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December 10, 1999

FILED

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Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Chief Administrative Law Judge
MO Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: TT-99-428, et al.

Dear Mr. Roberts:

Enclosed please find an original and 15 copies of the Initial Post Hearing Brief of Alma, MoKan, Mid-Missouri, Choctaw, Chariton Valley, and Peace Valley.

A copy of this letter and a copy of the enclosed brief has this day been served upon all attorneys of record. Thank you for seeing it filed.

Sincerely,

Craig S. Johnson

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BEFORE THE PUBLIC SERVICE COMMISSION
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.**

INITIAL POST HEARING BRIEF OF ALMA, MOKAN DIAL, MID-MISSOURI, CHOCTAW, CHARITON VALLEY, PEACE VALLEY, (MID-MO GROUP)

Introduction

The underlying issue which is critical to the disposition of this case is whether § 251 of the 1996 Telecommunication Act requires a *direct physical interconnection* for purposes of reciprocal compensation interconnection agreements. It is the interpretation of Alma, MoKan, Mid-Mo, Chariton Valley, and Peace Valley that the language of the Act does require a direct physical interconnection. It is the firm conviction of these companies that proper compensation can only be built around a direct physical interconnection.

The Missouri Public Service Commission has struggled with the issue of whether to structure intercompany compensation obligations over an "indirect" interconnection. This case demonstrates that, absent a direct interconnection between the carriers, and the establishment of a business relationship a direct interconnection entails, there is no assurance compensation will operate properly.

Prior to the 1996 Act business relationships between LECs and IXCs were structured around direct interconnections. There was sufficient regulatory control and sufficient business ethics so that termating compensation functioned without regulatory oversight. There was sufficient control and carrier ethics. The standard practice was for the carrier delivering traffic to pay terminating compensation for all traffic delivered, even if originated by another "upstream" carrier". Ex 3, Schoonmaker surrebuttal, p 19-20.

The telecommunications environment is changing. There has been entry of new IXCs and CLECs. The Act made a primary tool of entry to be interconnection agrements. CLECs and wireless carriers have negotiated interconnection agreements with the dominant ILECs such as SWB, GTE, and Sprint/United. There have been no interconnection agreements with small terminating ILECs. In their interconnection agreements, large ILECs continue to have compensation based upon a direct interconnection. This case concerns whether small ILECs too can continue to have compensation based upon direct interconnection.

One hallmark of an acceptable compensation arrangement is that compensation flows without resort to regulatory complaint or litigation. This case demonstrates that attempting to structure compensation between carriers that have not interconnected fails this hallmark.

The tariffs at issue in this case should be approved. They affirm that existing exchange access tariffs, approved and having the effect of law, continue to apply until replaced by an approved interconnection agreement based upon a direct interconnection. Approval of the tariffs will continue the standard compensation practice. Approval will

assure that small ILEC interconnection agreements are based upon direct interconnection, as are the interconnection agreements of the large ILECs. Most importantly, the tariffs correctly interpret the provisions of the Act which contemplate that reciprocal compensation interconnection agreements are to be constructed upon a direct interconnection between two carriers.

The Act requires a direct physical interconnection for reciprocal compensation

Section 251(b)(5) of the Act establishes an obligation of all local exchange companies to establish reciprocal compensation. The Act provides:

> "(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS.—Each local exchange carrier has the following duties:...
> (5) RECIPROCAL COMPENSATION.—The duty to establish reciprocal compensation arrangements for the **transport and termination** of telecommunications."

Reciprocal compensation must be established in order to provide *both* transport and termination. The Act uses the conjunctive "and" between the words "transport" and the word "termination". If the Act were intended to allow reciprocal compensation for either transport or termination, it would have used the word "or".

In 47 CFR 51.701(c) the FCC has defined "transport" for purposes of 251(b)(5) as follows:

> "*Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject ot section 251(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 an incumbent LEC."

From this definition it is clear that transport for purposes of reciprocal compensation only takes place between two carriers. Transport begins at the interconnection point between the two carriers, and ends at the terminating LECs end

office. When indirect interconnection exists, there is no transport between the originating carrier and the terminating LEC. This is because there is no interconnection point between them from which transport can occur, or can be measured. (Ex 3, Schoonmaker Rebuttal, pp 9-10; Ex 2, Stowell Surrebuttal, pp 12-15).

Under the structure suggested by the wireless carriers, reciprocal compensation could only be for termination of traffic, not transport. The agreements they have proposed provide only for termination, not transport.[1] These agreements do not meet the Act's definition of a reciprocal compensation agreement.

The pricing provisions of the Act applicable to reciprocal compensation agreements also confirm that reciprocal compensation is intended for direct interconnection between two carriers.

