BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Chariton Valley Communications Corporation, Inc., for Approval of a Direct Interconnection Agreement and for a Related Indirect Transiting Traffic Services Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, Pursuant to the Telecommunications Act of 1996	))))))	Case No. TK-2005-0449

SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a SBC MISSOURI'S OBJECTIONS TO THE APPLICATION OF CHARITON VALLEY COMMUNICATIONS CORPORATION, INC. FOR APPROVAL OF A TRANSIT TRAFFIC SERVICES AGREEMENT

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") hereby objects to that portion of the Application of Chariton Valley Communications Corporation, Inc. ("CVCI") which requests that the Commission approve the transit agreement submitted by CVCI to the Commission on May 27, 2005. SBC Missouri does not object to the approval of the interconnection agreement between SBC Missouri and CVCI also filed on May 27, 2005. In support of its objection, SBC Missouri states as follows:

1. This case was opened when CVCI filed, on May 27, 2005, an Application for Approval, pursuant to Section 252 of the Telecommunications Act of 1996 ("the Act"), of both an Interconnection Agreement ("ICA") and a Transit Traffic Services Agreement ("transit agreement") entered into between CVCI and SBC Missouri.[1] As a part of its Application, CVCI filed as an attachment thereto both the ICA and the transit agreement for approval by the Commission. Application, paras. 10-13. For purposes of

[1] In its June 1, 2005, Order Directing Notice and Making SBC Missouri a Party ("Order"), the Commission made SBC Missouri a party to this case, and further, directed its Staff to file a memorandum advising either approval or rejection of "this agreement" by not later than June 23, 2005. Order, pp. 2-3. The Order referenced an "Interconnection Agreement" but not a transit agreement.

this pleading, the term "interconnection agreement" or "ICA" when referring to CVCI, shall mean the Cellular/PCS Interconnection Agreement and Amendment thereto (attached to CVCI's Application as Attachment 2) and the term "transit agreement" shall mean the Wireless Service Provider Service Agreement, as well as the associated Transit Traffic Service Appendix (Wireless) and Transit Traffic rate sheet (attached to CVCI's Application as Attachment 3).

2. SBC Missouri objects to the portion of CVCI's Application that requests the Commission's approval of the transit agreement entered into between CVCI and SBC Missouri. First, the parties did not agree that such agreement would be submitted to the Commission for its approval. Second, such agreement is not subject to the Commission's approval pursuant to Section 252 of the Act.

3. SBC Missouri has no objection to either CVCI's submission or the Commission's approval of the ICA entered into between CVCI and SBC Missouri. To the contrary, SBC Missouri requests that the Commission approve the ICA. Thus, while the Commission should approve the parties' ICA, the Commission should conclude that its approval of the parties' transit agreement is neither required nor allowed.

4. CVCI does not allege, nor do the agreements show, that CVCI and SBC Missouri agreed to submit the transit agreement to the Commission for its approval. To the contrary, the parties specifically agreed that "[e]xcept as otherwise provided herein, this Agreement shall not be filed with any State Commission . . . . unless requested by such agency." Application, Attachment 3, WSP Service Agreement, para. 1.2. This is in keeping with the parties' having expressly acknowledged that the agreement is a "private commercial agreement" whose provisions "are not subject to Sections 251/252 of the

[Act] and are not subject to negotiation and/or arbitration under Section 252 of the Act." Id. Nor did CVCI allege that it has submitted the transit agreement to the Commission because the Commission either requested or ordered that the transit agreement be filed or submitted to it Commission for its approval. Id., para. 7.1.[2] Given these express agreements made by CVCI and SBC Missouri, CVCI lacked the authority to unilaterally determine to submit the transit agreement to the Commission and to request that the Commission approve it. Where the parties to an agreement have expressly agreed that it is not to be submitted to the Commission for approval, the agreement is not properly before the Commission and the Commission has no authority to approve or reject it.

5. Additionally, the transit agreement is not subject to the Commission's approval pursuant to Section 252 of the Act. For this independent reason, SBC Missouri objects to that portion of CVCI's Application which requests that the Commission approve the transit agreement submitted by CVCI.

6. Under the Act, any "interconnection agreement" adopted by negotiation or arbitration must be submitted for approval to the state commission. Section 252(e)(1). In the case of a negotiated interconnection agreement, Section 251(c)(1) provides that the duty to negotiate extends to "the duties described in paragraphs (1) through (5) of subsection (b) and this subsection." (i.e., Section 251(b) and (c)).

7. Nothing in paragraphs (1) through (5) of Section 251, subsection (b), speaks to interconnection of networks. With respect to Section 251(c), the only duty to provide interconnection is set forth in Section 251(c)(2). The obligation set forth in

[2] When the Commission previously rejected the SBC Missouri-CVCI interconnection agreement, the Commission expressly declined to order the filing of the transiting agreement. See, Case No. TK-2005-0300, Order Rejecting Interconnection Agreement, May 19, 2005 at p. 4 ("The Commission, however, will not order SBC Missouri and CVCI [to] file the transiting agreement."

