



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

ROBERT G. SCHEMENAUER

KELVIN L. SIMMONS

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

March 1, 2001

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

MAR 01 2001

Missouri Public
Service Commission

RE: Case No. TO-99-593

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **INITIAL BRIEF OF STAFF**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Keith R. Krueger
Deputy General Counsel
(573) 751-4140
(573) 751-9285 (Fax)

KRK/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
MAR 01 2001
Missouri Public
Service Commission

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

Case No. TO-99-593

INITIAL BRIEF OF STAFF

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), and for its Initial Brief states to the Missouri Public Service Commission ("Commission") as follows:

'Business Relationships' Are Not Properly An Issue In This Case

The Commission created this case by an ordered paragraph in its Report and Order in Case No. TO-99-254, which was issued on June 10, 1999, and became effective on June 21, 1999. That ordered paragraph, No. 7, provided in full as follows:

That Case No. TO-99-593 is established to investigate signaling protocols, call records, trunking arrangements and traffic measurement.

It is therefore clear that this case was established as an *investigation*. There were to be four specific subjects of the investigation, namely: signaling protocols, call records, trunking arrangements, and traffic measurement. Each of these four subjects is of a technical nature, and each is related to either the transmission of telephone messages or to the recording or measurement of telephone calls. It is obvious that the Commission did not specifically direct the parties to look into the *business relationships* between telecommunications companies. And it is equally clear that business relationships are not within the ambit of the issues that the parties

were to investigate in this case, for business relationships, by their very nature, are entirely separate and distinct from the technical subjects that the Commission established this case to investigate.

The Commission's Report and Order in Case No. TO-99-593 did not identify "business relationships" as an issue to be investigated in this case.

On June 15, 1999, the Commission issued an Order Directing Notice, in which it stated that it had created this case "to investigate the issues of signaling protocols, call records, trunking arrangements, and traffic measurement." Persons who were interested in addressing these matters were allowed 20 days from June 15, 1999, to file an application to intervene. Such persons were therefore put on notice that if they wanted to be heard on these matters, they should intervene in this case. The Order Directing Notice made no reference to "business relationships." Parties to whom the notice was directed therefore had no way to know, and no reason to suspect that the Commission might take any action in this case that would affect their business relationships with other telecommunications companies.

It is probably true that most of the parties who would have an interest in the business relationships between telecommunications companies are present in this case. However, it is not certain that all of them are. The Staff believes it would be improper for the Commission to enter orders on an issue that was neither identified in the order that established this case, nor in the notice that the Commission gave to potential intervenors.

Even though the Commission did not establish "business relationships" as an issue in this case, two groups of parties, the Missouri Independent Telephone Group ("MITG") and the Small Telephone Company Group ("STCG") have attempted to inject this issue into the case. In fact,

the parties did identify "business relationships" as Issue No. 5 in this case.¹ However, not all parties agreed that "business relationships" were, in fact, an issue the Commission should address in this case. Southwestern Bell Telephone Company ("SWBT"), for example, steadfastly resisted the introduction of this new issue into the case. In its Position Statement, filed with the Commission on January 19, 2001, SWBT stated its position on Issue No. 5, in part, as follows:

SWBT objects to MITG and STCG's attempt to raise this issue in that it is not an issue that was identified by the Commission as appropriate for investigation in this case. When the Commission established this case, it did so to investigate "signaling protocols, call records, trunking arrangements and traffic measurement." At no time, however, did the Commission direct that the parties should investigate requiring larger tandem LECs like Fidelity, Sprint, SWBT or Verizon to be financially responsible for paying for the termination of another carrier's traffic.

From the foregoing, it is clear that it cannot fairly be said that the parties to this case tried the issue of "business relationships" (Issue No. 5) by consent.

Since the Commission did not identify "business relationships" as a subject of the investigation in this case, and "business relationships" were not identified as an issue in the notice that was given to potential intervenors, and since the issue was not tried with the consent of the parties, the Staff believes it would be improper for the Commission to order a change in the business relationships between telecommunications companies in this case.

Furthermore, the Staff notes that the Commission does not ordinarily enter orders for the primary purpose of regulating the business relationships between utilities that are subject to its jurisdiction. It is certainly true that the Commission has issued orders that incidentally affect the business relationships between utilities. However, in the circumstances here, the Staff believes it would be improper to enter such an order in this case.

¹ See the Proposed List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statement, which was prepared by Staff on behalf of all parties and filed with the Commission on January 17, 2001.

Payment For Uncompensated Traffic

The primary reason why the Commission established this case was that some telecommunications companies, generally known as "Secondary Carriers," or "SCs," or "former SCs," believed that they were not receiving compensation for all of the terminating access minutes for which they were entitled, by the terms of their tariff, to receive compensation. The SCs believed that other companies, generally known as "Primary Toll Carriers," or "PTCs," or "former PTCs" failed—either intentionally or inadvertently—to report to the SCs all of the access minutes for which the former PTCs should have compensated the SCs.