Subsection 252(d) of the Act sets forth the pricing standards for reciprocal compensation agreements. Subsection 2 of this subsection applies to the pricing of transport and termination, and provides as follows:

> "(d) PRICING STANDARDS.--...
> (2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.—...
> (A) IN GENERAL.—For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal copensation to be just and reasonable unless--
> (i) such terms and conditions provide for the **mutual** and **reciprocal** recovery by each carrier of costs associated with the **transport and**

[1] Schedule JP5 to Ex 9, the rebuttal testimony of Sprint PCS, is a suggested "indirect interconnection" or "termination" agreement. Although the agreement purports to be pursuant to § 251 of the Telecommunications Act, a closer examination reveals there is no provision for transport. At page 9, Article IV is encaptioned "Transport and termination of traffic". However, § 4.3.1 only mentions termination, not transport. At page 13, Appendix B containing the rates and charges only sets forth a "terminated MOU" rate, not a transport rate. T. 362-363, Propst. The agreement between Sprint PCS and the TDS companies uses the access tandem as the "default" point of interconnection. Interestingly, this Agreement in Section X Miscellaneous also contains the agreement of Sprint PCS with TDS that the agreement is not an interconnection or reciprocal compensation agreement under 47 USC 251. See Schedule JP9 to Ex 9. Schedule 1 to the rebuttal of Dreon, Ex 12, is specifically for traffic "transited" over the network of a third party LEC. Attachment 1 to that agreement also lacks a transport rate, and only provides for termination.

> **termination** on **each** carrier's network facilities of calls that originate on the network facilities of **the** other carrier; ..."

The terms "mutual" and "reciprocal" denote a relationship between two carriers. The Fifth Edition of Black's Law Dictionary defines "mutual" as "common to **both** parties. "Both" connotes two. Black's defines "reciprocal" as given or owed **mutually** between **two** persons. As set forth earlier, the FCC by rule has defined "transport" as taking place between the interconection point between **two** carriers and the terminating end office. The term "the other carrier" in § 252(d)(2)(i) is singular, and also denotes involvement of only two carriers. The terms "each" and "the" are both singular and describe a relationship between two carrires.

The FCC's definition of "local" traffic for purposes of reciprocal compensation contemplates a relationship between two carriers

47 CFR 51.701(b), in setting forth the definition of local telecommunications traffic for purposes of reciprocal compensation, uses the term "a" to denote a relationship in which two carriers, **a** LEC and **a** CLEC (or **a** wireless carrier), are involved in the exchange of local traffic:

> "(b) *Local telecommunications traffic.* For purposes of this subart, local telecommunications traffic means:
>
> (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 **a** CMRS provider that, the beginning of the call, originates and terminates within the same Major Trading Area, as defned in § 24.202(a) of this chapter."

The FCC's use of two singular carriers involved in the exchange of local traffic under reciprocal compensation is also a clear indication that reciprocal compensation is for instances where two, not three, carriers collaborate to complete a local call. Ex 3, Schoonmaker surrebuttal, pp18-19.

The Act requires a direct physical interconnection for interconnection agreements

Section 251(c)(2) of the Act set forths the duty of ILECs with respect to interconnection agreements. The language of this section makes it clear that interconnection agreements are for direct physical interconnection between two carriers:

> "(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.—In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:...
> (2) INTERCONNECTION.—The duty to provide, **for the facilities and equipment of any requesting telecommunications carrier,** interconnection **with the local exchange carrier's network--**
> (B) at any technically feasible point **within the carrier's network;**"

Under these provisions of the Act, interconnection with the ILEC is to be between the requesting carrier's facilities and a point within the ILEC's network. This is a direct physical interconnection point between the two carriers. Ex 2, Stowell surrebuttal, pp 6-7, 12-13; Ex 3, Schoonmaker surrebuttal, pp 14-15.

The 8th Circuit United States Court of Appeals has held that the term "interconnection" refers to a physical linking (direct physical interconnection) between the requesting carrier and the ILEC. *Competitive Teleommunications Association v FCC,* 117 F. 3d 1068 (1997).

The FCC's Report and Order regarding interconnection supports the conclusion that reciprocal compensation agreements and interconnection agreements are designed for situation in which two carriers, not three, collaborate to complete a call.

As directed by the Act, within six months after enactment the FCC established rules for interconnection, and accompanying those rules were the FCCs decision interpreting the Act. The following paragraphs pertinent to this case are taken from the August 8, 1996 First Report and Order in CC Docket Nos. 96-98 and 95-185:

> ¶ 1033. We conclude, however, as a legal matter, that **transport and**

termination of local traffic are different services than access service for long distance telecommunications.

¶ 1034. 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.... 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....We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.

¶ 1039. We conclude that transport and termination should be treated as two distinct functions. We define "transport", for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from **the** interconnection **point** between ***the two carriers*** to the terminating carrier's end office switch that directly serves the called party...

¶ 1040. We define "termination", for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carriers's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises... we conclude in the interconnection section above that ***interconnecting carriers*** may interconnect at any technically feasible **point**. We find that this sufficiently limits LECs' ability to disadvantage ***interconnecting parties*** through their network design decisions.

¶ 1042... Section 251(b)(5) specifies that LECs and ***interconnecting carriers*** shall compensate one another for termination of traffic on a reciprocal basis.

¶ 1043...Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges, ***unless it is carried by an IXC***....we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

¶ 1044...As an alternative, LECs and CMRS providers can use **the** ***point of interconnection between the two carriers*** *at the beginning of the call* to determine the location of the mobile caller or called party.

This language confirms that reciprocal compensation applies where two carriers directly interconnect for the mutal and reciprocal exchange of local traffic. In indirect or "transiting" situations where three carriers collaborate to originate, transport, and terminate a call, exchange access remains the appropriate form of intercompany compensation.

History in Missouri

When SWB, GTE, and Sprint/United interconnect with a CLEC or wireless carrier, SWB, GTE, and Sprint provide for reciprocal transport and termination over large geographic areas. Because in the past SWB, GTE, and Sprint/United served as toll carriers for the exchanges served by small rural ILECs, the facilities of SWB, GTE, and Sprint/United still directly interconnect with those of these small companies.

