Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.010 The LEC-to-LEC Network **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005, (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

COMMENT: A public hearing on this and associated proposed rules was held February 9, 2005, and the public comment period ended February 2, 2005. At the public hearing, Keith Krueger, Deputy General Counsel in General Counsel's Office of the Public Service Commission of Missouri, and William Voight, Rate/Tariff Examination Supervisor of the Public Service Commission of Missouri, provided oral comments and responded to questions from Commissioners: Leo J. Bub, appeared as attorney for Southwestern Bell Telephone, LP, Marlon Hines and Joe Murphy provided comments for Southwestern Bell Telephone, LP, and Marlon Hines responded to Commissioners questions; John Idoux provided oral comments and responded to Commissioner questions for Sprint Missouri, Inc. and Sprint Spectrum, L.P. d/b/a Sprint PCS; Matt Kohly appeared to respond to any Commissioner questions directed to Socket Telecom LLC, XO Communications Services, Inc. or Big River Telephone Company, LLC; Larry Dority of Fisher and Dority, P.C., provided comments and responded to Commissioner questions for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; William R. England, III of Brydon, Swearengen & England P.C., appeared as attorney for and Robert Schoonmaker provided oral comments and responded to Commissioner questions for the companies known as the Small Telephone Company Group ("STCG"); and Craig S. Johnson of Andereck, Evans, Milne, Peace and Johnson, LLP, provided oral comments for the companies known as the Missouri Independent Telephone Group ("MITG").

The Staff of the Commission; Southwestern Bell Telephone, L.P.; Sprint Missouri, Inc. and Sprint Spectrum, L.P. d/b/a Sprint PCS; Socket Telecom LLC, XO Communications Services, Inc. and Big River Telephone Company, LLC, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; STCG; MITG; VoiceStream PCS 11 Corporation, VoiceStream Kansas City, Inc., and Powertel/Memphis, Inc.-collectively, d/b/a T-Mobile, New Cingular Wireless PCS, LLC, Eastern Missouri Cellular Limited Partnership, Kansas City SMSA Limited Partnership, Missouri RSA 11/12 Limited Partnership, Missouri RSA 8 Limited Partnership, and Missouri RSA 9131 Limited

Partnership-collectively d/b/a Cingular Wireless, and Nextel West Corp. filed written comments.

COMMENT: The Missouri Independent Telephone Company Group (MITG) filed comments generally supporting the Enhanced Record Exchange Rules. The MITG states that the rules establish a billing record and financial responsibility system for intrastate intraLATA traffic, and it supports adoption of the rules. The MITG states the rules will end the practice of the past five years wherein SBC unilaterally determined and announced changes in billing record formats and compensation responsibilities to the rest of the local exchange carriers in Missouri. According to the MITG, the small carriers have experienced actual failures of the current record-creation system, as evidenced by SBC's failure to record or pay for its own "Local Plus" and Outstate Calling Area traffic, as well as other failures, including SBC's failure to record Alltel wireless traffic. The MITG points to failures in providing sufficient information to rate traffic, failure to identify a financially responsible carrier, and a general inability of terminating carriers to reconcile their recordings with the billing records provided to them. According to the MITG, such failures on the part of transiting carriers inhibit terminating carriers' ability to identify which carriers are failing to meet compensation obligations incurred by originating carriers. The MITG offers the rules as the culmination of more than eight years of small local exchange carrier efforts to assure an interexchange carrier/Feature Group D (IXC/FGD) billing relationship after implementation of intraLATA presubscription for long distance telephone service. Despite discontent that its efforts to implement an IXC/FGD billing relationship have not been successful, the MITG supports adoption of the rules.

The MITG cites eight specific items needed for successful intercompany compensation. According to the MITG, the Enhanced Record Exchange Rules comprehensively addresses all eight of those items. MITG notes that establishment of the rules will necessitate the maintenance and operation of two different types of billing systems and compensation responsibilities – one for the interLATA network and one for the intraLATA network. Nevertheless, states the MITG, adoption of the rules will implement principles and practices that are preferable to the current lack of any enforceable terminating traffic relationship that has existed since the 1999 termination of Missouri's Primary Toll Carrier Plan. The MITG cites numerous deficiencies of an "originating responsibility" and "originating billing records" system, and states that it is time for improvement. While the MITG remains concerned about what it calls the inherent deficiencies of an originating carrier compensation structure, it supports the rules as a fair attempt to regulate such a compensation structure.

The MITG's written comments express a belief that its intraLATA access tariffs should be followed in all instances. MITG states that transiting carriers are essentially interexchange carriers, and that MITG exchange access tariffs should fully apply to the exchange access traffic transited to its member companies by transiting carriers. MITG also states that its tariffs require the elimination of the LEC-to-LEC network upon implementation of Feature Group D (FGD). Thus, according to the MITG, the LEC-to-LEC network should not exist in the first instance. Moreover, states the MITG, "the ERE

rule should not have been necessary." The MITG further opines that establishment of a LEC-to-LEC network will lead to the maintenance and operation of two different billing systems and two different compensation responsibilities for terminating traffic. MITG opines that no justification exists to allow transiting carriers to act as interexchange carriers, yet escape the responsibilities of interexchange carriers. MITG complains of inadequate billing information for, among other matters, wireless traffic. However, MITG concedes that a rule prohibiting interstate/interMTA wireless transiting traffic represents an "improvement."

Lastly, the MITG also supports the ability of terminating carriers to re-examine the success the rules may have on addressing the MITG's concerns over the business relationship codified by the rules. The MITG suggests a reasonable time for re-examination would be two years.

COMMENT: Socket Telecom, XO Communications Inc, and Big River Telephone Company (Socket, XO, and Big River) generally support the Enhanced Record Exchange Rules as written. These carriers are particularly supportive of the provisions that permit terminating carriers to bill from Category 11-01-XX records created at the terminating end office. According to Socket, XO, and Big River, the current practice employed by transiting carriers such as SBC, Sprint, and CenturyTel is simply unworkable in today's telecommunications environment - especially when telephone numbers are ported between carriers. Socket, XO and Big River offer examples to demonstrate how the present system leads to the wrong carrier being improperly compensated for call termination. Socket, XO and Big River opine that use of records created at the terminating end office is a critical step in the right direction if Missouri is going to have facility-based competition.

COMMENT: The Telecommunications Department Staff's (Staff's) comments express support for the proposed Enhanced Records Exchange Rules and, except for additions addressing transiting traffic to and from Internet Service Providers, recommends adoption of the rules without change. Staff provided written comments describing the lengthy process it used to comply with the Commission's directive to promulgate rules addressing problems inherent to the LEC-to-LEC network. Staff states that while undertaking such efforts it endeavored not to interfere with existing LEC-to-LEC network billing processes that appear to work, offering by way of example the LEC-to-LEC network traffic and record exchange systems utilized between the former Primary Toll Carriers (SBC, CenturyTel, and Sprint). Staff also states that the proposed rules do not interfere with traffic-recording and billing systems utilized on the Interexchange Carrier (IXC) network, as governed by the Federal Communications Commission (FCC). Staff offers its opinion that adoption of the proposed rules will accomplish the Commission's stated objectives as announced in the Order Directing Implementation issued by the Commission in Case No. TO-99-593, and in the Commission's Order Finding Necessity for Rulemaking that was issued in the instant case. While acknowledging that companies have always had and will likely continue to have instances of billing disputes, Staff opines that the proposed rules will minimize the problem of unidentified traffic, while establishing a framework to

resolve billing disputes when they do occur. Staff offers its belief that a rule is necessary to provide guidance to the telecommunications industry.

The Staff's written comments also express concern about Voice over Internet Protocol (VoIP) telecommunications traffic transited to terminating carriers via the LEC-to-LEC network. Staff states its concerns are primarily with call termination, and not call origination. Staff opines that interconnection agreements should be required before VoIP telephone companies are permitted to transit calls over the LEC-to-LEC network. In the absence of such agreements, the Staff recommends changes to this rule which would mandate use of the interexchange carrier network for VoIP telephone call termination.

COMMENT: The Small Telephone Company Group (STCG) supports adoption of the proposed Enhanced Record Exchange Rules as a good first step towards resolving the problem of unidentified and uncompensated traffic on the LEC-to-LEC network. The STCG's written comments provide a review of the long history of transiting traffic in Missouri, beginning with the Primary Toll Carrier Plan and concluding with the present situation. The STCG states it experienced numerous problems with the existing LEC-to-LEC network arrangement, and expresses disagreement with the existing business relationship between its member companies and Missouri's three transiting carriers. The STCG extensively documents instances of unidentified and uncompensated traffic occurring on the LEC-to-LEC network in recent years, and expresses great concern that its member companies are forced to accept 100 percent of the risk for such traffic.

Along with its support of the Enhanced Record Exchange Rules, the STCG suggests several changes, which, it says, will represent improvement. Among the improvements the STCG recommends a "sunset" provision for Chapter 29. According to the STCG, the efficacy of this chapter should be examined within three years in order to ensure that the proposed Enhanced Record Exchange Rules are actually working. The STCG proposes adding 4 CSR 240-29.170 to accomplish the sunset provision. The STCG opines that addition of a sunset provision will provide for Commission review of the effectiveness in eliminating unidentified and uncompensated traffic.

The STCG suggests the proposed rule prohibits interLATA wireline and interMTA wireless traffic from using the LEC-to-LEC network. The STCG states it supports such limitation. According to the STCG, this limit would prevent additional types of traffic from being transited that may be unidentified and unbillable. The STCG expresses concern that the definition of the LEC-to-LEC network may permit SBC to circumvent the rule by sending interLATA calls to STCG member companies for call termination. Other than to suggest clarification be made, the STCG's comments offer no suggestion as to what such clarification might be.

COMMENT: CenturyTel opposes the Enhanced Record Exchange Rules. CenturyTel states that the rules are unnecessary, and that they will create inefficiencies and increase costs. CenturyTel characterizes issues related to the LEC-to-LEC network as compensation issues, and suggests the issues have mostly been resolved. CenturyTel notes that Peace Valley Telephone Company and Alltel are the only two small local

exchange carriers subtending its tandem switches, and neither company has expressed concerns regarding CenturyTel's record exchanges occurring thereon.

COMMENT: SBC recommends the Commission refrain from adopting the Enhanced Record Exchange Rules at this time. According to SBC, no showing has been made of any need to adopt such rules. SBC states that no formal complaints have been lodged involving unidentified traffic, and that the complaints that have been filed focused on the rate charged for transited wireless traffic. SBC opines that these issues have mostly been resolved through wireless termination tariffs and traffic termination agreements involving wireless carriers and small telephone companies. SBC points to the billing records it is now creating, and states that such records now capture traffic that previously went unreported. SBC offers that the Enhanced Record Exchange Rules impose unnecessary costs and unwarranted regulatory burdens on the Missouri telecommunications industry. While SBC does not believe a rule is warranted at this time, SBC does note its agreement with those aspects of the rules that establish the principle that the originating carrier is the carrier responsible for compensating all downstream carriers for transiting traffic. According to SBC, this concept is consistent with federal standards.

SBC's written comments oppose this rule to the extent that it seeks to impose restrictions on a carrier's lawful use of its own network. SBC opines the Commission has no authority to impermissibly interfere with federal law and the Commission's own rulings which, for example, expressly permit SBC to provide interLATA telecommunications services. According to SBC, the rule co-opts management rights of transiting carriers for traffic occurring over their own networks, and unlawfully impairs the financial value of SBC's LEC-to-LEC network. SBC states that the rule results in an unlawful taking in violation of state and federal constitutions.

COMMENT: Sprint filed written comments stating its long-standing and adamant opposition to enactment of the Enhanced Records Exchange Rules. Sprint submits that the proposed rules would create new and additional problems for both the industry and the Commission that would outweigh any potential benefits. Sprint states that only five small carriers subtend its tandem offices, and cites figures to compare the customers served by small carriers to those served by large carriers. Sprint adds that none of the carriers to whom Sprint transits traffic have filed any formal Commission complaints against Sprint regarding transiting traffic. Sprint opines that unidentified traffic in Missouri is not a material issue, and suggests that no carrier has presented any quantification of benefits to be received from the proposed rules. Sprint challenges carriers supportive of the rule to quantify the amount of unidentified traffic received. Sprint opines that only under such circumstances will it be appropriate to perform an analysis to determine if the unidentified traffic is even compensable. Sprint offers that the complaints received by the Commission have been about compensation or the type of traffic being exchanged – not about large quantities of unidentifiable traffic. Sprint urges the Commission to not go forward with its efforts to implement the rules.

Sprint's written comments state that this rule is overly broad. Sprint states that not all long distance carriers have direct access to each Sprint end office. Sprint offers its Platte

City exchange as an example of tandem switching that does not necessitate direct trunk transport to and from interexchange carriers. Sprint states that the rule prohibits tandem switching of interexchange telecommunications traffic. Sprint opines that this rule is inconsistent with 4 CSR 240-29.050(1), which does acknowledge common LEC-to-LEC network trunking arrangements used to connect terminating tandem offices to subtending end offices. Sprint suggests the last sentence of this rule be entirely stricken. Sprint also voices concern with placing limitations on use of the LEC-to-LEC network by wireless carriers who may wish to transit interstate/interMTA wireless-originated traffic. Sprint states the Commission does not have jurisdiction over such wireless carrier activity. Sprint cites to 47 USC 332(c)(3)(A) as prohibiting state and local governments from the regulation of wireless carrier market entry. Sprint states that 47 USC 251(c)(2) permits carriers to interconnect. Sprint opines that this section permits it to transit interstate/interMTA traffic.

COMMENT: T-Mobile, Nextel, and Cingular (collectively, Joint Wireless Carriers) state that the Enhanced Record Exchange Rules do not encourage deployment of new technologies, promote competition, inspire innovation, or reduce regulation - all in contravention of Congressional intent. To the contrary, Joint Wireless Carriers submit that the rules will inevitably increase consumer cost. Citing, in particular, 47 U.S.C. Section 152(b), Section 251(a), Section 332(c)(3), and Section 253(a), as well as Sections 386.020(53)(c), 386.030 and 386.250(2) RSMo, Joint Wireless Carriers question the Commission's authority to impose rules governing wireless carriers' use of the LEC-to-LEC network. At minimum, state Joint Wireless Carriers, the Commission should make clear that the Enhanced Record Exchange Rules do not apply to wireless carriers or to telecommunications traffic sent or received by wireless customers.

Joint Wireless Carriers' written comments cite federal and state law exempting Commercial Mobile Radio Service providers from the Commission's jurisdiction. Joint Wireless Carriers state that federal preemptions apply to intrastate as well as interstate traffic. Joint Wireless Carriers object to the aspect of this rule requiring that interstate/interMTA wireless traffic be directed to the interexchange carrier network. Joint Wireless Carriers allege the Commission has already determined that it is impossible to comply with the routing rules it proposes. By allegedly imposing a "triple screening function" during call set-up, Joint Wireless Carriers allege the rule would impermissibly require a fundamental change in how its customers' calls are routed. Joint Wireless Carriers state that number portability may occur to wireless carriers or VoIP telephone companies, thus in some cases making the location of the end user indeterminable, even if "triple screening" were implemented.

Joint Wireless Carriers state a presumption that the Commission is proposing this rule to facilitate the ability of rural local exchange carriers to identify wireless traffic that should be assessed interstate access charges. Joint Wireless Carriers characterize the LEC-to-LEC network as one that uses Feature Group C (FGC) protocol, and state that it commingles wireless traffic over the FGC trunk group. Joint Wireless Carriers characterize FGC protocol as "antiquated" and accuse rural local exchange carriers of not modernizing their networks in spite of having received over $216 million in subsidies.

Joint Wireless Carriers state the problem with rural local exchange carriers is determining whether wireless calls are to be compensated at reciprocal compensation, or at the rates specified in exchange access tariffs. Joint Wireless Carriers state that even with the addition of an Operating Company Number (OCN), rural local exchange carriers are still unable to determine what rate to apply to any given wireless call. Joint Wireless Carriers characterize wireless termination tariffs as "futile" and state that the only way to charge wireless carriers for call termination is by negotiating appropriate compensation factors. Joint Wireless Carriers state that rural local exchange carriers complain of an inability to identify incoming wireless traffic and cannot determine proper rate application. Joint Wireless Carriers state this problem is largely self-inflicted because rural local exchange carriers have chosen to maintain obsolete FGC networks, despite federal subsidies. Joint Wireless Carriers accuse rural local exchange carriers of deliberately not initiating negotiations with wireless carriers. Joint Wireless Carriers state that Missouri rural local exchange carriers advocate changes in the Unified Intercompensation Regime Case that render the rule requirements obsolete.

Joint Wireless Carriers opine that states cannot regulate market entry or rates charged by wireless carriers. Joint Wireless Carriers calculate the rule would apply to only one percent of its traffic. Joint Wireless carriers object to the fiscal note reporting less than $500 in the aggregate for this rule, and characterize such assumptions as defying common sense and commercial realities.

RESPONSE AND EXPLANATION OF CHANGE: The Commission will begin its initial response by first acknowledging the general manner in which numerous commentators submitted written comments. While some commentators associated specific comments with specific rules, other commentators, often at length, responded without acknowledging which rule they were referring to. Moreover, numerous commentators, rather than associating specific comments to specific rules, chose to lump comments into general categories, or list "issues" or other categories of their own choosing. We also recognize that several of the proposed rules are intertwined such that a comment on one rule may apply to other rules as well. Therefore, wherever possible we have used our judgment and attempted to arrange the commentators' responses to those rules most closely aligned with their comments. Because numerous commentators filed general comments addressing the entire gamut of the Enhanced Record Exchange rulemaking, we address here, in this rule establishing the LEC-to-LEC network, several items of key importance that have been brought to our attention.

We first acknowledge the general comments filed by various parties addressing the reported problems associated with traffic traversing the LEC-to-LEC network. We recognize the comments and viewpoints of Missouri's three incumbent transiting carriers - SBC, Sprint, and CenturyTel. SBC, in particular, points to the improvements that have been made to its records creation process while CenturyTel and Sprint generally dismiss past critiques of record exchange and ascribe most issues to a collections problem. At most, according to the transiting carriers, whatever problems that may have previously existed have largely been corrected. Some companies question the extent to which any problems ever existed on the LEC-to-LEC network.

The transiting carriers' comments are contrasted with the extensive documentation of problems experienced by the member companies of the MITG and STCG. The MITG and STCG comment extensively on the traffic-recording and billing problems associated with the LEC-to-LEC network and state that these problems have occurred since elimination of the Primary Toll Carrier Plan. These commentators point to the various docketed cases giving rise to the proposed rules. The MITG correctly points out that many of the issues challenging carriers today are the same issues that were discussed in prior cases. By way of example, the MITG offers Case Numbers TO-84-222; TO-99-254; and TO-99-593. In providing its analysis, these small companies point to past instances of unrecorded traffic generally ranging around 24 percent in July of 2000, to about 10 percent after adjusting for SBC's "Local Plus" traffic. According to testimony at the public hearing on these rules, recent reviews have been conducted for eight companies in an attempt to quantify the extent of any traffic-recording problem that still exists. According to that testimony, unidentified traffic varied from as low as less than one percent to as high as approximately six percent of all traffic. Thus, the threshold question we must address is whether sufficient reason continues to exist that would warrant rules to address traffic utilizing the LEC-to-LEC network.

