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April 9, 2003

Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

FILED³

APR 09 2003

Re: Case No. TX-2003-0301

**Missouri Public
Service Commission**

Dear Mr. Roberts:

Enclosed for filing, please find an original and eight (8) copies of the Small Telephone Company Group's Reply to SBC Missouri and Staff.

Please see that this filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this matter, please direct them to me at the above number. Otherwise, I thank you in advance for your attention to and cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

WRE/da
Enclosure
cc: Parties of Record

FILED³

APR 09 2003

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of a Proposed Rule to Require All)
Missouri Telecommunications Companies to)
Implement an Enhanced Record Exchange Process)
to Identify the Origin of IntraLATA Calls Terminated)
by Local Exchange Carriers.)

Case No. TX-2003-0301

**THE SMALL TELEPHONE COMPANY GROUP'S REPLY
TO SBC MISSOURI AND STAFF**

COMES NOW the Missouri Small Telephone Company Group (STCG) and for its Reply to Staff and SBC Missouri, states to the Missouri Public Service Commission ("Commission") as follows:

I. SUMMARY

1. **Response to Staff.** Staff's proposed rule involves a number complex and disputed issues. Therefore, the Commission's procedure in this case should include an opportunity for the parties to be involved in the rulemaking process to a greater extent than what is minimally required by the Commission's rules. In fact, depending upon the Commission's statutory authority for these rules, a contested case may be required.

2. **Response to SBC.** SBC misrepresents the small companies' position and the status of Case No. TO-99-593. The small companies are not trying to re-introduce the business relationship proposal at this time, and the Commission never adopted an originating carrier responsibility plan in Case No. TO-99-593. Rather, the Commission ordered Staff to proceed with an enhanced records rule as a first step, but it specifically stated that it would consider the STCG's proposal if "it becomes clear that there is no cost-effective way to identify and bill the party responsible for uncompensated traffic."

II. DISCUSSION

A. RESPONSE TO STAFF

3. **Hearing and Procedure.** The STCG agrees with SBC that there should be hearings in this rulemaking proceeding. This is essential because the ability of the STCG member companies to receive compensation for the facilities and services that they provide will be impacted by Staff's proposed rule. Although the parties to this case have made good faith efforts and participated in several industry workshops, the parties still have significant differences. The Commission should be fully informed regarding the impact and precedent that Staff's proposed rule would establish.

4. Staff argues at length about the Commission's general rulemaking procedures, but the Commission's underlying authority to adopt rules is dependent upon its statutory authority over the telecommunications companies operating in Missouri. Staff has not identified its specific statutory authority for an "Enhanced Records Rule." If the Commission's authorizing statute requires the Commission to adopt rules "after hearing" or "based upon the evidence", then a contested case proceeding is required, not optional.

5. Moreover, the STCG notes that, as a practical matter, the Commission has always held contested cases when it has dealt with issues of common industry concern such as intercompany billing and compensation. For example, this case arose from Case No. TO-99-593, a contested case which was created to examine the issues of "signaling protocols, call records, trunking arrangements, and traffic measurement." Case No. TO-99-593, in turn, arose from the contested case that terminated the

Primary Toll Carrier (PTC) Plan.¹ These contested cases examined issues of concern to the telecommunications industry in Missouri. Likewise, the cases that established the PTC Plan² and implemented expanded calling plans in Missouri such as the Community Optional Service (COS) Plan³ and the Metropolitan Calling Area (MCA) Plan⁴ involved contested case proceedings. The Commission is presently considering issues related to the Missouri Universal Service Fund (MoUSF) in a contested case.⁵ The issues in this rulemaking case are no less significant, so the Commission should employ similar procedures.

6. Even SBC recognizes that something more than a quasi-legislative procedure is appropriate in this case. SBC's *Opposition* states, "SBC would recommend a contested case type proceeding, so that the Commission has a full understanding of the issues prior to determining whether to adopt a rule."

¹ *In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity*, Case No. TO-99-254, *Report and Order*, issued June 10, 1999.

² *WATS Resale Applications, IntraLATA Competition, and InterLATA Access Charge/IntraLATA Toll Pool*, Case Nos. TO-84-222, TO-84-223, TC-85-126, and TO-85-130, 28 Mo. P.S.C. (N.S.) 535 (1986).

³ *In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges*, Case No. TO-92-306, *Report and Order*, Dec. 23, 1992.

⁴ *Id.*

⁵ *In the Matter of an Investigation into Various Issues Related to the Missouri Universal Service Fund*, Case No. TO-98-329.

7. Finally, it has been over two years since the Commission's hearing in Case No. TO-99-593, so the Commission will benefit from a proceeding which affords the parties more opportunity to be heard than the limited comment and hearing procedures envisioned by the Commission's rules and the Staff's response.