It is typically the direct physical interconnection agreements between SWB and the wireless carriers that *assume* indirect interconnection reciprocal compensation is appropriate for small ILECs. Although these agreements provide the large ILECs with compensation built around a direct interconnection, they are predicated upon the assumption that *indirect* interconnection is a lawful and appropriate basis upon which compensation can be applied to small ILECs. It is in these agreements that the "transiting" theory is interposed. Small ILECs were not allowed to intervene or assert their rights in the approval proceedings involving the large ILEC interconnection agreements, yet this case demonstrates they have been significantly prejudiced thereby.

Large ILECs are not typically presented with indirect interconnection. SWB has no "indirect interconnection" agreements with wireless carriers. T. 388, Hollingsworth.

The existing direct physical interconnection between SWB, GTE, Sprint/United and small ILECs has given rise to the wireless carrier and CLECs' attempt to obtain reciprocal compensation without direct interconnection. They know that by having an interconnection agreement with SWB, their traffic will terminate on the facilities of the small LEC, and the small LEC is powerless to prevent it. Ex 2, Stowell surrebuttal, pp 3-7.

In its December 23, 1997 Order in TT-97-524 (officially noticed), the Commission approved SWB's revision to its wireless interconnection tariff. The Commission recognized that it was a violation of SWB's tariff for the wireless carrier to send traffic to the third party ILECs without a prior compensation agreement for that traffic. P. 22. (See page 9 of Ex 11, Hollingsworth rebuttal.) At page 21 of the Order, the Commission decided that wireless carriers were primarily liable to third party ILECs, and that the third party ILECs would be required to bill and attempt to collect from the wireless carriers originating the traffic. At page 22 of that Order the Commission refused to assume wireless carriers would violate the tariff by sending such traffic without an agreement.

Similarly, SWB's interconnection agreements with wireless carriers, and with CLECs, prohibit those carriers from sending traffic to third party LECs without a prior compensation agreement. See pages 6-7, 9-11 of Ex 11, Holllngsworth rebuttal. The Commision's December 11, 1996 arbitration order (paragraphs 28 and 29) in TO-97-40/TO-97-67 determined that other LECs not a party to the interconnection agreements between SWB and CLECs, should continue to receive switched access as an incentive to the CLECs to pursue interconnection agreements. Ex 1, Stowell direct, pp 6-7. The

Commission's September 6, 1996 Report and Order in TO-96-440 determined that the first operating CLEC in Missouri, Dial US, was *prohibited* from sending to SWB traffic destined for the network of a third party unless and until mutually agreeable compensation arrangements had been reached. See Schedule 4-2 to Ex 11, Hollingsworth rebuttal.

SWB stated in its rebuttal testimony that these carriers understood they had an obligation to obtain interconnection agreements with the third party LECs prior to sending traffic to them. Ex 11, pages 7-8, Hollingsworth rebuttal. Ameritech had promised Commissioner Drainer personally that it would abide this condition. See schedule 2-4 to Ex 11, Hollingsworth rebuttal. Ameritech has broken that promise, and continues to send this traffic to the small ILECs. Perhaps Ameritech's reluctance to be confronted with this broken promise explains its absence in this proceeding.

Enforcement of this prohibition has been ineffective, if it existed at all. ATT Wireless claimed not to know it was prohibited from sending traffic to small ILECs. Maas, T. 269-270. SWB claimed all such carriers were aware of their obligation. Ex 11, pp 6-11, Hollingsworth. Basically the only enforcement SWB performed was to trust that these carriers would not violate their obligations. T. 400-401.

As a result small ILECs have not been paid terminating compensation. It now appears small ILECs, besides this tariff proceeding, will have to request payment from SWB, probably file a complaint against SWB, and perhaps sue in Circuit Court to collect past compensation due.

The interconnection agreements involving the large ILECs has resulted in significant harm and detriment to the small ILECs. Although the standard for

interconnection agreement approval is that these agreements not discriminate against them. 47 USC 252(e). Small ILECs cannot depend upon the ethics of either transiting carriers or originating carriers to honor their rights. We should not be placed in the position of having to litigate our right to compensation before the Commission and the Courts.

Wireless carriers and CLECS have betrayed the trust placed in them by the Commission. They have done exactly what the Commission refused to assume they would do. They have been sending this traffic to third party ILECs, without agreement, without payment, without offer to pay, without apology. Ex 1, Stowell direct, pp 7-8.

Competition is now the policy of the land. Gone are the days when regulators could assume that companies utilizing the terminating services of other companies had the business ethics to make arrangements to pay before using those facilities. In the 1983-1996 access environment interexchange carriers paid their access bills to LECs. Direct interconnection systems and procedures for offering toll and ordering access services assured accountability. Direct interconnection ethics resulted in payment for use of another carrier's facilities.

Judging from the actions of the wireless carriers and the CLECs, the ethics of competition appears to be "dog eat dog". In the Missouri indirect interconnection environment it is only the small terminating LEC whose dog gets eaten. The large LECs are getting paid, because they have a direct interconnection and a negotiated direct interconnection agreement. The wireless carriers and CLECs are satisfied with the free ride for termination of traffic on small ILEC facilities that indirect interconnection provides.

