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February 14, 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
FEB 15 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 Suggestions in Opposition to Applications for Rehearing.

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

Very truly yours,

Leo J. Bub/TM

Leo J. Bub

Enclosure

cc: Attorneys of Record

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Public Service Commission

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
SUGGESTIONS IN OPPOSITION TO APPLICATIONS FOR REHEARING

Southwestern Bell Telephone Company respectfully opposes the Applications for Rehearing filed on February 3, 2000 by Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., and Peace Valley Telephone Company (MMG) and the Small Telephone Company Group (STCG) on February 7, 2000.

1. The Applications filed by MMG and STCG are nothing more than attempts to reargue their positions they presented in this case. None of them present anything new to the Missouri Public Service Commission for consideration. They each had the opportunity to persuade the Commission of the merits of their position. But having failed to do so, they now attempt to have these same points reconsidered. Their attempt should be rejected by the Commission.

2. MMG claims that it filed the proposed tariffs pursuant to the Cole County Circuit Court's February 23, 1999 Order, that the Court's Order did not foreclose them from applying access charges to wireless traffic, and that their right to be compensated for such traffic was not limited to reciprocal compensation. (MMG Application, p. 2).

MMG's loose paraphrasing of the Court's Order is incorrect. Nowhere did the Court sanction MMG's application of access rates to intraMTA wireless traffic. Rather, citing

paragraph 1035 of the FCC's Interconnection Order[1] the Court concluded that it was only "traffic originating or terminating outside of the applicable local area [that] would be subject to interstate and intrastate access charges." (emphasis added). And, citing paragraph 1036 of the Interconnection Order, the Court concluded that the local area for intercompany compensation for CMRS traffic (i.e., wireless) was the MTA (Major Trading Area or MTA). Further, the Court reinforced this view in specifically finding that "the PSC did not foreclose Relators from applying their existing inter or intrastate access tariff as appropriate on interMTA wireless traffic."[2] Nowhere, however, did the Court sanction the application of access charges to intraMTA wireless traffic as MMG appears to claim.

3. MMG also claims that wireless carriers, through transiting arrangements with Southwestern Bell, delivered their customers' traffic to MMG members in violation of Commission orders and the terms of approved interconnection agreements. MMG claims that it was the intent of those orders and interconnection agreements for "wireless carriers to make arrangements for the termination and compensation for this traffic to applicants before delivering any such traffic" and that the wireless carriers fail to do so.[3] STCG claims that its members are also not being compensated and that the Commission's Report and Order in this case "continues this unreasonable situation."[4]

MMG and STCG, however, completely ignore the uncontested evidence presented in this case that the wireless carriers in fact attempted to make those types of arrangements with MMG. But rather than negotiating good faith as required by the Act and prior Commission Orders, the

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[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket 96-98 (released August 8, 1996 (the "Interconnection Order")).
[2] State of Missouri ex rel. Alma Telephone Company, et al. v. the Public Service Commission of Missouri, Sheila Lumpe, Diane M. Drainer, Connie Murray, and Harold Crumpton, Case No. CV198-178CC, et al., Findings of Fact, Conclusions of Law, and Judgment, issued February 23, 1999 at pp. 5-6.
[3] MMG Application, p. 2.
[4] STCG Application, p. 2.

evidence showed that MMG flatly refused. MMG and STCG cannot now claim that lack of terminating compensation arrangements with wireless carriers constitutes a violation of the Act or of those carriers' interconnection agreements when it was MMG itself that was the one responsible for frustrating the conclusion of such arrangements.

4. MMG claims that the only rate in effect for terminating wireless traffic is their switched access rates.[5] And STCG claims that the Commission failed to make sufficient findings of fact and Conclusions of Law on the inapplicability of MMG's access tariffs to intraMTA.[6] But MMG and STCG, however, completely ignore well settled federal law prohibiting LECs from imposing access charges on wireless traffic that originates and terminates within an MTA. Such traffic is subject to reciprocal compensation rates for transport and termination under Section 251(b)(5) of the Act and not access:

> . . . 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.[7]

The Commission correctly cited and interpreted the FCC's Interconnection Order. on this point.

