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March 1, 2001

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101

FILED³

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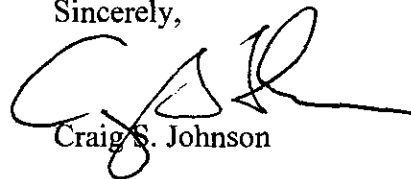
Re: Case No. TO-99-593

Missouri Public
Service Commission

Dear Judge Roberts:

Enclosed please find an original and eight copies of the Initial Brief of Missouri Independent Telephone Company Group. A copy of this Brief and this cover letter have been served upon all attorneys of record. Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:tr

Enc.

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED³

MAR 01 2001

**In the Matter of the Investigation)
into Signaling Protocols, Call)
Records, Trunking Arrangements,)
and Traffic Measurement.)**

Case No. TO-99-593

**Missouri Public
Service Commission**

INITIAL BRIEF

MISSOURI INDEPENDENT TELEPHONE COMPANY GROUP

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

In the Matter of the Investigation)
into Signaling Protocols, Call)
Records, Trunking Arrangements,) Case No. TO-99-593
and Traffic Measurement.)

Initial Brief

Missouri Independent Telephone Company Group

The Missouri Independent Telephone Company Group (MITG) submits the following Initial Brief after hearing in this docket:

Overview

This docket was established by the same Order that terminated the Primary Toll Carrier Plan. As the former Primary Toll Carriers (FPTCs) no longer originate toll traffic in the former Secondary Carrier's (FSCs) exchanges, the focus of this docket is the traffic terminating to the FSCs from the FPTCs over the common trunks between them. Signaling protocols, call records, trunking arrangements, and traffic measurement were among the things to be reviewed. Thus, those systems that constitute the terminating "business relationship" between the FPTCs and the FSCs were intended to be reviewed in this proceeding.¹

Now that the PTC Plan has terminated, the relationship between the FPTCs to the FSCs for terminating interexchange traffic is controlled by the access tariffs of the FSCs.

¹ The June 10, 1999 Order in TO-99-254, contemplated that this docket would also include more analysis of the discrepancy between total terminating and reported terminating minutes, and business relationships with upstream carriers. Ex 1, Schoonmaker direct, pp 4-5; Ex 2, Schoonmaker rebuttal, p 11. T. 137-138, and T. 189-190, Schoonmaker response to bench questions. T. 213-214.

This tariff is the Oregon Farmers (OF) access tariff that the FSCs concur in. The tariff language subjugating the OF access tariff to the terms of the PTC Plan is no longer effective, as the terms of the PTC Plan are no longer in effect. Under the OF access tariff, the FPTCs are interexchange carriers ("ICs", or "IXCs"), just as are AT&T, Sprint (LD), MCI Worldcom, or any other of the host of ICs operating in Missouri².

Pursuant to the terms of the OF access tariff, by ordering trunks for the termination of interexchange traffic, IXCs establish the business relationship for terminating this traffic. The IXC ordering the trunks to a FSC with an access tandem is responsible for all traffic terminated over the trunk it ordered, regardless of the identity of the carrier originating the traffic, and regardless of the nature of upstream relationships between the IXC and other carriers³. A FSC with its own tandem does its own terminating recordings at that tandem.

The IXC delivering terminating traffic to a FSC end office subtending another carrier's tandem pays the tandem owner for all traffic delivered at the tandem, regardless of what IXC originated the traffic. The IXC also pays the FSC for all traffic terminating to the FSC, regardless of what IXC originated the traffic. A difference in the FSC end office situation is the manner of record exchange. The terminating tandem owner provides the FSC end office with records of the IXC traffic terminating to the FSC. The FSC converts these records to summary records, by IXC, and both the tandem owner and the FSC use these records to bill each IXC their respective portion of the common trunk. But each IXC is billed both by the tandem owner and the FSC for all traffic that IXC

² Ex 5, Jones rebuttal, p 4, Schedule 2. T. 238-239.

³ Ex 2, Schoonmaker rebuttal, p 12. T. 341-342.

delivered to the tandem, both the traffic it originated and the traffic it terminates for other IXC's.

The terminating access tariff contains the business model the small companies propose be approved for use on the common trunks between FPTCs and FSCs⁴. This terminating business relationship is the established model in use for competitive toll markets where a multitude of IXC's compete.⁵ This model has been in use since divestiture for all IXC's competing in the nation-wide *interLATA* market. It has been in use since divestiture for all traditional IXC's using the "FGD" network for "non-1+" *intraLATA* traffic. During the term of the PTC Plan, between the FPTCs and the FSCs this model was in use for all " *intraLATA 1+*" traffic. During the PTC Plan the FPTC ordering the common trunk to the FSC was responsible for all traffic terminated, even traffic originated by other FPTCs.

LECs have an obligation to directly or indirectly interconnect for purposes of *carrying* traffic⁶. All small LECs in Missouri comply with this obligation. There is no type of traffic that is not being terminated. Contrary to the questioning of the FPTCs at hearing, small LECs are not refusing to *carry* traffic originated by indirectly interconnected carriers. The small LECs are objecting to being forced to *accept indirect business relationships* with originating carriers. The FPTCs attempt to convert the duty to indirectly connect into a duty to accept indirect business relationships.

⁴ Ex 1, Schoonmaker direct, pp 5-6, 18-19; Ex 4, Jones direct, pp 4-5. See Ex 33 tariff language indicating those NXXs served by end office connection, or those NXXs of end offices subtending the tandem connection, are obtained by the IC.

⁵ Ex 2, Schoonmaker rebuttal, pp 2-4; The only difference involved here is that the FPTCs use common trunks, not the dedicated or separate trunks in use for FGD IXC's. T. 194-195, 197-198, 202-203.

⁶ T. 324-Jones, T. 337-338-Jones, T. 353-354-Larsen.

Under the law today, there is no requirement to construct "indirect business relationships". Access relationships are constructed over direct connections. The IXC originating traffic in a LEC exchange orders access, makes a direct connection, and is responsible for all traffic originated. On the terminating end of an interexchange call, the IXC delivering the traffic to the terminating LEC is responsible for the call. That IXC ordered access, made the direct connection, and is responsible for traffic terminated, whether it originated the call or accepted it from another IXC for termination (sometimes referred to as "wholesaling" or functioning as a "carrier's carrier")

Interconnection Agreements (IAs) for local traffic are also to be constructed over direct connections. The TCA '96, for the exchange of local traffic between two competitors, retained the requirement that compensation relationships be constructed upon direct physical interconnections.

The FPTCs are advocating a change to the established terminating access compensation relationship. The FPTCs attempt to persuade the Commission to force an indirect business relationship upon small Missouri LECs by improper extensions of IA concepts to access traffic. Although the TCA '96 contemplates that IAs will address local traffic exchanged between directly interconnected local competitors, the IAs of the FPTCs have gone further than the Act provides. They address traffic destined for LECs that are not party to the IA. They also address access traffic. The FPTCs then claim that because the terminating LEC has a duty to indirectly interconnect it must bill the originating carrier for this access traffic, not the IXC who ordered the access connection the traffic was delivered over. The FPTCs urge the adoption of an "originating responsibility" plan (ORP) for access traffic, where OPR has no place. Finally the

FPTCs then urge that terminating compensation be based upon traffic recordings made at the originating end of the call.