In an indirect interconnection environment, the terminating small LEC has no power to enforce compensation. The terminating small LEC can not prevent unauthorized use of its facilities. The small ILEC cannot identify the carrier originating the call, or its jurisdiction. It must rely on the systems of others. The terminating small LEC must resort to relief from the regulators and the courts. This is an unacceptable arrangement upon which to do business. Such an arrangement would lead to unacceptable levels of complaint proceedings and/or civil litigation.

Wireless carriers and CLECs have consciously defied the terms of the tariffs and interconnection agreements, and the Commission's Orders approving same. They have consciously sent traffic to third party LECs knowing they were not to do so absent an approved agreement. "Misappropriation" is a strong word, but it is the appropriate description for the activities of the wireless carriers and CLECs. By knowingly taking use of the MMG facilities, in knowing violation of tariffs, interconnection agreements, and Commission Orders, without making payment or any attempt at payment, these carriers have made unauthorized use of our facilities[2]. Presumably they would have continued to do so unabated but for this proceeding. Ex 1, Stowell direct, p 8; Ex 2, Stowell surrebuttal, pp 3-5.

Under the law, an interconnection and agreement with SWB does not provide the CLEC or wireless carrier with the basis for reciprocal transport and termination with the small companies. The essential direct physical interconnection upon which to structure reciprocal compensation is missing.

There is no reciprocal traffic without a direct physical interconnection over which the two interconnecting carriers reciprocally exchange traffic bound for each other.

Another essential ingredient for reciprocal compensation that is missing in an "indirect interconnection" or "transiting" situation is reciprocal traffic. When wireless carriers and CLECs request direct physical interconnection with SWB, by this interconnection and negotiation they determine the perameters of exchange of traffic that each carrier originates destined to terminate to the customer of the other carrier. They can determine where they will interconnect, what traffic will flow, what traffic will be considered "local" or "toll", the applicable rates, measurement, netting, and payment of compensation. T. 123-125, Stowell.

All of these things are possible because each carrier sends traffic from its facilities over the interconnection point to the facilities of that other carrier, and only that other carrier. There is reciprocal traffic between them.

Alma, MoKan, Mid-Mo, Choctaw, Chariton Valley, and Peace Valley originate no such traffic leaving their exhange destined for a customer of a CLEC or wirless carrier. These small ILECs provide exchange access to IXCs originating traffic destined for termination outside their exchanges, but do not carry this traffic themselves. Therefore these small ILECs have no traffic they are responsible for transporting or terminating to other exchanges. They have no reciprocal traffic going to CLECs or wireless carrier customers. Ex 2, Stowell surrebuttal, p 22; Ex 3, Schoonmaker surrebuttal, p 9, 11, T. 204, Meisenheimer. SWB agreed with this analysis. T. 385-388, Hollingsworth.

[2] One wireless carrier, Aerial, has gone so far as to state it has no obligation to pay for past usage, as there is not now a payment mechanism in place. In other words, only Aerial can initiate the process, but if Aerial chooses not to do so it will have no obligation to pay. See attachment 1 to Ex 2, Stowell surrebuttal.

SWB told the small LECs in 1997, and the wireless carriers were so informed in 1999, that SWB was responsible for paying compensation to the wireless carriers for calls originating in SC exchanges. Schedule RCS-2, Ex 3 Schoonmaker surrebuttal. The wireless carriers were specifically told SWB would pay them for toll traffic originated by a secondary carrier for which SWB was the PTC[3]. Presumably SWB paid them. If so, the wireless carriers' position that they are entitled to reciprocal compensation from small ILEC SCs would meant they would be paid twice. Indirect interconnection would indeed be a wonderful thing. They could get paid twice for calls terminating to them while getting free termination of calls to SC exchanges.

When confronted with the notion that IXCs, not the small ILECs, were responsible for toll calls going from small ILEC exchanges to wireless customers, the wireless carriers did not know if they were to receive reciprocal compensation from the small ILEC. T. 240-242, Maas. SWB Wireless witness Dreon was unable to distinguish the role an ILEC plays in providing exchange access to an IXC from the role of directly providing toll service. T. 433-435.

If a CLEC or wireless carrier had sufficient incentive to interconnect with these small ILECs, perhaps then there would be a basis to create reciprocal traffic. Perhaps then there would be a basis for small ILECs to create services and provide calling plans for their customers to place calls to the customers of the interconnecting CLECs and wireless carriers. Until the direct physical interconnection is established there is no basis for reciprocal compensation, as there is no reciprocal traffic.

[3] In its letter of December 22, 1997, Sprint PCS made the statement that "Sprint PCS is not compensated by Southwestern Bell for traffic originated by your customers". See Schedule JP4 to Ex 9, Propst rebuttal. Although Sprint PCS has been informed of its mistaken assumption in this regard, it still takes the position there is reciprocal traffic coming from the small ILECs.

Assume for the sake of argument that a small LEC such as Mid-Missouri had reciprocal traffic to Sprint PCS. Assume further for argument's sake that reciprocal compensation did not require a direct interconnection. Even making these assumptions, the indirect interconnection scenario stills has a gap in logic. For reciprocal traffic Mid-Missouri is to send to Sprint PCS, whose facilities would Mid-Missouri use to deliver that traffic to Sprint PCS? Mid-Missouri is not directly interconnected with Sprint PCS. As Sprint PCS was told on February 9, 1998, Mid-Missouri is not in a position to confiscate the facilities of other carriers to deliver and route local traffic to Sprint PCS (Schedule JP8 to Ex 9, Propst rebuttal).