Section 251(c)(2) is limited to interconnecting "the facilities and equipment" of the requesting carrier "with the [incumbent] local exchange carrier's network." The duty of ILECs to provide interconnection, therefore, is limited to providing requesting carriers interconnection with the ILECs' networks, and does not include providing requesting carriers interconnection with other carriers' networks. The FCC has never held that this or any other provision of the Act imposes a duty upon ILECs to provide or facilitate indirect interconnection and transit services between two other carriers.

8. This interpretation is consistent with the July, 2002, decision of the FCC's Wireline Competition Bureau ("Bureau") in the Verizon/AT&T/WorldCom/Cox arbitration for Virginia ("FCC Virginia Arbitration Order"),[3] and with the FCC's September, 2002, BellSouth Section 271 Approval Order.[4] In the first proceeding, Verizon argued that, while every carrier has a right to interconnect indirectly with any other carrier under Section 251(a), there is nothing in the Act that permits carriers to transform that right into a duty on the part of ILECs to provide transit services and thus facilitate the duty of other carriers to interconnect indirectly.[5]

9. The Bureau noted that the Commission has not had occasion "to determine whether incumbent LECs have a duty to provide transit service under [Section 251(c)(2)]."[6] Nor did the Bureau find "clear Commission precedent or rules declaring

[3] Memorandum Opinion and Order, Petitions of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, et. al., CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (released July 17, 2002) ("FCC Virginia Arbitration Order").
[4] Memorandum Opinion and Order, In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, WC Docket No. 02-150, 17 FCC Rcd 17595, 17719 (2002) ("BellSouth Section 271 Approval Order").
[5] FCC Virginia Arbitration Order, ¶ 113.
[6] FCC Virginia Arbitration Order, ¶ 117.

such a duty."[7] The Bureau also did not specifically determine whether ILECs have a duty under 47 U.S.C. § 251(a) to provide transit services. Rather, the Bureau concluded that "any duty Verizon may have under section 47 U.S.C. § 251(a) of the Act to provide transit service would not require that service to be priced at TELRIC."[8] Thus, the Bureau has confirmed that no Commission rule requires carriers to provide indirect interconnection and transit services (whether at TELRIC prices or otherwise).

10. In the FCC's September, 2002, BellSouth Section 271 Approval Order, the FCC declined to investigate BellSouth's charging of access tariff rates for transit service because of a lack of any clear FCC precedent or rules declaring a duty upon incumbent LECs to provide transit service under §251(c)(2).[9] The FCC found that BellSouth's transit rates did not violate Checklist Item 1.[10] This is significant in that Checklist Item 1 is "Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." See, Section 271(c)(2)(B)(1). Therefore, finding no authority to interfere in how BellSouth offered and priced the service, the FCC did not find transit traffic subject to Section 251(c) and did not find that BellSouth's pricing of its transit service at access rates was a violation of §252(d)(1).

11. These decisions are also consistent with the FCC's earliest interpretation of Section 251(c)(2). For example, in the FCC's First Report and Order issuing rules and regulations to interpret and implement the Act, the FCC concluded that the "term 'interconnection' under section 251(c)(2) refers *only* to the physical linking of *two*

[7] FCC Virginia Arbitration Order, ¶ 117.
[8] FCC Virginia Arbitration Order, ¶ 117.
[9] BellSouth Section 271 Approval Order, para. 222, n. 849.
[10] BellSouth Section 271 Approval Order, para. 222, n. 849.

networks for the *mutual exchange* of traffic."[11] Similarly, the FCC held that "[s]ection 251(c)(2) gives competing carriers the right to deliver traffic *terminating on an incumbent LEC's network* at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."[12]

12. In sum, the parties have expressly agreed that the transit agreement entered into between them is not subject to negotiation and/or arbitration under Section 252 of the Act and should not be filed with the Commission. Additionally, the transit agreement is not an "interconnection agreement" for purposes of Section 251, subsections (b) and (c), and thus, the agreement is not subject to the Commission's approval under Section 252(e)(1).

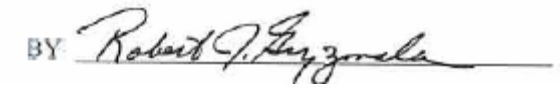
WHEREFORE, SBC Missouri objects to CVCI's having filed with this Commission the transit agreement entered into between CVCI and SBC Missouri. SBC Missouri further objects to the Commission's proceeding to approve the transit agreement, inasmuch as the agreement is not an interconnection agreement for which the Commission's approval is required under the Act. Finally, SBC Missouri urges the Commission's approval of the ICA entered into between CVCI and SBC Missouri.

[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996), para. 176 (emphasis added) ("First Report and Order"), modified on recon, 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999), decision on remand, Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), aff'd in part, rev'd in part sub nom., Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002).

[12] First Report and Order, para. 209. (emphasis added).

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

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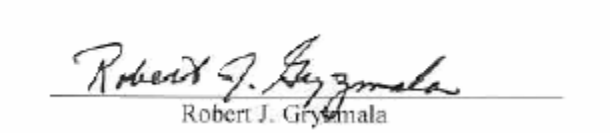
Certificate of Service

I hereby certify that copies of the foregoing have been electronically mailed to all counsel of record this 14th day of June, 2005.



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