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December 10, 1999

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 (14) copies of the Initial Brief of the Small Telephone Company Group.

Please see that this filing is brought to the attention of the appropriate Commission personnel. Copies of the attached are also being provided to all parties of record. I thank you in advance for your cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

BTM/da
Enclosure
cc: Parties of Record

FILED

DEC 1 0 1999

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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.

INITIAL BRIEF OF THE SMALL TELEPHONE COMPANY GROUP

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69

TABLE OF CONTENTS

I. INTRODUCTION

Currently, the member companies of the STCG[1] receive no compensation for traffic that is terminated to their exchanges by competitive local exchange companies and wireless carriers. The tariffs at issue in this case address this problem by clarifying that access rates should apply to the traffic until and unless an interconnection agreement is reached between the ILEC and a CLEC or wireless carrier. These tariffs, with a slight modification to address the Metropolitan Calling Area plan, are lawful. In addition, compelling policy reasons support the approval of the tariffs. For these reasons, the STCG supports the tariff filings and urges the Commission to approve them.

II. BACKGROUND

From 1990 until February 4, 1998, Southwestern Bell Telephone Company ("SWBT") terminated wireless traffic to the small independent local exchange companies ("small companies") pursuant to SWBT's wireless interconnection tariff. However, SWBT refused to pay the other incumbent LECs for the wireless traffic that was terminated to them under their access tariffs. United Telephone Company of Missouri (now Sprint Missouri, Inc.) and two small companies objected, and the Missouri Public Service Commission ("Commission") eventually

[1] The STCG is a group of small rural telephone companies comprised of BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Mo., Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Mark Twain Rural Telephone Company, Miller Telephone Company, New Florence Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, and Steelville Telephone Exchange, Inc. for the purposes of this case.

determined that the ILECs' access tariffs did apply to this traffic during this time period. Accordingly, the Commission found that SWBT was responsible for the payment of terminating access for these calls.[2]

Subsequently, SWBT modified its tariff to provide only a "transiting" function for this traffic. In Case No. TT-97-524, the Commission approved SWBT's transiting structure for wireless traffic.[3] Under this transiting structure, either embodied in its tariffs or pursuant to interconnection agreements, SWBT has been delivering traffic originated by commercial mobile radio services ("CMRS" or "wireless") carriers and competitive local exchange companies ("CLECs") to the MMG and STCG companies for termination. However, the MMG and STCG companies are not being compensated for the CLEC and wireless traffic that is being transited and terminated to them.

In March of 1999, Alma Telephone Company, Chariton Valley Telephone Corp., Choctaw Telephone Company, Mid-Missouri Telephone Co., MoKan Dial, Inc., and Peace Valley Telephone Co., Inc. filed tariffs designed to address this situation. The tariff language stated:

> The provisions of this tariff apply to all traffic regardless of type or origin, transmitted to or from the facilities of the Telephone Company, by any other carrier, directly or indirectly, until and unless superseded by an agreement approved pursuant to the provisions of 47 U.S.C. 252, as may be amended.

Staff and others filed applications to intervene and motions to suspend these tariffs, and on April

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[2] Case No. TC-96-112, *Report and Order*, issued April 11, 1997 (United's Complaint against SWBT) and Cases No. TC-98-251 and TC-98-340, *Report and Order*, issued June 10, 1999 (Chariton Valley Telephone Corporation and Mid-Missouri Telephone Company's Complaints against SWBT)

[3] *Report and Order*, issued Dec. 23, 1997.

8, 1999, the Commission issued its *Orders* suspending the tariffs and inviting proper parties to intervene.

The STCG applied to intervene on April 28, 1999, and the STCG has participated fully in this case. On October 4, 1999 the STCG submitted the Surrebuttal Testimony of its witness Robert C. Schoonmaker in support of the tariffs and suggested that the following clause be added to the last sentence of the tariffs:

> " . . . , other agreements between the parties for different interconnection and/or compensation terms, or specific orders of the Missouri Public Service Commission that establish different interconnection and compensation terms."[4]

This modification was proposed to clarify that the tariffs would not apply to existing or future calling plans ordered by the Commission such as the Metropolitan Calling Area ("MCA") plan.

III. ARGUMENT

The tariffs at issue in this case are lawful, and a number of compelling public policy rationales support the approval of these tariffs. Therefore, the tariffs should be approved, along with the minor modification proposed by the STCG.