It appears to be an implied—but not stated—assumption of "indirect interconnection" that Mid-Missouri would have to contract with SWB to send reciprocal traffic to Sprint PCS. While SWB may enjoy being in the middle—both ways—for reciprocal traffic, there is no requirement that Mid-Missouri use SWB facilities.

Mid-Missouri is not required to contract with other carriers for use of their intermediate facilities in orderf to fulfill its interconnection duties with Sprint PCS. Mid-Missouri is under no obligation to enter into a "transiting" interconnection agreement with SWB in order to have an indirect reciprocal compensation interconnection agreement with Sprint PCS. Although Sprint PCS may purchase transiting services from SWB, that does not *create* an *obligation* of Mid-Missouri to do the same.

Without a direct physical interconnection, reciprocal compensation does not work. The wireless carrier position is fundamentally flawed. This is why the Act speaks in terms of interconnection points between the requesting carrier and the LEC's facilities. By limiting reciprocal compensation to direct physical interconnections between two

carriers, the Act assures there are no such "gaps", and no forced use of a transiting company's facilities.

Only the CLECs and wireless carriers can compel interconnection agreements

The MMG has already set forth above why a direct physical interconnection is requried for reciprocal compensation under the Act. Another reason the present situation is even more deplorable is that only the wireless carriers and CLECs can compel the process by which reciprocal compensation is established. By failing to compel this process, these carriers continue to unlawfully and unethically receive free termination.

Under § 251(c)(1) of the Act, ILECs are obligated to negotiate interconnection and reciprocal compensation agreements in good faith in accordance with § 252. § 251(c)(1) only imposes the obligation to negotiate in good faith upon CLECs and wireless carriers when they *request* interconnection, thus becoming a "requesting carrier". § 252(a)(1) specifies that, upon receiving a request for interconnection, the **incumbent** local exchange carrier is to negotiate and submit any agreement for approval.

Only the CLECs and wireless carriers can compel the interconnection agreement process. ILECs must respond to an interconnection request. CLECs and wireless carriers need not respond. Ex 2, Stowell surrebuttal, pp 10-11; Ex 3, Schoonmaker surrebuttal, pp 12-13; Ex 4, Meisenheimer surrebuttal, pp 5-6, T. 162-164, Schoonmaker, T. 205-206, 208-211, Meisenheimer.

ATT Wireless agreed it could not be compelled to negotiate by an ILEC. T. 259-260. The ultimate proof of who is control of interconnection agreement negotiations is found in the testimony of SWB. Of the 100 or so interconnection agreements, all of the

negotiations therefore were inititiated by the wireless carriers or CLECs as the requesting carrier. T. 373, Hollingsworth.

It was the MMG companies who deemed it in their interest to initiate resolution by this proceeding. The wireless carriers were content not to utilize the tools the Act gave solely to them to resolve the issue. Because indirect interconnection gave them the ability to terminate without paying, they have been content not to seek resolution of the issue. Who knows when, if ever, they would have?

With termination of the PTC Plan, the only authority for the existing inteconnection between the MMG companies and their former PTCs are their access tariffs

The Commission Order and contracts establishing the PTC Plan has been replaced by an Order terminating the PTC Plan. The PTC Plan contracts established the terms and conditions for interconnecting ILEC SC networks with ILEC PTC networks. These contracts were the sole authority for the ILEC PTCs to handle MTS and WATS traffic in ILEC SC exchanges. With their termination, the only legal use of the interconnection between the ILEC PTCs and the ILEC SCs is as per the access tariff of the SCs. SWB and the other ILEC PTCs have no right to "transit" traffic of other carriers on any basis other than the joint billing of access traffic. Ex 3, Schoonmaker surrebuttal, pp 6-8, T. 160-161.

SWB, GTE, and Sprint/United no longer have any authority, other than the small ILEC access tariff, to interconnect with the small ILECs for the termination of traffic. If the carriers directly interconnecting have authority to do so only under access tariffs, there is no authority whatsover for the notion the CLECs and wireless carriers can piggyback on these interconnections on a different basis. These tariffs, which have the

effect of law, presently are the only authority for *any* carrier to terminate traffic to our exchanges.

SWB and the wireless carriers are not following the rules regarding compensation

At hearing it was established that SWB and the wireless carriers have not defined the MTA as a local calling scope. In fact SWB is charging the wireless carriers SWB access rates for intraMTA calls. T. 306-314, Ex 16, T. 375-382, T. 390-392.

SWB is charging access on intraMTA calls even though SWB and the wireless carrier *have* a direct physical interconnection, for which reciprocal compensation rates should apply. These same carriers suggest small ILECs are *not* entitled to charge access on such calls when there is *no* direct interconnection.

So on the one hand SWB and wireless carriers are not following the rules everyone agrees apply to them. On the other hand they attempt to force us to accept less than access, even when there is no consensus that reciprocal compensation applies over an indirect interconnection. The Commission should reject this attempt to turn the access and reciprocal compensation rules upside down.

Not all intraMTA calls can be delivered by SWB

Most of the interconnection agreements involving the wireless carriers are with SWB. It is these interconnections with SWB that allow the wireless carriers to "transit" traffic to the small ILECs. It is only intraMTA calls which are eligible for "local" treatment under the Act and FCC decision. At hearing it was established that the LATA boundaries do not align with the MTA boundaries. In fact there are only two MTAs in Missouri, while it is common knowledge that there are three major LATAs,. See the MTA map which is the last page of Propst Schedule JP1 attached to his rebuttal, Ex 8.

