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January 4, 2000

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

FILED

JAN 4 2000

Missouri Public
Service Commission

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

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Reply Brief.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Leo J. Bub Hm

Leo J. Bub

Enclosure

cc: Attorneys 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, PSC Mo. No. 2.	))	Case No. TT-99-428, et al.

SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY BRIEF

In its Initial Brief, Southwestern Bell Telephone Company explained that the tariffs should be rejected as unlawful to the extent applied to companies that transit calls from originating providers to MMG members. Any attempt to apply the tariff to a transiting carrier like Southwestern Bell would run afoul of prior Commission orders approving Southwestern Bell's wireless interconnection tariff and orders approving interconnection agreements between Southwestern Bell and various CLECs and wireless carriers, each of which limits the transiting carrier's liability and requires the originating company to bear the responsibility for paying to terminate its traffic. Nothing in the Mid-Missouri Group (MMG's) or Small Telephone Company Group's (STCG's) Initial Briefs disturbs this important premise. The only question is whether the Commission should approve any tariff applicable to originating CLECs and/or wireless carriers. As detailed below, Southwestern Bell believes applicable law would compel rejection even if the MMG's tariffs applied only to originating CLECs and wireless providers.

MMG and STCG attempt to secure approval of a patently unlawful tariff provision by trying to portray the law on wireless interconnection as unclear. But it is not. Federal law makes absolutely clear that access charges may not be applied to wireless originated traffic that

174

originates and terminates within the same Major Trading Area (MTA).[1] The FCC did not make any exception to this absolute prohibition when a wireless carrier seeks an indirect interconnection or when more than two carriers are involved in completing the wireless carrier's call.

Despite the various contortions MMG and STCG go through, they cannot avoid the obvious illegality of the tariff they are trying to support. For example, STCG asserts that "it is unclear" how the Section 251(b)(5) reciprocal compensation requirement "can possibly apply in this situation" claiming that there is no "reciprocal" two-way exchange of traffic since its member companies have their customers' calls to wireless carriers handled by IXCs. (STCG Initial Brief pp. 4-5). MMG makes a similar argument. (MMG Initial Brief pp. 13-16). But there is nothing in the FCC's prohibition against charging access rates on intraMTA wireless traffic making it dependent on the existence of a two-way traffic flow. Reading such an exception into the rule would allow LECs (like MMG and STCG) to deprive wireless carriers of their right to terminate traffic under Section 251(b)(5) -- and completely defeat the FCC's absolute prohibition against charging access rates on intraMTA wireless traffic -- by simply electing not to handle their customers' land to mobile traffic. Given the explicit language the FCC's Interconnection Order, it is clear that the FCC did not intend such an anomalous result.

[1] In its Interconnection Order, the Federal Communications Commission (FCC) rules that: "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and terminates rates under Section 251(b)(5) rather than interstate and intrastate access charges." Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket 96-98, para. 1036 (released August 8, 1996) (the Interconnection Order).

MMG and STCG similarly misapply the FCC's definition of the term "transport" in 47 CFR Section 51.701(c)[2] in an attempt to read the present situation out of the obligation to apply reciprocal compensation rates instead of access charges. They claim that under the FCC's definition, "transport" can only take place between two carriers since it is to be measured from the "interconnection point between the two carriers" to the terminating LEC's end office. They state that because more than two carriers are involved with an indirect interconnection, there is no point of interconnection between the first and third carrier from which the "transport" can be measured. (MMG Initial Brief pp. 3-4; STCG Initial Brief pp. 5-6). MMG and STCG's reading of the definition is simply incorrect. The FCC has recognized that many alternatives exist for the transport of traffic between two carriers' networks, including using the facilities of another carrier:

> Many alternative arrangements exist for the provision of transport between the two networks. These arrangements include: dedicated circuits provided either by the incumbent LEC, the other local service provider, separately by each, or jointly by both; facilities provided by alternative carriers; unbundled network elements provided by incumbent LECs; or similar network functions currently offered by incumbent LECs on a tariffed basis. . . .[3]

In this case, transport is being provided by two carriers, the transiting LEC and the terminating LEC. Instead of the terminating LEC providing all of the transport, the transiting carrier is providing part of it (usually transporting the call from the meet point between the wireless carrier and the transiting LEC to the transiting carrier's tandem switch, switching the call there; and transport the call on to the meeting point between the transiting LEC and the terminating LEC).

