

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

ATTORNEYS AT LAW
305 EAST McCARTY STREET
P.O. BOX 1438

JEFFERSON CITY, MISSOURI 65102-1438
TELEPHONE 573-634-3422
FAX 573-634-7822

EUGENE E. ANDERECK
TERRY M. EVANS
ERWIN L. MILNE
JACK PEACE
CRAIG S. JOHNSON
RODRICA A. WIDGER
GEORGE M. JOHNSON
BEVERLY J. FIGG
WILLIAM S. LEWIS
VICTOR S. SCOTT

COREY K. HERRON
MATTHEW M. KROHN
LANETTE R. GOOCH
SHAWN BATTAGLER
ROB TROWBRIDGE
JOSEPH M. PAGE
OF COUNSEL:
MARVIN L. SHARP
PATRICK A. BAUMHOER
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)

February 3, 2000

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

FILED

FEB 3 2000

Missouri Public
Service Commission

Re: Case Number: TO-2000-407

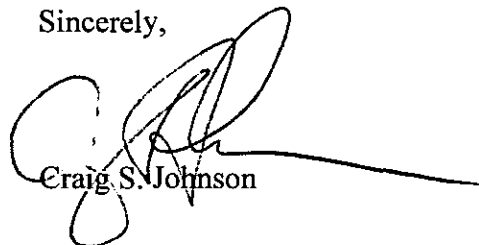
Dear Mr. Roberts:

Please find enclosed for filing an original and 14 copies of the Missouri Independent Telephone Group's Application To Participate Without Intervention, and Suggestions In Support Of Approval of the Southwestern Bell Wireless/TDS Companies Agreement.

A copy of this letter along with a copy of the enclosure has been served upon all attorneys of record.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ/ksw
enclosure

cc: W. R. England
Brian McCartney
Jeanne Fischer
General Counsel
Michael F. Dandino
MITG Managers

TRENTON OFFICE
9th AND WASHINGTON
P.O. BOX 547
TRENTON, MISSOURI 64683-0547
660-359-2244
FAX 660-359-2116

SPRINGFIELD OFFICE
1111 S. GLENSTONE
P.O. BOX 4929
SPRINGFIELD, MISSOURI 65808-4929
417-864-6401
FAX 417-864-4967

PRINCETON OFFICE
207 NORTH WASHINGTON
PRINCETON, MISSOURI 64673
660-748-2244
FAX 660-748-4405

SMITHVILLE OFFICE
119 E. MAIN STREET
P.O. BOX 634
SMITHVILLE, MISSOURI 64089
816-532-3895
FAX 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
FEB 3 2000
Missouri Public
Service Commission

Application of Southwestern Bell Wireless,)
Inc. and TDS Telecom, Inc. for approval)
of an Interconnection Agreement under)
the Telecommunications Act of 1996)

Case No. TO-2000-407

APPLICATION TO PARTICIPATE
WITHOUT INTERVENTION, SUGGESTIONS
IN SUPPORT OF APPROVAL OF AGREEMENT

Comes Now the Missouri Independent Telephone Group, consisting of MoKan Dial, Inc., Choctaw Telephone, Alma Telephone Co., NE Missouri Rural Telephone Company, Modern Telecommunications, Chariton Valley Telephone Corp., and Mid-Missouri Telephone companies, pursuant to the Commission's January 26, 2000 Order in this docket, and hereby submits this Application To Participate Without Intervention and Suggestions in Support of Approval of the Agreement between SWBWireless and the TDS Companies.

The MITG submits this application and suggestions for the purpose of assisting the Commission in clarifying the distinction between a direct interconnection agreement which can be compelled of an ILEC, and other types of agreements ILECs can voluntarily enter into. A careful reading of Section 252 of the Telecommunications Act of 1996 indicates that **both** types of agreements must be submitted to the Commission for approval. It is the MITG's belief that disputes as to whether voluntary indirect reciprocal compensation agreements can be compelled of ILECs has caused unnecessary confusion

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as to whether such voluntary agreements require Commission approval under 47 USC 252.

In support of this application and as suggestions, the MITG sets forth the following:

1. The MITG is interested in the determinations of whether interconnection/reciprocal compensation agreements can be compelled of ILECs where the "requesting carrier" is not directly interconnected with the ILEC, but instead hands off traffic to a third party transiting ILEC.