The FPTC proposal is not required by law. It is contrary to the accepted access regime as set forth in existing access tariffs. It is not required by the reciprocal compensation systems of the TCA '96. It was inappropriate for these IAs to address traffic destined for FSCs which were not party to these IAs. It was inappropriate for the IA to address access traffic. Access tariffs already covered access traffic. For access traffic there is not ORP, unless the delivering IXC happens to have also originated a particular call. Otherwise the IXC that delivers terminating traffic pays terminating access, regardless of the identity of the originating carrier.

The IAs containing these inappropriate extensions of reciprocal compensation to access traffic did not bind the FSCs. The FSCs were not parties to the IAs. Approval of an IA is not to discriminate or prejudice a carrier that is not party. The FPTCs have not obtained the consent of the FSCs. In entering into such IAs the FPTCs have taken the risk the structure would not be forced upon the FSCs. The FPTCs have consciously departed from the "carrier's carrier" model in which it is their obligation to obtain sufficient compensation to cover termination costs for access traffic they transport and deliver to the FSCs. They did not ask the Commission for approval. The FPTCs have assumed the risk this Commission will honor existing access tariffs. The FPTCs have assumed the risk that the traditional access business relationship already used in the interLATA and intraLATA markets will be applied to traffic the FPTCs place on the common trunks.

The Small Company Terminating Compensation Proposal

The small company proposal for conforming the common trunk traffic to the established "FGD" terminating business relationship is a superior proposal to the FPTC proposal. First, it permits the FPTCs not to convert to FGD facilities and protocols, even though the OF tariffs contain language requiring it⁷. Second, it will apply the established business relationship in use for interLATA and interLATA FGD IXC traffic to intraLATA traffic on the common trunks.⁸ Third, it gives effect to existing state and interstate access tariffs, which have been in place for over a decade.

Under the small company proposal for FPTCs connecting with a FSC at an FSC's *tandem*, the FPTC will be responsible to pay for all traffic terminating over the trunk it ordered, both its own originated traffic and that traffic it allows any other carrier to place on the trunk⁹. This is exactly how the interLATA terminating business relationship has worked since divestiture and implementation of FGD. For any "residual" or "unidentified" traffic measured at the tandem for which the former PTC does not make payment (after subtraction of reported interstate intraLATA, FGA, and wireless traffic), the former PTC will be responsible for that residual.

Under the small company proposal, for FPTCs connecting with a FSC *end office*, the FPTC will be responsible to deliver a billing record and pay for terminating traffic it originated. For traffic originated by other IXCs, the FPTC will be responsible to deliver a billing record it creates at its terminating tandem, and the FSC will bill the responsible IXC based upon those records¹⁰. This is how the interLATA terminating business

⁷ Ex 1, Schoonmaker direct, pp 22-23; Ex 4, Jones direct, pp 5-6, 11-12; Ex 5, Jones rebuttal, pp 9-11.

⁸ This business relationship is already in use for traditional IXC FGD intraLATA traffic on the common trunks to FSC end offices. Ex 4, Jones direct, pp 6-7.

⁹ Ex 8, Larsen surrebuttal, pp 8-13.

¹⁰ Ex 8, Larsen surrebuttal, pp 8-13. T. 355-356. In the FGD environment, an IXC must make an access request from both the end office LEC and the carrier with the tandem serving that end office. T. 258-263.

relationship has worked since divestiture and implementation of FGD. For any "residual" or "unidentified" traffic measured at the end office for which no record is created (after subtraction of reported interstate intraLATA, FGA, and wireless traffic)¹¹, the FPTC will be responsible for that residual. This is in recognition of the OF tariff language preferring terminating traffic recordings made by the terminating FSC.

The small company proposal could not be used to create competitive advantage for FSCs over IXC's in the "carrier's carrier" market, as the FPTC proposal could¹². It would not create incentives for traffic reporting failures, as the FPTC proposal would¹³. The small company proposal would allow the terminating LEC to measure usage made of its own facilities. The small company proposal would continue to rely upon compensation relationships constructed upon the direct interconnection the IXC's have requested. It would avoid the chaos and administrative difficulties of every LEC having to establish business relationships with each of the many carriers originating traffic that the FPTC's place on the common trunks¹⁴.

At hearing, Sprint (the ILEC) proposed a "50-50" sharing of the residual, instead of being responsible for all of it. There was also discussion of other "sharing" relationships such as the 98% SWB accepted responsibility for in Kansas, or a sharing based upon relative financial size or toll revenues (as Commissioner Drainer inquired¹⁵). The MITG asks that the residual responsibility level be established such that the FPTC will have a real incentive to eliminate any unidentified traffic residuals.

The tandem company holds itself out to complete access calls to end offices served by the tandem. T. 386-388.

¹¹ Ex 3, Schoonmaker surrebuttal, p 11.

¹² Ex 4, Jones direct, p 7.

¹³ Ex 1, Schoonmaker direct, pp 7-8.

¹⁴ Ex 2, Schoonmaker rebuttal, pp 4-9.

¹⁵ T. 135-137.

What is most important to the MITG is that former PTC responsibility for the unidentified residual be established¹⁶. The establishment of this responsibility recognizes that the FPTC ordered the trunk, controls what traffic is placed on the trunk, and that the terminating FSC may not be provided with sufficient traffic information to identify or collect for the traffic. This responsibility also recognizes that the FPTC is in a superior position to account for the traffic, and to collect for unidentified traffic.

In order to eventually eliminate unidentified traffic residuals, the responsibility of the FPTC should be established at a level providing incentive to identify all traffic. The small company 100% responsibility obviously does that. The MITG believes that a "50-50" residual sharing is inadequate to address the concerns regarding unidentified traffic¹⁷. Such a sharing would allow the FPTC to save 50% on its own traffic. In addition it could make one upstream carrier 50 % responsible for unidentified traffic caused by another carrier.¹⁸ A 98% responsibility may provide acceptable compensation for the FSC, but it will not create an incentive for the FPTC to identify the unidentified traffic *unless* it is that of another carrier. The same is true of a residual responsibility based upon relative financial size of the FPTC compared to the FSC.

Implementation of the small company proposal will not create hardships which the FPTCs cannot address. There is not a significant amount of CLEC interexchange traffic to date¹⁹ (as set forth later in the MITG implementation schedule proposal, the IAs contain provisions allowing for modification upon a PSC decision affirming the small company proposal). That leaves one significant type of traffic the small company

¹⁶ T. 192-193.

¹⁷ T. 325-326, 328-329.

¹⁸ T. 330-331.