A. The Tariffs Are Lawful

The tariffs comply with federal law, and they also clarify the small companies' rights under their existing arrangements.

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[4] Schoonmaker Surrebuttal, Ex. 3, p. 4.

1. Federal Law

The tariffs comply with the Federal Act, the Federal Communication Commission's ("FCC") Rules, and the FCC's Interconnection Order.

a. The Act

Section 251(a) of the Telecommunications Act of 1996 ("the Act") requires carriers to allow both direct and indirect interconnection to their networks, but the Act also makes it quite clear that interconnections should occur pursuant to interconnection agreements between the involved carriers. Nowhere does the Act allow direct or indirect interconnection without such interconnection contracts. SWBT adheres to this requirement quite strictly, and SWBT will not directly interconnect its network with another carrier until a properly executed interconnection agreement has been reached. Missouri's small companies should have the same rights under the Act.

Section 251(b)(5) of the Act requires all local exchange carriers to establish "reciprocal compensation arrangements for the transport and termination of telecommunications." However, it is unclear how the reciprocal compensation requirement can possibly apply in this situation, since reciprocal compensation presumes that there is a two-way exchange of traffic. If, as in this case, one party is terminating traffic to a second party, but the second party does not terminate any traffic to the first party, then there can be no "reciprocal" arrangement since the exchange of traffic is not reciprocal. Currently, there is no traffic originating in the exchanges of the small companies and terminating to the wireless companies that is subject to reciprocal compensation because this traffic carried by an interexchange carrier ("IXC").[5] Thus, Section 251(b)(5) cannot apply in this situation.

b. The FCC's Rules

The Act applies the reciprocal compensation requirement to the "transport and termination" of telecommunications, but the FCC's relevant rule only defines the term "transport" in the context of a direct interconnection between two carriers:

> *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 carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than the incumbent LEC.

47 C.F.R. §51.701(c)(emphasis added) Under the FCC's definition, "transport" takes place between ***two carriers*** and begins at "***the interconnection point between the two carriers***." However, under the present indirect interconnection, or "transiting," structure, more than two carriers are involved, and the first and third carriers have no point of interconnection between them from which the "transport" can be measured. Therefore, there is no "transport" under the FCC's definition presently taking place.

Staff's analysis,[6] among others, has failed to take into account this definition of "transport" and thus erroneously concludes that access rates cannot apply to traffic originated by a wireless carrier, transited by a LEC, and terminated by a third LEC. Regardless of whether this

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[5] See Tr. 238-243.

[6] *See* Clark Rebuttal, Ex. 5, pp. 4-6.

is a "local" call or not, since it does not fit the definition of "transport and termination," it cannot fit under the reciprocal compensation clause.[7] Therefore, access rates must apply.

As with the definition of "transport," the FCC's definition of "local telecommunications" traffic addresses only the context of a direct interconnection between two carriers. The FCC 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 area 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 within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

47 CFR 51.701(b). This defines the wireless carrier's local calling scope as calls between a single LEC and a CMRS provider within the MTA. However, this definition does not address calls between a CMRS provider and an IXC, nor does it define calls between a CMRS provider and multiple LECs or calls from a CMRS provider that are "transited" through a LEC or some other carrier to another LEC. The FCC's rules leave real doubt regarding the appropriate definition of traffic and the proper approach for intercompany compenstion under these circumstances.

Finally, as a practical matter, the Commission should note that the MMG's proposed tariffs are not really any different than SWBT's interconnection tariff, which basically **applies the same rates as intrastate access to calls outside of the telephone company's local area, *not* the MTA.**[8]

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[7] Schoonmaker Surrebuttal, Ex. 3, p. 15.

[8] *See* Ex. 16 (SWBT's Access Services Tariff); Tr. 377-83; *see also* Tr. 314-15.

c. *The FCC's Interconnection Order*

The provisions of the Act must be read in conjunction with the Federal Communications Commission's orders which implement the Act. The FCC's August 8, 1996 Interconnection Order, which established the rules for interconnection, specifically recognized that access charges were developed for the situation where, as in the present case, three carriers collaborate to complete a call:

> **Access charges were developed to address a situation in which three carriers** – typically, the originating LEC, the IXC, and the terminating LEC – **collaborate to complete a long-distance call.** As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. **By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call.** In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.