2. The MITG is also interested in the determination of what agreements between carriers must be approved by the Commission pursuant to 47 USC 252.

3. The MITG has been active in other dockets in advancing its interpretation of the Act.

4. The Commission's January 13, 2000 Order Directing Filing, and its January 26, 2000 Order Directing Notice indicate the Commission has concerns as to whether the Agreement between SWBW and the TDS Companies requires Commission approval, or alternatively whether the Commission has the jurisdiction or authority to approve the Agreement. It is the position of the MITG in this filing that the Commission does have this authority and jurisdiction under 47 USC 252, and it is hoped that these Suggestion will provide some assistance to the Commission in that regard.

5. The Agreement between the TDS Companies and SWB Wireless is not an interconnection agreement under 251(c)(2) of the TCA of 1996, as that section specifies that interconnection agreements requires a physical interconnection between the requesting carrier and the ILEC. (The MITG has extensively briefed the provisions of the Act, the FCC rules, and the FCC decision accompanying those rules in support of the MITG interpretation elsewhere, and it is not necessary to repeat it here.) The Agreement

itself specifies that it is not an interconnection agreement. The Agreement specifies that it is for the termination of traffic transited between TDS and SWBW over the network of a third party LEC.

6. Even though this is not an "interconnection agreement" to which 252(e)(1) expressly references, there are other provisions of the TCA of 1996 that indicate this agreement still requires PSC approval.

7. The TCA of 1996 allows the PSC to approve other types of agreements which are voluntarily entered into. § 252(a) contemplates PSC approval of voluntary agreements as to services or network elements, even though they may not be an interconnection agreement. 252(a)(1) says an ILEC **may** negotiate and enter into a binding agreement with the requesting telecommunications carrier **without regard** to the standards set for in 251(a) and 251(b).

252(a) goes on to specify that any such agreement (including any interconnection agreement negotiated prior to enactment of the TCA of 1996,) **shall** be submitted to the state commission under subsection 252(e).

8. The Act recognizes two types of agreements for which 252(e) approval is required. The first is the typical direct physical interconnection agreement providing for reciprocal compensation for mutual transport and termination of traffic, a § 251(c)(2). This is the type of agreement which the ILEC is obligated to negotiate, and can be compelled through arbitration to enter into. The second type of agreement for which § 252(e) approval is required is a voluntary § 252(a)(1) agreement between an ILEC and another carrier that does not necessary comply with § 251(a) and 251(b) standards, and for which the ILEC cannot be mandated or compelled to enter into. The TDS/SWBW agreement is of the second or "voluntary" type.

9. In its Order Directing Filing, the Commission seems to be concerned that the provision of the SWBW/TDS Agreement specifying that it is not a § 251(c) interconnection agreement destroys the authority of the Commission to approve it. As set forth above, the Agreement is a voluntary § 252(a)(1) agreement for which approval is still required.

WHEREFORE the MITG respectfully requests that it be allowed to participate without intervention in this proceeding, that the foregoing suggestions be accepted by the Commission, that the Commission enter its Order approving the Agreement between the TDS Companies and Southwestern Bell Wireless without any hearing if the Commission believes the Agreement meets the standards for approval contained in 47 USC 252(e).

ANDERECK, EVANS, MILNE,
PEACE & JOHNSON

By 

Craig S. Johnson MO Bar#28179
305 E. McCarty Street
P.O. Box 1438
Jefferson City, MO 65102
Phone: 573-634-3422
Fax: 573-634-7822

ATTORNEYS FOR MITG

CERTIFICATE OF SERVICE

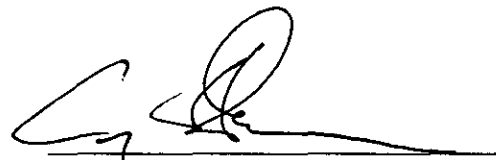
The undersigned hereby certifies that a true copy of the foregoing documents has been mailed via first class, postage prepaid this 3 day of February, 2000, to:

W.R. England, III
Brian T. McCartney
BRYDON, SWEARENGEN & ENGLAND
P.O. Box 456
Jefferson City, MO 65102-0456

Jeanne Fischer
Southwestern Bell Wireless, Inc.
13075 Manchester, 1st Floor
St. Louis, MO 63131

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Michael F. Dandino
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102



Craig S. Johnson