Contrary to MMG's conclusory assertions, the Commission's Report and Order does not "continue to allow other carriers to confiscate the use of facilities of applicants without paying any compensation therefore."[8] Rather, it simply affirmed well settled federal law as to the appropriate intercompany compensation on intraMTA wireless traffic. MMG's claim that it only intends to apply its access rates to wireless traffic until a wireless carrier "requested, obtained, and had approved an interconnection agreement pursuant to 47 U.S.C. 252"[9] does not cure the

[5] MMG Application, p. 2.
[6] STCG Application, p. 1.
[7] Interconnection Order, para. 1036.
[8] MMG Application, p. 3.
[9] MMG Application, p. 3.

defect the Commission identified in MMG's tariff. It is simply unlawful even on an interim basis, to apply access rates to intraMTA wireless traffic.

5. MMG also claims that wireless carriers have "refused to directly interconnect" with them, "have not requested arbitration before the Commission of reciprocal compensation rates, as only they are authorized to do" and that they cannot compel wireless carriers "to enter into negotiations to develop such rates, and neither can this Commission."[10]

But as demonstrated in the case, MMG's entire justification for its "right" to impose its access rates on intraMTA wireless traffic rests on a foundation of false premises. First, MMG has no right to insist that wireless carriers "directly interconnect" with it. Section 251(a)(1) of the Act provides that "each telecommunications carriers has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" (emphasis added). And the FCC,[11] this Commission[12] and the Cole County Circuit Court[13] have all clearly held that wireless carriers, under federal law, have the right to interconnect with other telecommunications carriers like the members of MMG either "directly" or "indirectly".

Second, MMG and STCG's claims to be without a remedy (such as access to the Commission to arbitrate interconnection with the wireless carriers) is simply wrong. Evidence in

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[10] MMG Application, p. 2.

[11] Interconnection Order, paras. 985, 1012.

[12] 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, Report and Order, issued December 23, 1997 at p. 13.

[13] In its Findings of Fact, Conclusions of Law and Judgment, affirming the Commission's Report and Order in Case No. TT-97-524, the Cole County Circuit Court stated that:

> Neither SWBT nor Relators [MMG and STCG] can deny a wireless carrier the use of their respective networks to terminate wireless calls to the landline network. Section 251(a)(1) of the Telecommunications Act of 1996 (the "Act") imposes the duty on all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." This provision gives wireless carriers the right to directly connect with Southwestern Bell's network. It also give the wireless carriers the right to indirectly interconnect with Relators' networks through the direct interconnection the wireless carriers have established with Southwestern Bell.
>
> Cole County Order, pp. 4-5

this case showed that all of the wireless carriers that participated acknowledged MMG's right to seek arbitration. And in other jurisdictions, Southwestern Bell's affiliate Pacific Bell was the one that initiated arbitration with wireless carriers in California. Further, the undisputed evidence showed that the wireless carriers had contacted MMG for the purpose of negotiating appropriate arrangements for the termination of their wireless traffic. Thus, under the specific terms of the Act, MMG had the right to request either mediation or arbitration before this Commission. Section 252(a)(2), mediation, states:

> Any party negotiating an agreement under this section may, at any point in the negotiation, ask a state commission to participate in a negotiation and to mediate any differences arising in the course of the negotiation. (emphasis added).

And, under Section 252(b)(1), once a request for negotiation is made, either party to that negotiation may petition the Commission to arbitrate open issues once the window for requesting such arbitration has opened:

> Arbitration. -- During the period from the 35th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives their request for negotiation under this section, the carrier, or any other party to the negotiation may petition the state commission to arbitrate any open issues. (emphasis added).

MMG and STCG's complaints that "wireless carriers were receiving free termination and would have received free termination indefinitely into the future"[14] can only be laid at their own feet. Had MMG followed the requirements of the Act, they would have negotiated in good faith with the wireless carriers that sought such negotiations. They could have either voluntarily reached agreement or submitted the matter to the Commission for resolution. MMG and STCG have various remedies available both under state and federal law to secure appropriate

[14] MMG Application, p. 3; see also, STCG Application, p. 2.

compensation for terminating intraMTA wireless traffic. MMG and STCG, however, have simply failed to avail themselves of those remedies.

6. MMG asserts that "the essential error of the Commission's Report and Order" is its failure "to interpret and apply the law of interconnection agreements."[15] While it is unclear as to what MMG means by "the law of interconnection agreements," its discussion in this section of the Brief is simply off base. MMG incorrectly asserts that carriers, through their interconnection agreements, define the "local calling scope." To the contrary, it is up to each carrier to set the local calling scope for its own end-user customers. Wireline carriers do this through tariffs filed with and approved by the Commission. Wireless carriers do it through published rate schedules.