First Report and Order in CC Docket No. 96-325, ¶ 1034. (emphasis added) Here, the FCC's explanation supports the view that the use of access charges, as opposed to reciprocal compensation, is appropriate in situations involving three carriers. In fact, AT&T Wireless' ("AWS") witness acknowledged during the hearing that when AWS delivers traffic to a small LEC via an IXC, the IXC is paying access.[9]

It is not unusual for traffic to be exchanged as something other than reciprocal compensation. In fact, this will become the norm now that the PTC plan has been terminated. "Transport and termination" of traffic and the reciprocal compensation agreement section of the

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[9] Tr. 245 ("I think today in those cases where we would contract with intermediate carrier to deliver that traffic and the intermediate carrier delivers that traffic at the other end . . . the intermediary carrier pays the local carrier, unless we have an arrangement with that local carrier at the other end.")

Act refers to traffic that is not governed by access tariffs. With the termination of the PTC plan, the STCG and MMG members will not be providing any intraLATA toll calling using the LEC to LEC network. In all cases this traffic will be carried by an interexchange carrier. The business relationships related to these arrangements will require the interexchange carrier to be responsible for arranging the termination of the call and paying for that termination. Because the small companies themselves will be generating virtually no traffic to wireless carriers, CLECs, or other ILECs, the traffic will be in only one direction, from the CLECs and wireless carriers to the small companies.[10]

2. *Contract Law*

The MMG's tariff provisions clarify that access tariffs will be used to bill all companies who are using the network connections established via the joint provision of access services. The ILEC access tariffs are the primary contractual documents that establish the terms and conditions for network connections between all of the ILECs in Missouri at this time, and these tariffs provide for the joint provisioning of exchange access to other carriers.[11] At present, ***access is the only contractual arrangement in effect between the STCG member companies and the carriers with whom the STCG companies directly connect***, such as SWBT or AT&T. When SWBT delivers the traffic, it is the joint provision of access. When AT&T and other

[10] Schoonmaker Surrebuttal, Ex. 3, p. 11; *see also* Tr. 238-243.

[11] In certain circumstances, a few other limited contracts such as: (1) Extended Area Service contracts between certain LECs that provide for exchange of local traffic certain exchanges, and (2) the wireless interconnection agreements entered into by a few LECs with wireless carriers.

interexchange carriers deliver the traffic, it is the intrastate access tariff (or exchange access). Accordingly, access tariffs should apply when a wireless carrier sends traffic to a third party, whether a LEC or an IXC, who in turn sends it to an STCG member company for termination, and it is appropriate to make clear to various carriers that charges should be rendered under the access tariffs until and unless the tariffs are superceded by an interconnection agreement.[12]

Although SWBT now has the right to provide only a "transiting" function for traffic terminating to the small companies from CLECs and wireless providers,[13] SWBT's contracts and tariffs only involve the business relationships between SWBT and the carriers with whom SWBT directly interconnects and to whom SWBT offers services. SWBT's contracts specifically indicate that they are between the two parties only and only bind those two parties. Nothing in those contracts or the SWBT wireless tariffs establishes the terms, conditions, or prices upon which the terminating LEC will interconnect with either SWBT or indirectly with other carriers.

Just because SWBT offered a contract to provide transiting service does not mean that the STCG and MMG companies have offered or entered into a contract to interconnect with SWBT in this manner or to terminate that traffic either for SWBT or the carriers who contract with SWBT. There are no other legal agreements providing for the interconnection of the ILECs' networks now that the PTC plan has been terminated, so the only lawful use of the network connections between SWBT (and the other former PTCs) and the STCG and MMG members is the use of those interconnections for exchange access traffic. SWBT should not be transiting traffic to the LECs under any other basis than the joint billing of access traffic. Now

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[12] Schoonmaker Surrebuttal, Ex. 3, pp. 7-8.

[13] *See* Case No. TT-97-524, *Report and Order*, issued Dec. 23, 1997.

that the PTC contracts have been canceled, the access tariffs are the only authorization SWBT has to terminate traffic to the networks of the STCG. The STCG has the same right as SWBT not to incur interconnection, either direct or indirect, until appropriate contracts have been established both between the LEC and SWBT with whom the direct interconnection is made and between the LEC and the wireless carriers or CLECs who may want indirect connections.