SWB is prohibited by the divestiture consent decree from handling interLATA traffic. T. 273, Maas. However there are many examples of intraMTA calls which are interLATA in nature. There are many examples of exchanges which are in the same LATA but in different MTAs. The evidence disclosed that the interconnection agreements are being used to allow SWB to transport intraMTA traffic across LATA boundaries for termination, a violation of the consent decree.

In the interconnection agreements between the wireless carriers and SWB, the parties are not attempting to distinguish between interMTA calls, for which access applies, and intraMTA calls, for which reciprocal compensation applies. For intraMTA calls which cross LATA boundaries, ATT Wireless is not sure it is paying access. Its system is not set up to distinquish interMTA from intraMTA calls! T. 275-276. This may be because they have allowed SWB to do the recording and billing for these calls. T. 276. SWB charges the same transit rate for interMTA calls as they do for intraMTA calls. T. 277.

An indirect interconnection between a wireless carrier and small ILECs occasioned by transit via SWB cannot be used by the wireless carrier to obtain reciprocal compensation for all intraMTA calls. Yet at hearing it was obvious that the wireless carriers had not considered this. Apparently they assumed all calls transited via SWB deserve "local", or intraMTA treatment. T. 243-244. Maas. The structural defects of the "indirect interconnection" theory are made manifest. Under the law requiring a direct physical interconnection for reciprocal compensation, this defect would not arise.

Mr. Maas of ATT wireless agreed that it would be necessary to contract with an IXC to deliver these interLATA, intraMTA calls. He also agreed that that *IXC* would be

required to pay terminating *access* to the small ILEC to whom the call terminated. T. 244-245.

This presents an irreconcilable dichotomy. According to the wireless carriers, when SWB is the intermediate interexchange carrier, reciprocal compensation applies. But when a traditional IXC is the intermediate interexchange carrier, access applies. This makes no sense. Both SWB and the traditional IXC provide exactly the same function. There is absolutely no distiction between SWB and an IXC that would justify this difference in treatment. Since termination of the PTC PLan, SWB is treated just as any other IXC would be treated. This is the treatment SWB requested and received. It is inappropriate to discriminate against small ILECs depending upon whether the intermediary interexchange carrier was SWB, ATT, MCI, or Sprint.

This is a fundamental flaw of indirect interconnection. The only structure that makes sense, and avoids such nonsense, is that reciprocal compensation is to be structured upon direct physical interconnection agreements between the wireless carrier and the small ILEC.

Through use of the CTUSR, the deficiencies of the interconnection agreements between SWB and the wireless carriers are attempting to be imposed on the small ILECs. The CTUSRs only identify terminating minutes of use attributable to a cellular carrier. There is no call record from which the originating carrier can be identified, from which the originating calling party NXX can be identified, and therefore there is no ability to separate interstate from intrastate calls, and no ability to separate interMTA from intraMTA calls. In short there is no ability to verify what compensation rate applies.

SWB and the wireless carriers would like to impose these deficiencies upon the small ILECs by subjecting them to indirect interconnection. If there were direct interconnection small ILECs would have an opportunity to prevent these deficiencies from being applied to them, or they would have the opportunity to agree to similar deficiencies should they choose to do so.

It would be exceedingly difficult to negotate terms with the indirectly interconnected carrier that are different from the transiting terms of the agreement that carrier has with SWB. It would be exceedingly difficult for small companies to obtain these carriers' agreement to provide more information and safeguards at the terminating end than the intermediate or transiting system functions provide.

Indirect "termination" agreements between ILECs and originating carriers have not been submitted for approval as is required of direct interconnection agreements.

All interconnection agreements have been submitted for approval. Not all of the "termination only" agreements entered into have been submitted for approval. This practice supports the notion that the industry views an indirect interconnection "termination" agreement as not being an interconnection agreement the law requires be submitted for approval.

To our knowledge, the "transiting" or "terminating" agreement betweeen ExOp and SWB, where ExOp directly interconnects with Sprint/United by not SWB, was not submitted to the Commission for approval. That this agreement was not submitted supports the notion that "termination" agreements, where three carriers are involved in completing calls, are not interconnection agreements under the Act which must be approved by the Commission. Ex 2, Stowell surrebuttal, p 17.

As set forth before in footnote 1 at page 4, there are other indications that the industry does not view "termination" agreements as interconnection agreements requiring approval under § 251 of the Act.

Discussion

The Act requires a direct physical interconnection for reciprocal compensation. Until there is a direct interconnection there is no basis for two carriers to collaborate for the mutual exchange of local traffic. When there is a direct interconnection and exchange of mutual and reciprocal traffic, then the parties can define and the Commission can approve a "local calling scope" for landline traffic. When a wireless carrier is involved the parties can determine how to identify and record traffic between them that, at the beginning of the call, originates and terminates within the same MTA.

Indirect interconnection is not the product of a conscious choice or negotiation. Indirect interconnection with small terminating LECs is only a byproduct of the direct interconnection with SWB, GTE, or Sprint/United. Ex 2, Stowell surrebuttal, pp 6, 13-15. New entrants are primarily interested in the transport and termination services that SWB, GTE, and Sprint/United can provide. All three of these carriers can provide transport and termination to desirable highly populated metropolitan areas. All, or virtually all, of the interconnection agreements involve the large ILECs in Missouri.