¹⁹ T. 209.

proposal would make the terminating FPTC responsible for. That traffic is that of **another FPTC** the terminating FPTC terminates to a FSC²⁰. This is not a new responsibility. During the PTC Plan the terminating PTC paid for this traffic. Following termination of the PTC Plan, and during the pendency of this docket, the PTCs unilaterally changed the system in use during the PTC Plan. The Commission did not sanction such a change.

The only lawful relationship between the FPTCs and the FSCs is that of an IC to a LEC

With termination of the PTC Plan in 1999, the language of the OF access tariff subjecting that tariff to the terms of the PTC Plan is no longer effective. Under the OF access tariff a FPTC is now an interexchange customer, or "IC", the same as IXCs such as AT&T, Sprint (LD), or MCI Worldcom²¹.

The FSCs and FPTCs no longer "jointly" provide 1+ intraLATA toll originating from FSC exchanges. The "LEC to LEC" relationship no longer exists²². There really is no such thing as a "LEC to LEC" relationship where toll traffic is concerned. Some ILECs including FPTCs do provide toll services. When toll traffic is carried from the originating exchange to the terminating exchange, it is carried on interexchange facilities by a carrier in its IXC capacity, not in its LEC capacity. This was true during the PTC Plan. PTC Plan toll traffic was not "LEC to LEC" traffic, it was "IXC to LEC" traffic. During the PTC Plan, the OF access tariffs defined the FPTCs carrying such traffic as "ICs".

²⁰ T. 144-146.

²¹ Ex 4, Jones direct, pp 6-7; Ex 5, Jones rebuttal, pp 4-5, Schedules 1 and 2.

²² Ex 5, Jones rebuttal, pp 7-9, Schedule 1. Ex 8, Larsen surrebuttal, pp 6-8. T. 189-190, Schoonmaker response to bench questions.

With termination of the PTC Plan, the FPTCs must comply with the OF access tariff to originate or terminate interexchange traffic. Precedent for this proposition is found in the Commission's September 26, 2000 Report and Order in TC-2000-325. In that case the Commission held:

"The Respondents (FSCs) are free to make many business decisions without obtaining the approval of the Commission. The Respondents made a business decision to not allow SWBT (FPTC) to continue to originate MaxiMizer 800 calls in their exchanges. That decision is not forbidden by "any provision of law, or of any rule or order or decision of the commission." Therefore, the Respondents were within their rights when they acted to prevent SWBT from continuing to originate MaxiMizer 800 traffic in their exchanges using FGC..... If SWBT does wish to compete to provide interexchange service to Respondents' customers, it may do so by complying with the Respondents' lawful tariffs, as do all other carriers that wish to originate interexchange intraLATA toll calls within the exchanges served by the Respondents....when the PTC plan was eliminated, SWBT's relationship to the Respondents changed. For the purpose of originating intraLATA interexchange traffic, SWBT is now essentially just another intraLATA IXC, which may, if it chooses to comply with the Respondents' respective tariffs, originate traffic in the Respondents' exchanges. As an intraLATA IXC, competing for business with other IXCs, SWBT must comply with the Respondents' tariffs by using FGD."

This docket concerns terminating interexchange traffic. However the precedent that the OF access tariffs apply to FPTCs is equally binding in this case. By analogy to the MaxiMizer 800 decision, any FPTC is now just another IXC. If the FPTC wishes to terminate its own traffic or if it wishes to compete with other IXCs in the "carrier's carrier" business of delivering traffic originated by other IXCs, the FPTC must comply with the OF access tariffs. For the purpose of terminating intraLATA interexchange traffic the FPTC is now another intraLATA IXC, competing with other IXCs, and must comply with the FSC's tariffs.

FSC Access Tariffs Require Measurement of Terminating Traffic by the Terminating LEC

With the implementation of intraLATA toll dialing parity, intraLATA toll carrier pre-subscription occurred. In Missouri this occurred effective with termination of the PTC Plan between July and October of 1999. The OF access tariff states that, upon implementation of pre-subscription, FGC will no longer be provided. The interstate tariffs stated that IC "customer traffic would be measured by the Telephone Company (the FSC) at end office switches or access tandem switches...". The Missouri tariffs stated that it is only "where measurement capability does not exist" that terminating FGC usage will be derived from originating usage. As terminating measurement capability does exist, the tariffs require terminating traffic to be measured at the FSC terminating tandem or end office²³.

The tariffs anticipated that, with intraLATA pre-subscription, the use of originating records to attempt to measure terminating traffic would no longer apply. The tariffs anticipated that in a competitive multiple carrier environment it would no longer be appropriate to retain a monopoly regime where terminating compensation was based upon surrogates for actual terminating measurement by the terminating company. As the very purpose of competition is to provide equal carrier access, it is only appropriate for each IXC to be responsible for all traffic it delivers on the trunks it ordered²⁴.

The FPTC Position is based upon a combination of unsupported assumptions of originating responsibility and "transiting", is anti-competitive, and is impractical.

The FPTCs propose that *toll* traffic compensation relationships be based upon "originating responsibility" (ORP) and "transiting", or indirect business relationship concepts. A review of the TCA '96 reveals that ORP and transiting can be appropriate

²³ Ex 4, Jones direct, pp7-9, See Schedules 1-4.

²⁴ Ex 6, Jones surrebuttal, pp 19-20

for *local* Interconnection Agreement (IA) traffic between *two* directly interconnected carriers, but it is not appropriate for interexchange or *access* traffic.

After the TCA '96 the FPTCs entered into interconnection agreements (IAs) with CLECs and wireless carriers. Although IAs are designed for situations where two competing carriers directly interconnect to mutually exchange local traffic, the FPTCs have taken these IAs beyond the structure contemplated by the Act. First, they have extended IAs to cover traffic between CLECs and FSCs even though the CLECs do not compete in FSC exchanges. Second, the IAs have not been limited to local traffic the two competitors mutually transport and terminate to one another. Instead they purport to apply to interexchange or toll traffic, even though that traffic is presently addressed by existing access tariffs. Third, they have broadened the scope of the IAs to include traffic destined for the FSCs, without allowing the FSC to participate in the IA negotiations or approval process²⁵. Fourth, instead of complying with the terminating business relationship established for toll traffic by the OF access tariffs, the IAs purport to establish a different business relationship. The IAs purport to make the traffic originator responsible to pay terminating access, and the IAs purport to utilize an originating record system to attempt to determine terminating compensation.

The inclusion of CLEC toll traffic in an IA is not justification to change the access regime by which the delivering IXC pays terminating access. The IA provisions of the Telecommunications Act of 1996 (TCA '96) did not address toll or access traffic²⁶. The FPTC's unwarranted expansion of reciprocal compensation principles to change terminating access relationships was not intended by the Act. Transiting of *toll* traffic is

²⁵ Ex 8, Larsen surrebuttal, pp 3-5.

²⁶ Ex 8, Larsen surrebuttal, pp 5-6.

not required by the TCA '96. Attempts to use transiting for the FPTCs, but traditional access for other IXC's, would create advantage in the "carrier's carrier" market. It is also not practical for each LEC to build indirect business relationships with every carrier that originate intraLATA toll calls.

