and incumbent LECs there is no obligation to establish reciprocal compensation arrangements for the transport and termination of traffic.

An analysis of the relevant law reveals no support for the MMG's contentions. In fact, FCC Rule 51.703(a) expressly requires every LEC to establish reciprocal compensation arrangements for transport and termination of local traffic with any telecommunications carrier. Interpreting the Act, the FCC ruled that "CMRS providers are telecommunications carriers and thus, LECs' reciprocal compensation obligations under section 251(b)(5) apply to *all local traffic transmitted between LECs and CMRS providers*. FCC First Report and Order ¶1041. (emphasis added.) This conclusion does not distinguish how a CMRS provider's local traffic is carried to the terminating party. All local traffic is included.

The MMG has also contended that reciprocal compensation arrangements between CMRS providers, CLECs and its members are inappropriate because the MMG companies do not originate any traffic that terminates to those entities. Tr. at pp.111, 124. Even if it were true that MMG companies did not originate such traffic, it does not mitigate their legal obligation to

establish reciprocal compensation arrangements. MMG does not, and cannot, point to any authority, which would relieve them of that obligation.

It must also be remembered that reason that there is little if any traffic from MMG companies terminating to CMRS providers and CLECs is that the MMG companies made a business decision not to provide interexchange services. There is no legal prohibition restricting MMG companies from providing those services and the current position could be reversed at any time.

It is AT&T's position that it would be premature to approve the proposed tariffs even if the contained lawful rates. As previously mentioned AT&T is neither paying nor receiving compensation for local wireless and MCA traffic. AT&T believes that the reason for this is a practical one, and that is there is no industry consensus on the type of traffic records to exchange. The issue of providing appropriate records will be decided in Case No. TO-99-593. Once those records are exchanged and terminating compensation arrangements are put in place, the proper compensation can be exchanged among all parties. Ex. 6 at pp.5-6.

Additionally, the provisioning of MCA service in a competitive market, the role of CLECs in the MCA, and the appropriate intercompany compensation for MCA traffic is being considered in Case No. TO-99-483. Until these issues are resolved and given the wide ranging impact of the proposed tariff, approval at this time would be premature and therefore not in the public interest. Id.

Contrary to the assertions of the MMG companies, both the traffic volumes and revenues at issue in this case are de minims. Even if switched access rates were applicable, which as a matter of law cannot be permitted, the most generous estimation is that the proposed tariff would

generate approximately $300-$600 per month for members of the MMG. Tr. at p.151. If proper and lawful rates were established for the proposed tariffs, for example utilizing the FCC's proxy rates, the amount of revenue at issue would only be approximately $25 per month. Id.

CONCLUSION

AT&T believes that the Commission must reject the proposed MMG tariffs because application of switched access rates to all traffic that is transited to MMG companies directly or indirectly, would violate the 1996 Act, as well as various FCC Rules and Orders. The heart of the controversy presented in this case is not whether and how interconnection between wireless providers, CLECs and incumbent LECs can or must be accomplished, but rather what appropriate inter-company compensation arrangements may be imposed. Imposition of switched access rates is not a lawful option.

As the Commission is aware the industry is in a state of transition from a monopoly environment to a competitive environment. Thus far the compensation arrangement between wireless providers, CLECs, and incumbent LECs that do not have an interconnection agreement has been a defacto bill and keep arrangement. It is important to keep in mind that not being compensated for terminating traffic has been and will continue to be a two way street. Rather than add to the confusion surrounding the transition, the Commission should proceed to resolve the related issues referenced above in the other pending dockets. Once those issues are resolved there should be no need for MMG members to attempt to apply switched access rates to all types of traffic.

Respectfully submitted,

Paul S. DeFord Mo. #29509
LATHROP & GAGE L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108-2684
Telephone: (816) 292-2000
Facsimile: (816) 292-2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above pleading was served, by first class United States mail, postage prepaid, this _10th_ day of December, 1999, on the following counsels of record:

Craig S. Johnson
Andereck/Evans/Milne/Peace/
Baumhoer
PO Box 1438
Jefferson City, MO 65102

General Counsel
Missouri Public Service Comm.
PO Box 360
Jefferson City, MO 65012

Paul Lane/Leo Bub/Anthony
Conroy/Katherine Swaller
Southwestern Bell Telephone
Co.
One Bell Center, Room 3518
St. Louis, MO 63101

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

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

Office of Public Coun
PO Box 7800
Jefferson City, MO 6

W.R. England, III
Brian T. McCartney
Brydon, Swearengen &
PC
PO Box 456
Jefferson City, MO 6