The wireless carrier and CLEC position that reciprocal compensation can be built around indirect interconnection is unworkable. In this scenario the carrier would be indirectly interconnected with the universe of carriers by directly connecting to only one. Traffic the carrier originates could terminate anywhere in the nation. Traffic all other carriers in the nation originate could terminate to the carrier's customer. It is not difficult

to imagine the chaos that would be created if all carriers attempted to construct "termination agreements" with all other carriers in the nation that originated traffic "transitted" to them.

To the contrary, under the indirect or "transiting" relationship between these originating carriers and the MMG ILECs, there is no direct physical interconnection point. By directly connecting to one ILEC, the requesting carrier becomes indirectly interconnected with every other carrier in the state (and in the nation).

A direct physical interconnection exists between the cellular carriers and SWB under their approved interconnection agreements. A direct physical interconnection exists between the CLECs and SWB under their approved interconnection agreements. Under the wireless carrier and CLEC position, being interconnected with SWB would entitle them to reciprocal compensation to every carrier SWB is interconnected with. That would include GTE and Sprint/United. Yet these carriers only want indirect intrconnection with small ILECs. They want multiple direct interconnection agreements with large ILECs.

The wireless carriers have not adhered to their own indirect interconnection scenario. In practice they have interconnection agreements with more than one ILEC. For example Sprint PCS as of November 12, 1997 directly interconnected with, and had interconnection agreements with, both SWB and GTE. See Schedule JP 1 to Ex 9, Propst rebuttal. In that letter Sprint PCS also indicated it would not interconnect with the small ILECs. In his response to written question 2 from the Mid-Missouri Group, ATT witness Kohly indicates CLEC TCG St. Louis has interconnection agreements with both SWB and GTE (as does AT&T itself).

The existence of multiple interconnection agreements for one wireless carrier or CLEC belies their position interconnection agreements apply for indirect interconnections. No reason has been voiced for treating small ILECs differently from large ILECs under the law respecting interconnection agreements. There is no legal reason small ILECs should be subject to indirect interconnection agreements while large ILECs enjoy only direct interconnection agreements.

At hearing the wireless carriers agreed that if reciprocal compensation were to apply, it would seem fair that the small ILECs should have the ability to control the routing of the call. T. 243, Maas. The problem with this is that under "indirect interconnection", the small ILEC does not carry the traffic. The small carrier has no facilities to the wireless carrier. Prior to July 22, 1999 the PTC did. After July 20, andIXC did. The PTCs and IXCs making provision for routing their calls, not the small ILECs. Unless there is a direct interconnection there is no ability for the small ILEC to control routing of the calls going to the wireless carrier customers.

The conclusion that access applies where three carriers collaborate makes practical business sense. When a call is transported to a LEC for termination, whether "local" or long distance, the terminating LEC provides the excact same service. The calls terminate over the exact same facilities in exactly the same manner. Differing carriers terminate differing amounts of traffic to different ILECs. They will have differing terminating access costs. If the cost savings of reciprocal compensation rates justify the expense of direct interconnection, and the expense of negotiating and obtaining approval of a reciprocal compensation agreement, the originating carrier is positioned under the Act to compel a reciprocal compensation agreement. All it must do is request

interconnection, conduct negotations, and obtain approval. The Act is designed to covert access costs to reciprocal compensation where there is sufficient incentive for the requesting carrier to do so. Ex 2, Stowell surrebuttal, pp 6-9, 15-16; Ex 4, Meisenheimer surrebuttal, pp 6-7.

When the wireless carriers requested interconnection from SWB, even though they were already directly interconnected, SWB's access costs provided sufficient incentive for the wireless carriers to undergo the costs of requesting, negotiating, and having interconnection agreements approved in order to obtain reciprocal compensation. T. 218-219, Meisenheimer. When it comes to interconnection and reciprocal compensation agreements, the Act does not distinguish between SWB and small ILECs. The same incentives should apply to interconnection with small ILECs.

It is intriguing to contemplate how "indirect interconnection" works when one wireless carrier contracts to terminate traffic for another wireless carrier. It was established at hearing that this is not an uncommon situation. T. 392-393. In the landline FGD environment, the carrier interconnection with the ILEC pays termination for all calls, whether it originated the call or whether it is terminating a call another carrier originated.

In an originating responsibility type indirect interconnection environment postulated by SWB and the wireless carriers, would the delivering wireless carrier be responsible to pay for traffic originated by another carrier, or soley for traffic it originated? Would the terminating ILEC have to look to the originating carrier carrier for compensation, with whom there is no agreement, even though the traffic was delivered by an indirectly interconnected carrier pursuant to an indirect inreconnection agreement ?

Would this then be the collaboration between 4 carriers—the originating wireless carrier, the delivering wireless carrier, SWB, and the terminating ILEC?

Coupling indirect interconnection with ORP creates a very dangerous propsect. Such a coupling would potentially allow all types of traffic not properly subject to reciprocal compensation to be inappropriately delivered, and compensated at inappropriate rates. This could potentially create migration of significant amounts of traffic, and disturb exising revenue levels. The delivery of *landline* originated traffic under a wireless interconnection agreement would be an unlawful use of interconnection agreements. T. 394-395.