Originating Responsibility (ORP)

ORP is not in use in the interLATA FGD access regime. ORP is not in use in the intraLATA FGD access regime. ORP was rejected by the Commission at the time intraLATA toll competition was first authorized in Missouri. In TO-84-222/TO-84-223/TC-85-126/TO-85-130 the Commission considered authorizing intraLATA toll competition, continuation of the intraLATA toll pool. In this docket SWB proposed a "Terminating Compensation Arrangement" (TCA) where a LEC providing toll service would keep end user revenue and pay compensation to every carrier whose facilities were used in provisioning the call. TCA is the same as "ORP". The Commission rejected TCA in favor of a primary toll carrier by toll center plan (subsequently resulting in the PTC Plan). In rejecting the terminating compensation arrangement, the Commission recognized that it was inconsistent with the access model of the competitive interLATA jurisdiction. The Commission also found the notion that LECs must develop relationships with a multitude of carriers (not directly interconnected with) administratively burdensome.²⁷

When the Commission ordered termination of the PTC Plan by June 10, 1999 Report and Order in TO-99-254, it did not order ORP.

²⁷ See 28 Mo. P.S.C. (N.S.) 535, 583-596.

It is true that the reciprocal compensation obligation under a two carrier interconnection agreement is an ORP obligation. As there are only two carriers involved, it could not be otherwise. Each carrier is responsible to pay the other transport and termination for local traffic that carrier originates. The same does not apply to access traffic. For access traffic, which may traverse the facilities of two, three, four, or even more carriers, the mutuality which exists for two carrier exchange of local traffic over a single interconnection point does not exist. For access traffic, the elements allowing ORP to work for two carrier traffic exchange are not necessarily present.

Nonetheless the FPTCs attempt to convert both CLEC and FPTC access traffic to an ORP basis. The justification they attempt for converting CLEC access traffic is that it is included in an IA. But this attempted justification cannot apply for FPTC access traffic, as there are no IAs between the FPTCs. During the PTC Plan, the terminating PTC paid the terminating LEC access on traffic originated by other PTCs. The FPTCs now propose to change this standard and long-standing access relationship without adequate justification for changing it.

IA obligations apply to the FPTCs in their ILEC capacity, not their IXC capacity

The FPTCs are different from other LECs, and from other IXCs, in that the same company has both an IXC capacity and an ILEC capacity. In their ILEC capacity the FPTCs engage in local competition with CLECs and wireless carriers. In this ILEC capacity the FPTCs are obligated to engage in the Interconnection Agreement process for the exchange of local traffic. The purpose of interconnection agreements is for local competitors to interconnect and negotiate the terms and conditions upon which they will exchange local traffic for which they also compete. IXCs are not subject to

Interconnection Agreement obligations. In their IXC capacity, the FPTCs are not concerned with IAs.

In their IXC capacity, the FPTCs compete with IXCs. They compete not only in the end-user toll services market, they also compete with other facilities based IXCs in the "underlying carrier", or "carrier's carrier" market. In this marketplace ORP, reciprocal compensation and interconnection agreements do not apply.

It is important to keep the FPTC's dual capacity in mind in keeping access structures separate from reciprocal compensation structures. The FPTC in their IAs have not kept these separate capacities separate. However, this Commission should not allow the FPTC's status as ILECs to permit a local traffic relationship for traffic the FPTCs handle solely in an IXC capacity. The FCC tried to keep these distinctions clear in its August 8, 1996 Interconnection Order²⁸.

The FCC recognized that there was a significant difference between two carrier reciprocal compensation, where each of the two competitors pays the other for its traffic, and the access regime, where the responsible IXC pays originating and terminating access. The following excerpts, while regrettably lengthy, demonstrate that reciprocal compensation and interconnection agreements of the FPTCs do not disturb the tariffed access regime.

First, Section 251(c)(2) of the TCA '96 imposes upon ILECs the duty to provide interconnection to requesting competitors. The FCC specified that the duty of interconnection only refers to a linking of two carriers' networks for the transport and termination of traffic, and does not effect exchange access charges:

²⁸ FCC 96-325, CC Dockets No. 96-98 and 95-185.

"The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, **transport and termination of traffic.**" (§ 172)

"We conclude that the term "interconnection" under section 251(c)(2) refers only to the **physical linking of two networks for the mutual exchange of traffic.....** We note that because interconnection refers to the physical linking of two networks, and **not the transport and termination of traffic, access charges are not affected by our rules implementing section 251(c)(2).**" (§ 176)

At paragraphs 186-191 the FCC concluded that IXC's requesting interconnection to originate or terminate interexchange traffic is not entitled to receive § 251(c)(2) interconnection, as interexchange service is not telephone exchange service or exchange access service:

"We tentatively concluded in the NPRM that interexchange service does not appear to constitute either "telephone exchange service" or "exchange access". "Exchange access is defined in section 3(16) as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." We stated that **an IXC that requests interconnection to originate or terminate an interexchange toll call is not "offering" access services, but rather is "receiving" access services.**" (§ 186)

"We concluded, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2)...A telecommunications carrier seeking interconnection only for interexchange services is not within the scope of this statutory language because it is not seeking interconnection for the purpose of providing telephone exchange service.... **We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service...**" (§ 191)

This holding makes it clear that the FPTCs cannot use a 251(c)(2) interconnection agreement to terminate interexchange or toll traffic. Yet that is exactly what the FPTCs ask be approved.

At paragraphs 978-984, in discussing the continued application of access charges, the FCC concluded:

"IXCs must still pay access charges to incumbent LECs for originating or terminating interstate traffic, even when their end user is served by a telecommunications carrier that resells incumbent LEC retail services...IXCs must therefore still purchase access services from incumbent LECs outside the resale framework of 251(c)(4), through existing interstate access tariffs." (§ 980)

"Most existing interstate access charges are recovered from IXCs, and therefore can easily be recovered by incumbent LECs whether or not the incumbent LEC retains its billing relationship with the end user subscriber." (§ 981)

The FCC, at paragraphs 1033 and 1045, also recognized that the TCA '96 provides a distinction between access and the "transport and termination" of traffic under § 251(b)(5) for reciprocal compensation:

"Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate **and intrastate charges for terminating long-distance traffic.**" (§ 1033)

"We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers--typically, the originating LEC, the IXC, and the terminating LEC--collaborate to complete a long-distance call. As a general matter, in the access regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call...We note that the conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. *We find that the reciprocal compensation provision of section 251(b)(5) for transport and termination do not apply to the transport or termination of interstate or intrastate interexchange traffic.*" (§ 1034)

"Traffic originating or **terminating** outside of the applicable local area would be subject to interstate and **intrastate access charges.** " (§ 1035)