Those carriers desiring indirect interconnection believe that CLEC and wireless traffic should be delivered on some terms other than access; however, no such terms have been developed, no such contracts have been entered into, and no such interconnections, either direct or indirect, have been authorized. Therefore, because no interconnection has legally been effected, the CLEC and wireless traffic should not be being delivered. Just as SWBT may require carriers to enter into contracts with SWBT before interconnection takes place, the STCG companies have the right to complete contracts with all appropriate parties before interconnection commences. Until interconnection is completed, no CLEC or wireless traffic should delivered to the STCG companies.[14]

B. The Tariffs Should Be Approved

Public policy clearly supports the approval of the MMG's tariffs. Unless these tariffs are approved, the CLECs and wireless carriers will have no incentive to enter into negotiations with the STCG and MMG companies. Instead, they will continue to terminate traffic to the STCG and MMG companies without paying for it.

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[14] Schoonmaker Surrebuttal, Ex. 3, p. 8.

1. Incentives and Public Policy

Approval of the MMG's tariffs will give the CLECs and wireless carriers the incentive to enter into interconnection negotiations with the small companies.[15] Currently, traffic from CLECs and wireless carriers is being terminated to the STCG and MMG companies, but the CLECs and wireless carriers are not paying anything for this termination. Thus, there is very little incentive for them to pursue interconnection contracts at this time. In fact, because it is likely that they will have to pay something in the future, the incentive is for the CLECs and wireless carriers to avoid or delay negotiations. This situation is further exacerbated by the fact that the CLECs and CMRS providers are presently under no duty to negotiate interconnection agreements with the small companies.

2. CLECs and CMRS Providers Do Not Have an Obligation to Negotiate or Arbitrate

Only the ILECs have a statutory "duty to negotiate" with a requesting carrier under Section 251(c)(1) of the Act.[16] AT&T argues that the reciprocal compensation clause, which requires all LECs to establish such arrangements, allows ILECs to request CLECs to enter into

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[15] Although two or three of the wireless carriers have initiated discussions with the STCG and MMG companies, these negotiations have generally broken down over disagreements regarding the parties' interpretations of the various terms of the Act and the FCC's rules. (Schoonmaker Surrebuttal, Ex. 3, p. 12) None of the wireless carriers have pursued arbitration of these issues at the Missouri Public Service Commission, and the ILECs are precluded from doing so. At the hearing, the witness for AT&T Wireless testified that wireless carriers probably do not have any obligation to negotiate or arbitrate. (Tr. 259-260)

[16] Section 251(c) outlines the "*Additional* Obligations of Incumbent Local Exchange Carriers," which include the duty to negotiate in good faith and in accordance with section 252 of the Act. (emphasis added)

such arrangements,[17] yet CLECs clearly do not have the same statutory requirement to negotiate as do ILECs.[18] There is no other provision in the Act to require CLECs or wireless carriers to enter into interconnection negotiations,[19] and as discussed previously, it is also questionable how a reciprocal compensation arrangement can actually apply in this situation where the small companies do not generate traffic to the CLECs or wireless carriers.[20]

Negotiation is also complicated by the uncertain nature of indirect interconnections. For example, while Section 251(a) requires both direct and indirect interconnection, Section 251(c)(2)(B) states that interconnection with a local exchange carrier's network must be "at any technically feasible point ***within*** the carrier's network."[21] Since any connection ***within*** a carrier's network must, of necessity, be a direct connection, rather than an indirect one, it appears that this section of the Act clearly deals with direct connections, not indirect ones. In addition, it appears that the FCC's definition of "transport" does not contemplate indirect interconnections.[22] However, the wireless carriers apparently believe that this definition of transport does contemplate indirect interconnection and that it is not appropriate to charge access charges for such indirect interconnections within an MTA.

Finally, some of the wireless carriers argue that it is "impractical" for them to negotiate

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[17] Section 251(b)(5)

[18] Tr. 259-260.

[19] Schoonmaker Surrebuttal, Ex. 3, p. 13.

[20] *See* Tr. 238-243.