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[2] 47 CFR Section 51.701(c) states:

> Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to Section 252(b)(5) of the Act from the interconnection point between the two carriers to the terminating carriers and office switch that directly serves the called party, or equivalent facilities provided by a carrier other than the incumbent LEC.

[3] Interconnection Order, para. 1039 (emphasis added).

In the present situation, the "interconnection point" from which MMG and STCG can start measuring to bill their piece of transport is simply the place where indirect interconnection occurs, i.e., the interconnection between the transiting LEC and the terminating LEC. Both the transiting and terminating LECs receive compensation for the portion of transport each provides.

STCG also incorrectly claims that the FCC's definition of "local telecommunications" in 47 CFR Section 51.701(b)[4] "addresses only the context of a direct interconnection between two carriers" and "defines the wireless carrier's local calling scope as calls between a single LEC and a CMRS provider within the MTA." (STCG Initial Brief p. 6). First, there is absolutely nothing in the definition requiring or limiting its application to direct interconnections. Rather, by referencing "telecommunication traffic" in general, it is clear that the FCC intended it to apply to all telecommunications traffic between a LEC and a CMRS provider within the MTA. Second, this FCC definition has nothing to do with the setting of a wireless carrier's "local calling scope." Rather, it is the wireless carrier that sets its own customers' calling scope. Instead, this rule defines the scope of local telecommunications for purposes of intercompany compensation.

In addition, STCG claims that "as a practical matter" MMG's proposed tariffs are "not really any different" than Southwestern Bell's Wireless Interconnection Tariff asserting that each basically applies intrastate access rates. (STCG Initial Brief p. 6). And MMG claims that Southwestern Bell's wireless tariff does not comply with the FCC's rules because "SWB is charging the wireless carriers' SWB access rates for intraMTA calls." These claims, however, are inaccurate and misleading. First, MMG and STCG fail to explain that Southwestern Bell's

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[4] 47 CFR Section 51.701(b) defines "local telecommunications traffic" as:

> (1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service areas established by the state commission; or
>
> (2) Telecommunications traffic between a LEC and CMRS provider that, at the beginning of the call, originates and terminates between the same major trading area, as defined in Section 24.202(a) of this chapter.

Wireless Interconnection Tariff was filed and approved by the Commission long before the enactment of the Telecommunications Act of 1996. That tariff fully complied with the FCC's rules. Before Southwestern Bell filed that tariff, as required by FCC rules, it negotiated the rates in that tariff with wireless carriers. And second, since the passage of the Federal Telecommunications Act, Southwestern Bell has negotiated new interconnection arrangements with the vast majority of wireless carriers. Under those agreements, they are now paying much lower transport and termination rates pursuant to the Act.

STCG also claims that Southwestern Bell is "misleading" the Commission in stating that the standard industry practice is for the originating carrier to be responsible for compensating all other carriers for the use of their facilities in carrying and terminating its customers' calls, not the tandem company. (STCG Initial Brief p. 15; see also, MMG Initial Brief p. 2). But it is MMG and STCG that persist in misleading the Commission. The vast majority of traffic involving two terminating LECs is completed as Southwestern Bell has described; the originating carrier is responsible for paying applicable charges by the terminating LECs. At hearing MMG and STCG conceded that when an IXC brings a call to a LEC tandem for termination to another LEC subtending that tandem, the standard industry practice is for both the tandem LEC and the terminating LEC to bill the IXC on a meet point billing basis. The terminating LEC does not bill the tandem company. (MMG, Stowell Tr. pp. 119-121; STCG, Schoonmaker Tr. pp. 168-170).

MMG and STCG have gone to great lengths attempting to sow seeds of doubt concerning the application of the FCC's wireless interconnection rules. But the truth of the matter is that the FCC's rules leave no such doubt. The FCC's rules are clear and absolute. If MMG or STCG truly believed the rules were in doubt, they at any time could have taken their concerns to the

FCC. But they have not. Such failure is telling: it shows that MMG and STCG know the rules really are not ambiguous, and that the FCC would reject their views.

WHEREFORE, Southwestern Bell respectfully urges the Commission to reject MMG's proposed tariff.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on January 4, 2000.

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