

EXHIBIT

Exhibit No.:

Issue(s):

FCC Requirements;

Applicability of Access Rates

Witness/Type of Exhibit:

Meisenheimer/

Surrebuttal

Sponsoring Party:

Public Counsel

Case No.:

TT-99-428, et al.

SURREBUTTAL TESTIMONY

OF

BARBARA A. MEISENHEIMER

Submitted on Behalf of the Office of the Public Counsel

In the matter of Mid-Missouri Group's Filing to
Revise its Access Service Tariff, P.S.C. Mo. No. 2

Case No.: TT-99-428, et al.

OCTOBER 4, 1999

Exhibit No. 4
Date 10-12-99 Case No. TT-99-428, et al.
Reporter SURREBUTTAL

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of Mid-Missouri Group's Filing)
To Revise its Access Service Tariff,)
P.S.C. Mo. No. 2.)

AFFIDAVIT OF BARBARA A. MEISENHEIMER

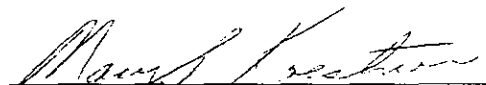
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Barbara A. Meisenheimer, of lawful age and being first duly sworn, deposes and states:

1. My name is Barbara A. Meisenheimer. I am Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony consisting of pages 1 through 9.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.


Barbara A. Meisenheimer

Subscribed and sworn to me this 4th day of October, 1999.


Mary Koestner, Notary Public

My Commission expires August 20, 2001.

TABLE OF CONTENTS

INTRODUCTION	1
RESPONSE TO AT&T AND AT&T WIRELESS	3
RESPONSE TO STAFF	5
RESPONSE TO SPRINT SPECTRUM	8

**SURREBUTTAL TESTIMONY
OF
BARBARA A. MEISENHEIMER**

IN THE MATTER OF THE MID-MISSOURI GROUP'S FILING TO

REVISE ITS ACCESS SERVICE TARIFF

CASE NO. TT-99-428

Introduction

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. Barbara A. Meisenheimer, Chief Utility Economist, Office of the Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102. I am also employed as an adjunct Economics Instructor for William Woods University.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS CASE?

A. I have not.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to portions of the rebuttal testimony of Matthew Kohly, filed on behalf of AT&T Communications of the Southwest Inc. (AT&T), Kurt C. Maass, filed on behalf of AT&T Wireless Services Inc. (AWS),

1 Anthony Clark, filed on behalf of the Public Service Commission Staff (Staff), and James
2 D. Propst, filed on behalf of Sprint Spectrum L.P. (Sprint PCS)

3 **Q. IN PREPARATION OF YOUR TESTIMONY, WHAT MATERIALS DID YOU**
4 **REVIEW?**

5 A. I have reviewed the direct and rebuttal testimony filed in this case, the Commission's
6 Order in Case No. TT-97-524, portions of the Federal Telecommunications Act of 1996
7 (Act), and portions of the Federal Communications Commission's First Report and Order
8 on Interconnection.¹ (Interconnection Order)
9

10 **Q. WHAT IS PUBLIC COUNSEL'S POSITION IN THIS CASE?**

11 A. Public Counsel does not oppose the proposed tariffs of the requesting small incumbent
12 local exchange carriers (MMG ILECs). The tariffs clarify the tariff language to reflect
13 that switched access rates should apply to traffic terminated on their local networks
14 absent approved agreements or other arrangements for compensation required by the
15 FCC or the Missouri Public Service Commission. (Commission) The MMG ILECs are
16 obligated under Section 251 of the Act to interconnect directly or indirectly with other
17 carriers and are obligated to coordinate with other carriers in completing calls. In
18 exchange for the use of their local network facilities by other carriers, they have an
19 obligation to their customers and shareholders to pursue the means to secure fair

¹ FCC 96-325, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98 and CC Docket No. 95-185, respectively.

1 compensation from those other carriers. Public Counsel believes that, subject to our
2 proposed modification, the proposed tariffs do not violate the FCC's Orders regarding
3 wireless traffic and should be approved to facilitate the efforts of the MMG ILECs to
4 clarify their tariffs.

5 Response to AT&T and AT&T Wireless

6 Q. AT&T WITNESS MATTHEW KOHLY RAISES CONCERNS ABOUT THE SCOPE OF
7 TRAFFIC THAT COULD BE IMPACTED BY THE PROPOSED TARIFF
8 LANGUAGE. DO YOU SHARE HIS CONCERNS?