B. RESPONSE TO SBC MISSOURI

8. **SBC continues to mischaracterize the position of the STCG and the language in the Commission's prior orders.** First, without any benefit of citation, SBC accuses the MITG (and by implication the STCG) of trying to "relitigate" the business relationship issue. This is not the case. The STCG has heeded the Commission's *Order Denying Motion*,⁶ and the STCG has focused its efforts on developing a rule that, to the maximum extent possible, implements OBF 2056.

9. As the Commission will recall, SBC was part of the effort by GTE/Verizon Midwest to convince this Commission that implementing OBF 2056 would solve the problem of unidentified and uncompensated traffic. After having done so, however, SBC took the position that OBF 2056 does not apply to intrastate, intraLATA Feature Group C (FGC) traffic – the very traffic at issue in Case No. TO-99-593. Now that it is abundantly clear that the advocates of OBF 2056 have misled the Commission, SBC seeks again to confuse the issue by characterizing the MITG's request for procedural due process as an attempt to resurrect the business relationship issue.

⁶ *In the Matter of the Investigation into Signaling Protocols, Call Records, Trunking Arrangements, and Traffic Measurement*, Case No. TO-99-593, *Order Denying Motion*, issued Jan. 28, 2003.

10. The STCG and the MITG have worked with Staff and others to develop proposed rule language that, to the maximum extent possible, implements the Commission's intent (and applies OBF 2056 to intraLATA FGC traffic). However, the proposals differ from Staff's proposed rule. All that the STCG seeks now is the opportunity to fully and fairly debate the various rule provisions which will be proposed by Staff, the STCG, and others.⁷

11. As a final matter, the STCG will respond to SBC's continued mischaracterizations about the current status of intrastate intraLATA FGC traffic.

12. For example, SBC claims that "the Commission repeatedly determined that the originating carrier should be responsible for compensating all downstream carriers for the use of their facilities in transiting and terminating its customer's call." But this is not entirely true. First, SBC offers no citation to these "repeated" determinations because the Commission has made no such determinations. Second, as illustrated by the quote below, the Commission left the door open to the STCG's proposal, but it preferred to try an enhanced records rule as the first step:

The STCG/MITG proposal is an attempt to assign responsibility and it is still a "drastic step." **The Commission will not take this drastic step until it becomes clear that there is no cost-effective way to identify and bill the party responsible for uncompensated traffic.**⁸

⁷ While the STCG is actively participating in this case to develop a rule, the STCG is not waiving its right to return to the Commission if the enhanced records rule does not work.

⁸ *In the Matter of the Investigation into Signaling Protocols, Call Records, Trunking Arrangements, and Traffic Measurement*, Case No. TO-99-593, *Order Denying Motion*, issued Jan. 28, 2003.

Thus, although the Commission's Orders in Case No. TO-99-593 indicate that the rulemaking should be the first step to resolve the issue of uncompensated and unidentified traffic, the Commission has not completely ruled out the STCG's proposal. Rather, the Commission stated that it was too drastic a measure to take as a first step. SBC's arguments that there are no issues left in Case No. TO-99-593 are unfounded.

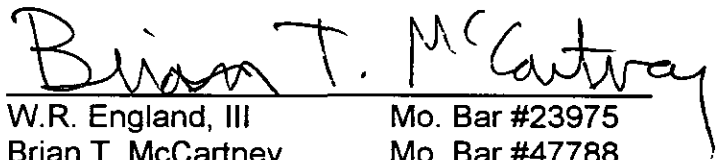
13. SBC also misrepresents its history of record exchange. Without any citation to the record, SBC's *Opposition* argues that the existing records exchange process has been used for years "without incident."⁹ This claim completely contradicts the evidence and SBC's own admissions in Case No. TO-99-593. For example, the Network Test in Case No. TO-99-593 revealed that SBC was not recording its Local Plus traffic in a number of its switches and exchanges around the state. SBC's unrecorded Local Plus traffic amounted to several hundred thousand dollars of access revenue to various small companies throughout the state. SBC's Local Plus recording problem illustrates the serious shortcomings of the former PTCs' originating records system. It is also a lesson in the serious impacts SBC's recording errors can have on small companies.

III. CONCLUSION

WHEREFORE, the STCG respectfully requests that the Commission establish a procedure in this case which provides for prefiled testimony, hearing, and legal briefing on the issues.

⁹ SBC's *Opposition*, p. 2.

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 9th day of April, 2003 to:

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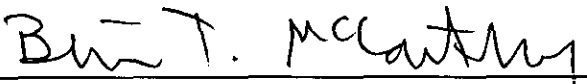
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