

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
BRIAN K. BOGARD
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

August 26, 2002

FILED²

AUG 26 2002

Missouri Public
Service Commission

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

Re: Case No. TC-2002-1077
- **Direct Testimony of Dave Beier**
- **Fidelity Telephone Company**

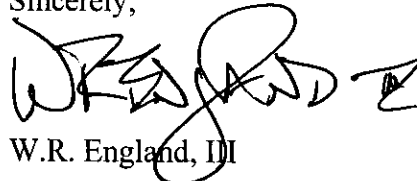
Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of the direct testimony of Dave Beier on behalf of Fidelity Telephone Company.

Please note that Schedule No. 1 has been designated "highly confidential" because it contains information relating directly to specific customers and market specific information relating to services offered in competition with others. Accordingly, it is being provided in a separate envelope.

Please see that this filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this filing, please give me a call. I thank you in advance for your attention to and cooperation in this matter.

Sincerely,



W.R. England, III

WRE/da
Enclosures
cc: Parties of Record

Exhibit No.:
Issue: Terminating Wireless Traffic
Witness: David N. Beier
Type of Exhibit: Direct Testimony
Sponsoring Party: Fidelity Telephone Company
Case No.: TC-2002-1077
Date: August 26, 2002

CASE NO. TC-2002-1077

DIRECT TESTIMONY

OF

DAVID N. BEIER

ON

BEHALF OF

FIDELITY TELEPHONE COMPANY

FILED²

AUG 26 2002

**Missouri Public
Service Commission**

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

BPS Telephone Company, et al.,

Petitioners,

v.

VoiceStream Wireless Corporation, et al.,

Respondents.

Case No. TC-2002-1077

County of Franklin)

State of Missouri)

AFFIDAVIT OF

DAVID N. BEIER

David N. Beier, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony entitled "Direct Testimony of David N. Beier"; that said testimony and schedules attached thereto was prepared by him and/or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information and belief.

David N. Beier

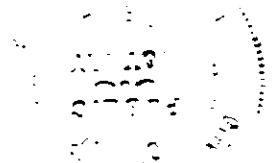
Subscribed and sworn to before me this 21st day of August, 2002.

Christine Stroup

Notary Public

My Commission expires:

CHRISTINE STROUP
Notary Public - Notary Seal
STATE OF MISSOURI
Franklin County
My Commission Expires: June 20, 2004



DIRECT TESTIMONY

1 Q. Please state your name and business address.

2 A. My name is David N. Beier. My business address is 64 North Clark, Sullivan, Missouri
3 63080.

4 Q. By whom are you employed and in what capacity?

5 A. I am employed by Fidelity Telephone Company as Vice President-Regulatory.

6 Q. Briefly describe the nature of your duties and responsibilities for Fidelity Telephone
7 Company.

8 A. I am responsible for all regulatory affairs, tariff matters, compliance reporting, revenue
9 accounting and cost separations for the Company.

10 Q. Are you authorized to testify on behalf of Fidelity Telephone Company?

11 A. Yes.

12 Q. Please briefly describe your education and work background.

13 A. I obtained a B.S.B.A. degree from St. Louis University with a double major in
14 Accounting and Finance in 1985. Between 1985 and 1991, I worked for Baird, Kurtz &
15 Dobson (BKD), a CPA firm, performing audit, tax and consulting services. I passed the
16 CPA exam in November 1985. While at BKD, I served clients in various industries,
17 including Fidelity Telephone Company. I joined the Accounting Department of Fidelity
18 Telephone Company in December 1991 and performed various accounting, tax and
19 management functions. I left in 1993 for a Controller position with Reliant Care Group, a
20 group of eight nursing homes. In 1995, I moved on to another Controller position at
21 Universal Sewer Supply, a wholesaler of sewing machine parts and supplies. In May
22 1999, I returned to Fidelity Telephone Company as Director of Regulatory. In December
23 2000, I was promoted to my current position, Vice President of Regulatory.

24 Q. Please briefly describe Fidelity Telephone Company and the nature of its business.

25 A. Fidelity Telephone Company (hereinafter sometimes referred to as the "Company") is a

1 Missouri corporation with its principal office and place of business located at 64 North
2 Clark, Sullivan, Missouri 63080. A certificate of corporate good standing, issued by the
3 Missouri Secretary of State, is attached to the Complaint filed in Case No. TC-2002-
4 1077. Fidelity Telephone Company provides telephone service to approximately 17,000
5 subscribers that are located within the following Missouri exchanges: Owensville,
6 Gerald, Sullivan, New Haven, Stanton, Lyon, Berger, Japan and Spring Bluff. The
7 Company operates pursuant to a certificate of service authority issued by the
8 Commission in its Case No. TA-88-76. Of particular relevance to the instant complaint,
9 Fidelity Telephone Company provides basic local telecommunications services,
10 exchange access services and wireless termination services pursuant to tariffs on file
11 with and approved by the Missouri Public Service Commission (Commission).