9 A. Yes I do. Mr. Kohly has pointed out that, given the proposed tariff language, existing bill
10 and keep arrangements between ILECs that were approved by the Commission but not
11 approved under Section 252 of the Act as well as MCA and EAS traffic exchanged
12 between MMG ILECS and CLECs might be inappropriately subject to access charges. I
13 would also add that if a negotiated or arbitrated agreement is pending approval, then the
14 FCC interim rates would apply.

15 Q. SHOULD THE COMMISSION REQUIRE THAT THE PROPOSED LANGUAGE BE
16 MODIFIED TO EXCLUDE TRAFFIC EXCHANGED UNDER THE ARRANGEMENTS
17 APPROVED BY THE FCC OR THE COMMISSION TO ADDRESS THESE
18 CONCERNS?

19 A. Yes, this modification will address these concerns.

1 Q. AT&T WIRELESS WITNESS MAASS AS WELL AS OTHER PARTIES TO THIS
2 CASE CONTEND THAT THE COMMISSION WILL VIOLATE THE PROVISIONS
3 OF THE FCC'S INTERCONNECTION ORDER BY APPROVING A TARIFFED
4 OFFERING FOR TRANSPORT AND TERMINATION AT RATES INCONSISTENT
5 WITH THE PRICING METHODOLOGY FOR TRANSPORT AND TERMINATION
6 DESCRIBED IN THE FCC'S ORDER. DO YOU AGREE?

7 A. No. As I fully described in my response to Staff, the FCC's pricing methodology is
8 applicable in the limited cases of a state commission's review of an arbitrated agreement
9 and pending finalization of an agreement. So long as the tariff language states that it
10 does not apply in these cases, I do not believe that the Commission's approval of the
11 tariffs will violate the provisions of the FCC's Interconnection Order. If the proposed
12 tariff language is modified to reflect Public Counsel's proposed change, then the issue of
13 the correct pricing methodology for arbitrated agreements should no longer be an issue in
14 this case.
15

Response to Staff

Q. DO YOU AGREE WITH STAFF WITNESS ANTHONY CLARK'S
INTERPRETATION OF THE FCC'S INTERCONNECTION ORDER AT
PARAGRAPH 1036 AS THE BASIS FOR HIS CONCLUSION THAT "RATES
FOR THE TERMINATION OF INTRA-MTA WIRELESS TRAFFIC SHOULD NOT
BE SWITCHED ACCESS. INSTEAD THE RATES SHOULD BE COST-BASED."
(CLARK REBUTTAL, PAGE 6, LINES 17-18)

A. Not entirely. I believe that that Mr. Clark's interpretation is appropriate in cases where a
wireless carrier has requested arbitration for a reciprocal compensation arrangement for
the exchange of local traffic because the pricing standards of Section 252(d) would apply.
However, as the Commission knows from its role in reviewing voluntary agreements, the
pricing standards of Section 252(d) are invoked only in the review of arbitrated
agreements and do not apply in all cases. I believe that in cases where CMRS providers
have not requested negotiations or have voluntarily agreed to access or non-cost based
rates, the Commission and the MMG ILEC are not limited by the requirements of Section
252(d).

Where a request for arbitration is made, a MMG ILEC has the duty to establish reciprocal
compensation contained in Section 251(b)(5) according to the negotiation requirements
of Section 251(c)(1) and the pricing standards outlined in Section 252 that require cost
based rates for arbitrated agreements. Cost based rates should also result from
negotiations that end in arbitrated agreements if the entrant requests and qualifies for the

1 special interim rates for ILEC transport and termination services provided to new entrants
2 under the FCC's Interconnection Order, paragraph 1065.

3
4 Absent a request for negotiations by the wireless carrier or a voluntary agreement, the
5 FCC's Interconnection Order does not prohibit the Commission from approving switched
6 access rates for the termination of intra-MTA wireless traffic. For voluntary agreements,
7 the parties are free to establish switched access or non-cost based rates and the state
8 commission's review of the agreement under 252(e) does not include scrutiny of the
9 agreement under the cost-based pricing rules of 252(d). Where a request for negotiations
10 has not been made, a MMG ILEC is not subject to the negotiation requirements of
11 Section 251(c)(1), the cost-based pricing standards for arbitrated agreements in Section
12 252, or the special interim transport and termination rate levels described above.