We conclude that minimally invasive local interconnection rules are necessary to address the complex processes and myriad interests of those companies involved with traffic traversing the LEC-to-LEC network. We characterize our rules as minimally invasive because in all instances they simply codify existing practices currently employed by those who are most apprehensive and most opposed to the proposed rules. For example, our modified rules do not seek to regulate the business practices and customer-related activities of nonregulated entities, such as wireless carriers. Our rules are minimally invasive because the record-creation obligations we codify, such as the requirement for tandem providers to create Category 11-01-XX billing records, is simply an acknowledgement of what tandem providers are already doing. Our rules are minimally invasive because, in spite of considerable exhortations to the contrary, we do not seek to change the business relationship that the Commission ordered when it eliminated the Primary Toll Carrier Plan. Our rules impose no new record-creation obligations on any carrier; rather, new requirements permitting terminating record-creation is strictly voluntary. Our rules are minimally invasive because trunk segregation occurring under our rules is common industry practice, as evidenced by the voluminous record we have examined and commented upon herein. Our rules do not overextend technical requirements because those requirements contained in the rule, such as the requirement for passage of CPN, do not exceed the technical capabilities commonly employed by all carriers currently using the LEC-to-LEC network. Indeed, and as will be demonstrated, our CPN requirements are entirely consistent with the requirements offered by SBC's replacement Missouri Section 271 Interconnection Agreement (M2A).

We find that a set of local interconnection rules is particularly necessary for transiting traffic because parties receiving this traffic are not involved in the negotiations leading to the traffic delivery. Moreover, and as will be further explained, all terminating carriers must be given more leeway in managing their own networks when receiving traffic from

originating carriers. This is particularly true in instances for which the terminating carrier has no traffic termination or interconnection agreement in place. Equally important to rule creation is an environment, as in Missouri's, where the business relationship does not hold the transiting carrier principally or even secondarily liable for traffic delivered to unsuspecting terminating carriers.

We find it particularly necessary to implement local interconnection rules in light of SBC's stated policy that transiting traffic is not subject to Section 251/252 obligations of incumbent carriers. Because we are unaware of the legal positions of CenturyTel and Sprint in this matter, we will confine our comments to SBC by taking official notice of previous testimony of its witnesses and by noting that SBC provides the preponderance of transiting service within our jurisdiction. We note the Direct Testimony of SBC witness Timothy Oyer in Case No. T0-2005-0166. According to Mr. Oyer, SBC is no longer required to submit transiting provisions of its interconnection agreements to the Commission because such traffic does not create a Section 251/252 obligation. Moreover, according to Mr. Oyer, a "plain reading" of Section 251(a) makes clear that SBC has no obligation to provide transiting service, and no obligation to subject such service to arbitration under Section 252. According to Mr. Oyer, SBC should be permitted to provide its transiting service pursuant to tariff or individually negotiated agreements not submitted to the Commission for approval.

Unlike new entrants, incumbent local exchange carriers cannot avail themselves of federal laws to negotiate interconnection agreements and other matters with other incumbent local exchange carriers. In addressing these matters, the Commission will take official notice of its extensive case files as well as the task force reports, committee meetings, written comments and testimony in this case. We find the record before us is one of near constant disagreement among two factions of Missouri incumbent local exchange carriers. One faction is comprised of the three largest Missouri incumbent local exchange carriers, who happen to also be the transiting carriers receiving payment for providing the transiting service. The other faction can best be described as the rest of Missouri's incumbent local exchange carriers, who happen to be small carriers who are not transiting carriers, and who also happen to report great difficulty in receiving compensation for terminating the traffic that is transited to them. We find the matters separating the two factions to be largely unaddressed in federal law. Nor do we find any rules of the FCC which address the disputes that LEC-to-LEC network traffic fosters between these incumbent local exchange carriers. It is for these reasons that we find a modified version of the Enhanced Record Exchange Rules to be of particular importance and necessity. We anticipate that our rules will provide the necessary guidance to reduce instances of traffic-recording and billing problems, and provide a forum for resolution of those problems when they do occur.

While we acknowledge that traffic-recordings have improved since we began this process (a fact acknowledged by the small companies' witness), we disagree with the contention of Sprint, CenturyTel and others who comment that the issues with transiting traffic are primarily limited to that of bill collection. Transiting carriers and non-transiting carriers alike have credited Commission-approved wireless termination tariffs as assuaging

concerns with traffic problems occurring on the LEC-to-LEC network. However, we find the future of such tariffs to be seriously in doubt. As was also explained at the public hearing, expected traffic by new facility-based entrants such as the cable telephone companies will place further demands on the traffic-recording capabilities of the LEC-to-LEC network. We find, contrary to assertions of Sprint and CenturyTel, that a major aspect of the difficulties experienced by terminating carriers involves identifying responsible carriers in an environment where no direct business relationship exists. We find that the difficulties experienced by terminating carriers extend far beyond the costly and frustrating experiences of non-payment of invoices. Given the extensive record before us, we will adopt a modified version of the Enhanced Record Exchange Rules as a set of local interconnection rules to address the problems associated with traffic-recording, identification, and collections associated with use of the LEC-to-LEC network. We find that adoption of rules is necessary because the activities of transiting carriers directly affect the financial and operational well-being of terminating carriers who are not presented an opportunity to participate in the negotiation of transiting agreements. Adoption of rules is particularly necessary and timely because the dominant transiting provider, SBC, has ceased offering the Commission any opportunity to review the very agreements which obviously affect the interests of third parties who are not a part of the agreements.

We will also use this response section to discuss the Commission's authority over the matters pertaining to use of the LEC-to-LEC network. As will be explained further in more detail, we are eliminating those aspects of the proposed rules that restrict interstate interMTA wireless traffic from transiting the LEC-to-LEC network. We are also eliminating those proposed rules requiring wireless termination tariffs. We trust elimination of these items will reduce, if not eliminate, the concerns of wireless carriers. But we cannot accept in total the arguments of those who would have the Commission entirely disregard transiting problems on the regulated LEC-to-LEC network simply because nonregulated carriers use the network. The Commission is mindful that the LEC-to-LEC network is obviously a continuum of a much larger multi-jurisdictional network, and we will enact our rules in harmony with the rules of other jurisdictions.

We note the comments of Joint Wireless Carriers who cite 386.020(53) (c), 386.030, and 386.250(2) RSMo as precluding our authority over the LEC-to-LEC network when such network is used by wireless carriers not subject to our jurisdiction. Sprint, likewise, questions the Commission's authority in this area. Section 386.020(53)(c) excludes wireless service from the definition of telecommunications service. Section 386.030 precludes the Commission's authority over interstate commerce unless specifically authorized by the Congress, and Section 386.250(2) limits the Commission's jurisdiction to telecommunications between one point and another point within Missouri. We also note Joint Wireless Carriers' reference to 47 U.S.C. Section 152(b), Section 251(a), 251(b)(5), Section 332(c)(3) and Section 253(a).

As we have stated, we trust that elimination of certain portions of the draft rules will alleviate the wireless carriers' concerns. However, to the extent the commentators continue to question the Commission's authority to establish interconnection

requirements of incumbent local service providers, we will first rely upon the Commission's general authority over all telecommunications companies found throughout Chapters 386 and 392 and, in particular, Section 386.320.1 RSMo 2000. This section sets forth the Commission's general supervision of all telephone companies including the manner in which their lines and property are managed, conducted and operated. As stated by counsel for Staff, the Enhanced Record Exchange Rules do not regulate wireless carriers, as the Joint Wireless Carriers and Sprint suppose. Rather, what the rules would regulate is use of the LEC-to-LEC network - not the wireless carriers. We find that Section 386.320.1, in particular, places an obligation upon the Commission to assure that all calls, including calls generated by nonregulated entities, are adequately recorded, billed, and paid for. We reject Joint Wireless Carriers' apparent contention that nonregulated carriers may use the Missouri LEC-to-LEC network without regard to service quality, billing standards, and, in some instances, with an apparent disregard for adequate compensation. We find this particularly so in the case of transiting traffic because terminating carriers often have little or no knowledge of those carriers placing traffic on the network. Given that terminating carriers are left to bear 100 percent of the liability in such situations, we find that minimally invasive rules are necessary to reduce such instances as far as practical.

Joint Wireless Carriers also rely on 47 U.S.C. Section 251 as prohibiting the Commission's authority over the transiting traffic generated by wireless carriers. Joint Wireless Carriers specifically cite Sections (a) and (b)(5). We acknowledge the prerogative of wireless carriers to connect to the LEC-to-LEC network with reciprocal compensation agreements based upon the most efficient technological and economic choices. And we acknowledge that wireless carriers may sign, and submit to the Commission for approval, agreements to interconnect directly or indirectly with landline carriers. Indeed, we encourage all carriers to sign agreements and submit them to the Commission for approval pursuant to federal and state law. However, the record before us is one of far less than complete agreements, signed or otherwise. We are not convinced that one carrier's most technological and efficient interconnection should extend to another carrier's financial loss without an agreement. Moreover, we would note another aspect of Section 251 not cited by Joint Wireless Carriers. Section (d) (3) preserves a state's interconnection regulations. Specifically, this section holds that the FCC may not preclude the enforcement of any regulation, order, or policy of a State commission that establishes access and interconnection obligations of local exchange carriers. We find that the obligation we are imposing on incumbent local exchange carriers is a necessary interconnection obligation on incumbent carriers. Moreover, we can see nothing in our rules that prevents interconnection in the most efficient technological and economic manner, nor do we find anything in our modified rules that is otherwise inconsistent with federal law.

We also note Joint Wireless Carriers' reliance on 47 U.S.C Section 152(b) as giving the FCC authority over intrastate wireless service and Sections 332(c)(3) and 253(a) as preempting state regulation of wireless entry. We note Joint Wireless Carriers' comment that all wireless traffic is interstate, because it is impossible or impractical to determine the end points of wireless calls. Moreover, Joint Wireless Carriers hold that "entry"

prohibitions extend to "any" regulation – regardless of whether it prohibits market entry. As we have previously stated, we anticipate that removal of certain proposed rules will lessen concern on the part of wireless carriers. But while we acknowledge federal preemption in the area of wireless services, we do not believe our rules conflict with federal law, because they have nothing to do with the relationship between a wireless carrier and its customers. Rather, our proposed rules have only to do with the terms and conditions that may be required by those who provide services *to a wireless carrier*, and in particular, transiting service. Our rules are not targeted to the practices of wireless carriers; rather, our rules are targeted to the practices of regulated local exchange carriers and the network employed by them – a matter that *is* under the jurisdiction of this Commission. In particular, our proposed rules address use of the LEC-to-LEC network, especially that traffic which is transited to terminating carriers who are not a party to agreements made between originating carriers (including but not limited to wireless carriers) and transiting carriers.

The Commission agrees with the comment of Joint Wireless Carriers that the addition of an Operating Company Number (OCN) will not determine the jurisdictional rate of wireless telephone calls. We also agree that Calling Party Number (CPN) cannot in all instances be used to determine the proper jurisdiction of wireless calls. We caution all terminating carriers that any attempt to use an OCN or CPN to determine the proper jurisdiction of wireless telephone calls on the LEC-to-LEC network is not permissible under our local interconnection rules. We recognize this limitation contrasts with processes historically employed on the Interexchange Carrier network in which CPN is used to determine the jurisdiction of wireless calls. Again, we caution that our rules will not permit such practices on the LEC-to-LEC network.

However, this does not mean that billing records should not contain an OCN, because an OCN will, along with other determinates, aid identification of the responsible party, irrespective of the jurisdictional rate to be applied to each wireless telephone call. Similarly, this does not mean that CPN should not be present on each and every telephone call, wireless or otherwise, traversing the LEC-to-LEC network. We disagree with the presumption of Joint Wireless Carriers that the purpose of our rules is to facilitate the ability of rural carriers to identify wireless calls that are to be assessed switched access charges. We also disagree with Joint Wireless Carriers that the FGC network, however defined, is perpetuated by rural carriers when in fact, the evidence before us indicates that it is the small carriers who, for years, have advocated elimination of what Joint Wireless Carriers characterize as the "FGC network". Given the demands placed on the LEC-to-LEC network by wireless carriers, we find instructive the testimony at the public hearing that characterized as "particularly ironic" the Joint Wireless Carriers' notion that the LEC-to-LEC network is "antiquated" and should be done away with.

We will clarify that the purpose of providing CPN on all traffic traversing the LEC-to-LEC network is twofold. First, as described by the STCG, CPN brings full benefit to end users subscribing to Caller Identification service. Secondly, we find that CPN will aid terminating carriers in establishing general auditing provisions for LEC-to-LEC network

traffic. For example, CPN can be used to determine the party responsible for placing traffic on the LEC-to-LEC network. Stated differently, the presence of CPN will enable terminating carriers to gather specific information about calls sent for termination even though, due to roaming, the presence of CPN will not always permit determination of the proper jurisdiction of each and every telephone call.

We note the paucity of evidence before us that wireless carriers are unable to transmit caller identification on wireless-originated telephone calls. To the contrary, only Sprint has provided but a single landline example of one exchange incapable of providing CPN on calls traversing the LEC-to-LEC network. The comments filed in this case indicate a simple unwillingness to have local interconnection rules requiring passage of CPN, not an inability to comply with them. We note the extent to which CPN and OCN subject matters were covered in the Task Force meetings and conclude that the evidence before us does not compel acquiescence to the notion that originating carriers are incapable of transmitting CPN, nor are transiting carriers incapable of transmitting it. We note that wireless carriers, in particular, have been required by the FCC to have the capability of transmitting Caller ID as part of Phase One Wireless 9-1-1 procedures. We conclude our rules require nothing more of wireless carriers than has already been required of them by the FCC.

We acknowledge comments of the MITG that codification of the billing relationship inherent in the LEC-to-LEC network will lead to two different billing systems and two different compensation systems. We do not disagree that transiting carriers function as interexchange carriers in many respects, albeit without the obligations of interexchange carriers. We also recognize the likelihood that dual systems have increased costs for small carriers, perhaps substantially. However, decisions to change the traditional LEC-to-LEC network business relationship have been made in past cases and we are hesitant to reverse course without at least giving the new rules a chance to work. We are encouraged that implementation of our local interconnection rules will reduce whatever financial burden may have been caused by past actions of transiting carriers and past instances of unidentified traffic.

We decline to adopt the Staff's request to expand the proposed rules to address transiting traffic traversing to and from the Internet. We find Staff's suggestions to be premature when viewed in light of unsettled developments concerning the Internet. For this reason, we decline to also incorporate the Staff's additional definitions which, according to Staff, were required to support its recommendation for Internet traffic.

We acknowledge the STCG's comments concerning SBC's potential use of the LEC-to-LEC network to terminate interLATA landline traffic without the use of an interexchange carrier's Point of Presence. While we note the STCG's expressed desire for clarification to prohibit such action, we also note that the STCG did not offer suggestions for improvement in this area. Moreover, we find that the STCG's suggestion for 4 CSR 240-29.030(4) does not address its stated concern in this matter. We determine that the STCG's concerns correlate to those of SBC which we address next.

We recognize that SBC is permitted to provide interLATA long distance telephone service pursuant to Section 271 of the Federal Telecommunications Act, and that in many cases it may do so without a separate affiliate. Indeed, we would encourage SBC to avail itself of all rights granted to it under federal law. However, we do not accept that our interconnection rules prohibit SBC's lawful use of its own network nor do we accept that our rules co-opt management rights to employ service offerings to its own customers over SBC's own facilities. While we readily acknowledge SBC's stated concerns in this matter, we find SBC's comments on 4 CSR 240-29.010 to be lacking in specificity as to how the rule brings forth the presumed results. Indeed, SBC does not even set forth with specificity whether it is the interLATA transiting restriction that is the primary area of concern. We will presume that it is, and address our responsive comments accordingly.

We find nothing in our rules that restricts how SBC or any other carrier may provide services over its *own* facilities to its *own* customers. Rather, we find that our rules are intended and in fact do govern instances when one carrier uses *another carrier's* facilities in conjunction with its own facilities to provide service. In particular, our rules address situations where no contract exists between a tandem company and a non-affiliated terminating company. As will be further clarified, we find that our rules do not preclude SBC from providing interLATA service to its customers in, for example, Sacramento, California, and terminating calls to its customers in Kansas City without the use of an interexchange carrier Point of Presence. In such an example, no facilities other than SBC's own facilities are used to process the call. The LEC-to-LEC network is not used because calls do not leave SBC's own network nor are calls transited or otherwise sent to unsuspecting terminating carriers. Our rules do not cover such instances – indeed, no interconnection even takes place – and consequently SBC's unlawful takings argument is unsupportable. For the same reason, we do not believe that our rules "impair the financial value" of SBC's network. It is only when SBC (or another transiting carrier) chooses to send calls to another local exchange carrier that our interconnection rules intercede. In such instances, SBC is no longer merely "using its own network." Rather, SBC (and other transiting carriers) are most certainly using the networks of other terminating carriers, often without the knowledge of those carriers. Moreover, the record before us clearly demonstrates numerous instances occurring over several years whereby terminating carriers suffer financially from traffic (much of it transited) terminating on their networks without proper compensation. This is in contrast to many of SBC's Commission-approved interconnection agreements which clearly establish that SBC is financially compensated for transiting traffic on behalf of originating carriers. Under those situations, it would seem more likely that any "takings" are directed more to unsuspecting terminating carriers, rather than SBC. We find that under such circumstances, our rules quite properly set forth the arrangement in which such interconnection takes place and we cannot accept SBC's unlawful takings argument.

We are convinced that SBC's inversion of the takings argument is a result of its misinterpretation of the description of the LEC-to-LEC network as covered in the Task Force meetings, as explained in the August 18, 2003 revised draft rule that was distributed to all Task Force parties of record, and as established by rule in this section. SBC's interpretation of the definition of the LEC-to-LEC network suffers the same fatal

flaw as those of numerous other commentators. Simply stated, SBC and others misinterpret the impacts of our rule because of the common practice of confusing FGC call protocol, which is a particular signaling protocol used only in the originating direction of a telephone call, with a LEC-to-LEC telephone network, which consists of facilities and trunking arrangements used to transport calls between local exchange carriers in both the originating and terminating directions.

We will rely on the testimony referenced in footnote 19 of SBC's comments to illustrate our concerns about many commentators who mischaracterize the LEC-to-LEC network. Footnote 19 references the Direct Testimony of SBC witness Scharfenberg filed on November 30, 2000, in Case No. TO-99-593. We adopt Mr. Scharfenberg's Exhibit 3 and find that it depicts the LEC-to-LEC network as beginning with the inclusion of the originating tandem office and concluding with the inclusion of the terminating tandem office. We find this exhibit (and the accompanying narrative) specifically excludes the "common trunks" connecting the terminating office as a part of the LEC-to-LEC network. Mr. Scharfenberg's diagram simply characterizes the end office connections as "common trunks," in obvious recognition of the fact that they are not exclusive to either the LEC-to-LEC network or the IXC network. We note Mr. Scharfenberg's narrative of Feature Group C (FGC) and Feature Group D (FGD) call protocol, and we direct commentators specifically to this part of his testimony. Mr. Scharfenberg correctly describes FGC and FGD call protocol as occurring on the common trunks and pertaining exclusively to call origination and not call termination. This testimony correctly states that calls in the terminating direction do not use FGC or FGD protocol; rather, such calls are terminated with the use of a simple 10-digit routing scheme without the use of any call protocol. Commentators are cautioned to refrain from characterizing the common trunks, the LEC-to-LEC network, and the IXC network as a "FGC network" or a "FGD network" because FGC and FGD have nothing to do with a network. Rather, FGC and FGD refer to the particular manner in which calls are originated *on a network.* We ask commentators to properly use the terms FGC and FGD and to do so only when referring to a specific type of call origination. Because of the uniqueness of the common trunking arrangement, and because FGC and FGD refer to a specific call protocol used only in the originating direction, we have refrained from characterizing our rule as applying to a "FGC network" and instead have chosen to refer to the LEC-to-LEC network according to the expert testimony of Mr. Scharfenberg. Commentators, such as the STCG, who characterize call termination as a FGC or FGD function are simply incorrect. Moreover, commentators, such as Sprint and CenturyTel, who mistakenly conclude that our rules preclude tandem switched transport because "FGD traffic" cannot be "terminated" on common trunks are equally mistaken for the same reason.