12 Q. What is the purpose of your testimony?

13 A. The purpose of my testimony is to support our Company's complaint against
14 VoiceStream Wireless Corporation (VoiceStream), Western Wireless Corporation
15 (Western) and Southwestern Bell Telephone Company (SWBT) for their failure to pay
16 terminating compensation on wireless originated traffic which they are responsible for
17 causing to terminate in the exchanges served by our Company.

18 Q. Are there any pending actions or final unsatisfied judgments or decisions issued against
19 your Company from any state or federal agency or Court within three years of the date of
20 the filing of the instant Complaint which involved customer service or rates?

21 A. No.

22 Q. Are either your Company's annual report to the Commission or its assessment fee
23 overdue?

24 A. No.

25 Q. Please state your understanding of the nature of Respondents', VoiceStream and
26 Western, business.

27 A. It is my understanding that VoiceStream and Western are providers of commercial

1 mobile radio service (CMRS) (also known as wireless service) within the State of
2 Missouri. It is also my understanding that wireless customers of VoiceStream and
3 Western originate wireless calls which are ultimately terminated to wireline customers
4 which are located in exchanges which our Company serves.

5 Q. What is your understanding of the nature of SWBT's business?

6 A. It is my understanding that SWBT is a telecommunications company providing basic
7 local telecommunications services, basic interexchange telecommunications services
8 and exchange access services in various parts of the state of Missouri. In addition,
9 SWBT offers what it calls a "transit" service to CMRS providers, such as VoiceStream
10 and Western, which allow those CMRS providers to terminate wireless-originated traffic
11 to exchanges served by our Company without directly connecting to our Company's
12 local network. It is also my understanding that SWBT provides these transit services or
13 facilities pursuant to either its intrastate wireless interconnection tariff or an
14 interconnection agreement entered into between SWBT and CMRS providers such as
15 VoiceStream and Western.

16 Q. How does wireless-originated traffic terminate to your Company's exchanges?

17 A. The wireless originated traffic is terminated to our exchanges over common trunk groups
18 owned by SWBT which directly connect to the facilities of our Company. SWBT
19 commingles this wireless originated traffic with other wireline interexchange (i.e., toll)
20 traffic also destined for termination to the Company's exchanges. Because all of this
21 traffic comes to us over a common trunk group, our Company is unable to distinguish the
22 wireless-originated traffic from other interexchange traffic that is terminated to us. We
23 are also unable to unilaterally prevent or block wireless-originated traffic from terminating
24 to our facilities even in those circumstances where wireless carriers refuse or otherwise
25 fail to pay for the terminating service which our Company provides.

26 Q. Please describe the terminating services which your Company provides.

27 A. After the traffic is delivered by SWBT to our facilities, it is transported over wire/cable

1 facilities which we own to our central office where the traffic is switched and directed to
2 the individual customers to whom the traffic is destined. In addition to the switch, we
3 own distribution facilities which carry the calls throughout our exchanges where it is
4 ultimately terminated over the cable pair or loop which serves each individual customer's
5 residence or place of business.

6 Q. How are you compensated for wireless-originated traffic which terminates to your
7 exchange?

8 A. On February 19, 2001, the Missouri Commission approved, in its Case No. TT-2001-
9 139, et al., a "wireless termination service tariff" which contains rates, terms and
10 conditions for the termination of intraMTA wireless-originated traffic delivered to our
11 Company via the transit services or facilities of an intermediate LEC such as SWBT.
12 That tariff is currently on file with and approved by the Commission and applies in the
13 absence of an agreement negotiated pursuant to the Telecommunications Act of 1996.

14 Q. Does VoiceStream or Western have an agreement with your Company to terminate or
15 otherwise exchange intraMTA traffic?

16 A. No.

17 Q. Are there other tariffs which may apply to this wireless-originated traffic?

18 A. Yes. To the extent that VoiceStream and Western terminate interMTA wireless traffic to
19 our Company, our intrastate access tariff would apply. Again, the rates, terms and
20 conditions of our access service are contained in tariffs which are on file with and
21 approved by the Commission.

22 Q. How do you know that VoiceStream and Western have terminated wireless-originated
23 traffic to your exchanges?

24 A. Each month we receive from SWBT a cellular transiting usage summary report (CTUSR)
25 which identifies, by carrier, the CMRS providers who have transited wireless originated
26 traffic over SWBT's facilities for termination to our exchanges. The CTUSRs we have
27 received from SWBT since February 19, 2001 (when our wireless service tariff became

effective) indicate that VoiceStream has terminated traffic to our Company. The specific amounts of traffic are shown on the copies of CTUSRs which are attached to this testimony as Schedule No. 1. These CTUSRs are for the period of time February 5, 2001 through June 4, 2002, which is the most recent period for which SWBT has hard copies of this information. There are several months that the CTUSRs list Western as the carrier, but VoiceStream and SWBT personnel have told me that the ACNA of WCG belongs to VoiceStream and accordingly we have billed these minutes to VoiceStream.

Q. Do the CTUSRs you receive from SWBT distinguish between interMTA and intraMTA wireless originated traffic?

A. No. The CTUSRs we receive from SWBT just tell us, in total, for each month, the amount of traffic a particular CMRS provider has terminated to our exchanges. These reports do not distinguish between inter- and intraMTA traffic.