13 **Q. WOULD THE COMMISSION'S APPROVAL OF TARIFFED ACCESS RATES FOR**
14 **THE TERMINATION OF WIRELESS INTRAMTA TRAFFIC APPLICABLE IN**
15 **CASES WHERE THE WIRELESS CARRIER HAS MADE NO REQUEST TO**
16 **ESTABLISH AN AGREEMENT VIOLATE THE RECIPROCAL COMPENSATION**
17 **REQUIREMENT OF SECTION 251(B) (5) .**

18 **A.** No. Section 251(b)(5) should not be viewed as a generic "stand alone" requirement that
19 precludes or restricts a LEC's unilateral, generally available tariff service offerings.
20 Instead, Section 251(b)(5) and related requirements of the Act are invoked when a
21 wireless carrier or other entrant requests negotiations. As previously indicated, Section
22 251(b)(5) together with Section 251(c)(1) and Section 252 are applicable in shaping the

1 terms and conditions for agreements between carriers. They establish a framework under
2 which a CMRS provider may secure reciprocal compensation from a LEC if it desires to
3 do so. Furthermore, paragraph 116 of the Interconnection Order indicates that it is both
4 necessary and sufficient for a LEC to satisfy its obligation to establish reciprocal
5 compensation through negotiating voluntary or arbitrated agreements with other carriers:

6 Section 252 generally sets forth the procedures that state commissions,
7 incumbent LECs, and new entrants must follow to implement the
8 requirements of section 251 and establish specific interconnection
9 arrangements.
10

11 The FCC's statement that switched access should not apply to local wireless traffic must
12 be considered in the context of the FCC's full discussion of a LEC's obligation under
13 Section 251(b)(5). It is clear that the FCC's determination that switched access is not the
14 appropriate reciprocal compensation rate for wireless intraMTA traffic is binding on this
15 Commission only for the limited purposes to establish interim rates and to guide it in its
16 review of arbitrated agreements. I do not believe that the FCC's statement should be
17 construed to direct state commissions to reject agreements in which the parties to the
18 agreement agree voluntarily to switched access or to reject tariff offerings in cases where
19 negotiations have not been requested. Therefore, the Commission is not obligated to
20 reject the proposed tariffs if the Commission believes that allowing MMG ILECs to
21 clarify that access rates apply absent requests for negotiations will encourage wireless
22 carriers to initiate negotiations, and if the Commission finds that in other respects access
23 is just and reasonable compensation for the termination of wireless traffic.

1 Q. STAFF WITNESS CLARK SUGGESTS THAT:

2 ALTHOUGH THE RESULTING RATES WOULD NOT NECESSARILY BE
3 COST-BASED, AT LEAST THE EXPLICIT SUBSIDY ASSOCIATED WITH CCL
4 WOULD NO LONGER BE PRESENT. (EMPHASIS ADDED). (CLARK
5 REBUTTAL, P. 9. LINES 12-14).

6 DO YOU AGREE WITH THAT CHARACTERIZATION?

7 A. No. The CCLC is a charge that is used to recover a portion of the common line that is
8 shared by toll carriers. In order for a toll carrier to terminate a call from their customer,
9 the call is carried over the LEC's loops which connect to the called party's location. The
10 CCLC is not a subsidy but a way of recovery of a share of the actual cost of providing the
11 service over the LEC's loop facilities.
12

13 Response to Sprint Spectrum

14 Q. SPRINT SPECTRUM WITNESS PROPST ARGUES ON PAGE 4 LINES 20
15 THROUGH PAGE 5 LINE 2 THAT ALL CARRIERS HAVE AN OBLIGATION TO
16 INTERCONNECT. DOES THIS OBLIGATION REQUIRE CMRS PROVIDERS TO
17 ESTABLISH RECIPROCAL COMPENSATION ACCORDING TO 251(B) IF
18 REQUESTED BY THE MMG ILECS?

19 A. No. In the Interconnection Order, the FCC determined that CMRS providers are
20 telecommunications carriers, but declined to classify CMRS providers as either LECs or
21 ILECs. (Paragraphs 1012, 1005, 1006).
22

1 These findings limit the obligation of CMRS providers. They are telecommunications
2 providers and are required under Section 251(a) to link their networks directly or
3 indirectly to the networks of other carriers to ensure that calls will be completed.
4 However, as nonLECs, they are not required to establish reciprocal compensation as
5 required by Section 251(b). Therefore, Sections 251 and 252 of the Act and the FCC's
6 orders implementing these provisions do not require the CMRS providers to come to the
7 bargaining table with the MMG ILECs unless they choose to do so. Although Sprint PCS
8 may be committed to negotiate MMG ILECs, some wireless carriers may find it
9 beneficial to game the system by not requesting negotiations and continuing to terminate
10 traffic through third party arrangements.

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 **A. Yes.**