Thus, we conclude that our rule is clear and that it does not hamper SBC's ability to utilize its own network for its own purposes. InterLATA calls may be terminated by SBC (or any carrier) on its own network without the use of an interexchange carrier's Point of Presence. However, absent a Commission-approved interconnection agreement or variance from these requirements, SBC is precluded by our rules from using its tandem switching operations to terminate interLATA calls to another carrier without the use of an interexchange carrier's Point of Presence. Utilization of tandem functions in such manner

constitutes use of other non-affiliated carriers' property via the LEC-to-LEC network. Without approval of the affected terminating carrier, such action is prohibited. We conclude that preclusion of such action does not co-opt management rights of SBC, does not impermissibly interfere with federal law, does not impermissibly impair the financial value of SBC's network, and does not result in unlawful takings. We conclude that as a general matter, SBC may use its own network for its own purposes, but SBC's own network ends where another carrier's network begins – that is, at a meet-point or meet-point like interconnection facility. Similarly, SBC management rights to use its network for its own purposes must end where a terminating carrier's rights begin. We will not permit SBC to unilaterally use another carrier's property without formal agreement, while simultaneously shielding itself under the guise of management prerogative.

We also reject the apparent notion of some commentators that the jurisdiction of the FCC is exclusive in matters pertaining to calls that begin in one state and end in another. We cite *Southwestern Bell Telephone Co. v. United States et al.*, 45 F.Supp. 403 (W.D. Mo 1942). There, the FCC attempted to exert jurisdiction of interzone calls traversing between Missouri and Kansas. The court ruled that the Federal Communications Commission was without jurisdiction to regulate such interstate activity. Hence, we find that our local interconnection rules that include intraLATA and intraMTA calls do not infringe on interstate matters, even though LATA and MTA boundaries extend slightly into other states.

We will also use our LEC-to-LEC comments section to address and respond to comments requesting expansion of the rules to include a "sunset" provision. The Commission fully expects and acknowledges the likelihood that traffic-recording and billing circumstances will change over time. However, we are reluctant to establish an automatic sunset provision to the Enhanced Record Exchange Rules as advocated by the STCG. Certainly any carrier or group of carriers is free at any time to petition the Commission to change, add to, or eliminate any of our rules. Thus, we decline to establish a new rule 4 CSR 240-29.170, as suggested by the STCG.

Lastly, we will use the LEC-to-LEC comments section to respond to recent inquiries focusing on the FCC's February 24th Declaratory Ruling and Report and Order in CC Docket No. 01-92 (Order). We find the FCC's Order instructive on a going-forward basis and, as a result, we will eliminate the aspect of our proposed rule that would require incumbent local exchange carriers to file wireless termination tariffs. We also find the Order provides further evidence of the continued dispute surrounding transiting traffic in general, and wireless transiting traffic in particular. We draw upon the FCC's Order as further reason to adopt minimally invasive rules pertaining to interconnection obligations of incumbent local exchange carriers – especially as it pertains to transiting traffic. We note that paragraph 6 of the FCC's Order provides an overview of the practice by which wireless carriers exchange traffic in the absence of interconnection agreements or other compensation arrangements, and accurately describes the compensation problems it causes. We also note that the Order changes Section 20.11 of the existing FCC rules, which heretofore did not attempt to prohibit wireless termination tariffs, and which, consistent with Congressional intent, contemplates that competitive carriers will seek

negotiation from incumbents, not the reverse. We concur in paragraph 11 of the Order, which correctly describes the 1996 Act's introduction of a mechanism by which CMRS providers may compel local exchange carriers to enter into bilateral interconnection agreements. We also note footnote 62 of the Order, which reviews the assertions of some commentators who characterize wireless providers generally as net payers of reciprocal compensation with a financial interest to maintain a "bill-and-keep" arrangement. We agree Section 252(b)(1) contemplates that incumbent carriers are to *receive* a request for negotiation - not submit requests for negotiation.

We note that in our proceeding, again, wireless carriers have complained that small landline carriers "have deliberately chosen not to initiate negotiations." Yet the small carriers contend that only after implementation of wireless termination tariffs have wireless carriers begun to approach small carriers with a willingness to negotiate. Yet in spite of the prevalence of wireless termination agreements approved by this Commission, we note the record before us again demonstrates instances whereby some wireless carriers continue to transit calls without interconnection agreements, and without payment for services rendered. Given these circumstances, we will await the outcome of the FCC's rulings which appear to contemplate that terminating landline carriers will engage in negotiations with carriers with whom they have no network connection, nor business relationships. In any regard, by eliminating our draft requirement for local exchange carriers to submit wireless termination tariffs, we are confident that our rules do not come into conflict with the FCC's Order.

The Commission determines that the origin of wireless-originated calls transiting the LEC-to-LEC network is best addressed in interconnection agreements, and thus will remove the requirement that interstate/interMTA wireless-originated traffic be directed to the IXC network. The Commission also determines that interLATA wireline telecommunications traffic may be terminated over the LEC-to-LEC network, provided the terminating carrier has agreed to accept such traffic in a Commission-approved interconnection agreement. We will revise our rule accordingly:

4 CSR 240-29.010 The LEC –to-LEC Network

> The LEC-to-LEC network is that part of the telecommunications network designed and used by telecommunications companies for the purposes of originating, terminating, and transiting local, intrastate/intraLATA, interstate/intraLATA, and wireless telecommunications services that originate via the use of feature group C protocol, as defined in 4 CSR 240-29.020 (13) of this chapter. InterLATA wireline telecommunications traffic shall not be transmitted over the LEC-to-LEC network, but must originate and terminate with the use of an interexchange carrier point of presence, as defined in 4 CSR 240-29.020 (31) of this chapter. Nothing in this section shall preclude a tandem carrier from routing interLATA wireline traffic to a non-affiliated terminating carrier over the LEC-to-LEC network, provided such terminating carrier has agreed to accept such

traffic from the tandem carrier and such acceptance is contained in a Commission-approved interconnection agreement.

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Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.020 Definitions **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

COMMENT: Socket Telecom, XO Communications, and Big River Telephone Company (Socket, XO, and Big River) suggest adding a definition to this rule. Socket, XO, and Big River submitted written comments contending that other local exchange carriers may misinterpret 4 CSR 240-29.030 as prohibiting calls destined to Internet Service Providers (ISPs) from traversing the LEC-to-LEC network. According to Socket, XO and Big River, the Federal Communications Commission (FCC) has defined such traffic as interstate in nature, but requires local exchange carriers to provide local services to ISPs rather than exchange access services. In order to remedy such potential misinterpretation, Socket, XO, and Big River suggest adding a definition of ISP-bound traffic and a provision to ensure that it is clear the rule contains no prohibition on ISP-bound traffic from traversing the LEC-to-LEC network. For a definition of ISP-bound traffic, Socket, XO, and Big River suggest: "ISP-bound traffic - traffic (excluding CMRS traffic) that is routed by local exchange carriers to or from the facilities of a provider of information services, of which ISPs are a subset." Together with a change to 4 CSR 240-29.030, Socket, XO, and Big River state that they would support the proposed rules.

COMMENT: In its written comments, the Telecommunications Department Staff (Staff) also proposes adding two definitions to this rule. The Staff's proposed definition of ISP-bound traffic is similar to that suggested by Socket, XO, and Big River. According to the Staff, the definition of ISP-bound traffic should denote a subset of information access traffic, and should encompass traffic both to and *from* ISPs. The Staff also suggests adding a definition of ISPs. Staff suggests that an ISP be defined as an entity that provides its customers the ability to obtain on-line information through the Internet. Staff notes that its definitions are needed to support Staff's suggested changes to 4 CSR 240-29.010, which Staff believes are necessary to preclude transiting of ISP-bound calls in the absence of interconnection or traffic termination agreements with the terminating carrier. Otherwise, according to the Staff, interstate Voice Over Internet Protocol (VoIP) traffic will be terminated on the LEC-to-LEC network as local calls and without the knowledge of terminating carriers.

RESPONSE: We find the Staff's Internet suggestions to be premature at this time. We affirm that the LEC-to-LEC network may be used to originate calls to the Internet. However, we find the definition suggested by Socket, XO, and Big River to be too expansive. Instead, we will modify our proposed rules to indicate that calls originated from local exchange carriers to Internet service providers may traverse the LEC-to-LEC network. We will modify Section 240-29.030 (3) to address the concerns of Socket, XO, and Big River.

4 CSR 240-29.020 (5)

COMMENT: SBC recommends deletion of the last sentence in Section 5(A) because differences in the value within bit fields 167-170 and 46-49 of category 11 records have become standardized.

RESPONSE: SBC's comments do not reflect the fact that Carrier Identification Codes (CIC) are used only by interexchange carriers for traffic originated by the use of Feature Group D (FGD) protocol. SBC's comments do not reflect the fact that none of the traffic traversing the LEC-to-LEC network contains a CIC code. SBC is simply incorrect that this definition is inaccurate. The "validity" of populating an Operating Company Name (OCN) in positions 167-170 instead of a CIC in positions 46-49 does not make the sentence invalid. To the contrary, the validity is affirmed. A billing record generated for LEC-to-LEC network traffic will not contain a CIC code because the carriers utilizing the LEC-to-LEC network are not acting in an IXC capacity. Granting SBC's request to change this definition would leave the false impression that CIC codes are to be expected in the billing records of traffic recorded on the LEC-to-LEC network. Therefore, we will not adopt SBC's suggested change and we find no inaccuracy in the definition.

4 CSR 240-29.020 (17)

COMMENT: SBC suggests revising the definition of Local Access and Transport Area (LATA) to reflect that the permissible areas of Bell Operating Companies may have been, and continue to be, modified. SBC states revisions are necessary to reflect that LATA boundaries have been subsequently modified since their inception. Without explanation, SBC states Missouri's LATA boundaries have been modified.

RESPONSE AND EXPLANATION OF CHANGE: SBC provides no explanation of how the Missouri statute could be valid without references to subsequent LATA boundary modifications yet our rule must contain such references. In any regard, we will not attempt to modify Missouri's revised statutes. Instead, we will revise our definition to be entirely consistent with how the term is defined in Missouri law.

4 CSR 240-29.020 (20)

COMMENT: SBC states that modification of this definition is necessary to reflect that the Local Exchange Routing Guide (LERG) is only intended to reflect current network configurations and may not reflect actual network configurations.

COMMENT: The Missouri Independent Telephone Company Group (MITG) notes that failure to turn on numbers registered in the LERG is inappropriate, but characterizes such issues as miscellaneous, and suggests such issues are not properly within the purview of this rule.

RESPONSE: SBC suggests the LERG may not reflect current network configurations due to delays, errors and failure to timely update carrier information. Yet SBC provides no explanation of how network configurations could be updated without use of the information contained within the LERG. We agree with SBC that there may be delays etc. However, because network configurations are dependent on the LERG, we find that the delays referenced by SBC are more likely to occur in network configurations rather than in the LERG. In his Direct Testimony in Case No. TO-2005-0166, SBC witness Oyer testified about reliance upon the LERG to identify end offices, relevant tandems, and for proper delivery of traffic. According to Mr. Oyer, "[I]nformation is maintained in the LERG to assist carriers with identifying the proper routing for the purpose of delivering telecommunications traffic to the appropriate local or access tandem." We find witness Oyer's testimony instructive and convincing. Based on his testimony, network configurations appear to be dependent on the LERG, not vice versa. Yet in its comments SBC suggests the LERG may not reflect network configurations. SBC's comments in the instant case provide no explanation of how network configurations come about without use of the information contained within a LERG. It would seem more likely that SBC's suggestions pertain to translations and trunking arrangements, rather than to the LERG. Therefore, we are unable to accept SBC's proposed change.

4 CSR 240-29.020 (34)

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) hold that the Commission has no right to include wireless carriers in its rule definitions.

Sprint expresses concern with the Commission's authority over wireless carriers, and suggests this section be modified by eliminating references to wireless carriers.

RESPONSE AND EXPLANATION OF CHANGE: We will amend our definition to be entirely consistent with Missouri statutes.

4 CSR 240-29.020 (38)

COMMENT: SBC recommends modifying the definition of "traffic aggregator". SBC opines that more differentiation is needed between the role of a traffic aggregator and that of a transit carrier. SBC states that "traffic aggregators" assume financial and operational responsibility for transiting traffic. SBC further states that an aggregation function may occur at a LEC-to-LEC network tandem location in addition to an end office. SBC also

proposes to use the definition of traffic aggregator to codify the Missouri business relationship between transiting carriers and terminating carriers. SBC states that its contracts with other carriers reflect such business relationships and, as such, should be stated in the rule section.

RESPONSE: We disagree with SBC's assertion that our rule describes transiting carriers as placing traffic on the network at a tandem office. In fact, our definition says nothing about where a transiting carrier places traffic on the network. Rather, our rule simply acknowledges that a transiting function occurs with the use of a tandem office. This fact cannot be disputed, in spite of SBC's references to Type I wireless origination. Moreover, we find confusing SBC's suggestion that "transiting carriers and carriers providing switching services are not traffic aggregators." To our knowledge, traffic aggregators do have switches and are providing a "switching service." We also decline to define the functionality of aggregators and transiting carriers based upon financial responsibility. We prefer that our rules define aggregators and transiting carriers based on specific functionality rather than financial responsibility. We find that adoption of SBC's suggestions would create confusion and we decline to adopt the suggested changes.

4 CSR 240-29.020 (39)

COMMENT: SBC recommends modifying the definition of "transiting carrier". To help differentiate the role of transiting carriers from traffic aggregators, SBC suggests adding the following: "Transiting carriers and carriers providing switching services are not traffic aggregators."

RESPONSE: We decline to make changes to this definition for the reasons stated in our response to 4 CSR-29.020 (38).

4 CSR 240-29.020 (42)

COMMENT: SBC suggests eliminating reference to specific unbundled network elements from this section. SBC opines that it is not appropriate to list specific elements in light of a recent court ruling.

RESPONSE AND EXPLANATION OF CHANGE: SBC's suggestion properly acknowledges unbundling obligations under Section 251 but neglects to acknowledge the duty of state commissions under Section 252 to determine items to be unbundled under Section 251. Thus, we decline to limit elements to those items solely determined by the FCC. Nevertheless, we recognize that the list of unbundled items may change over time and we will modify our definition to denote that such items as loops, ports and transport may or may not be included among the items required to be unbundled.

4 CSR 240-29.020 (43)

COMMENT: SBC states that a recent court decision necessitates deletion of the definition of "UNE-P".

RESPONSE AND EXPLANATION OF CHANGE: We agree with SBC that recent court rulings necessitate deletion of the term UNE-P. To the extent UNE-P or "UNE-P like" arrangements continue to exist within the LEC-to-LEC network, we will refer to these arrangements as "shared switch platforms." We will eliminate the definition of "UNE-P".

4 CSR 2340-29.020 Definitions

(17) LATA (Local Access and Transport Area) means that term as defined in Section 386.020(29) RSMo Supp. 2004

(34) Telecommunications Company means those companies as set forth by Section 386.020(51) RSMo Supp. 2004

(42) Unbundled Network Elements (UNE) are physical and functional elements of an incumbent local exchange carrier's network infrastructure, which are made available to competitors on an unbundled basis. Such elements may include, but are not limited to, local loops, switch ports, and dedicated and common transport facilities

(43) Wireline Communications means all telecommunications traffic other than telecommunications traffic originated pursuant to authority granted by the U.S. Federal Communications Commission's commercial mobile radio services rules and regulations.

(44) A Wireline Carrier is any carrier providing wireline communications.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.030 General Provisions **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005, (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: Consistent with its comments in 4 CSR 240-29.010, the Telecommunications Department Staff (Staff) suggested adding two additional sections to this rule in order to clarify that interconnection agreements are necessary before originating wireline carriers are permitted to transit Voice over Internet Protocol (VoIP) traffic that was originated beyond the terminating carrier's local calling area. The Staff also recommended addition of a section requiring telecommunications carriers to program switch translations in observance of the Local Exchange Routing Guide (LERG).

RESPONSE: We decline to adopt the Staff's suggestions to expand the application of our rules to include traffic from the Internet. As we have stated, the Staff's suggestions are premature, given the unsettled nature of the Internet. We also note the "substantial concern" expressed at Hearing by the Small Telephone Company Group (STCG) pertaining to Staff's suggestions for updating the LERG. The STCG witness opined that Staff's suggestion would require intraLATA transport of long distance telephone calls. While we do not agree that Staff's suggestions have anything to do with transport obligations of any carrier, we nevertheless will not incorporate the Staff's recommendation. And while we also note that the Missouri Independent Telephone Company Group (MITG) has perhaps been the most vocal about large carriers who refuse to activate LERG switch recordings, we also note that even the MITG characterizes these actions as "miscellaneous" and suggests they are not properly within the purview of our rules. Thus, we decline to adopt the Staff's suggestions simply because of a lack of industry support even from those who are perhaps most affected.

4 CSR 240-29.030 (1)

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) object that this section unfairly limits the way wireless calls are routed. Joint Wireless Carriers state that the Commission should make clear that the rules do not apply to the manner in which wireless carriers send and receive transiting calls to terminating carriers.

RESPONSE: We have deleted wireless carriers from the definition of a telecommunications company as stated in 4 CSR 240-29.020(34). Therefore, we see no reason to change this section.

4 CSR 240-29.030 (2)

COMMENT: Joint Wireless Carriers object that the interstate, interMTA restrictions place limitations on how wireless calls are routed. Joint Wireless Carriers offer roaming as an example of how caller identification may not reliably indicate the jurisdictional nature of a wireless call. Using an "end-to-end" analysis as an example, Joint Wireless Carriers opine that small local exchange carriers might "assume" some calls are intrastate when in fact such calls may be interstate. Joint Wireless Carriers mention calls originating in Illinois as an example of the mobility of the calls that wireless carriers route to the Missouri LEC-to-LEC network. Joint Wireless Carriers contend such calls may originate in Illinois "or from any other location in the country." According to Joint Wireless Carriers, wireless users pay the same price for calls irrespective of the distance or location of the number dialed. Joint Wireless Carriers characterize such offerings as "One Rate" offerings. According to Joint Wireless Carriers, it is important for the Commission "to understand" that interexchange carriers act as "transit carriers" for mobile-to-land calls. Thus, according to the comments of Joint Wireless Carriers, wireless carriers do not provide any "toll service" to customers.

COMMENT: Sprint questions the Commission's authority over wireless carriers, and recommends elimination of this section.