Interconnection agreements, on the other hand, set out the dealings between carriers. For intercompany compensation purposes, the FCC left it up to CLECs and incumbent LECs to define the areas within which they will exchange traffic on a local basis. But on the wireless side, the FCC, in no uncertain terms, clearly defined the MTA as the local service area for intercompany compensation purposes for CMRS traffic. It also prohibited the application of interstate and intrastate access charges on intraMTA wireless traffic. And contrary to what MMG appears to assert, the application of this prohibition is not limited to negotiated interconnection agreement. Rather, it applies to all intraMTA wireless traffic.

7. MMG and STCG again attempt to argue that reciprocal compensation is limited to the exchange of traffic between only two carriers and that since three carriers are involved when wireless carriers indirectly interconnect with them through Southwestern Bell, "access is the appropriate form of compensation."[16] MMG and STCG raise nothing new here either. They again use the same tortured logic in an attempt to avoid the FCC's clear prohibition against

[15] MMG Application, p. 4.
[16] MMG Application, pp. 4-9; STCG Application, pp. 3-5.

applying access charges to intraMTA wireless traffic. Not only did this Commission find this argument lacking in merit, so did the Cole County Circuit Court. In affirming the Commission's Report and Order in Case No. TT-97-524, the Court stated:

> Relators have also raised, in scatter shot fashion, a number of other issues in their Petitions for Write of Review. They claim the PSC's Report and Order is unlawful and/or unreasonable because (a) when three carriers collaborate to complete a call, reciprocal compensation does not apply . . . the Court finds that none of these other claims have merit and that the Report and Order, as interpreted by the Court, is neither unlawful nor unreasonable.[17]

8. MMG and STCG also claim that their view on the applicability of its access rates is validated by newly alleged "facts" that some wireless carriers have paid access charges to terminate their cellular traffic.[18] Under Section 252(a)(1) requesting telecommunications carriers may negotiate and enter into binding agreements with incumbent LECs without regard to the standard set forth in subsections paragraph b and c of Section 251 (containing, inter alia, the duty to establish reciprocal compensation arrangements). Apparently, that is what MMG claims Ameritech and US Cellular have recently done,[19] although there is no evidence of these facts in the record in this case.

MMG also claims that its view on the applicability of its access rates is validated by the fact that some wireless carriers contract with interexchange carriers to terminate their cellular traffic and that those IXCs pay MMG access charges.[20] This fact proves nothing. There was no evidence presented as to what the wireless carriers actually paid IXCs to perform this function. And the fact that IXCs paid MMG access rates to terminate these calls is irrelevant. Wireless carriers are free to voluntarily to contract with IXCs or any other carrier for the termination of

[17] Cole County Order, p. 9.
[18] MMG Brief, p. 6; STCG Application, p. 5.
[19] MMG Application, p. 9.
[20] MMG Brief, p. 6.

traffic and, may voluntarily pay access rates to terminate its calls. But it does not detract in any way from the absolute prohibition in federal law against a LEC attempting to force a wireless carrier to pay access charges to terminate its intraMTA wireless traffic.

CONCLUSION

MMG and STCG have raised nothing new warranting rehearing here. Rather, the arguments they raise further demonstrate deliberate efforts to frustrate federal law and prior Commission Orders that contemplate the negotiation of terminating compensation arrangements for wireless traffic. Undisputed evidence in the case showed that as the Commission intended, wireless carriers continue to contact MMG members seeking to negotiate appropriate terminating compensation arrangements for the traffic. But rather than negotiating in good faith as required by the Act and prior Commission Orders, MMG simply refused. MMG and STCG's motives in this case are obvious: their members would rather collect their full access rates on all wireless traffic instead of much lower cost-based rates as presubscribed by the Act for intraMTA wireless traffic. Their goal here is to have the Commission impose unlawful rates they knew they would never obtain through negotiation. The Commission correctly recognized this gamesmanship and rejected MMG's inappropriate attempts to collect access charges on intraMTA wireless traffic. Given the continued intransigence in this case, the Commission should provide guidance to the industry to make clear once and for all that:

(1) access charges do not apply to calls placed by a wireless carrier's customer that originate and terminate within an MTA, regardless of whether the originating wireless carrier and terminating LEC are directly or indirectly connected;

(2) compensation for the termination of intraMTA wireless calls must be set out in an appropriate wireless interconnection tariff approved by the Commission or negotiated between the originating wireless carrier and the terminating LEC as provided in Section 252(a)(1) of the Act; and

(3) if such a terminating compensation arrangement cannot be reached, it should be brought to the Commission for arbitration pursuant to Section 252(b)(1) of the Act.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY Leo J. Bub/TM

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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 February 14, 2000.

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