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

Several conclusions follow, all of which indicate that IAs do not and cannot displace access tariffs for access traffic. First, the IAs between FPTCs and their local competitors define what traffic is local between the two interconnecting competitors. They do not define what is local between a CLEC and a FSC. Second, interconnection for reciprocal compensation requires a physical linking of the two competitors' networks for the mutual exchange of local traffic. That physical linking does not exist for purposes of access compensation concerning the FSCs, as no CLEC or wireless carrier has directly interconnected with a FSC. Third, there is only "transport" for purposes of reciprocal compensation when there is a physical interconnection point between the two parties to the IA. Under a "transiting" structure, there can be no transport between the originating CLEC or wireless carrier and the terminating FSC.²⁹ Fourth, the rules regarding the transport and termination of local traffic did not displace intrastate terminating access tariffs for the termination of interexchange traffic. Fifth, when three carriers are involved in completing an interexchange call, access--not reciprocal compensation--applies. Sixth, an IXC that uses an interconnection to terminate an interexchange toll call is receiving access service from the terminating LEC. Seventh, the IAs between the

²⁹ FCC Rule 47 CFR 51.701(c) defines transport for purposes of interconnection/reciprocal compensation as "the transmission and any necessary tandem switching of **local telecommunications traffic** subject to 251(b)(5) of the Act **from the interconnection point between the two carriers** to the terminating carrier's end office switch..."

FPTCs and their local competitors cannot prejudice or discriminate against the FSCs, which are carriers not parties to an IA.³⁰

The FCC in its Interconnection Order was careful to preserve a distinction between local traffic exchange and access traffic relationships. The line the FCC has drawn will not be followed if the FPTC proposal is adopted. The FPTC proposal, instead of preserving the distinction, actually applies local traffic structures to access traffic.

Application to Missouri

The FPTCs have negotiated IAs that encompass interexchange traffic destined to terminate in the FSC exchanges. This is traditional interexchange traffic that access tariffs already address. When a FPTC agrees to carry interexchange traffic originated by others, it does so strictly in its IXC capacity³¹. It does not matter whether its agreement to do so is verbal, contained in a wholesale agreement, or is contained in an IA. The traffic remains access traffic subject to the OF access tariff. The FSCs' relationship to the FPTCs cannot be changed by an agreement that the FSC is not party to. The Commission should not allow the FPTC's inappropriate extension of IAs to cover access traffic to confuse the terminating compensation relationship for access traffic.

If SWB originates an interexchange call destined for Mid-Missouri Telephone from a SWB toll customer, it does so in its IXC capacity. SWB carries the call to Mid-Missouri in its IXC capacity. When Mid-Missouri terminates the call, Mid-Missouri is entitled to receive terminating access compensation from SWB. SWB is obligated to pay not because it *originated* the call, but because it *delivered* the call on the trunk it was responsible for. SWB is required to charge toll rates that cover the imputed originating

³⁰ 47 USC 252(e)(2)(A)(1). T. 210-213.

³¹ See cross examination Larsen, T. 353-356, 365-367, 375-377.

access costs. This is in recognition that SWB originated this call in its IXC capacity, and serves to prevent SWB as an IXC from obtaining a competitive advantage arising from its ILEC capacity.

If SWB agrees to carry an interexchange call originated by another IXC (FPTC, CLEC, wireless carrier, or traditional IXC) destined for Mid-Missouri, SWB does this solely in its IXC capacity. Providing interexchange facilities to the use of another IXC is very common. There is a highly competitive market for being a "carrier's carrier". In this "carrier's carrier" market, an IXC with extensive facilities will actively seek to carry traffic of other IXCs that lack an extensive network of their own. The carrier's carrier maximizes usage and revenue to recover its facility investment. The IXC using a carrier's carrier can avoid the cost of establishing its own network unless, until, and where its traffic volumes justify installing its own facilities.

Not only has this system promoted network efficiency, the terminating access business relationship promotes efficiency by making the IXC ordering the terminating trunk responsible for all traffic on it. The terminating LEC is not a necessary party to the agreement between the originating IXC and the carrier's carrier IXC, as it does not effect the terminating LEC. It would be very inefficient to attempt to involve all potential terminating LECs in all upstream carrier's carrier arrangements.

In the IXC carrier's carrier environment, the IXC owning the interexchange facilities, acting as the carrier's carrier, pays terminating compensation to terminating LECs for all traffic on the IXC's facilities. It is that IXC's obligation to collect sufficient compensation from the carrier using its facilities to recover this cost. The former PTC's ILEC capacity should not be allowed to create a competitive advantage over other IXCs.

Allowing the FPTCs to provide only a "transiting" function for access traffic gives them the ability to charge lower prices than IXC's who must cover all termination costs.

Accepting the small company proposal would prevent such an IXC "carrier's carrier" advantage. This would accomplish the same goal as requiring SWB's toll rates to cover imputed access--to prevent SWB from using its LEC capacity to obtain advantage in the IXC carrier's carrier marketplace.

When SWB or another FPTC accepts the interexchange traffic of another carrier destined for a LEC other than SWB, SWB is acting in the interexchange "carrier's carrier" capacity. It is SWB's obligation to pay terminating compensation to the terminating LEC. It is SWB's obligation because SWB in its *IXC capacity*, delivered the call. It makes no difference what carrier originated the call.

During the PTC Plan, the same carrier's carrier rules applied. If the call were originated by Sprint (the ILEC), handed off to SWB, and terminated to Mid-Missouri, SWB paid Mid-Missouri's terminating access even though SWB did not originate the call.³²

But the FPTCs wish to blur the lines. For an *interexchange* call originated by a CLEC, handed off to SWB pursuant to an IA, and delivered to Mid-Missouri for termination, SWB claims it should not be required to pay terminating access. SWB is wrong. SWB ordered its access trunks to Mid-Mo in its IXC capacity. When SWB agreed to carry the interexchange call to Mid-Missouri, SWB agreed to perform in its IXC or carrier's carrier capacity. SWB is not acting in its capacity as an ILEC reciprocally exchanging local traffic with a local competitor. Although in this situation

³² T. 213, 216-220.

SWB did not originate the call, it still performed the same IXC function of delivering the call to Mid-Missouri.

In all situations--SWB's toll call, another PTC's toll call during the PTC Plan, and a CLEC's toll call--SWB acts as an IXC in delivering the toll call for termination over trunks it ordered from the terminating LEC. In either situation, it is SWB's IXC function of delivering multiple carrier interexchange traffic that triggers its obligation as an IXC to pay terminating access.

Mid-Missouri's access tariff does not limit it to billing the carrier that originated the call. Mid-Missouri bill the IXC that delivered the call. That is the carrier that ordered access and established its responsibility to pay Mid-Missouri for traffic delivered on that trunk.

The FPTC proposal would create competitive advantage

The FPTC proposal will result in an unwarranted competitive advantage over IXCs in the "carrier's carrier" marketplace. Today FPTCs and traditional IXCs compete to carry and deliver interexchange traffic originated by other carriers³³. Traditional IXCs such as AT&T, Sprint (LD), MCI-Worldcom, and Frontier are confined to FGD business arrangements. Under those arrangements, they must pay for all terminating traffic delivered on their trunks, and must recover the costs of termination from other IXCs who purchase use of the carrier's carrier network.