RESPONSE AND EXPLANATION OF CHANGE: The absence of Joint Wireless Carriers from the Industry Task Force meetings is made clear by a reading of its comments to this rule. The Commission disagrees with Joint Wireless Carriers' contention that we are implementing Caller ID rules to determine the jurisdiction of roaming wireless calls. We also note Joint Wireless Carriers' references to use of the LEC-to-LEC network for delivery of transiting traffic originated nationwide. We will consider Joint Wireless Carriers' comments as constituting a prima facie admission to local interconnection trunk usage instead of interexchange carrier trunk usage for delivery of nationwide interstate interMTA wireless-originated calls. Although this section has nothing to do with roaming or end-to-end analysis, we nevertheless will delete this section and leave the matter of nationwide interstate interMTA transiting traffic as a subject for negotiated agreements between wireless carriers and terminating carriers.

4 CSR 240-29.030 (3)

COMMENT: As also reflected in its comments on 4 CSR 240-29.010, the STCG supports limiting interLATA landline calls from using the LEC-to-LEC network. According to the STCG, such limitation will prevent additional types of traffic from being delivered that may be unidentifiable and unbillable. The STCG's comments

suggest that SBC may have plans to terminate interLATA calls without the use of an interexchange carrier point of presence. This, according to the STCG, will likely compound the problems with uncompensated and unidentified traffic, such as that demonstrated with SBC's Local Plus.

COMMENT: Consistent with their comments on 4 CSR 240-29.010, Socket Telecom, XO Communications, and Big River Telephone Company (Socket, XO and Big River) submitted written comments hoping to avert misinterpretation of this section from applying to ISP-bound traffic. Socket, XO, and Big River suggest addition of the following: "Nothing in this section is meant to apply to ISP-bound traffic".

RESPONSE AND EXPLANATION OF CHANGE: We acknowledge the comments of the STCG and agree that this section will limit the likelihood that interLATA landline traffic will be delivered to terminating carriers without their knowledge. We find this section to be particularly useful to terminating carriers given Missouri's business relationship for transiting traffic. We acknowledge the possible difficulty of tracking down and attempting to collect for transiting traffic from Missouri carriers who are providing intraLATA and intraMTA telephone service. We do not wish to compound this problem by permitting Missouri's transiting carriers to expand the LEC-to-LEC network nationwide, or even worldwide. With an originating payment responsibility plan, we find that requiring terminating carriers to locate responsible out-of-state originating carriers would impose hardships that we find unreasonable and are not willing to impose. We do not wish to place additional burdens on terminating carriers by requiring them to track down originating carriers all over North America, or beyond, simply to be paid for terminating transiting traffic.

We acknowledge the stated concerns of Socket, XO, and Big River. We will modify this definition to ensure that it does not apply to calls delivered from local exchange carriers to Internet Service Providers.

4 CSR 240-29.030 (4)

COMMENT: In addition to its own end offices, CenturyTel explains that it has two carriers subtending its Missouri tandems - Peace Valley and Alltel – and that neither carrier has expressed concerns over record exchange. CenturyTel states that even though Peace Valley and Alltel have not expressed concern, this section would eliminate tandem-switched transport to all end offices subtending CenturyTel tandem locations, unless CenturyTel installed separate IXC and LEC-to-LEC network trunk groups. CenturyTel complains that such artificial and unreasonable restrictions will create inefficiencies and increase costs.

COMMENT: In conjunction with its comments on 4 CSR 240-29.010, Sprint also opines that this section will serve to prohibit tandem switched transport. Sprint states that, pursuant to this section, interexchange carriers will have to lease direct connections to each end office subtending a Sprint tandem. Sprint points out that, historically, most long

distance carriers do not lease direct trunk transport to end offices as that option is cost prohibitive. Sprint suggests this section be eliminated.

COMMENT: The STCG states that the common trunk group is used to originate traffic via Feature Group D (FGD) protocol and terminate traffic via FGD protocol on the LEC-to-LEC network. According to the STCG, the important distinction is that FGD traffic does not terminate as Feature Group C (FGC) traffic. Therefore, suggests the STCG, this section should be revised such that: "No carrier shall terminate traffic on the LEC-to-LEC network as FGC traffic when such traffic was originated by or with the use of feature group A, B, or D protocol trunking arrangements." This change, according to the STCG, takes into account the fact that FGD traffic does terminate over the LEC-to-LEC network, yet preserves the rule's intent to prevent such traffic from terminating as FGC traffic.

RESPONSE: This section precludes the practice whereby calls may be terminated on local interconnection trunks subject to reciprocal compensation when in fact they were originated on meet-point trunks and are subject to access charges. The section seeks to assist local exchange carriers, such as Sprint, CenturyTel, and the STCG member companies, in collecting tariffed charges by limiting potential instances of tariff arbitrage. CenturyTel and Sprint's insistence that this section eliminates tandem-switched transport is simply misplaced. For the reasons expressed in our Response to 4 CSR 240-29.010, Sprint and CenturyTel are simply incorrect in their belief that FGD and FGC are synonymous with, and constitute, a "network." Similarly, the STCG's contention that calls terminate via FGC or FGD signaling protocol is technically flawed and scientifically incorrect. As we have explained previously, FGC and FGD are specific protocols used only to originate traffic and have nothing to do with a "network". CenturyTel and Sprint's definition would attempt to depict common trunks as part of a "network," when in fact they are not exclusive to the LEC-to-LEC network or the IXC network. Hence, there is nothing in our rules prohibiting tandem-switched transport IXC calls from using 10-digit call-screening processes to terminate calls over a common trunk group. We decline to accept Sprint's recommendation to eliminate this section and we reject CenturyTel's contention that this section leads to inefficiencies. The efficiencies inherent in separating trunk groups for LEC-to-LEC traffic and IXC traffic are evident by the plethora of interconnection agreements we have approved which contain separations for the two. We will implement this section without change.

4 CSR 240-29-030 (6)

COMMENT: The STCG supports this section's clarification that nothing in this chapter will alter the record-creation or billing processes and systems currently in place for traffic originated by interexchange carriers via the use of feature group A, B, or D protocols.

RESPONSE: We find that it would be unnecessary and inappropriate to interfere with the processes occurring on the federally regulated interexchange carrier network. We will adopt this section without change.

4 CSR 240-29.030 (7)

COMMENT: SBC objects to this section which requires interconnection agreements to comport with the rule. Among other objections, SBC states that the Commission may only review agreements within 90 days of submission to the Commission, or within 30 days for adopted agreements. SBC opines that no further review may occur after these time periods. SBC further states that the Commission must make clear that bringing interconnection agreements into compliance with the rule may occur only on a prospective basis. SBC proposes the section be amended with the addition of the following language: "....upon expiration of these agreements..."

COMMENT: CenturyTel likewise states that modification of existing interconnection agreements could only be applied on a prospective basis. CenturyTel notes its disagreement with Staff's fiscal note analysis suggesting that no fiscal impact would be attributed to renegotiation of existing interconnection agreements.

COMMENT: Sprint objects to this section, and recommends it be eliminated. Sprint opines that federal law prohibits state commissions from enacting rules to modify interconnection agreements.

COMMENT: The STCG witness commented at the public hearing that most interconnection agreements contain provisions allowing for a change to the agreement in the event of a change in law or rules which may affect the agreement.

RESPONSE: We first note the paucity of evidence to demonstrate that any of our rules conflict with any existing interconnection agreement. In fact, we can find no comment and nothing in the record to suggest that any of our rules conflict with any existing agreement. Given the record before us, we have no reason to doubt the statement of zero fiscal impact attributed to this section and we thus cannot accept CenturyTel's suggestions to the contrary. We will implement this section without change. In the unlikely event this section or any of our rules require renegotiation of certain portions of existing agreements, carriers may avail themselves of the change-of-law provisions within those agreements.

4 CSR 240-29.030 General Provisions

(2) No originating wireline carrier shall place interLATA traffic on the LEC-to-LEC network. This section shall not apply to calls delivered from local exchange carriers to Internet Service Providers. Nothing in this section shall preclude a tandem carrier from routing interLATA wireline traffic to a non-affiliated terminating carrier over the LEC-to-LEC network, provided such terminating carrier has agreed to accept such traffic from the tandem carrier and such acceptance is contained in a Commission-approved interconnection agreement.

(3) No carrier shall terminate traffic on the LEC-to-LEC network, when such traffic was originated by or with the use of feature group A, B or D protocol trunking arrangements.

(4) No traffic aggregator shall place traffic on the LEC-to-LEC network, except as permitted in this chapter.

(5) Nothing in this chapter shall be construed to alter, or otherwise change, the record creation, record exchange, or billing processes currently in place for traffic carried by interexchange carriers using feature groups A, B, or D protocols.

(6) All carriers with existing interconnection agreements allowing for the exchange of traffic placed on the LEC-to-LEC network shall take appropriate action to ensure compliance with this chapter unless the commission has granted a variance from the requirements of this chapter.

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.040 Identification of Originating Carrier for Traffic Transmitted over the LEC-to-LEC Network **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005, (30 MoReg 49). No change is made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

COMMENT: The Telecommunications Department Staff (Staff) filed written comments recommending this rule be implemented without change. Staff indicates it has worked extensively with industry representatives in developing a rule that, in conjunction with 4 CSR 240-29.090, codifies a Commission-ordered business relationship between Missouri local exchange carriers. Staff states such business relationship includes a requirement for transiting carriers to create Category 11-01-XX billing records and to make those records available to terminating carriers who seek financial compensation from originating carriers for LEC-to-LEC network call termination. Staff states this policy was implemented upon elimination of Missouri's Primary Toll Carrier plan.

COMMENT: Should the Commission determine that 4 CSR 240-29.040 is necessary, Sprint suggests approval be limited to only Sections (1), (2) and (5) and (6).

COMMENT: Socket Telecom, XO Communications, and Big River Telephone Company (Socket, XO, and Big River) appear to characterize tandem-created records as a form of originating record-creation and opine that reliance on such records is inaccurate, especially when numbers are ported, and simply does not work in modern environments. Instead, Socket, XO, and Big River advocate use of terminating record-creation as a more satisfactory means of intercompany billing.

COMMENT: SBC states that it is now providing "industry standard" Category 11-01-XX formatted billing records for UNE-P and facility-based CLEC traffic. SBC states that it has discontinued use of the monthly Cellular Transiting Usage Summary Report (CTUSR) for wireless-originated traffic, even though some small carriers previously indicated to the Commission such reports were adequate. Without elaboration, SBC also states that it is now using an "industry standard" format for wireless traffic. SBC expresses that it has discontinued its Local Plus intraLATA long distance offering, which was a previous source of vocal opposition due to numerous allegations of billing

discrepancies. SBC claims its intercompany compensation billing records capture the traffic that previously went unreported, and that it is working diligently to provide additional information to downstream carriers on traffic that transits SBC's network. SBC proffers that these efforts demonstrate its commitment and follow-through in working cooperatively with small local exchange carriers to obtain records needed to receive appropriate compensation for the traffic terminated. SBC acknowledges that no industry-wide test has yet been performed to determine whether any "material" amounts of unidentified traffic currently exists, with the last such test having been conducted in July, 2000.

SBC states that all carriers have an interest in the creation and distribution of accurate intercompany compensation billing records and, accordingly, opines that a specific rule is not needed in this area. SBC points to an agreement, which it denotes as a set of "Network Principles" recently agreed to by all local exchange carriers in Texas. SBC presents the "Feature Group C Network Principles" (FGC) agreement as Attachment 1 to its comments.

SBC explains that, while it does not believe a rule is necessary at this time, it does agree with the billing relationship established by the rule. According to SBC, longstanding industry practices hold that the originating carrier is responsible for compensating all downstream carriers involved in call completion. SBC cites the federal Unified Carrier Compensation Regime proposed rulemaking as an example of this principle. According to SBC, the carrier who has the relationship with the calling party is also the entity responsible for compensating all downstream carriers. Moreover, states SBC, it is through the relationship with the end user that the originating carrier is able to recover the cost of terminating calls. SBC proffers the Verizon-Virginia arbitration with AT&T, Cox, and WorldCom as an example of where the Wireline Competition Bureau affirmed the standard of "calling-party's-network pays".

SBC also points to the meet-point billing arrangements in the small carriers' own Missouri exchange access tariffs as an example of when access services are billed for, and provided by, more than one local exchange carrier. SBC states that such practices are consistent with national standards promulgated by the Ordering and Billing Forum. SBC characterizes the role of long distance carriers within the interexchange network as comparable to transiting carriers within the LEC-to-LEC network. SBC then explains that both local exchange carriers, in their respective roles, bill their respective access charges attributable to the portion of the jointly provided exchange access services. SBC goes on to explain that similar multiple bill option processes are outlined in the National Exchange Carrier Association federal access tariff, of which the Missouri small local exchange carriers concur. With regard to its own tariff practices, SBC explains that similar coordinating meet-point billing provisions are contained in the exchange access tariffs of all Missouri transiting carriers. SBC concludes its tariff analysis by stating its belief that, with the creation and exchange of new intercompany billing records, along with the coordinating tariff provisions, it is not necessary for the Commission to promulgate a rule. Rather, SBC urges the Commission to consider a set of very straight

forward and less complicated rules such as those adopted by the Montana Public Service Commission, which SBC appends to its written comments as Attachment 2.

COMMENT: The Missouri Independent Telephone Company Group (MITG) states that the billing records and financial responsibility systems that the rule would establish for the intraLATA LEC-to-LEC network are different from the industry standard Feature Group D (FGD) or interexchange carrier (IXC) systems long in use in the interstate/ interLATA jurisdiction. The MITG cites SBC's Local Plus, the Outstate Calling Area plan and Alltel wireless-originated traffic as examples wherein SBC simply neglected to record compensable calls. The MITG expresses a great deal of difficulty in applying an originating responsibility principle to terminating traffic. As explained by the MITG, reliance on an originating records responsibility plan is perfectly acceptable for originating compensation because there is a direct business relationship between the originating local carrier, who receives payment, and the originating interexchange carrier, who pays for the expense of call origination. However, according to the MITG, reliance on such a system for call termination is inappropriate because there often is no business relationship between the terminating carrier, who receives payment, and the originating carrier, who is responsible for payment of terminating expense. According to the MITG, it is simply impractical for any local exchange carrier to attempt to establish and maintain business relationships with every carrier that may originate traffic that happens to terminate in that local exchange carrier's exchanges. Moreover, opines the MITG, SBC is no longer required to transit traffic but, according to SBC's own admission, is doing so voluntarily. According to the MITG, SBC's position is the only attempted justification for adoption of the Enhanced Record Exchange rule.

According to the MITG, transiting carriers such as SBC are no different in the LEC-to-LEC network from interexchange carriers in the IXC network, except that the Missouri commission has determined transiting carriers are not financially responsible for the traffic they transit. As stated by the MITG, both transiting carriers and interexchange carriers perform the very same role in the same manner. As viewed by the MITG, there is no justification to allow SBC to act as an IXC, but to have no responsibility to pay for terminating traffic and, further, there is no justification for SBC to be treated differently than any other IXC. MITG states that there is no dispute that both large and small local exchange carrier tariffs provide that, upon making FGD available, FGC would no longer be provided. The MITG declares that the Commission failed to decide that issue then, and has since continued in its failure to decide whether an IXC terminating compensation system should be applied to the traffic on the LEC-to-LEC network.

The MITG cites Oregon Farmer's tariff as an illustrative example of how FGC was to have been discontinued with implementation of FGD. According to the MITG, in at least one instance, Case No. TC-2000-235, the Commission did acknowledge SBC as an interexchange carrier by requiring SBC to purchase FGD for the transport of SBC's MaxiMizer 800 service. However, the MITG asserts that the Commission has repeatedly neglected to acknowledge elimination of the FGC network in other cases. The MITG cites Case No. TO-97-217, Case No. TO-99-254, and Case No. TO-99-593. In each instance, according to the MITG, the Commission failed to address the issue of

discontinuing FGC in lieu of FGD. Moreover, the MITG asserts that implementation of OBF Issue 2056 would have given the Commission the authority to apply OBF Issue 2056 to the traffic on the LEC-to-LEC network. According to the MITG, OBF Issue 2056 would have given the Commission a "state directive" to implement a state-specific plan that could have been applied to LEC-to-LEC network traffic. However, the MITG points out that OBF Issue 2056 was abandoned. Thus, the MITG asserts that the instant rule is being considered after more than eight years of rural local exchange carrier efforts to assure an IXC traffic and business type relationship. Nevertheless, states the MITG, adoption of the business relationship in this rule will end the practice of the past five years, wherein SBC unilaterally determined and announced changes in billing record formats and compensation responsibilities to the rest of the local exchange carriers in Missouri.

COMMENT: The Small Telephone Company Group (STCG) addresses the drawbacks of unidentified traffic inherent in the present situation, and expresses concern that small carriers bear 100 percent of the risk for unidentified traffic. The STCG maintains that SBC sought an end to the Primary Toll Plan for financial reasons as well as legal and technical reasons. The STCG asserts that SBC's own witness testified that SBC lost approximately $18M during 1998 by providing intraLATA toll to secondary carriers in Missouri. The STCG also notes that other transiting carriers testified to substantial savings from the elimination of the Primary Toll Carrier plan. The MITG cites Sprint's $600,000 annual loss as well. The STCG supports this rule and quotes the following from the Commission's Report and Order in Case No. TO-99-254:

> [T]he Commission will order the provision of standard "Category 11" records. This will provide the SCs [Secondary Carriers] better information about calls terminated to them. Any additional expense this will cause the PTCs is dwarfed by the elimination of the revenue losses they assert they are suffering under the PTC plan.

The STCG states that elimination of the Primary Toll Carrier plan not only relieved SBC's obligation to pay approximately $18M annually to the small carriers, but the plan elimination also left open a number of questions about the business relationship between transiting carriers and small carriers. Chief among these problems, asserts the STCG, was the question of responsibility for transited traffic and the problem of unidentified, unreported, and uncompensated traffic delivered to the small carriers. As an example, the STCG points to the "Network Test" conducted in July, 2000 as confirming the STCG's concerns about the use of originating records. According to the STCG, of the nine small companies analyzed, less than 76 percent of the terminating records had matches from the originating records. The remaining traffic was unidentified and unbillable, and, on an individual company basis, one company's percentage of matched records was as low as 41.1 percent. The STCG further states that even once significant problems are revealed, it often takes an extraordinary amount of time to correct the problem. Such delays in obtaining corrective action, asserts the STCG, have amounted to extensive financial losses and demonstrate the serious shortcomings with the current originating records system.

The STCG states that concerns regarding "originating records" and "originating carrier" compensation have been well documented over the last five years and small local exchange carriers have suffered financial loss on material amounts of traffic. The STCG asserts that there is no dispute that unidentified and uncompensated traffic continues to be delivered by the transiting carriers. But, according to the STCG, while the transiting carriers have been held financially harmless for their recording mistakes and omissions, the STCG member companies bear 100 percent of the risk. Moreover, asserts the STCG, small carriers are required to locate "upstream" carriers and establish billing relationships with those carriers, even though the small carriers have no direct relationship with them. Thus, states the STCG, the transiting carriers have no incentive to address the problem. According to the STCG, although there are still improvements to be made, it supports the rule as necessary and a first step towards resolution of a problem that is long overdue.

