

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 28th day
of July, 2005.

In the Matter of a Proposed Rule to Require All Missouri)
Telecommunications Companies to Implement an)
Enhanced Record Exchange Process to Identify the) **Case No. TX-2003-0301**
Origin of IntraLATA Calls Terminated by Local Exchange)
Carriers.)

**ORDER DENYING APPLICATION FOR REHEARING
AND GRANTING A TEMPORARY WAIVER**

Issue Date: July 28, 2005

Effective Date: July 30, 2005

BACKGROUND:

In May 2005, the Commission submitted to the Missouri Secretary of State's Office final orders of rulemaking regarding the Enhanced Record Exchange Rules. The Enhanced Record Exchange Rules, encompassing 4 CSR 240-29.010 through 4 CSR 240-29.160, were published in the June 15, 2005 *Missouri Register*¹ and in the June 30, 2005 *Code of State Regulations*. The rules become effective on July 30, 2005.

On July 14, 2005, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, filed an Application for Rehearing, and Alternative Request for Temporary Variance or Waiver. SBC Missouri requests that the Commission grant rehearing of its Orders of Rulemaking and, on rehearing, issue an order:

¹ *Missouri Register* Vol. 30, No. 12, issued June 15, 2005, at pp. 1373-1401.

- 1) reversing its conclusion in regards to 4 CSR 240-29.040(4) that originating Calling Party Number (CPN) be included in the Category 11-01-XX billing records for wireless-originated calls;
- 2) removing the restrictions in 4 CSR 240-29.010 and 4 CSR 240-29.030(2) that prohibit the use of the LEC-to-LEC network to transit interLATA (interstate and intrastate) traffic without an interexchange carrier (IXC) point of presence; and
- 3) limiting the application of 4 CSR 240-29.050's authorization to require separate trunk groups for IXC traffic only to carriers performing the official recording and records creation function on that traffic.

In the event the Commission denies the request for rehearing on 4 CSR 240-29.040(4), SBC Missouri requests that the Commission grant a temporary variance or waiver of its requirement that local exchange companies (LECs) include originating Calling Party Number (CPN) in Category 11-01-XX billing records for wireless-originated calls to give the company sufficient time to make the necessary changes to its record creation and billing systems to comply with the requirement when technically feasible.

On July 19, 2005, SBC Missouri filed its Motion for Expedited Treatment, noting that the Enhanced Records Exchange Rules will become effective on July 30, 2005. SBC Missouri requests that the Commission grant a temporary variance from the Commission's requirement to include CPN in the Category 11-01-XX billing records for wireless-originated calls before July 30, 2005.

The Commission's Staff filed its response to SBC Missouri's application for rehearing and request for waiver on July 25, 2005. Staff recommends that the Commission deny the motion for rehearing and deny the motion for expedited treatment. Staff, however, states that it does not oppose SBC Missouri's alternative request for a waiver or variance.

Also on July 25, 2005, the Small Telephone Company Group (STCG) filed its pleading opposing SBC Missouri's application for rehearing and request for waiver. The

STCG notes that SBC Missouri offers “no adequate evidence or explanation that satisfies the good cause requirement” for an additional one-year delay. STCG does not, however, oppose a brief variance of 30 to 60 days to allow SBC Missouri to finalize its processes and systems for capturing and passing wireless calling party number information. On the same date, the Missouri Independent Telephone Company Group (MITG) filed a pleading opposing SBC Missouri’s application. SBC Missouri responded to Staff, STCG, and MITG on July 27, 2005.

APPLICATION FOR REHEARING:

SBC Missouri indicates that it filed its request for rehearing pursuant to Section 386.500, RSMo 2000. Section 386.500 allows the Commission to grant rehearing of an order or decision of the Commission if, in the Commission’s judgment, there is sufficient reason to do so. Regardless of whether or not a motion for rehearing is ever authorized in a rulemaking case, the Commission determines that rehearing is not appropriate in this case. The final orders of rulemaking have been published in both the *Missouri Register* and in the *Code of State Regulations*. Moreover, the rules will become effective on July 30, 2005. The Commission has no authority to change the rules at this point, except by restarting the lengthy rulemaking process to amend the rules. Thus, there is no meaningful relief that the Commission can grant through a rehearing. Therefore, the Commission will deny the application for rehearing.

ALTERNATIVE REQUEST FOR TEMPORARY VARIANCE OR WAIVER:

SBC Missouri indicates that if the Commission denies the company’s application for rehearing, it alternatively requests that the Commission grant the company a temporary waiver or variance, pursuant to 4 CSR 240-2.060(4), of the application of certain provisions

of 4 CSR 240-29.040(4) in order to allow SBC Missouri to perform the work necessary to implement this rule. SBC Missouri states that it seeks a waiver or variance of the Commission's requirement to provide the originating CPN in Category 11-01-XX billing records for wireless-originated calls because it is currently technically unable to comply with this requirement. SBC Missouri indicates that a waiver of at least one year is necessary to enable the company to complete its investigation with Lucent Technologies to determine whether the 5 ESS tandem switches have the technical capacity required by the rule and to complete the necessary changes to SBC Missouri's record creation and billings systems to include the originating CPN in billing records for calls handled by its Northern Telecom DMS switches.

Staff indicates that it does not oppose this alternative request. MITG, however, argues that SBC Missouri has failed to provide a specific explanation or description of its technical inability to comply with certain provisions of 4 CSR 240-29.040(4). Therefore, MITG suggests that the Commission require SBC Missouri to establish, in a hearing, the nature and extent of any technical limitation. The STCG opposes a one-year variance but does not object to a 30- to 60-day variance.

The Commission finds that a 60-day waiver of any requirement to provide originating CPN in Category 11-01-XX billing records for wireless-originated calls is appropriate. This temporary waiver will allow the Commission to investigate this issue further. The Commission will also direct its Staff to file a recommendation and memorandum that more fully addresses this issue. In addition, the Commission anticipates that it may issue an order scheduling a hearing on this issue.

IT IS THEREFORE ORDERED:

1. That the request for rehearing, filed by Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, is denied.
2. That Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, is granted a 60-day waiver, until September 30, 2005, of the requirement of 4 CSR 240-29.040(4) that the originating Calling Party Number (CPN) be included in the 11-01-XX billing records for wireless-originated calls.
3. That no later than August 4, 2005, the Staff of the Commission shall file a recommendation and memorandum regarding the requirement of 4 CSR 240-29.040(4) that the originating Calling Party Number (CPN) be included in the 11-01-XX billing records for wireless-originated calls.
4. That this order shall become effective on July 30, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton, and
Appling, CC., concur.
Murray, C., concurs, with separate
concurring opinion to follow.

Ruth, Senior Regulatory Law Judge