The FPTC's position would disturb the carrier's carrier playing field.³⁴ When a FPTC acts as a carrier's carrier, the FPTC would charge access to the IXC for the termination of traffic *to that FPTC*, just as occurs in the FGD carrier's carrier

³³ Ex 2, Schoonmaker rebuttal, p 11. Ex 6, Jones surrebuttal, pp 14-15.

³⁴ Ex 5, Jones rebuttal, pp 4-5.

marketplace. But with respect to traffic terminating to *other LECs*, they would only charge a transiting charge. With respect to this traffic, they will merely insert an obligation for the purchasing IXC to record, report, and pay the FSC. Not only does this concept violate the FSC access tariff, it would also allow the FPTCs to charge lower prices than the FGD IXCs. This would also encourage and enable the carrier transiting access traffic to continue not to report or pay for terminating traffic.

This creates an inappropriate competitive advantage³⁵. When the FPTC acts as a "carrier's carrier", it acts in its IXC capacity. When it provides its interexchange network to a purchasing IXC, it provides the same service for traffic terminating to that FPTC's exchanges as it does for traffic terminating to FSC exchanges. The function of collecting sufficiently to recover the costs of termination of traffic to the FPTC as well as traffic termination to FSCs subtended by the FPTC's tandem should be no different. The reciprocal compensation structures of the TCA '96 for *local* traffic cannot be construed to give rise to a change in this business structure for *interexchange* or *access* traffic. It is respectfully suggested that SWB recognizes this. In the other states where it provides "IWS" or intraLATA wholesale service, it does provide complete termination and is responsible to pay terminating charges of subtending LECs, and recover sufficiently from purchasing IXCs to cover this cost³⁶.

If such a change in the established carrier's carrier business relationship were allowed to exist, the competitive advantage it provides would result in a migration of IXC traffic on FGD carrier's carrier networks to the FPTC's FGC common trunks. This would

³⁵ For about 18 months SWB enjoyed a 50% cost advantage over other IXCs because the originating record system allowed SWB to fail to report its own usage. The network test indicated the FPTCs would enjoy an approximate 13 to 17 % cost advantage over other IXCs. T. 307-310.

³⁶ Ex 7, Larsen Rebuttal, p 13. T. 382-384.

injure FGD carrier's carrier revenues. It could also further increase the unidentified traffic residuals the FSCs are experiencing. This is not a theoretical risk, there is evidence to suggest it is already occurring. The FSCs with access tandems are seeing traditional FGD IXC traffic improperly commingled and delivered over the common trunks. The FPTCs agree that this is improper, but it is nevertheless occurring.

The FPTC proposal would discourage competition in rural areas served by FSCs

Under the FPTC "transiting" theory, competitors directly interconnecting with FPTCs in St. Louis, Kansas City, and Springfield can have traffic destined anywhere in any LATA covered by a single interconnection agreement covering a direct interconnection with SWB in each LATA. This has resulted in a disincentive for the new competitors to interconnect and bring competition to the rural areas. Under the FSC position, which does not force transited traffic upon FSCs, a new competitor having economic justification will directly interconnect with a FSC, thus bringing the benefits of competition to the FSC areas³⁷.

Kansas upheld the small company position, which was there the same as SWB's position is here in Missouri

The FPTCs claim they have no choice but to "transit" *interexchange* traffic for termination to FSCs. The FPTCs also claim that the FSCs are required to accept this traffic but bill someone else based upon the duty of "indirect interconnection"³⁸. As explained above, the TCA '96 only required IAs and reciprocal compensation for *local* traffic exchanged between two directly interconnected carriers. The FCC has stated that reciprocal compensation contained in interconnection agreements does not displace the

³⁷ Ex 6, Jones surrebuttal, pp 18-19.

³⁸ Ex 9, Hughes direct, pp 4-5, Ex 10, Hughes rebuttal, p5.

access regime. This is exactly what SWB represented to the Kansas Corporation Commission, and the KCC agreed.

In Kansas, SWB said as an ILEC that it had no obligation to accept "transit" traffic from another carrier. SWB said that it was entitled to exercise its preference for its own direct interconnections, rather than accept transit traffic. SWB there took the position that being forced to accept transit traffic would allow the transiting carrier to interject itself into the establishment of its own interconnection agreements. SWB there took the position that allowing IA transit traffic status for interexchange traffic would undermine the Kansas access tariff regime.³⁹

Contrary to the intimation of SWB counsel in cross-examining David Jones (T. 243-244), the Kansas arbitration did involve interexchange traffic, not just local traffic. The following references to SWB's testimony, brief, and the KCC Order make it clear that interexchange traffic was at least in part involved. If not there would have been no basis for SWB's concern that transit traffic "undermine the access regime" in Kansas.

In its brief in Kansas, SWB successfully argued that TCG's proposal to require SWB to accept transit traffic went beyond the scope of local interconnections, and would have the effect of allowing TCG to exempt itself from Kansas access tariff requirements. The following are verbatim quotes from excerpts of SWB's Kansas brief⁴⁰:

"TCG's proposals attempt to address issues, specifically access-related issues that are well beyond the scope of a local interconnection agreement." (p1)

"TCG is attempting to single itself out for special treatment and exempt itself from existing federal and state access tariffs and access requirements, contrary to federal and state regulatory orders and regulations, as well as the Act". (pp1-2)

³⁹ See Ex 27, Ex 30.

⁴⁰ Ex 27.

"SWBT expects to be fairly and appropriately compensated for the network elements, interconnection arrangements, and access services that it provides." (p2)

"This issue is not about physically interconnecting TCG's network with SWBT's to provide local exchange service, **this issue is solely about avoidance of access charges and TCG's attempt to inappropriately use the methodology of reciprocal compensation, which is reserved for local traffic, as required by the Act.**" (p3)

"it would effectively eliminate the KCC established local service exchanges, abrogate Kansas' access tariff regime and result in all intraLATA calls, whether truly local or not, being subject to reciprocal compensation on a LATA-wide basis contrary to the system contemplated by the First Report and Order." (p5)

"adoption of SWBT's architecture here **preserves the existing access charge tariff regime approved by the KCC and ensures that reciprocal compensation is paid only when the traffic exchanged is truly local in nature.**" (p6)

"As with any IXC service, SWBT believes that is an access service and not a local service subject to this arbitration...**The appropriate compensation for SWBT would be terminating access charges.** SWBT opposes any suggestion that when TCG acts on behalf of another IXC such as AT&T, carrying that IXC traffic, it becomes local traffic subject to reciprocal compensation for local traffic.....SWBT's Last Best Offer ("LBO") NA Issue 6: SWBT will not be required to accept interexchange traffic through a third party." (p 18)