RESPONSE: We first acknowledge agreement with those commentators who maintain that this rule codifies a business relationship for LEC-to-LEC network traffic whereby the originating carrier, not the transiting carrier, is responsible for payment of call termination. But we disagree with those who object to this business relationship without even as much as giving our local interconnection rules an opportunity to work. We also disagree with SBC and others who suggest that local interconnection rules are not necessary because new systems are in place. We simply acknowledge the billing and traffic collections problems revealed in the extensive record before us, and we note the many years this rule has been in development.

We have examined SBC's Texas Network Principles document, submitted as Attachment 1 to its written comments in this case. SBC characterizes this document as a sort of "Network Principles" under which tandem carriers create and share billing records on the traffic traversing each carrier's respective network. According to SBC, the telephone companies in Texas, large and small, agreed among themselves on the principles.

In responding to SBC's comment, we will first note that Missouri carriers are certainly free to agree among themselves to develop a set of network principles, as SBC reports has voluntarily occurred in Texas. In fact, we encourage stakeholders to work cooperatively to reach agreement on technical matters not addressed in our rules. However, we must also recognize that the record before us does not indicate a willingness among Missouri carriers to agree to anything, much less a set of network principles developed independent of Commission oversight. We have no doubt that what works in Texas works well for Texas, but we find SBC's document woefully lacking in detail. We note the document's reference to the "Texas IntraState IntraLATA Compensation Plan (TIICP)" and note that Missouri's compensation plan was eliminated in 1999 with the introduction of intraLATA presubscription. It would appear as though the Texas system, whatever it is, is far more extensive than the simple 3-page document presented by SBC as Attachment 1 to its comments in this case. We also note the reliance of Texas terminating carriers on the "92 records" system created by transiting carriers and simply note the inadequacy of such system and the fact that Missouri has moved far beyond the "92 system." We note the Texas document requires compilation of additional

paperwork and I-LEC questionnaires denoted *"Feature Group C Network Compensation Billing Records Profile."* We find such additional paperwork unsuitable and inefficient for our purposes, and believe a more streamlined process is warranted. We note that SBC's Texas Network Principles is silent on the use of terminating record-creation, yet the Texas Commission has ordered implementation of terminating records creation in the 65-page Arbitration Award in Texas PUC Docket 21982. In summary, we conclude that SBC's Texas Network Principles document, especially when considered in context with other Texas documents, is undoubtedly sufficient for Texas. However, the document in and of itself does not appear comprehensive enough to suit the needs of Missouri. Thus, we decline to adopt any aspect of SBC's Texas document.

We also note SBC's offering of the Montana Public Service Commission's 2001 rule as a more preferable approach to rule making. SBC describes the Montana rule as "straight forward" and "less complicated" than our proposed rules. We first note that Montana's rule is derived from legislation passed in Montana known as House Bill 641, Chapter 423, Section 3. As with the Texas document, it appears SBC has submitted only a partial rendition of the actual documents governing the situation being described. In doing so, SBC appears to give the impression that our local interconnection rules are too expansive, and could be more easily accomplished if we would only "do in Missouri what is being done in other states." We thus conclude that SBC's suggestion that the Montana rule is more "streamlined" than our rule appears inaccurate because the Montana rule is accompanied by corresponding legislation and ours is not.

We also note that, pursuant to Montana law, Rule I, paragraph 4 requires transiting carriers to deliver telecommunications traffic by means of *facilities that enable the terminating carriers to identify, measure, and appropriately charge the originating carrier for the termination of such traffic* (emphasis added). We find this concept central to Montana's law and its rules. We note a similar concept first appeared in the draft version of our rules on February 14, 2003. We note this concept later appeared in the May 7, 2003 version and was sent to the parties of record and discussed thoroughly in our Task Force meetings. We also note that, due to concerns of Sprint, the concept was discarded in the August 18, 2003 version of our rules for the supposed financial reasons explained in bullet one of the Staff's August 18th e-mail memorandum to the Task Force participants. We quote the following from 4 CSR 240-29.040 (1) of the May 7, 2003, draft version of our rule:

> All [Missouri] telecommunications companies that originate traffic that is transmitted over the LEC-to-LEC network shall use *facilities that enable transiting carriers and terminating carriers to identify, measure, and appropriately charge for that telecommunications traffic.* (Emphasis added)

We thus find our draft rule of May 7, 2003, to be identical in concept to that which SBC is now advocating. We also note that our records show that at least one carrier, Sprint, attributed a fiscal impact statement of approximately $5M to this concept. Sprint interpreted this concept as precluding transiting traffic and tandem-switched transport of

traffic. Sprint's criticism of this concept caused it to submit unacceptable fiscal impacts because of Sprint PCS's belief that this rule would mandate direct connections to each local exchange carrier end office. We thus conclude that SBC's Montana suggestion, whatever its merits, has already been considered and found wanting by the Missouri Industry Task Force. We decline to renew the concept here and we will disregard as duplicative SBC's suggestion to resume this direction at this late hour.

SBC states that the coordinating tariff provisions and the intercompany billing records now being exchanged preclude the necessity of adopting our proposed rules. SBC maintains that longstanding industry policy requires that originating carriers – the ones with the relationship with the caller – should be responsible for compensating all downstream carriers involved with completing the call. We acknowledge the familiar arrangement whereby the interexchange carrier delivering the call is the same carrier as originated the call. However, we disagree with SBC that such arrangements represent "longstanding industry policy". SBC's analogy is misdirected with regards to interexchange transiting traffic, which we find to be just as prevalent in the interexchange carrier network as it is in the LEC-to-LEC network. In traditional interexchange carrier compensation schemes it is the facility-based transiting carrier (such as AT&T) who is responsible for paying terminating compensation - not necessarily the originating carrier (who may be, for example, resellers or even other facility-based IXCs) who has the billing relationship with the caller. These facts are evidenced by the example given in footnote 31 of Joint Wireless Carriers' written comments in this case. Using wireless-originated calls as an example, Joint Wireless Carriers' describe how originating carriers are not responsible to pay terminating usage fees. Rather, as the example clearly shows, it is the interexchange transiting carrier who is responsible for such payments.

Given the near constant criticism by Missouri's small incumbent carriers to implement a "FGD business relationship" in the LEC-to-LEC network, it would seem axiomatic that traditional transiting carriers are responsible for terminating access charge payments. It is obvious that the small carriers would prefer the LEC-to-LEC transiting carriers (such as SBC) to assume a traditional AT&T transiting relationship. There are many instances where AT&T, acting in the role of a transiting carrier, is responsible for payment to terminating carriers, even though AT&T may not be the originating carrier and may not have a relationship with the originating caller. As evidenced by its alliances with Williams Communications, Inc., SBC is well versed in the process of relying on another carrier for interexchange transiting service when SBC is the originating carrier. Yet, according to SBC, it wants to duplicate the "longstanding industry policy" of which AT&T and Williams would presumably be the best examples.

We regard the role of LEC-to-LEC network transiting carriers, such as SBC, as similar to IXC transiting carriers in traditional IXC networks, such as AT&T. Such definition is consistent with how we have defined transiting service by function rather than by payment responsibility. Both carriers, in a wholesale capacity, frequently transit calls that neither originate nor terminate on their own network. Both carriers frequently transit calls in instances where they have no relationship with the calling party. In the traditional sense, it is the facility-based transiting carrier – not the originating carrier - who is

responsible for paying terminating compensation. We find these circumstances as representative of longstanding industry policy, not the circumstances SBC attributes to this situation in its comments. As even SBC acknowledges, the concept of "calling-party's-network-pays" is a relatively recent phenomenon attributable to the federal government only as recently as December, 2003 in the Verizon-Virginia arbitration order. In Missouri, we first articulated this concept in September 1996. Then, in events pertaining to Case No. TO-96-440, which was our first contested case involving transiting traffic, we directed the applicant, Dial U.S., to obtain traffic termination interconnection agreements with all third parties prior to transiting traffic to them.

In conclusion, we cannot accept SBC's position that meet-point billing access tariffs are sufficient to supplant the necessity for our rules. SBC is simply mixing apples and oranges. As the record before us demonstrates in the first instance, a substantial portion of transiting traffic is wireless traffic not subject to the access payments inherent to the meet-point billing arguments of SBC. As with SBC's Texas Principles document and its Montana rule, we must also reject SBC's contention that its coordinating tariff provisions preclude the necessity of implementing our proposed rules. We will implement this rule without change.

4 CSR 240-29.040 (1)

COMMENT: The Staff opines that this section requires all carriers to deliver the originating telephone number of the calling party to all connecting carriers along the LEC-to-LEC network call path. Staff states that it has thoroughly discussed this matter with industry participants and is unaware of any instance where Calling Party Number (CPN) should not accompany the telephone call throughout the call progression.

COMMENT: The STCG supports this section and indicates that implementation will increase all carriers' ability to track and account for traffic delivered over the LEC-to-LEC network. The STCG states that this section will also ensure that customers who subscribe to Caller ID service will receive more calling numbers, thus making Caller ID service more valuable and reducing customer complaints.

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) complain that this section purports to dictate the kind of signaling information that wireless carriers must provide with the interstate calls their customers originate. According to Joint Wireless Carriers, the "solution" will not fix the "problem" – it will not assist small local exchange carriers in determining whether to bill wireless calls at reciprocal compensation or exchange access rates. Joint Wireless Carriers state that the Commission does not have authority over wireless intrastate traffic. Joint Wireless Carriers opine that the Unified Intercarrier Compensation Regime rulemaking will render this rulemaking irrelevant thus stranding investment. Joint Wireless Carriers state, without explanation, that the "unified rate" proposals advocated by Missouri's small local exchange carriers at the federal level would obsolete the modifications and required investments. Joint Wireless Carriers allege that eliminating rate disparity associated with different kinds of traffic, including bill and keep or a uniform rate for call termination, would make the rule irrelevant. Joint Wireless

Carriers opine that the Commission does not have authority over interstate traffic and Missouri law does not give the Commission oversight over wireless communications. Moreover, according to Joint Wireless Carriers, the Commission cannot construe the statute in a manner contrary to the plain terms of the statute.

Joint Wireless Carriers assert this rule requires wireless carriers to provide "certain information" along with their calls. Joint Wireless Carriers exert a right to select a transit carrier of choice, and to interconnect directly or indirectly with terminating carriers. Joint Wireless Carriers opine that such rights are based on the wireless carrier's "most efficient technologies and economic choice" and are reserved exclusively with the wireless carrier, and not the incumbent carrier. According to Joint Wireless Carriers, Section 332(c)(3) of the Communications Act bars state government from any authority to regulate entry of wireless carriers. Moreover, according to Joint Wireless Carriers, such preemption exists even if regulation does not actually have the effect of prohibiting entry.

RESPONSE: We find that our rules do not regulate wireless carriers. Rather, our rules represent minimal standards expected of regulated incumbent local exchange carriers for the transport of telecommunications traffic over a locally interconnected network under our jurisdiction. We find that permitting incumbent carriers to transport telecommunications traffic without CPN denies terminating carriers the necessary information required to identify the proper responsible party. Such information is particularly important in an originating responsibility system, such as Missouri's LEC-to-LEC network business relationship. Moreover, failure to transmit Calling Party Identification robs Caller ID consumers of what they are paying for - namely, the calling party's telephone number. We again note the primacy of the FCC's Emergency 9-1-1 standards for wireless carriers, Phase I of which requires transmittal of caller ID for wireless telephone calls. We find that our rules require nothing more than that which has previously been required by the FCC. Lastly, we note that no wireless carrier has provided any evidence that it is incapable of transmitting Caller ID to transiting carriers. We will implement this section without change.

4 CSR 240-29.040 (2)

COMMENT: SBC recommends removing the requirement for transiting carriers to deliver originating caller identification to terminating carriers. SBC suggests a sentence be added to reflect that transiting carriers can only deliver caller identification to the extent it receives this information from the originating carrier.

COMMENT: Sprint states that it has one connecting exchange in Missouri where it is unable to deliver originating caller identification to connecting carriers. Sprint expresses concern that the rule makes no exception for this single case of infeasibility. To remedy the matter, Sprint suggests this section be clarified to allow for Sprint's network limitations. Sprint recommends adding the proviso "where technically feasible" to the end of this section.

RESPONSE: We find that delivery of originating caller identification is indispensable for proper billing and recording of call records created at a terminating office. We note this view appears to be substantiated by SBC's Compensation Attachment offering in its replacement Missouri Section 271 Agreement (M2A) as viewed on SBC's Web site, as follows:

> 2.1 For all traffic originated on a party's network including, without limitation, Switched Access Traffic and wireless traffic, such party shall provide CPN as defined in 47 C.F.R. Section 64.1600(c) (CPN) in accordance with Section 2.3, below. Each party to this agreement will be responsible for passing on any CPN it receives from a third party for traffic delivered to the other party. In addition, each party agrees that it shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN. If either party identifies improper, incorrect, or fraudulent use of local exchange services (including, but not limited to PRI, ISDN and/or Smart Trunks), or identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, the parties agree to cooperate with one another to investigate and take corrective action.

We find that our caller identification rule is consistent with SBC's own proposed contractual wording as above. We also find that our rule is consistent with the below statements contained in the affidavit of SBC witness McPhee, who in Case No. TO-2005-0166 testified:

- "While I do not discuss issues surrounding IP telephony in this case, the current standard is that CPN information should be passed on all intercarrier traffic."
- "CPN information is critical for determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied."
- "This provision protects against the possibility that an unscrupulous C-LEC would fraudulently override call identification or delete CPN so that it can slip interLATA traffic in with local traffic."

We will implement this section without change. The record before us and the record established by the Industry Task Force is clear. There is simply no reason for calls traversing the LEC-to-LEC network to lack CPN. We encourage transiting carriers to require CPN from those with whom they interconnect and provide transiting services. If Sprint or any other carrier is utilizing inferior equipment that does not transmit CPN, those carriers are encouraged to petition the Commission for a variance from this rule.

4 CSR 240-29.040 (4)

COMMENT: SBC argues that it should not be required to create no-charge billing records for terminating carriers. SBC opines that the Commission has no authority to order creation of uncompensated services, and characterizes the practice as confiscatory and contrary to law. SBC says Qwest and other unidentified carriers regularly charge for billing records.

COMMENT: The Staff states that this section leaves in place the current practice of permitting SBC, CenturyTel, and Sprint to use category 92 records for the traffic exchanged among themselves. Staff states this section will also not interfere with the traditional practice whereby transiting carriers create records for their own traffic at an originating end office, rather than at a tandem location.

COMMENT: Sprint states that this section, along with Section (3), addresses billing records that are produced days or weeks after the call has been placed. Without explanation, Sprint opines that in some circumstances it is appropriate and acceptable to modify the call record. Sprint, without elaboration, states that carriers should follow industry-standard procedures for the creation of call detail records. Sprint opines, again without explanation or elaboration, that this section "alters industry-standards for records creation [and] exchange."

COMMENT: The STCG states that this section (along with Sections (3) and (5)) requires use of industry standard category 11-01-XX billing records and is consistent with prior Commission rulings. The STCG supports this section.

COMMENT: The MITG asserts that SBC's Category 11-01-XX billing system does not properly include the calling party number for wireless calls. Instead of providing the caller's number, SBC's record simply puts in an assigned number representing the wireless carrier. Thus, according to the MITG, SBC's improved wireless billing records provide no more information with respect to traffic jurisdiction than did SBC's previous Cellular Transiting Usage Summary Report (CTUSR). The MITG states that the rule will require carriers placing traffic on the network to also place on the network sufficient billing information for the terminating local exchange carrier to properly bill the call to the financially responsible carrier.

COMMENT: Joint Wireless Carriers presume that this section applies to transiting carriers only, and does not require wireless carriers to create billing records for the traffic they create and send to wireline carriers for termination. Joint Wireless Carriers state they would object to any such record-creation obligation. However, Joint Wireless Carriers proclaim this section to be discriminatory on its face. Joint Wireless Carriers opine that record-creation for wireless traffic is improper because no such requirements are similarly imposed on traffic originated by local exchange carriers. Joint Wireless Carriers presume the Commission is proposing tandem record-creation to facilitate the ability of rural local exchange carriers to bill the originating carrier for call termination. Joint Wireless Carriers maintain that there is no basis in logic, policy or law for the Commission to establish a new category 11-01-XX billing system to facilitate call termination, but then exempt rural local exchange carriers from such a record-creation requirement. According to Joint Wireless Carriers, competitive carriers have a right to bill rural local exchange carriers for call termination as well. Reciprocal compensation, proclaim Joint Wireless Carriers, is embedded in Section 251(b)(5) of the Act. Thus, according to Joint Wireless Carriers, if the Commission determines that the public interest would be served by use of Category 11-01-XX billing records, then this

requirement should be mandated on transiting carriers for all transiting traffic, including traffic originated on the networks of rural local exchange carriers. Joint Wireless Carriers complain that no explanation is given for such prima facie discrimination.

RESPONSE: Because it gave insufficient information, we are unable to comment on Sprint's expressed concern that our rule alters industry standards.

Joint Wireless Carriers exhibit a general lack of knowledge about the LEC-to-LEC network. The record creation obligations codified by our rules do not represent any new record creation obligations. Rather, the obligations were implemented by Missouri's transiting carriers pursuant to our Report and Order in Case No. TO-99-254. Joint Wireless Carriers do not establish any instance whereby rural carriers transmit compensable calls to wireless carriers, yet Joint Wireless Carriers inexplicably characterize this rule as discriminatory because rural carriers are not required to create billing records for calls they do not originate or transit. We determine Joint Wireless Carriers' comments on this section to be frivolous and unsubstantiated.

SBC complains that this rule establishes a no-charge records creation provision, a matter to which it objects and characterizes as confiscatory and unlawful. SBC references Qwest, another Regional Bell Operating Company (R-BOC), as charging for records, and seems to imply that SBC should also be permitted to charge for records. Yet SBC provides no comparative analysis which would permit the Commission to draw any conclusions. SBC does not even indicate whether Qwest is a price cap, rate-of-return, or free market price-deregulated carrier. In any regard, we disagree with SBC's characterization of our rule as establishing a no-charge bill creation provision. The record before us indicates that the Commission established this proviso in its ordered paragraph 3 of its Report and Order in Case No. TO-99-254, et. al. As we also stated in that Report and Order, any additional expense this will cause [SBC, Sprint, and CenturyTel] is dwarfed by the elimination of the asserted revenue losses occurring under the PTC plan.

We acknowledge the MITG claim that SBC strips off the CPN of wireless-originated calls when it creates Category 11-01-XX billing records. We acknowledge such practices render the Category 11 records as non-industry standard. We agree that such practice leaves terminating carriers with little or no more information than was previously contained in SBC's Cellular Transiting Usage Summary Report (CTUSR) summary records. We are unconvinced by the testimony at the public hearing of SBC witness Murphy, who states that it is fitting for SBC to engage in the practice of stripping CPN when it creates Category 11-01-XX billing records for terminating carriers such as the MITG member companies. First, we note Mr. Murphy was referring to creation of Automatic Message Accounting (AMA) records (i.e., "machine records"), not Category 11-01-XX billing records. We note our rules address Category 11-01-XX records and not the AMA switch records Mr. Murphy referred to in his sworn testimony. We acknowledge that part of the data contained within Category 11 billing records is dependent on source information derived from AMA records. However, we find nothing in the record before us to indicate that CPN is not a part of AMA records. Moreover, we find that Mr. Murphy's testimony presents no evidence that Telcordia Technologies

documents permit stripping of CPN when creating Category 11-01-XX billing records. We conclude that the Telcordia Technologies document referenced by Mr. Murphy simply does not address the situation complained of by the MITG.