Q. Has VoiceStream paid you for any of the traffic terminated to your Company's exchanges?

A. VoiceStream has paid us \$229.41, which covers the first four invoices sent and traffic terminated to us through August 4, 2001. After August 4, 2001, we have received no further payments.

Q. Have you sent bills to VoiceStream for this traffic?

A. Yes, we have sent bills to VoiceStream for this traffic. For purposes of those billings we have assumed that 95% of the traffic is intraMTA and applied our wireless termination service tariff rate, and we have assumed that 5% of the traffic is interMTA and applied our intrastate access rates. We estimated this 5% interMTA factor based upon certain existing interconnection agreements having interMTA factors ranging from 1% to 10%, and taking an approximate midpoint. It was necessary to estimate the amount because none of the carriers have provided actual data.

Q. What is the status of VoiceStream's payments with respect to your Company?

A. As of the date of the filing of the Complaint, VoiceStream has an outstanding and unpaid

1 amount as shown on Exhibit 15 (HC) attached thereto. This amount remains
2 outstanding and unpaid and will increase as wireless traffic continues to be terminated to
3 our Company.

4 Q. Are other wireless carriers paying you for traffic they terminate to your Company?

5 A. Yes. Most, if not all, of the major wireless carriers that terminate traffic to us, as shown
6 by the CTUSRs, are paying for that traffic pursuant to our wireless termination service
7 tariff. VoiceStream is the only major wireless carrier that I am aware of that is not paying
8 our wireless termination tariff rate for traffic they terminate to us.

9 Q. Prior to filing this complaint, did you attempt to resolve this dispute with VoiceStream?

10 A. Yes. I spoke with someone in the accounts payable department at VoiceStream. I was
11 told that it was VoiceStream's policy to not pay invoices for wireless terminating access.
12 In addition, our counsel contacted representatives for VoiceStream on several occasions
13 in an attempt to resolve this matter short of filing a complaint case. However, those
14 efforts were unsuccessful and, as a result, we were forced to file this Complaint.

15 Q. Do any of the amounts due and owing from VoiceStream include any late payment or
16 other charges?

17 A. No. Although our tariff permits the imposition of late fees, and the recovery of
18 reasonable attorneys fees in the event of nonpayment, I have not included those
19 charges in the amounts due and owing. As part of this Complaint, however, we are
20 asking the Commission to reaffirm the provisions of our tariff which would allow us to
21 assess late payment fees on these amounts as well as seek recovery of reasonable
22 attorneys fees which we have incurred in pursuing these unpaid amounts.

23 Q. You have also filed a complaint against SWBT. Why are you including SWBT in this
24 Complaint?

25 A. SWBT is included in this Complaint because we believe they have some responsibility
26 for this traffic being terminated to us and, perhaps, for VoiceStream's failure to pay.
27 When the Commission approved SWBT's revision to its own wireless interconnection

1 tariff in Case No. TT-97-524, it did so with the specific condition that SWBT would
2 remain secondarily liable to third party LECs for traffic sent to them by wireless carriers
3 and for which they receive no payment. The specific language in the Commission's
4 order is as follows:

5
6 In the event a wireless carrier refuses to pay a third-party LEC for such
7 termination and the wireless carrier does not have a reciprocal
8 compensation agreement with the third-party LEC, SWBT will remain
9 secondarily liable to the third-party LEC for the termination of this traffic,
10 but will be entitled to indemnification from the wireless carrier upon
11 payment of the loss. *In the matter of SWBT's tariff filing to revise its*
12 *wireless carrier Interconnection Service Tariff*, PSC Mo. No. 40, Case No.
13 TT-97-524, Report & Order, December 23, 1997.
14

15 It is also our understanding that in SWBT's interconnection agreements with CMRS
16 providers, including the interconnection agreements with VoiceStream, there is a
17 provision which requires CMRS providers to enter into their own agreements with third
18 party providers, such as our Company, for traffic which they send through SWBT's
19 facilities for termination to that third party provider. In the event, however, that the
20 CMRS provider sends traffic through SWBT's transiting network to a third party provider
21 with whom the CMRS carrier does not have a traffic interexchange agreement, then the
22 CMRS provider has agreed to indemnify SWBT for any termination charges rendered by
23 a third party provider for such traffic. Accordingly, in this case where VoiceStream has
24 knowingly sent traffic to our Company and has failed to establish an agreement or pay
25 for traffic they terminate to our Company pursuant to our approved tariffs, we believe
26 that it is appropriate to hold SWBT responsible for payment of such terminating charges
27 since 1) SWBT is responsible for the traffic being terminated to us in contravention of its
28 tariff or interconnection agreement with VoiceStream and 2) SWBT has a right of
29 indemnification from VoiceStream such that SWBT would be reimbursed for any charges
30 it is required to pay to us.

31 Q. Does that complete your direct testimony?

1 A. Yes, it does.

CASE NO. TC-2002-1077

Schedule No. 1

HIGHLY CONFIDENTIAL

Direct Testimony of Dave Beier
on behalf of Fidelity Telephone Company

FILED UNDER SEAL