"Issue 1: What prices should apply to intraLATA toll calls terminated by parties over interconnection trunks? Issue 1 is not an issue properly before the Arbitrator or the Commission in an arbitration of a local interconnection agreement... (FCC Interconnection Order excerpts omitted)...The appropriate price to be applied for terminating intraLATA traffic that is transported between local calling areas is determined from the appropriate access tariff." (pp 20-22)

"Therefore, SWBT requests the Arbitrator dismiss Issue 11, or in the alternative determine that **access charges, as contained in the company's approved access tariffs, should apply to long distance calls that are originated by or terminated to end user customers.**" (p 31)

"**TCG cannot require SWBT to accept transit traffic from TCG that originates from a third party carrier and deny SWBT any rights or arrange a direct interconnection agreement with the third party carrier....Likewise, TCG has no right to interject itself into SWBT's efforts to establish interconnection agreements that do not require TCG to transit traffic....Further, SWBT cannot be required to subscribe to the proposed transiting service that TCG may at some**

unknown future date decide to offer.....SWBT's Last Best Offer ("LBO") RC Issue 16: All parties wishing to terminate traffic on SWBT's network shall have their own interconnection agreement with SWBT for such purpose." (p37)

In Kansas SWB took exactly the same position the FSCs take here:

Interconnection agreements are properly confined to local traffic only. Interconnection agreements do not displace the existing access regime for interexchange traffic. ILECs cannot be forced to accept "transit" traffic, as transiting destroys an ILEC's right to its own direct interconnection agreements, and prejudices the ILEC's ability to establish interconnection agreements that do not require transit traffic.

The Kansas Corporation Commission agreed with SWBT, and entered an Order holding that ILEC SWB was not required to accept transit traffic from other carriers, as the Act made no such mention of transit traffic, or of any such duty⁴¹. The KCC determined:

"The Arbitrator agrees with SWBT that local exchange carriers have a duty to establish reciprocal compensation arrangements for the transport and termination of traffic. 47 U.S.C. § 251(b)(5). Consistent with that obligation, no other carrier should be authorized to interject itself into the interconnection arrangements of the local exchange carrier, without its agreement. There is no indication in the statute that transit services are considered. Clearly, parties may agree to accept calls on a transiting basis, but SWBT has indicated its unwillingness to do so and has established a preference for negotiating its own agreement. SWBT's last best offer is adopted." (emphasis added)

Neither the Act nor the Kansas interpretation supports the FPTC claim that they are LECs obligated to accept traffic destined for FSCs on a "transiting" basis⁴². What this means is not that SWB could refuse to *carry* traffic originated by carriers other than TCG. But SWB was entitled to apply its access tariff to all traffic that was not subject to

⁴¹ Ex 5, Jones rebuttal, pp 16-17; Ex 6, Jones surrebuttal, pp 5-9, Schedules 1, 2, and 3; also Exhibits 30 and 31.

the IA between SWB and TCG. SWB could apply its access tariff to TCG for all traffic delivered except local traffic TCG originated and handed to SWB.

What SWB successfully had rejected in Kansas, the small companies should have rejected in Missouri. There is no difference in SWB's position in the Kansas arbitration and the small company position in this docket.⁴³

Missouri experience establishes that transiting relationships constructed upon ORP and an originating records system does not perform satisfactorily.

Missouri has had several years' experience with the FPTCs attempt to combine indirect/transiting carrier relationships with ORP and originating records. That experience demonstrates that attempts to displace access by "transiting" structures does not work⁴⁴. In the wireless arena, SWB's tariff changes were approved premised upon the assumption that wireless carriers would not send SWB traffic destined for FSCs until there was an approved arrangement in place between the wireless carrier and the terminating FSC. IAs between FPTCs and wireless carrier contain similar provisions. In the CLEC arena, IAs between FPTCs and CLECs contain similar provisions. Despite these provisions, the wireless carriers and the CLECs have not complied, and the FPTCs have failed to enforce their own contracts⁴⁵.

Wireless carriers have been sending traffic without such agreements since on or before February 5, 1998, the effective date of SWB tariffs implementing the Commission's December 23, 1997 Report and Order in TT-97-524. SWB is providing a CTUSR, but the CTUSR fails to distinguish interMTA (access) traffic from intraMTA (local) traffic. The CTUSR also fails to distinguish between traffic delivered pursuant to

⁴² Ex 6, Jones surrebuttal, pp 3-10, Schedules 1-3.

⁴³ T. 251-253.

⁴⁴ Ex 5, Jones rebuttal, pp 13-16.

SWB's tariff, for which SWB is secondarily liable and has indemnity rights against the wireless carrier, and traffic delivered pursuant to interconnection agreement, which may or may not contain secondary liability and indemnity provisions. The only rate the FSCs have in existence to charge the wireless carriers has been their access rates. The wireless carriers have refused to pay. As a result, since February 5, 1998 the FSCs have not been paid, don't know which traffic is interMTA versus intraMTA, don't have a rate that applies to intraMTA traffic, and don't know what usage SWB is secondarily liable for and what usage SWB is not secondarily liable for⁴⁶.

Recently the Commission issued a Report and Order in TT-2001-139. In the near future most FSCs will now have a tariffed rate to apply prospectively to terminating wireless traffic. There will still be an issue as to what rate to apply for traffic terminating back to February 5, 1998, and what traffic SWB is secondarily liable for.

CLECs also have been sending such traffic, although apparently in small amounts, for a time unknown to the FSCs⁴⁷. Although, except for MCA traffic, all such traffic should generate terminating access charges, the FPTCs are refusing to be responsible to pay, even though they place the traffic on the common trunks without any mechanism in place superseding the access tariff of the FSCs. The FPTCs are not enforcing the requirement that the traffic not be delivered without an approved arrangement for paying the FSCs, and neither the FPTCs nor the CLECs are complying with or enforcing the provision of billing records.

⁴⁵ T. 344-345.

⁴⁶ Ex 3, Schoonmaker surrebuttal, p 9.

An Originating Record System is inherently defective

An originating record system utilizes recordings made by the originating carrier at the originating side of the call to attempt to develop billing records for use by the terminating LEC to bill terminating compensation. The fundamental flaw of such a system is that it puts other carriers in a position of determining whether or not the terminating LEC is properly paid⁴⁸. In almost every business one can think of the provider of goods or services measures the use others make of the provider's goods or services. The originating records system permits carriers, or even incents carriers, to fail. By failing, they save themselves money, thereby causing loss to the terminating LEC. Any innocent or intentional failure, such as the failure to do proper switch translations, the failure to record calls at an originating switch, the failure of the carrier's billing system to convert an originating switch call record to a billing record, or the failure to provide a proper billing system record to the terminating LEC, all result in savings to the originating carrier and loss to the terminating LEC.

Such failures are not theoretical, the evidence discloses that they happen. The evidence discloses that SWB has failed to do proper network translations for OCA⁴⁹. The evidence discloses that SWB has failed to provide proper originating switch recordings for Local Plus⁵⁰. There is evidence that Sprint likewise has discovered failures in its processes⁵¹. There is evidence that even during the PTC Plan such failures occurred between the FPTCs themselves. The evidence discloses that there exists a significant discrepancy between total terminating traffic and reported terminating traffic. The

⁴⁷ T. 209.