The incorrect interpretation of the Act by CLECs and wireless carriers has and continues to result in small terminating LECs not capturing access minutes of use

The levels of traffic that cellular carriers send to small ILECs for termination is growing. Although at hearing the national wireless carriers characterized the amounts as "deminimus", that is not a fair characterization. Even traffic levels of 5,000 minutes per month are significant to small companies. T. 146-147, Stowell, T. 217, Meisenheimer. In preparing requests for SWB to pay for the traffic the wireless carriers have not yet paid, the amounts billed from February 5, 1998 to November 1, 1998 are significant revenues, and the monthly usage is growing. The Commission may see those usage levels in the near future in proceedings requesting SWB to honor its secondary liability for terminating wireless traffic.

It is somewhat ironic that the small ILEC access rates are objected to as being high, yet the companies voicing this objection refuse to pay the usage that would provide a basis to reduce these rates in the future. As stated by OPC witness Meisenheimer, it is

the small ILECs have a responsibility to their customers to collect their tariffed rates and recover their costs, including joint and common costs. T. 215.

Many times in the rebuttal testimony of the CLEC and wireless carrier witnesses, they admit they are not paying the access bills being rendered to them. None of their stated reasons consitute justification. Some of the reasons tendered were simply disengenuous. Examples of these statements are that there are too many small ILECs to negotiate interconnection agreements with, that it is too expensive to negotiate interconnection agreemtents with a small ILEC, they will not pay without an indirect interconnection agreement, or "terminating agreement", that the small ILEC has no applicable CMRS tariff, and that because the wireless carrier had no agreement in place the CTUSR based invoice could not be verified. None of these statements excuse the wireless carriers' actions in sending traffic destined for small ILEC exchanges before there was an approved interconnection agreement.

Other reasons given *presume* that their position that reciprocal compensation can be applied over indirect interconnection is correct. These reasons include access is inappropriate for "local" calls, that small companies are not paying for traffic terminated to them, that it is common practice for carriers to exchange this traffic on a "bill and keep" basis, that the wireless carrier expects a "balance" of traffic, and that they intend to apply a rate to be determined in indirect interconnection agreement negotiations retroactively so as not to prejudice the samll ILECs.

It has yet to be determined if calls over an indirect interconnection are subject ot reciprocal compensation under the Act.

The undisputed evidence is there is no reciprocal traffic the small companies are responsible to pay wireless carriers terminating compensation for.

Bill and keep was rejected by the MMG companies on November 18, 1997. See Schedule JP3 to Ex 9, Propst rebuttal. By letter of January 15, 1998, Sprint PCS was specifically informed that the small companies rejected the contention reciprocal compensation applied without a direct physical interconnection. See Schedule JP6 to Ex 9, Propst rebuttal. Although the wireless carriers describe bill and keep as "standard", there arrangement with SWB is not bill and keep. T. 278, Maas. It is interesting to note that these proponents of choice and competition apparently would not give Missouri small ILECs any choice but to accept mutual bill and keep.

There is a difference in the interexchange choices ILECs must give their customers and the "choice" wireless carriers give their customers. ILECs are required to give customers PICs or carrier choices both for interLATA and intraLATA toll. Wireless carriers do not. T. 365-366. Wireless carriers that don't have to give choices are thereby in control of whether interexchange calls their customers place are carried by them. Small ILECs have no such control, and therefore do not control whether such calls can be routed on small ILEC facilities which may or may not directly interconnect to the wireless carrier facilities.

ATT Wireless testified that the "balance" of traffic was 3 of 4 calls were cellular to landline, and 1 of 4 was landline to cellular. T. 281-282. Sprint PCS testified to a similar balance. T. 365, Propst. These are not evenly balanced traffic levels justifying mutual bill and keep.

None of the reasons given for refusing to pay any terminating compensation excuse the wireless carriers' actions in sending traffic destined for small ILEC exchanges before there was an approved interconnection agreement.

Proposed Tariffs

The tariff language would state:

"The provisions of this tariff apply to all traffic regardless of type or origin, transmitted to or from the facilities of the Telecphone 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(, or unless subject to an Order of the Missouri Public Service Commission superseding this tariff)."

The intent is to make it clear that the access tariff applies to all traffic except that traffic which is the subject of an approved interconnection agreement. This intent tracks the intent of the Act to allow access to be replaced by reciprocal compensation where there is sufficient justification for a direct physical interconnection between the originating carrier and the terminating LEC. Ex 1, Stowell direct, p. 8.

There was no intent for the proposed tariff language to disturb existing MCA intercompany compensation arrangements. T. 83-85, 149-150, Stowell. MCA compensation issues are pending in separate docket TO-99-483. The MMG companies consent to the paranthetical phrase added at the end of the proposed tariff language to clarify that MCA is not intended to be included. See Ex 3, Schoonmaker surrebuttal, p 4.

Conclusion

Wherefore, on the basis of the foregoing, the MMG companies Alma Telephone Company, MoKan Dial Inc., Mid-Missouri Telephone Company, Chariton Valley Telephone Corp., and Peace Valley Telephone respectfully request that the tariffs, with the modification set forth above, be approved by the Commission.

ANDERECK, EVANS, MILNE
PEACE & BAUMHOER

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ATTORNEYS FOR MMG

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, U. S. Mail, postage pre-paid, this 10 day of December, 1999, to all attorneys of record to this proceeding.

_____
Craig S. Johnson