Mr. Murphy also indicates that industry records for wireless traffic are different from industry records for interexchange carriers because interexchange callers make calls from home or at work. We reject the notion that all interexchange callers are stationary. We first point to footnote 31 of Joint Wireless Carriers' comments to evidence the mobility of some interexchange carrier traffic. We will also take notice of our official records – in this instance, the record developed in Case No. TT-2004-0542 and, in particular, Issue 1.a of that case. We note for the record that on September 27, 2004 SBC withdrew its access revision tariff filing in that case. As SBC is well aware, the use of CPN to determine call jurisdiction is just as controversial for interexchange traffic as it is for wireless traffic for the simple reason that a substantial amount of interexchange traffic is originated from wireless telephones. Thus, we cannot accept Mr. Murphy's pronouncement that interexchange callers are "stationary" and, with the possible exception of an Operating Company Number, we cannot accept the notion that Category 11-01-XX billing records should be different for LEC-to-LEC network traffic than for IXC traffic. The record before us indicates that both networks contain some degree of wireless roaming traffic. Given that AT&T, for example, does not have its own wireless end users, it would seem that in fact all of AT&T's wireless-originated interexchange carrier traffic is roaming traffic. Yet, SBC witness Murphy characterizes interexchange traffic as originating from "stationary" users.

We find that SBC has shown no credible evidence that the Category 11-01-XX billing records it creates for wireless-originated calls traversing the LEC-to-LEC network should be different from the Category 11-01-XX billing records it creates for wireline *and wireless*-originated calls traversing the interexchange carrier network. We also caution terminating carriers that, as used for wireless-originated LEC-to-LEC billing records, the CPN is to be used as far as practical only to determine the responsible party and that, due to possible instances of roaming, CPN cannot be used in all instances to determine call jurisdiction of wireless-originated calls. We urge all carriers to work together in formulating industry solutions that address the ability to use the SS7 Jurisdiction Information Parameter (JIP) or similar indicators to determine proper jurisdiction of traffic traversing the LEC-to-LEC network. We note, in particular, the Ordering and Billing Forum Issue 0208 and events occurring in November 2004 as a possible starting place for Missouri carriers to seek resolution of potential misjurisdictionalized wireless roaming traffic.

We thus determine that transiting carriers shall include the CPN as part of the Category 11-01-XX records created for wireless-originated traffic occurring over the LEC-to-LEC network. If any carrier determines that it cannot or should not include the originating CPN of wireless callers in the Category 11-01-XX billing record, it is free to petition the Commission to be excluded from that aspect of our rule. Based on the comments and the record before us, we see no reason to exclude wireless CPN from the billing records generated by transiting carriers. We order implementation of this section without change.

4 CSR 240-29.040 (6)

COMMENT: The Staff opines that this section would prohibit a practice whereby unscrupulous carriers may engage in the practice of stripping the correct telephone number and inserting a jurisdictionally improper telephone number into the call path or billing records.

COMMENT: SBC recommends that this section be clarified to acknowledge that in some call forwarding situations, the caller identification of the party forwarding the call is the number that is provided to the transiting and terminating carriers.

COMMENT: If the Commission ultimately finalizes the ERE rule, Sprint expresses support for this section. However, Sprint recommends adoption of only Section (1), (2), and (5). Sprint recommends deleting Sections (3) and (4).

RESPONSE: Because Sprint provided insufficient explanation, we are unable to accept its suggestion to apply this section in a limited manner. Similarly, SBC suggests a change be made but offers no suggestion as to what form the change should take. We find nothing in this section that infringes the technical workings of multiple call-forwarding scenarios. It is to be expected that each leg of the call is reoriginated and that a new CPN may be derived on each leg of the call. We will not attempt to use the rulemaking process to address each and every possible technical scenario that may develop in the network. If the parties to this case find it necessary, they are free to work together, with or without enlisting assistance from the Staff, to develop a set of more detailed network principles to guide implementation of our Enhanced Record Exchange Rules. We will implement this section without change.

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.050 Option to Establish Separate Trunk Groups for LEC-to-LEC Telecommunications Traffic **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). No change is made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

4 CSR 240-29.050 (1)

COMMENT: The Missouri Independent Telephone Company Group (MITG) states that an option for its member companies to have separate trunk groups for IXC and LEC-to-LEC network traffic is an improvement. According to the MITG, separate trunk groups are needed because there is a separate and distinct billing and compensation system for IXC and LEC-to-LEC network traffic. According to the MITG, in order to distinguish traffic-recording responsibilities, separate trunk groups are needed.

COMMENT: The Small Telephone Company Group (STCG) supports this section and states that this rule is particularly appropriate in a competitive environment.

COMMENT: The Telecommunications Department Staff (Staff) states this section should be implemented without change. Staff asserts that separate trunk groups for IXC and LEC-to-LEC network traffic are standard industry practice among incumbent local exchange carriers such as SBC and Sprint. Staff opines that the Commission has approved many such agreements. Staff explains that under the Telecommunications Act of 1996, new competitive companies are permitted to petition incumbent local exchange carriers for separate trunk groups but that small local exchange carriers, such as the small Missouri companies, may not avail themselves of such law. Consequently, it is up to the Commission to determine if separate trunk groups will be made optional for local exchange carriers. Staff opines that separate trunk groups are just as important to small carriers as to larger carriers such as SBC and Sprint. The Staff asserts that separate trunk groups help to assure proper compensation and that using separate trunk groups for jurisdictionally distinct traffic is common practice. Staff opines that by opposing separate trunk groups for incumbent carriers, SBC, Sprint, and CenturyTel are engaged in disparate treatment of small local exchange carriers.

COMMENT: Sprint states that this section clearly contemplates that traffic from interexchange carriers will be combined with traffic from wireless carriers and local exchange carriers and, as such, allows separate LEC-to-LEC network and IXC trunk groups. According to Sprint, this section is therefore inconsistent with 4 CSR 240-29.010 and 4 CSR 240.29.030(4).

Sprint suggests this section is inconsistent with Sprint's PSC Mo. No. 26 tariff which states: "different types of FGC or other switching arrangements may be combined on a single trunk group at the option of the Telephone Company."

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) characterize separate trunk groups as needless. Joint Wireless Carriers presume the Commission is proposing this section to facilitate the ability of rural local exchange carriers to identify the wireless traffic that should be assessed interstate access charges. Joint Wireless Carriers state that this is not possible and that the only way to charge wireless carriers for call termination is to negotiate an appropriate interMTA and interstate factor.

Joint Wireless Carriers state that separate trunk groups would use antiquated Feature Group C (FGC) interface. Joint Wireless Carriers opine that costs for installing separate trunk groups might be passed on to wireless carriers in the form of higher transit costs. Joint Wireless Carriers state that these costs would be unnecessary if the Federal Communications Commission (FCC) adopts bill-and-keep for the exchange of traffic. Joint Wireless Carriers assert that separate trunk groups contravene the principle of cost-causation and distort competition as a result. According to Joint Wireless Carriers, the FCC mandates that costs be attributed on a cost-causative basis, as stated in the Verizon InterLATA Order. Joint Wireless Carriers opine that the rules are entirely imposed by the rural local exchange carriers. According to Joint Wireless Carriers, no explanation is given as to why transit carriers are to share in such costs. Joint Wireless Carriers would have terminating carriers subsume the entire cost of installing meet-point like trunks. Joint Wireless Carriers state, parenthetically, that rural local exchange carriers should not be allowed to recover their costs for installing separate trunk groups.

COMMENT: SBC opines that the Commission lacks statutory authority to require tandem carriers to make network changes through a rulemaking. SBC cites to Section 392.250, RSMo as requiring an adjudicatory hearing prior to the Commission ordering network changes. SBC states this section improperly strays into the realm of management prerogatives, and infringes on its right to use and enjoyment of its property. SBC points to its PSC Mo. No. 36 access tariff as permitting routes and facilities as only SBC may elect. SBC states that in this rulemaking the Commission has no evidence before it of any company failure to perform legal duties which have harmed the public. SBC characterizes as "generalized dissatisfaction" and "anecdotal" the claims of unidentified traffic, and states that such is not sufficient evidence under the statutory scheme.

SBC states that in previous cases before the Commission, SBC and other carriers have opposed use of separate trunk groups to handle different types of traffic. SBC asserts that engineers have testified that separate trunk groups are "extremely inefficient" and costly

to implement. As an example, SBC offers the testimony of its witness Scharfenberg in Case No. TO-99-593.

SBC also objects to Staff's reduction of the fiscal impact SBC reported for this section of the rule, and characterizes Staff's actions as improper. SBC states it reported an impact of $440,000 which Staff reduced to $219,000. SBC questions Staff's statement that Sprint and Spectra are not expected to implement separate trunk groups. According to SBC, such assumption conflicts with the express language of this section. SBC objects that the rule fails to provide any cost recovery mechanism for tandem providers who are impacted by the section. Lastly, SBC recommends placing the cost of implementing this section on the cost-causing requesting carrier.

RESPONSE: We reject Sprint's contention that our rule interferes with its access tariff. We find that Sprint may continue to commingle what it calls "different types of FGC or other switching arrangements" on a single trunk group. Our rules do not interfere with how Sprint handles its own traffic. However, other carriers have access tariffs too. In fact, many of the carriers with whom Sprint interconnects would prefer to apply those aspects of access tariffs that they interpret as eliminating FGC upon implementation of FGD. We note the following from Sheet 185 of Sprint's own P.S.C. Mo No 26 access tariff:

> "FGC switching is provided to the customer (i.e., providers of MTS and WATS) at an end office switch unless Feature Group D end office switching is provided in the same office. When FGD is available, FGC will be discontinued for Interexchange Carriers."

We will not permit Sprint to interpret its access tariff in such a way that imposes its traffic intermingling scheme on unwilling participants who have no market-based solution other than to use Sprint's tandem connections. We also disagree with Sprint's comment that this section contemplates intermingling of local and interexchange carrier traffic. To the contrary, this section contemplates separating the two traffic types in a manner consistent with how Sprint has voluntarily agreed to separate its traffic when interconnecting with competitive local exchange carriers.

We reject Joint Wireless Carriers' notion that separate trunk groups are useless. We are not imposing separate trunk groups to facilitate the ability of rural carriers to identify access traffic. We are empowering incumbent local exchange carriers with the tools needed to implement separate trunk groups because there are two separate networks in use, which employ two different traffic-recording mechanisms each with its own unique business relationship, and because separate trunk groups represent the standard employed in today's modern network environment. This simple fact is illustrated by wireless carriers' own use of network trunking arrangements. As demonstrated by Sprint PCS in technical meetings in this case, wireless carriers utilize three general trunk group types: Local, IXC, and Intermachine. We note these three basic trunk group types are already in place to enable the "triple screening" process that Joint Wireless Carriers claim not to utilize. The concept of using specific trunk groups for specific purposes is no different for landline carriers than it is for wireless carriers. We must reject Joint Wireless Carriers'

contention that their networks need separate trunk groups but landline carriers' networks do not.

We cannot accept SBC's complaint that Staff wrongly reduced its fiscal impact projection for separate trunk groups. We first note Staff's disallowance of costs that SBC initially attributed to separate trunk groups between SBC and its retail customers, competitive local exchange carriers, and wireless carriers. We find that Staff was correct to disallow reported costs for SBC's retail customers because our rules have nothing to do with the business trunks SBC provides to private entities. We also find that Staff was correct to disallow costs SBC attributed to competitive local exchange carriers and wireless carriers because these carriers negotiate trunks pursuant to interconnection agreements and our rules do not infringe upon such enterprise.

We conclude that Staff properly disallowed costs that SBC attributed to separate trunk groups between SBC and the other transiting carriers (Sprint and Century Tel). Given the unambiguous opposition of Sprint and CenturyTel to the establishment of separate trunk groups, it is clear that Sprint and CenturyTel do not intend to implement separate trunk groups. Such is further evidenced by special provisions in our rules that permit these carriers and SBC to continue with the Category 92 records creation process, thus negating the possibility that the former Primary Toll Carriers may engage in terminating record-creation for which the separate trunk groups are necessary. We also take official notice of the Task Force meetings and comments in which Sprint and CenturyTel spoke against separate trunk groups. Given these circumstances, we find that Staff was correct to exclude costs for establishing separate trunk groups from SBC to Sprint and CenturyTel. As the Staff instructed the Task Force participants, we again remind SBC that when calculating fiscal note costs, one should calculate what it reasonably expects will occur – not what "could" or "might" occur. We find reasonable the Staff's exclusion of Sprint and CenturyTel from the financial calculations. Lastly, we note SBC's per-trunk cost estimate of $299.00 contrasts sharply with Sprint's per-trunk cost estimate of $39.58 and CenturyTel's estimate of no fiscal impact. Given the inexplicable disparity, we find Staff's calculations with regard to SBC are more than reasonable. We also reject the contention that terminating carriers are solely responsible for the cost of implementing separate trunk groups. As is customary, we direct each involved carrier to be responsible for its individual cost of implementing the trunk groups.

As to SBC's trunk efficiency arguments, we find an extensive record before us that belies SBC's comments and insistence that separate trunk groups are "extremely inefficient". First, we take official notice of SBC's Commission-approved interconnection agreements (and similar agreements of CenturyTel and Sprint) in which SBC has voluntarily negotiated one trunk group for local/intraLATA traffic, and a separate trunk group for IXC network traffic. SBC's voluntary actions in this regard appear to contradict its comments in this case. And while we acknowledge SBC's comments that witness Scharfenberg has testified in Case No. TO-99-593 that separate trunk groups are inefficient, we will also acknowledge SBC witness Timothy Oyer's direct testimony in Case No. TO-2005-0166, as follows:

- "Software limitations prohibit both companies from being able to properly identify the traffic they are receiving over combined trunk groups. SBC Missouri makes terminating billing records on incoming trunk groups. All traffic that is sent over a single trunk group will generate the same type of billing record. This is where the opportunity for fraud exists. Level 3 must tell SBC Missouri what percentage of these calls should be billed at a reciprocal compensation rate as opposed to an access rate. Without the ability to identify the traffic, the parties are left no choice but to accept the word of the other as to the true jurisdictional nature of the traffic. Accurate and proper compensation is best accomplished through separate trunk groups. Separate trunk groups allow for traffic to be accurately recorded and then properly billed."
- "Level 3's proposal seeking to combine local/intraLATA toll traffic with interexchange access traffic on the same trunk group should be rejected because it would create the potential for blocking as well as significant billing problems without any discernible upside."
- "To ensure that Level 3 and SBC Missouri are properly compensated for local, intraLATA and interLATA exchange access, these different traffic types must be routed on separate trunk groups."
- "[SBC] Missouri's proposal that jurisdictionally distinct traffic be carried on separate trunk groups is consistent with what the parties' have been doing under their current interconnection agreement in this and other states in which SBC operates as an ILEC."
- "Local interconnection trunk groups must be provisioned to support the appropriate traffic. This assures proper routing per the LERG and also allows for proper tracking for compensation."
- "Specifically, under its proposed language, Level 3 could combine local/intraLATA toll traffic with interLATA IXC carried traffic on local interconnection trunk groups. SBC Missouri opposes Level 3's proposed language."
- "In other state arbitrations, Level 3 has identified several carriers that Level 3 uses for [call delivery], one of which is currently being sued by SBC for access charge avoidance by delivering access calls over local trunk groups."
- "...[C]ombining traffic [on a single trunk group] as suggested by Level 3 could potentially lead to blocked calls due to improper routing of calls."
- "...[C]ombining jurisdictionally distinct traffic on the same trunk group would create tracking and billing problems."

In summary, we find that SBC's testimony in Case No-TO-2005-0166 negates its position in this case. In one case SBC characterizes separate trunk groups as "highly inefficient," yet in another case it characterizes separate trunk groups as necessary for accurate recording and proper billing. We note that one SBC witness characterizes separate trunk groups as "[too] costly to implement," yet another witness characterizes common trunk groups as presenting "the opportunity for fraud." We conclude that SBC's commentary record on separate trunk groups appears to change with each case presented to us.

Because we find excessive contradiction in SBC's trunking statements, we will examine SBC's market-based local interconnection conduct as the best possible solution for our local interconnection rules. An examination of the interconnection agreements SBC has filed with the Commission reveals that such agreements contain provisions for separate trunk groups. We note SBC's market-based behavior in this regard and apply that concept to those instances in Missouri when we have to implement rules because incumbent carriers are not free to compel negotiation from one to the other. We will implement our rules consistent with the manner most closely resembling the market-based solutions as reflected in the interconnection agreements of SBC, Sprint, and CenturyTel. We see no reason to deny the benefits of these modern network technologies to Missouri's incumbent carriers who cannot avail themselves of the same interconnection rights guaranteed under federal law to competitive carriers. As to SBC's remaining arguments, we find that our responses would be duplicative of previous responses and we will not repeat them here. We will order implementation of this section without change.

4 CSR 240-29.050 (2)

COMMENT: Sprint recommends this section be eliminated. According to Sprint, this section seeks to change the business relationship between tandem carriers and end office carriers. Sprint opines that the carriers supporting the rule are, yet again, trying to persuade the Commission to change the business relationship. Sprint states that the proposed rule contains provisions that accomplish just that.

COMMENT: CenturyTel is opposed to those aspects of our rules that permit establishment of separate trunk groups. CenturyTel states that inclusion of this section constitutes a de facto mandate to change the business relationship between transiting and terminating carriers. CenturyTel cites to two previous occasions wherein the Commission has refused to do so.

RESPONSE: We see nothing in this section that would change the current business relationship. This section simply provides an option for tandem carriers to assume financial responsibility in the event they do not wish to honor the request of terminating carriers to install separate trunk groups.

We note that CenturyTel and Spectra's own interconnection agreements mandate separate trunk groups for competitive local exchange carriers as demonstrated by the following:

- "Spectra requires separate trunk groups from MTI to originate and terminate interLATA calls and to provide Switched Access Service to IXCs." (Paragraph 4.3.3, Interconnection Agreement between Spectra and Missouri Telecom, Inc.)
- "Neither party shall route switched access service traffic over local interconnection trunks, or local traffic over switched access service trunks." (Paragraph 4.3.3.3, Interconnection Agreement between CenturyTel and Missouri Telecom, Inc.)

We find that separate trunk groups do not interfere with the business relationship of CenturyTel and competitive local exchange carriers. Nor do we see any reason that separate trunk groups will interfere with the business relationship between CenturyTel and incumbent local exchange carriers. We will implement this section without change.

4 CSR 240-29.050 (4)

COMMENT: Sprint states, without explanation, that after traffic is separated between that which traverses an interexchange carrier point of presence and that which does not, "segregated traffic still rides the LEC-to-LEC network albeit on separate trunks." Sprint seeks clarification on what tandem providers are supposed to do with segregated traffic after it is segregated.

COMMENT: Joint Wireless Carriers state, inexplicably, that this section purports to dictate how wireless carriers must route their interstate interMTA traffic.