[21] emphasis added

[22] Schoonmaker Surrebuttal, Ex. 3, pp. 14-15.

and/or arbitrate interconnection agreements with all of the MMG and STCG companies. For example, AWS complains that it "cannot justify devotion of substantial resources to this issue."[23] Thus, the significant administrative costs related to the indirect interconnection of multiple small LECs under SWBT's "transiting" business arrangement is a further impediment to entering into and successfully concluding negotiations.[24]

3. Bill and Keep is an Inappropriate and Unfair Compensation Arrangement in this Situation

AWS recommends the use of bill and keep compensation arrangements for the termination of wireless calls.[25] There are two obvious problems with this position. First, AWS assumes the amount of traffic that the MMG and STCG companies deliver to AT&T wireless is roughly equal to the amount of traffic that AT&T wireless delivers to the MMG and STCG companies. AWS's assumption is erroneous because the MMG and STCG companies deliver virtually no traffic to AT&T wireless. Second, AWS suggests that bill and keep should be used because the volumes are "de minimus" and essentially not worth the trouble.[26] Although volumes of 5,000 minutes per month may not be of little importance to a nationally based company such as AWS, they are very important and significant to the MMG and STCG companies.[27]

AWS's position also begs the question: if the traffic volumes are so small as to be

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[23] Maas Rebuttal, Ex. 7, p. 5.

[24] Schoonmaker Surrebuttal, Ex. 3, p. 12; Stowell Surrebuttal, Ex. 2, p. 9.

[25] Maas Rebuttal, Ex. 7, pp. 4-5; Surrebuttal, Ex. 8, p. 3.

[26] Maas Rebuttal, Ex. 7, p. 3.

[27] Schoonmaker Surrebuttal, Ex. 3, p. 16.

considered "de minimus" by AWS, then why is AWS objecting so strenuously to paying for this traffic? One reason may be that this traffic is growing, and it is likely to become much more "significant" in the future. With this in mind, it should also be noted that AWS's argument contradicts good regulatory policy. If carriers or customers are to pay for their fair share, then the regulators have an obligation to see that it happens, regardless of whether this involves $10 or $1,000 a month.

4. Standard Records

AT&T argues that CLEC traffic cannot be billed because there is "no industry consensus on the type of traffic records to exchange," and AT&T suggests that billing should not be commenced until such standards are developed.[28] AT&T's argument should be rejected. In the PTC case, the Commission established Category 11 records as the standard to be exchanged beginning on April 1, 2000,[29] and industry discussions have led to a general agreement for the PTCs to provide paper records until that time. CLECs have the same responsibility as the former PTCs to provide appropriate records. Even if records are not exchanged, much, perhaps most, of CLEC terminating intraLATA traffic could be identified by the originating number in the SS7 record that is delivered to the terminating company.[30] Therefore, ILECs should be able to bill CLECs for terminating traffic immediately in those cases where appropriate tariffs apply.

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[28] Kohly Rebuttal, Ex. 6, pp. 4-5.

[29] Case No. TO-99-254, *Report and Order*, issued June 10, 1999, p. 14 ("11-01 records are an industry standard, and all of the SCs currently use them.")

[30] Schoonmaker Surrebuttal, Ex. 3, p. 17.

5. Standard Practice

SWBT states that the Commission has reaffirmed the "standard industry practice under which the originating carrier is responsible for compensating all other carriers for the use of their facilities in carrying and terminating its customers' calls, not the tandem company."[31]

SWBT's statement is misleading for a number of reasons. First of all, in a competitive environment the standard industry practice is that the carrier terminating a call to the LEC network is responsible for payment of compensation, not the party who originated the call. In many cases, different IXCs may pay LECs for the origination and termination of an individual call because of the standard industry business practices used in that environment, but SWBT apparently does not want to acknowledge these business practices. Second, SWBT's "standard practice" has been forced upon other parts of the industry by SWBT's commanding position as Missouri's primary tandem operator, but these practices are not necessarily agreed to by other parts of the industry as appropriate or "standard." Third, SWBT's position has only been "standard" since February of 1998, and only with respect to wireless traffic. Prior to that, SWBT's "standard," as expressed in its tariff, was to provide for termination throughout the LATA including the use of other LEC facilities. Fourth, and finally, the Commission has established Case No. TO-99-593 to explore issues related to the operation of the LEC to LEC network and the development of billing information. Therefore, it is likely that current business arrangements will be further modified as a result of this proceeding.[32]

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[31] Hollingsworth Rebuttal, Ex. 11, p. 10.

[32] Schoonmaker Surrebuttal, Ex. 3, p. 19.

IV. CONCLUSION

The tariffs at issue in this case are lawful, and they are supported by compelling public policy. Therefore, the Commission should approve the tariffs with the minor modification proposed by the STCG.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 10th day of December, 1999, to:

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