To ascertain the cause of this claimed underreporting, the parties investigated the source of the problem, most notably through the "Missouri Record Exchange Test" conducted in July of 2000. As a result of this test, and other actions taken by the parties, the parties have been able to account for much of the underreporting of terminating access minutes. However, the former SCs claim there is still a significant difference between the number of minutes that they terminate and the number of minutes that are reported to them by the former PTCs. As a result, they claim they are not receiving a substantial portion of their terminating access revenue.

As noted above, the Staff does not believe this is the appropriate case in which the Commission should *order* a change in the business relationships between the parties. It is not desirable, however, for the SCs to continue to provide services for which they do not receive the appropriate compensation. To cure this problem, the former SCs have proposed that the former PTCs be required to pay for all traffic that they terminate to the former SCs, unless it can be identified as noncompensable traffic. The Staff does not have any objection to this approach *per se*. The Staff notes that it would make the former PTCs responsible for all unidentified traffic, regardless of whether the former PTCs were at fault or not. As indicated above, the Staff does

not believe that this is the appropriate case in which the Commission should enter an order directing implementation of this approach.

An alternative solution, proposed by Sprint witness Robert Cowdrey, is to divide the responsibility for this unidentified traffic equally between the SCs and the former PTCs. The Staff believes that an approach of this nature would be the most equitable since it would give each of the parties an incentive to reduce the amount of unidentified traffic. The Staff is not certain, however, that an equal division of responsibility would be appropriate – perhaps a 75 percent / 25 percent allocation (former PTC / former SC) would be more equitable. It should be noted, however, that the 75/25 allocation has not been discussed in any of the testimony that was presented in this case.

If the Commission does decide to enter an order affecting the business relationships between telecommunications companies, the Staff believes this would be the best way to address the problems caused by uncompensated traffic.

Technical Issues

Issue No. 1 in this case, as identified in the List of Issues that the parties filed with the Commission, has become moot, for all parties agree that it is not necessary for the Commission to decide whether Feature Group C or Feature Group D should be utilized for intrastate intraLATA traffic terminating over the common trunks between the former PTCs and the SCs.

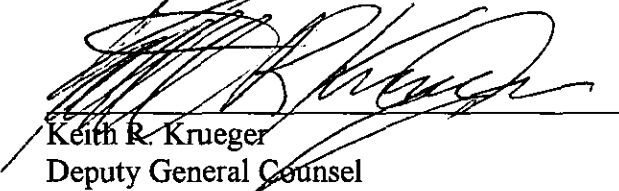
With respect to Issue No. 2, the Staff encourages the companies to measure traffic at multiple points, in order to provide additional data, which may be helpful in resolving any billing disputes that may subsequently arise.

The Staff takes no position on Issue No. 3—Call Records, or on Issue No. 4—Trunking Arrangements.

The blocking of calls, addressed as Issue No. 6 in this case, is a drastic action that should only be undertaken in extreme circumstances, when absolutely necessary. It should only be permitted if the company that takes the action first obtains a specific order from the Commission authorizing it to do so, or if the action is specifically authorized in the company's tariffs on file with the Commission.

Respectfully submitted,

DANA K. JOYCE
General Counsel

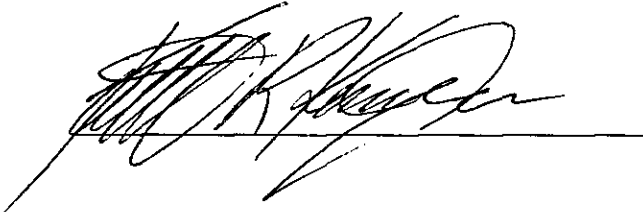


Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9285 (Fax)
kkrueg01@mail.state.mo.us (e-mail)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 1st day of March 2001.



Service List for:
Case No. TO-99-593
Revised: January 17, 2001 (lb)

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Craig S. Johnson
Andereck, Evans, Milne, Peace & Baumhoer
305 E. McCarty Street, P.O. Box 1438
Jefferson City, MO 65102-1438

W. R. England, III
Brian T. McCartney
Brydon, Swearengen & England P.C.
P.O. Box 456
Jefferson City, MO 65102-0456

James M. Fischer
Attorney at Law
101 West McCarty Street, Suite 215
Jefferson City, MO 65101

Paul G. Lane/Katherine C. Swaller/
Leo J. Bub/Anthony Conroy
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Steve D. Minnis
Sprint Missouri, Inc.
5454 West 110th Street
KSOPKJ0502
Overland Park, KS 66211

Paul S. DeFord
Lathrop & Gage
2345 Grand Boulevard, Suite 2500
Kansas City, MO 64108

Steve Minnis/Paul Gardner
131 High Street
Jefferson City, MO 65101