RESPONSE: We will clarify for Sprint that it is supposed to treat segregated traffic destined for incumbent carriers the same as it treats segregated traffic destined for the competitors with whom it has voluntarily agreed to segregate traffic. We instruct Sprint to take notice of Section 37 of its own Master Interconnection Agreement in Case No. TK-2005-0278. Section 37, titled, *Local Interconnection Trunk Arrangements*, indicates that Sprint will make available to competitors two-way trunks for exchange of combined Local Traffic, and non-equal access intraLATA toll traffic. Moreover, Sprint will make available to competitors *separate* two-way trunks for the exchange of equal-access interLATA or IntraLATA interexchange traffic. If, after examining its own interconnection agreements, Sprint is still unsure of how to treat segregated traffic, we instruct Sprint to examine its own trunking arrangements in its Lebanon, Ferrelview and Kearney end offices, which are connected to SBC tandems. We are confident that Sprint will find these trunking arrangements instructive because they utilize separate trunk groups to accommodate data, MCA, and intraLATA calls. If, after examining its own agreements and network configurations, Sprint is still uncertain on what it is supposed to do with segregated traffic, it may contact the Staff for further assistance. We order implementation of this section without change.

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Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and *386.250 RSMo 2000, the Commission adopts a rule as follows:*

4 CSR 240-29.060 Special Privacy Provisions for End Users Who Block Their Originating Telephone Number **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). No change is made in the *text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective* thirty (3) days after publication in the *Code of State Regulations*.

COMMENT: The Telecommunications Department Staff (Staff) recommends this section be implemented without change.

COMMENT: Since the Commission has recently enacted 4 CSR 240-32.190, SBC *reflects that additional rules for Caller ID blocking are unnecessary. SBC states that if it* is determined that changes are needed to the Caller ID rules, such changes should be made to Chapter 32.

COMMENT: CenturyTel writes that this section is unnecessary as Caller ID rules are contained in Chapter 32.

COMMENT: Sprint opines that this section is duplicative of provisions contained in Chapter 32.

RESPONSE: We find that this section contains additional requirements unique to carrier-to-carrier delivery of Caller ID, which are not contained in Chapter 32. The additional requirements are necessary to prevent carriers from stripping Calling Party Number (CPN) in instances where originating callers block delivery of Caller ID. In such situations, the CPN is delivered to the terminating office but privacy indicators preclude delivery of the Caller ID to the called party. We will order this section implemented without change.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission withdraws a rule as follows:

4 CSR 240-29.070 Special Provisions for Wireless-Originated Traffic Transmitted over the LEC-to-LEC Network **is withdrawn.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). The proposed rule is withdrawn.

4 CSR 240-29.070(1)

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) state that this section acknowledges the inability of wireless carriers to comply with Section (2) of this rule. Joint Wireless Carriers express that real time routing on demarcation point is impossible and in many cases the calling number has been ported. Joint Wireless Carriers contend this section is even more unreasonable given the blocking requirements in other aspects of this chapter.

RESPONSE: The Commission determines that these matters are best addressed in interconnection agreements. Thus, we will withdraw this rule.

4 CSR 240-29.070(2)

COMMENT: SBC states that this section impermissibly interferes with its interconnection obligations as set forth in the Telecommunications Act. SBC states that incumbent local exchange carriers are required to provide interconnection to wireless carriers who request it for the transmission and routing of telephone exchange service or exchange access service. SBC also questions the Commission's authority under Missouri law to impose such restrictions on wireless carriers.

COMMENT: Sprint states this section should be eliminated and refers to its previous comments.

COMMENT: Joint Wireless Carriers state this section would require "triple screening" and force comparison of cell sites to the telephone number being dialed. Joint Wireless Carriers again state that Missouri law prohibits the Commission from enactment of this section. In footnote 36, Joint Wireless Carriers express confusion about the switching

functions of local exchange and interexchange carriers, especially when a company holds both types of Missouri certificates of authority.

RESPONSE: The Commission determines that the matters contained in this rule are best determined in interconnection agreements. We therefore, withdraw this section in its entirety.

RESPONSE: The Commission determines that these matters are best addressed in interconnection agreements. Thus, we will withdraw this rule.

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.080 Use of Terminating Record Creation for LEC-to-LEC Telecommunications Traffic **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). No change is made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

COMMENT: Sprint recommends elimination of this rule in its entirety. Sprint opines that there is no demonstration or evidence to support this initiative. Sprint acknowledges that originating record-creation is not perfect; however, Sprint maintains that terminating record-creation is a solution that will lead to other problems. Sprint attributes a $400,000 fiscal impact to this rule.

COMMENT: SBC states this section will create confusion, increase costs, and increase billing disputes. SBC opines that in many instances, terminating records cannot identify the appropriate originating party. SBC asserts that terminating recordings do not differentiate the originating switch owner from the competitor utilizing the switch; SBC offers UNE-P and Type I wireless traffic as examples. As a result, according to SBC, use of terminating records will cause improper billing.

SBC states that it will incur $1.78 million in equipment and labor expense to develop, reconcile, and process terminating created records. Additionally, according to SBC, it will incur approximately $500,000 in annual personnel costs. SBC contends that Staff inappropriately excluded all of these reported costs in the fiscal impact statement. Instead of creating a terminating records system, SBC recommends the Commission revise this section as follows:

> Terminating telecommunications companies may obtain billing records or other billing information from transiting carriers for use in billing the originating carrier. Transiting companies may obtain billing information from other transiting carriers or terminating carriers for use in billing the originating carrier. It is the responsibility of both transiting and terminating companies to issue accurate bills to the originating carrier. It is the responsibility of the originating carrier to (1) compensate the transiting carrier(s) for providing the transiting function; and (2) compensate the terminating carrier for providing the terminating function.

Socket Telecom, XO Communications, and Big River Telephone Company (Socket, XO, and Big River) state particular support for this rule, which permits use of terminating records to generate accurate billing invoices. Socket, XO, and Big River opine that the current practice of relying on originating records simply does not work in today's environment, especially when numbers are ported. Socket, XO, and Big River describe the process of originating record-creation, and cite to the use of the called party's NPA-NXX code as the basis for identifying the terminating carrier. Socket, XO and Big River state that such records are then used by the terminating carrier to generate exchange access bills to the originating carrier. Socket, XO, and Big River complain that such systems fall apart when numbers are ported between carriers, because the terminating carrier is not correctly identified by the NPA-NXX code. According to Socket, XO, and Big River, the result is that one local exchange carrier receives payment to which it is not entitled, and another local exchange carrier fails to receive the compensation to which it is rightfully entitled. This situation is particularly onerous, according to Socket, XO, and Big River, because the two involved local exchange carriers are direct competitors. Socket, XO, and Big River state that use of terminating records would enable the proper terminating carrier to generate its own billing records and receive payment for the calls it terminates. Socket, XO, and Big River state that this rule is a critical step in the right direction if Missouri is going to have facility-based competition.

COMMENT: The Telecommunications Department Staff (Staff) recommended this rule be implemented without change. Staff states the current practice of creating records at an originating or tandem office does not recognize the many instances where the call terminates to a ported telephone number. Consequently, according to the Staff, originating and tandem-created billing records are frequently in error. Staff reflects that only the terminating carrier may know for certain where a telephone call physically terminates, and on whose network. Staff states its opinion that terminating carriers should have the ability to create accurate billing records.

Staff asserts its belief that number portability will challenge billing record-creation irrespective of whether the billing records are recorded at the beginning, in the middle, or at the end of a telephone call. Staff reminds us that it is customary in our economy for those providing a service to also bill for the service, and contrary to standard practice for those receiving a service to also bill for the service. Staff points to 4 CSR 240-29.100 as a dispute resolution process that has been established, and offers that rule as a mechanism to be used in the event number portability causes billing problems. Staff states the dispute resolution process is similar to the processes used in various interconnection agreements, and offers Sprint's Master Agreement as an example. Staff also points to SBC's Accessible Letter CLEC03-346 as evidence that SBC implemented a terminating record-creation process for local exchange carriers in its five-state region on December 1, 2003. Lastly, the Staff opines that terminating record-creation is recognized by Sprint, and offers Sprint's Wireless Termination Service tariff as an example. For these reasons, the Staff supports accurate terminating record-creation wherever possible or appropriate.

COMMENT: The Small Telephone Company Group (STCG) states that its concerns regarding the accuracy of originating records have been well documented over the last five years. The STCG asserts its support for the ability of terminating carriers to utilize information received from the originating and/or transiting carriers to prepare category 11-01-XX records to generate bills for traffic termination. The STCG opines that this rule provision is consistent with standard billing practices where service providers generate bills for the use of their services, and the STCG supports this rule.

COMMENT: The Missouri Independent Telephone Company Group (MITG) characterizes originating record-creation as the "fox guarding the henhouse" approach. The MITG states that for the last five years its member companies have suffered the loss of compensation and increased collection expenses attendant with an originating billing records system. The MITG asserts that some originating records are not provided with individual call detail, which renders the terminating local exchange carriers incapable of reconciling billing records to its own switch recordings. The MITG points to Texas PUC Docket 21982 as recognizing the national economic practice whereby the party remitting a service is also the party to record and bill for the service it provides. According to the MITG, the Texas PUC ordered that the terminating carrier be authorized to bill from its own recordings because such terminating records impose less cost, and are more efficient and less burdensome that other systems. According to the MITG, allowing terminating carriers to bill from its own call information, rather than relying on upstream carriers to provide billing records, represents a needed improvement.

RESPONSE: We cannot accept the fiscal impact or problematic assumptions inherent in Sprint's comments. We note that Sprint's own interconnection agreements contemplate the use of terminating records creation. For example, paragraph 64.1 of Sprint's December 9, 2002 Master Interconnection Agreement states:

> 64 USAGE MEASUREMENT
> 64.1 Each party shall calculate terminating interconnection minutes of use *based on standard AMA recordings made within each party's network,* these recordings being necessary for each party to generate bills to the other party. (Emphasis added).

We thus conclude that Sprint has already put in place the systems necessary to record traffic and process billing invoices generated on the basis of terminating switch recordings.

We note that SBC's suggestion would require both transiting carriers and terminating carriers to issue *accurate* bills to originating carriers. We find it disconcerting that SBC's suggestion places no such requirement on the bills or records SBC issues to terminating carriers. We see nothing in the record before us to refute the comments of Socket, XO, and Big River that originating office and tandem office created billing records are frequently inaccurate because of ported numbers. We agree with the MITG that the ability of terminating carriers to bill from their own records, rather than relying on upstream carriers, represents a needed improvement. We note our June 10, 1999 Report

and Order in Case No. TO-99-254 which characterized as a "worthwhile goal" the opportunity for terminating carriers to capture more information about calls terminated to them. We note that terminating record-creation has been examined and implemented in other jurisdictions such as Kansas and Texas. We note the revised arbitration award in Docket No. 21982 as establishing a terminating record-creation process in Texas. We note SBC's Accessible Letter CLEC03-346 implementing a terminating record-creation process in its five-state area beginning on December 1, 2003. We concur with the Texas Commission's statements that there may be disagreement over the content and/or accuracy of a carrier's termination records and, as with the Texas Commission, we expect that such disputes will be settled among the parties. We also note that the Texas Commission has concluded that use of terminating records is a more efficient and less burdensome method to track the exchange of traffic, and that terminating records impose less cost upon terminating carriers. While the record before us is insufficient to make similar conclusions in Missouri, we do agree with the Staff and the Texas Commission's statements that it is customary in our economy for those providing a service to also bill for the service. We find antithetical to ordinary commerce the practice of permitting those incurring charges to also be those who generate the bill for services rendered.

We caution any carrier that may wish to engage in Category 11 record-creation based on information received at the terminating office that our rules require accurate bill rendition. We expect all carriers to produce accurate billing records irrespective of the location where the billing information is captured. When disputes arise, we expect parties to work together to resolve issues. When the parties cannot reach agreement, we invite those parties to avail themselves of the dispute resolution processes contained within the various interconnection agreements and/or our local interconnection rules.

We disagree that terminating records are any more inaccurate for recording UNE-P and Type I wireless calls than originating records or tandem created records. We note that all resellers, including UNE-P providers, are required by the North American Numbering Plan Administrator to obtain an Operating Carrier Number (OCN). Notwithstanding SBC's previous comments that the Federal Communications Commission (FCC) has eliminated UNE-P on a going-forward basis, we find that the addition of an OCN has eliminated the problem SBC attempts to explain. As was explained in the Task Force meetings, OCNs can be used to distinguish UNE-P providers from the incumbent providers. As has also been explained, in the affidavit of SBC witness McPhee in Case No. TO-2005-0166, carriers may also utilize the Local Exchange Routing Guide and the Local Number Portability ("LNP") database to help identify the appropriate party to bill. The Commission would also note its expectation that wireless number portability has and will continue to reduce demand for Type I wireless interconnections. However, to the extent Type I connections may still be used, Type I wireless connections can be identified by an OCN in all but the smallest blocks of numbers. If, after implementing these measures, SBC still finds it difficult to identify Type I wireless calls, SBC is encouraged to work with industry participants to address issues surrounding the identification of Type I wireless connections. For example, SBC may want to explore the possibility of using SS7 parameters to identify responsible parties in much the same manner as the Jurisdiction Information Parameter (JIP) may be used to identify the appropriate

jurisdiction. Use of these and similar parameters will enable parties to work together to at first identify and, if necessary, refute any potential instance of false billing related to Type I wireless calls.

We note that our rule permitting terminating record-creation requires creation of Category 11-01-XX records. We also note that Category 11-01-XX records are the type of records long used by local exchange carriers to bill interexchange carriers for long distance traffic traversing the interexchange carrier network. We find this type of record to be widely used and the most accepted form of record-creation among all carriers. We also note that creation of terminating records is strictly voluntary according to our rule. Because implementation of terminating records is voluntary, and because all carriers are already using Category 11-01-XX records as an accepted basis for establishing billing invoices, we cannot accept that carriers will have any fiscal impact associated with our rule. This is especially true for SBC, because it has already implemented a terminating record-creation process in its five-state area pursuant to the Texas arbitration award. We conclude that receiving an accurate invoice compiled from a Category 11 record generated at a terminating end office imposes no greater fiscal impact on SBC, Sprint, and CenturyTel than does a similar invoice compiled from information generated at a tandem office. Thus, we conclude SBC, Sprint, and CenturyTel will have no fiscal impact from this rule.

Lastly, we reject SBC's contention that use of terminating records will cause confusion, increase costs, and increase billing disputes. In particular, we reject as unsubstantiated SBC's claim of a $1.78M fiscal impact to develop, reconcile, and process terminating created records. We note SBC's replacement Missouri Section 271 Interconnection Agreement (M2A) offering to competitive local exchange carriers as posted on SBC's Web site. Specifically, "Attachment Compensation" contains the following offerings:

> 10.1 In SBC Missouri each party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard switch recordings made within the terminating carrier's network for Section 251(b)(5) traffic, ISP bound traffic, and intraLATA toll traffic. *These terminating recordings are the basis for each party to generate bills to the originating carrier.* (Emphasis added).
>
> 10.1.2 Where CLEC is using terminating recordings to bill intercarrier compensation, SBC Missouri will provide the terminating Category 11-01-XX records by means of the Daily Usage File (DUF) to identify traffic that originates from an end user being served by a third party telecommunications carrier using an SBC Missouri non-resale offering whereby SBC Missouri provides the end office switching on a wholesale basis. *Such records will contain the Operating Company Number (OCN) of the responsible LEC-to-LEC network that originated the calls which CLEC may use to bill such originating carrier for MOUS terminated on CLECs network.* (Emphasis added).

From this document and the substantial record now before us, we conclude that SBC has implemented a system-wide process of terminating record-creation for traffic exchanged with competitive local exchange carriers. We also conclude that SBC's system obviously uses an OCN to account for UNE-P traffic, and that such system feeds UNE-P call transactions daily to competitors who use a terminating records creation process. Given the obvious extent to which SBC has already implemented a terminating records creation process in Missouri, we reject SBC's contention of a fiscal impact attributed to our rules.

We are also hesitant to accept the view point of those who contend that our rules will create confusion. Because SBC has already implemented its terminating records creation process, any potential confusion should be directed elsewhere – not to our rules. Given SBC's practice of relying on terminating record-creation for traffic exchanged with competitive carriers, we see no reason not to extend the process to willing participants simply because they are incumbent carriers. We find that doing less might result in disparate treatment of incumbent carriers in Missouri because these carriers are not permitted to avail themselves of the M2A or similar interconnection agreements that SBC makes available to competitive local exchange carriers. We find that permitting incumbent carriers to avail themselves of the same record-creation processes as competitors will lessen the potential for disparate treatment. We will implement this rule without change.

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Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.090 Time Frame for the Exchange of Records, Invoices and Payments for LEC-to-LEC Network Traffic **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: The Small Telephone Company Group (STCG) expresses support for this rule as requiring the timely provision of records and payments to terminating carriers. According to the STCG, these provisions are appropriate and consistent with common business practices.

COMMENT: The Telecommunications Department Staff (Staff) recommends this rule be implemented without change.

RESPONSE: We will implement this rule after making a change as discussed in our comments related to Section 2.

4 CSR 240-29.090(2)

COMMENT: Sprint suggests eliminating this section as it is inconsistent with Sprint's PSC Mo. No. 26 Tariff.

COMMENT: SBC states this section is unnecessary, as the payment time frame for exchange access service invoices is stated in individual access tariffs. SBC suggests that in the event the Commission goes forth with this section, this paragraph be amended to read: "The originating carrier shall submit payment of all amounts not disputed in good faith within thirty (30) days.

RESPONSE AND EXPLANATION OF CHANGE: Not all compensation occurring on the LEC-to-LEC network is subject to access tariffs. We find no material difference in the thirty (30) days referenced in this section and the thirty-one (31) days referenced in Sprint's tariff. Nevertheless, we will change our rule to reflect that payments are due in thirty-one (31) days and not the original thirty (30) days. We also acknowledge SBC's concern and will incorporate its suggestion to recognize the possibility of disputed amounts.

4 CSR 240-29.090(3)

COMMENT: The Staff supports this section and states a 12-month record retention period is consistent with other industry standards, and offers SBC's PSC Mo. No. 36 as an example.

COMMENT: SBC objects to a 12-month record retention period for billing records it creates. SBC states that the carrier creating the records should keep such records only so long as may be needed to retransmit the data if needed, and that carriers using the records to submit invoices should keep the records only for so long as that carrier deems necessary. SBC recommends reducing from 12-months to 90 days the retention period for recording companies.

RESPONSE: We will order this section implemented as written. We find instructive the 12-month retention period outlined in SBC's access tariff. We can find no reason to implement industry standards for the LEC-to-LEC network which are not consistent with what SBC and the industry recognize as acceptable in the interexchange network.

4 CSR 240-29.090(4)

COMMENT: The STCG recommends addition of a new section to this rule to address residual billing. According to the STCG, addition of its suggested language will address the problem whereby terminating carriers assume 100 percent of the risk for unidentified and uncompensated traffic. According to the STCG, a residual billing mechanism would also provide terminating carriers an appropriate procedure for relief in the event that unidentified and uncompensated traffic continues to flow over the LEC-to-LEC network. The STCG states that other state commissions have imposed similar residual billing obligations on large Bell Operating Companies, and offers the state of Michigan by way of example. The STCG's proposed language would first permit recording of total telecommunications traffic at an end office. The total minutes would then be compared to the sum of all recorded minutes as shown on Category 11-01-XX billing records received from transiting carriers. If the total minutes received exceeded the recorded minutes, the STCG's proposal would permit it to invoice the transiting carrier for the difference. The transiting carriers would then have 60 days to produce Category 11-01-XX billing records or pay the terminating carriers for the "unidentified" traffic.