⁴⁸ Ex 4, Jones direct, p 7.

⁴⁹ Ex 39.

⁵⁰ Ex 1, Schoonmaker direct, pp 14-16. T. 234-235.

network test establishes that significant discrepancies have arisen in the 1 and ½ years since termination of the PTC Plan⁵². The test demonstrated that errors can occur even when compiling records needed to determine the cause of residual discrepancies⁵³.

In an originating records environment, the terminating LEC cannot identify which upstream carrier is failing to create and pass terminating records correctly. The terminating LEC cannot distinguish "innocent" mistakes from intentional misreporting. The terminating LEC cannot successfully pursue these mistakes or misreporting without information and cooperation from all upstream carriers. The terminating LEC cannot even prevent a known misreporting carrier to continue to terminate traffic without reporting or paying, unless the FPTC performs blocking at the location of its direct interconnections with that carrier.

This is not an acceptable business relationship⁵⁴. This is shown by the actions of the FPTCs themselves. The FPTCs don't accept this. The FPTCs require every carrier sending them traffic to directly interconnect at a tandem. As all FPTC end offices are served by their own tandems, they don't accept records other carriers create at some upstream originating location, the FPTCs create their own at the terminating tandem. The FPTCs there measure all traffic delivered over this connection. They don't accept the other carriers' measurements. They measure all traffic, and the other carrier is responsible to pay for all traffic, regardless of the identity of the originating carrier. This

⁵¹ Ex 6, Jones surrebuttal, p 23

⁵² Ex 1, Schoonmaker direct, pp 8-12, Schedules RCS-3, RCS-4, RCS-5HC; Ex 4, Jones direct, pp 9-11, HC Schedule 5; Ex 7, Larsen rebuttal, pp 16-19.

⁵³ Ex 1, Schoonmaker direct, pp 13-14, describing an unexplained failure of SWB to provide test records for calls terminating to Northeast Missouri Rural.

⁵⁴ Ex 5, Jones rebuttal, pp 17-18; Schoonmaker, T. 223-224.

is the same terminating compensation business relationship built around a direct interconnection that is in use for interLATA and intraLATA traditional IXC FGD traffic.

The small company proposal is preferable to the new relationship the FPTCs propose. It is built around the establishment of a direct interconnection, so the carriers creating the connection also create and know the business relationship. It is constructed upon the terms of the terminating LEC's lawfully approved access tariffs. It is administratively more efficient in that the terminating LEC has a single relationship with each directly interconnecting IXC. There is no need to attempt to create separate business relationships with the hundreds of carriers originating traffic, assuming that these carriers could be timely identified⁵⁵.

Terminating recordings and terminating AMA 119 (made into category 11 records) have been demonstrated to be accurate, and based upon existing industry standard billing records in use for interLATA and intraLATA FGD traffic⁵⁶.

Implementation schedule

An implementation schedule will be useful to the Commission and to the FPTCs in implementing the small company proposal. The MITG proposes that the Commission provide for six months in which the parties can accommodate the transition to the small company compensation proposal.

For FPTCs who desire to continue to use one another to transport access traffic of the other, this period will give them time to resurrect their PTC Plan agreements, or a

⁵⁵ The OBF Issue 2056 does not address the issues presented in this case. Ex 3, Schoonmaker surrebuttal, p 12. Ex 5, Jones rebuttal, pp 5-6. T. 111-112, 140-141.

⁵⁶ Ex 2, Schoonmaker surrebuttal, pp 9-11; Ex 3, Schoonmaker surrebuttal, pp 3-9; Ex 7, Larsen rebuttal, pp 5-6. Ex 7, Larsen rebuttal, pp 7-11, 14-15. T. 187-189, Schoonmaker response to bench questions. T. 238, 240, Mid-Mo terminating records exactly matched Verizon and Sprint originating records for the industry test.

new wholesale agreement. For former PTCs who do not desire to transport the access traffic of another FPTC, this will provide the other FPTCs with time to order their own direct access facilities or to contract with another IXC to transport this traffic.

This will also give the FPTCs time to modify their interconnection agreements. If the other party to an IA desires for the FPTC to continue transporting access traffic to the FSCs, the IA can be modified for the CLEC to pay the FPTC for this function. If the other party desires to order a direct connection enabling a direct business relationship it may do so.

In light of the particular juncture Missouri is at now, it would not be as difficult as one might initially think for the FPTC IAs to be changed. Recent appellate court decisions will require the renegotiation of the AT&T/SWB IA, which is the pattern for most IAs in Missouri⁵⁷. Additionally, the IAs typically have provisions expressly reserving the parties' right to modify the IA in this situation.⁵⁸

The Commission and SWB can implement the necessary changes to the M2A form, as pending in SWB's § 271 docket, TO-99-227, to provide for recovery of the cost of terminating this traffic. The current M2A IA form, filed with the Commission under cover letter dated February 16, 2001, contains such a provision at § 18.4, p 24, which provides:

"In the event that ...any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement are, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction....the affected provisions shall be

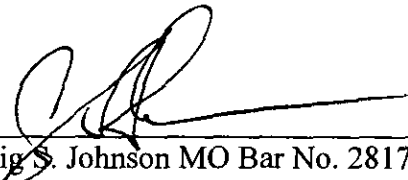
⁵⁷ See SWB v MoPSC, 8th Cir Ct Appeals Jan. 8, 2001 Opinion in Nos. 99-3833, 99-3908. T. 150-151.

⁵⁸ SWB has a history of including provisions for renegotiation of the terms of IAs if a regulatory change of the assumptions upon which the IA was based. It is noted that SWB's Statement of Terms and Conditions Under Sections 251 and 252 of the TCA '96, at page 42, § 31.17, contained provision for renegotiation upon regulatory decision materially affecting performance (TO-98-355). Likewise, the early IA between SWB and MFS, TO-97-27, contained similar provisions, see § 28.5 of that IA. So did the early IA between SWB and US Long Distance, TO-97-94, at § XIV and § XXI of the IA. T. 210-213. T. 335-336.

immediately invalidated, modified, or stayed....the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications."

Finally, the industry could use this transition period to review the continued use of separate trunking, the implementation of new separate trunks, the development of MCA usage factors, or a combination of all, to separate non-compensable MCA traffic from compensable traffic on the common trunks⁵⁹.

ANDERECK, EVANS, MILNE,
PEACE & JOHNSON, L.L.C.

By 

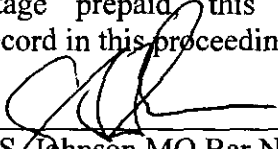
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⁵⁹ Ex 1, Schoonmaker direct, pp 20-21; Ex 2, Schoonmaker rebuttal, pp 12-14; Ex 5, Jones rebuttal, p 18. See also Ex 38.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 1 day of March, 2001, to all attorneys of record in this proceeding.



Craig S. Johnson MO Bar No. 28179