RESPONSE: We are unwilling to accept the STCG's suggestion to implement the residual billing mechanism suggested. We have previously declined to implement residual billing for the reasons stated in our Report and Order in Case No. TO-99-254, and we again decline for those same reasons. We will not permit measurement of total telecommunications traffic at a terminating end office to be used against total compensable minutes recorded in a tandem office because total telecommunications traffic recorded at an end office contains minutes of noncompensable traffic. It is improper to compare compensable calls recorded at a tandem switch to total minutes recorded at a terminating office that may include local calls, Metropolitan Calling Area

(MCA) calls, incomplete calls, abandoned calls, calls to busy signals, calls to recorded announcements and other manner of noncompensable traffic. We note the STCG's comment defined this difference as "unidentified traffic." We caution carriers that the term "unidentified traffic" is defined in 240-29.100(3) as the difference between *compensable* minutes for which a call record is received and *compensable* minutes recorded at a terminating office. Our rules intentionally do not count non-compensable minutes of use as "unidentified."

In order for the STCG to count traffic as "unidentified," it must first determine the minutes of compensable records received and compare them to the compensable minutes terminated. Pursuant to 4 CSR 240-29.100 (3), if the terminating carrier notes discrepancies between the two, it is encouraged to report the discrepancy to the relevant upstream tandem providers. In reporting instances of unidentified traffic, terminating carriers are required, again, pursuant to our rules, to provide the "ANI [Automatic Number Identification] and such other information relating to such unidentified traffic as is in its possession." We expect such other information to include, at minimum, the called number, time and date stamp, and trunk group information. Such information must be provided to upstream carriers on a per-call basis. Terminating carriers may not simply count up minutes on a random basis without consideration to such basic information as to whether or not the calls are even compensable. The STCG's proposal would place the burden on tandem carriers to prove calls were delivered to, for example, a busy signal. It is simply unnecessary as well as improper and inefficient to place such burdens on tandem providers. Our rules empower the small terminating carriers with the tools they need to monitor and better manage developments on their own network. Having provided such tools to them, we will not now permit the small carriers to simply sit back and mistakenly count calls to busy signals as unidentified traffic, thus forcing tandem carriers to disprove the allegation. We will implement our rules without the residual billing suggestion from the STCG.

4 CSR 240-29.090 Time Frame for the Exchange of Records, Invoices, and Payments for LEC-to-LEC Network Traffic

(2) Upon receiving a correct invoice requesting payment for terminating traffic placed on the LEC-to-LEC network, the originating carrier shall submit payment of all amounts not disputed in good faith within thirty-one (31) days to the telecommunications company that submitted the invoice.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.100 Objections to Payment Invoices **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). No change is made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: SBC opposes this rule as overly formal.

COMMENT: The Telecommunications Department Staff (Staff) recommends this rule be implemented without change. Staff states this rule defines the term "unidentified traffic" and establishes clear and expedited dispute resolution procedures involving receipt of such traffic. Staff opines that this rule encourages a thorough examination of billing problems and sets forth an intercarrier dispute resolution process whereby the parties may ultimately bring a dispute to the Commission in the event they are unable to resolve via informal dispute resolution. Staff describes a streamlined process which will permit a regulatory law judge to make a decision, which shall be the Commission's decision, except that any party shall have twenty (20) days to request a full Commission review of the judge's decision.

COMMENT: The Small Telephone Company Group (STCG) supports this rule because it establishes a dispute resolution procedure to resolve objections to invoices received from terminating carriers. The STCG states it supports the concept of a dispute resolution procedure that facilitates expeditious resolution of billing disputes and discrepancies.

COMMENT: The Missouri Independent Telephone Company Group (MITG) supports this rule as providing an expedited dispute resolution process applicable to disputed invoices as well as to unidentified traffic.

COMMENT: Sprint recommends elimination of this proposed rule. Sprint opines that carriers have long-established billing dispute resolution procedures. Without explanation, Sprint states that the rule seeks a change in the business relationship between tandem carriers and end office carriers.

RESPONSE: We will implement this rule without change. We disagree with Sprint's contention of a long-established billing dispute resolution procedure for transiting traffic. In fact, the billing relationship associated with traffic traversing the LEC-to-LEC network

is a relatively recent development. This is especially true for transiting traffic. We find that the long-established dispute resolution referenced by Sprint is more applicable to the business relationship inherent to the interexchange carrier network. The business relationship inherent to the LEC-to-LEC network is not sufficient to have developed any experiences with a dispute resolution track record. This is especially so in a business relationship where, as with transiting traffic, the terminating carrier has no business relationship with the carrier responsible for invoice payment.

We also disagree with SBC's characterization of this rule as overly formal. What SBC characterizes as overly formal and convoluted we find clear, concise, and detailed enough to provide guidance to parties who wish to avail themselves of the dispute resolution process. Our rule is intended to provide for the timely resolution of billing disputes among the involved parties, without Commission intervention. In the event parties are unable to resolve the dispute, our rule codifies the steps necessary to bring the matter to the Commission's attention. Our rule contemplates an expedited hearing process, without the need for mandatory prefiled testimony. Our expedited process calls for a regulatory law judge to render a binding decision which may be appealed to the full Commission at the discretion of one party or the other. We find this process is not overly complicated and we will implement this rule without change.

4 CSR 240-29.100 (3)

COMMENT: SBC opposes the manner in which this section permits connecting carriers to report receipt of unidentified traffic. SBC states that mere notification is insufficient to conduct an investigation of unidentified traffic, and suggests expanding the rule to include sufficient information about each call the terminating carrier believes is unidentified. SBC also characterizes as impractical the notification requirements imposed on terminating tandem carriers. SBC states that, by definition, if a call is "unidentified," neither the terminating carrier nor the tandem carrier would know which upstream carrier to notify. SBC states that such requirement would require it to notify all carriers in the LATA in order to comply with this section. SBC concludes its written comments on the section by stating that a "thorough investigation" be conducted to determine if unidentified traffic is even an issue anymore.

RESPONSE: We will implement this section without change. SBC mischaracterizes this section as requiring an investigation based on a simple e-mail request to do so. In fact, our rule requires the objecting carrier to provide the Calling Party Number (CPN) and other such information as is in its possession to enable the tandem provider to investigate the unidentified traffic.

We also reject SBC's contention that this section is impractical because "unidentified traffic" is, by definition, "unidentified." SBC's definition suffers the same fatal flaw as the STCG's. This section of our rule defines "unidentified traffic" as a compensable call for which no Category 11-01-XX billing record was received. As we have explained in our response to the STCG, our rules ensure that terminating carriers will have to diagnose the CPN and other relevant factors to determine if a call is at first compensable. Then, on

a per-call basis, the terminating carrier will be required to determine if a corresponding Category 11 billing record was received from the originating tandem provider. Only after establishing discrepancies between these facts may a terminating carrier characterize traffic as "unidentified" and report the information to the upstream tandem carrier for investigation. We reject SBC's contention that "unidentified" traffic means that upstream carriers are unknown. As we have stated throughout our responses, parties are expected to use the CPN parameter to aid in determining the responsible party.

Lastly, we reject SBC's contention that we should expend more time to conduct even more investigations to determine the prevalence of "unidentified traffic." We find that our rules provide the affected parties with the necessary tools to determine for themselves the amount of unidentified traffic that may be occurring on the LEC-to-LEC network. The ability to have separate trunk groups and the expectation that an unmodified CPN will be present on each call should provide terminating carriers the ability to identify "unidentified traffic," as we define the term. Past instances of unaccounted-for traffic have already been thoroughly documented and there is no need to conduct further investigations. We will implement this rule without change.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission withdraws a rule as follows:

4 CSR 240-29.110 Duty to File Tariffs for Compensable Telecommunications Traffic in the Absence of Commission – Approved Interconnection Agreements **is withdrawn.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). The proposed rule is withdrawn.

COMMENT: Sprint reports "no issues" with this rule.

COMMENT: The Telecommunications Department Staff (Staff) recommends this rule be implemented without change. Staff points to the Missouri Court of Appeals as upholding the concept of the filed tariff doctrine.

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) characterize tariffs as "futile."

RESPONSE: Due to actions of the Federal Communications Commission in its February 24, 2005 Report and Order in CC Docket No. 01-92 , we will rescind this rule in its entirety.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.120 Blocking Traffic Originating Carriers and/or Traffic Aggregators by Transiting Carriers **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) state that it is unreasonable to block wireless calls. According to Joint Wireless Carriers, blocking rules prevent wireless carriers from providing their services. Joint Wireless Carriers recommend that blocking rules not apply to wireless traffic.

COMMENT: Sprint comments that the blocking process outlined in the rules inappropriately moves the legal burden of proof. Sprint cites those aspects of the rules that require an originating carrier to complain to the Commission if it desires to refute the reasons it is given for having its traffic blocked.

COMMENT: SBC maintains that current tariffs already contain provisions sufficient for blocking traffic for nonpayment of tariff charges. SBC cites to small local exchange carrier wireless termination and access tariffs as examples. Without recommending specific language, SBC also requests the Commission clarify that blocking authorized by these sections be limited to situations where the carrier to be blocked is directly interconnected to the originating tandem carrier.

COMMENT: The Small Telephone Company Group (STCG) supports this rule as an appropriate and necessary enforcement mechanism when carriers fail to pay for their traffic, provide proper records, or deliver originating caller identification to downstream carriers. However, the STCG states that it is inappropriate to make terminating carriers bear the cost burden.

COMMENT: The Missouri Independent Telephone Company Group (MITG) supports this rule and characterizes it as a comprehensive process for halting the transmission of traffic from carriers not in compliance with the rules.

COMMENT: The Staff recommends this rule be implemented without change. The Staff notes that traffic would not necessarily be blocked; rather, the traffic would likely be

rerouted onto the facilities of an interexchange carrier. Staff states the blocking rules establish an orderly process for blocking traffic of carriers who do not pay their bills or comply with rules governing traffic on the LEC-to-LEC network. Staff states its belief that there are adequate safeguards in the blocking rules, and any decision to block traffic is ultimately left up to the Commission. The Staff suggests the blocking provisions provide balance between the needs of consumers and those of telephone companies. Staff opines that the rules acknowledge the need for calls to traverse the network uninterrupted, while recognizing that all originating carriers have to duty to pay for sending transiting calls to another carrier.

RESPONSE: We find our blocking provisions necessary to prevent abuses of payment obligations. We again note that our rules would not actually block traffic to end users. Rather, our rules would block the ability of end users to receive calls over the LEC-to-LEC network. It is expected that affected carriers would use the facilities of interexchange carriers to terminate calls in the event these rules were implemented against a carrier.

4 CSR 240-29.120(7)

COMMENT: In the event the Commission implements blocking rules, SBC recommends modification of this section to recognize that competitive local exchange carriers provide wholesale switching. Rather than identify UNE-P, SBC suggests more generic wording.

RESPONSE: We agree with SBC that this section should be modified to include the potential for competitive carriers to provide unbundled switching ports.

4 CSR 240-29.120 Blocking Traffic of Originating Carriers and/or Traffic Aggregators by Transiting Carriers

(7) It is recognized that at the time of call placement, transiting carriers cannot identify the traffic originated by a particular originating carrier, where that particular originating carrier and one or more other originating carriers are using the same switch to originate traffic. Transiting carriers who desire to block traffic of a particular originating carrier of such a "shared" switch platform shall file a formal complaint with the commission seeking such blockage. All such formal complaints shall name the originating carrier whose traffic is sought to be blocked as well as the carrier or other entity whose switch is being used to originate the traffic. All such formal complaints shall be filed pursuant to the commission's procedures for filing formal complaints, and shall set forth complete details including, but not limited to, any violation of commission rules or Missouri statutes alleged to have occurred. Such formal complaint shall also state what action and relief the complainant seeks from the commission. Such requested relief may include complete blockage of the originating carrier using switching services provided by the incumbent local exchange carrier or other entity whose switch is being used. All such formal complaints shall request expedited consideration.

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.130 Requests of Terminating Carriers for Originating Tandem Carriers to Block Traffic of Originating Carriers and/or Traffic Aggregators **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: The Telecommunications Department Staff (Staff) supports adoption of this rule without change.

COMMENT: Sprint opines that this rule inappropriately shifts the burden of proof.

COMMENT: The Small Telephone Company Group (STCG) states this rule is necessary and appropriate.

COMMENT: The Missouri Independent Telephone Company Group (MITG) states this rule is comprehensive and necessary.

RESPONSE: We disagree that placing blocking safeguards in our rule shifts the burden of proof. Our safeguards are designed to prevent a carrier's traffic from being blocked without the final authority of the Commission. We agree that terminating carriers may initiate blocking procedures; however, affected carriers have an automatic right to appeal to the Commission. We find such safeguards to be more extensive than the current practices outlined in various access tariffs. We decline to make changes to this rule other than those to Section 11 as suggested by SBC.

4 CSR 240-29.130 (10)

COMMENT: The STCG states that it is inappropriate to make terminating carriers bear the cost for blocking unidentified and uncompensated traffic. According to the STCG, it is more appropriate for the upstream carriers to bear the cost because the upstream carriers are the ones responsible for placing the traffic on the network. The STCG proposes wording that would permit terminating carriers to recover blocking costs from upstream carriers.

RESPONSE: As we have explained in previous orders, we believe that the carrier requesting blocking to occur should be the carrier responsible for paying for the blocking. 4 SR 240-29.130(11)

COMMENT: SBC suggests this section should conform to its suggestions in Section 7 of 4 CSR 240-29.120.

RESPONSE: We agree with SBC that Section 11 of this rule should reference unbundled switch ports of competitors as well as SBC. We will modify Section 11 to comport with SBC's suggestion.

4 CSR 240-29.130 Requests of Terminating Carriers for Originating Tandem Carriers To Block Traffic of Originating Carriers and/or Traffic Aggregators

(11) Nothing in sections (1) through (10) above shall require transiting carriers to block traffic of originating carriers using switching services provided by an incumbent local exchange carrier or other entity. It is recognized that, at the time of call placement, transiting carriers cannot identify the traffic originated by a particular originating carrier where that particular originating carrier and one or more other originating carriers are using the same switch to originate traffic. Terminating carriers who desire to block the traffic of a particular originating carrier of such a "shared" switch platform shall file a formal complaint with the commission seeking such blockage. All such formal complaints shall name the originating carrier whose traffic is sought to be blocked, as well as the carrier or other entity whose switch is being used to originate the traffic. All such formal complaints shall be filed pursuant to the commission's procedures for filing formal complaints, and shall set forth complete details including, but not limited to, any violation of commission rules or Missouri statutes alleged to have occurred. Such formal complaint shall also state what action and relief the complainant seeks from the commission. Such requested relief may include complete blockage of the originating carrier using switching services provided by the incumbent local exchange carrier or other entity whose switch is being used. All such formal complaints shall request expedited consideration.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.140 Blocking Traffic of Transiting Carriers by Terminating Carriers **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: Sprint opines that this rule inappropriately shifts the burden of proof.

COMMENT: The Telecommunications Department Staff (Staff) supports adoption of this rule without change.

COMMENT: The Small Telephone Company Group (STCG) states this rule is necessary and appropriate, although it is inappropriate for terminating carriers to bear the cost burden.

COMMENT: The Missouri Independent Telephone Company Group (MITG) states this rule is comprehensive and necessary.

RESPONSE: We decline to place blocking cost recovery on entities other than those who request blocking to occur. We will implement this rule without change.

4 CSR 240-29.140 (2)

COMMENT: SBC recommends this section be modified by addition of the following sentence: "It is recognized that transit carriers can only pass originating caller identification to other transit carriers and terminating carriers to the extent it receives such information."

RESPONSE: We find that Calling Party Number (CPN) is an essential ingredient to determine the entity properly responsible for payment of call termination. The business relationship we have established relieves SBC, Sprint and CenturyTel of all primary and secondary financial responsibility for the traffic they choose to transit. Such business relationship leaves terminating carriers at complete financial risk for 100 percent of the traffic delivered by transiting carriers. Given the business relationship and financial liability we have placed on terminating carriers, we find our CPN delivery requirement

provides but a modicum of comfort to terminating carriers who bear 100 percent of the risk. Especially in light of the substantial financial responsibility our business relationship places on terminating carriers, we conclude this requirement represents a *de minimis* intrusion on originating and transiting carriers. Transiting carriers are expected to only transit calls bearing CPN and we order implementation of this section without change.

4 CSR 240-29.140(4)

COMMENT: We received no comments on this section.

RESPONSE AND EXPLANATION OF CHANGE: Because we have eliminated use of the term "UNE-P" from other rules in this chapter, we find it necessary to eliminate it from this rule.

4 CSR 240-29.140(7)

COMMENT: As with 4 CSR 240-29.130(10), the STCG recommends changing language in this section which would permit the terminating carrier to recover blocking costs from upstream carriers.

RESPONSE: We again find that those carriers requesting blocking should be responsible for the costs of blocking. We decline to change this section.

4 CSR 240-29.140 Blocking Traffic of Transiting Carriers by Terminating Carriers

(4) Upon receipt of notice that its transiting traffic is subject to blocking by terminating carriers, transiting carriers shall notify all telecommunications companies for whom the transiting carrier is contractually obligated to transit traffic. Such notices shall include, but shall not be limited to, resellers of local exchange service and providers of shared switching platforms. Such notices shall also include, but shall not be limited to, all originating carriers, traffic aggregators, and other transiting carriers with whom the transiting carrier has established direct interconnection facilities. Such notices shall be sent via certified mail within seven days from the receipt of notice from the terminating carrier.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.150 Confidentiality **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). No change is made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: SBC states that this rule is unnecessary. SBC maintains that most aspects of this rule have been codified in Chapter 33 of the Commission's rules.

COMMENT: CenturyTel states that this rule should be eliminated as the subject matter is addressed in Chapter 33 of the Commission's rules. CenturyTel opines that, if changes are needed, such changes should be made in Chapter 33.

COMMENT: Sprint recommends eliminating this rule because similar provisions are in Chapter 33 of the Commission's rules.

COMMENT: The Telecommunications Department Staff (Staff) supports adoption of this rule without change.

RESPONSE: We find that this rule contains provisions not contained in Chapter 33 of our rules. We conclude that the specific confidentiality aspects of this rule are unique to intercompany billing purposes, and we order implementation of this rule without change.

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ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.160 Audit Provisions **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: Sprint reports no issues with this rule.

COMMENT: The Telecommunications Department Staff (Staff) supports adoption of this rule without change.

RESPONSE: No changes will be made as a result of general comments to this rule. We will, however, modify our rule pursuant to SBC's comments on Section (1) below.

4 CSR 240-29.160(1)

COMMENT: SBC recommends adding language which it says would bring this rule in line with language commonly found in Commission-approved interconnection agreements.

RESPONSE AND EXPLANATION OF CHANGE: We agree with SBC that the audit provisions of our local interconnection rule should be more in line with industry standards as reflected in Commission-approved interconnection agreements. We will adopt SBC's suggestions.

4 CSR 240-29.160 Audit Provisions

(1) A telecommunications company who receives records from another telecommunications company for billing may perform a comprehensive review of the record process utilized for providing billing records that are issued for payment of compensable traffic. These reviews may only be conducted once a year. A telecommunications company's right to access information for review purposes is limited to data not in excess of 18 months in age. Once specific data has been reviewed, it is not subject to further reviews. All information involved with the review shall be treated as strictly confidential and not be disclosed to a third party without the written consent of the party being reviewed.