

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

In the Matter of a Proposed Rule to Require	)	
all Missouri Telecommunications Companies	)	
to Implement an Enhanced Record	)	Case No. TX-2003-0301
Exchange Process to Identify the Origin of	)	
IntraLATA Calls Terminated by Local	)	
Exchange Carriers.	)	

**SBC MISSOURI'S MOTION TO CONSIDER IMPACT  
OF NEW FCC DECISIONS AND ABATE RULEMAKING**

SBC Missouri<sup>1</sup> respectfully requests the Missouri Public Service Commission (“Commission”) to reopen the record in this rulemaking proceeding to consider the impact of two recently released Federal Communications Commission (“FCC”) Orders: (1) the FCC’s Declaratory Ruling and Report and Order concerning transited wireless traffic and incumbent ILEC wireless termination tariffs;<sup>2</sup> and (2) the FCC’s Further Notice of Proposed Rulemaking in the Unified Intercarrier Compensation proceeding.<sup>3</sup>

As a result of these FCC actions, several sections of the rule proposed by the Commission in this proceeding now conflict with federal law. Moreover, many issues that the Commission’s proposed rule attempts to cover are now being specifically and substantively addressed by the FCC. Given these developments at the federal level and the utter lack of evidence that there is any urgent need for a rule at the state level, the proposed rule should not go forward.

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as “SBC Missouri” or “SBC.”

<sup>2</sup> In the Matter of Developing a Unified Intercarrier Compensation Regime; and T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92, Declaratory Ruling and Report and Order, released February 24, 2005 (“FCC Declaratory Ruling”) (a copy of the FCC Declaratory Ruling is appended as Attachment 1).

<sup>3</sup> In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, released March 3, 2005 (“FCC Further Notice”) (a copy of the Further Notice is appended as Attachment 2).

## **BACKGROUND**

1. T-Mobile Petition for Declaratory Ruling. On September 6, 2002, T-Mobile USA, Western Wireless, and Nextel jointly filed a petition for declaratory ruling asking the FCC to find wireless termination tariffs an improper mechanism for establishing reciprocal compensation. These carriers claimed such tariffs conflicted with Section 251 of the Act and the FCC's rules, and that incumbent LECs engaged in bad faith by unilaterally filing wireless termination tariffs without first negotiating in good faith with the wireless providers.<sup>4</sup> The FCC incorporated T-Mobile's petition into its ongoing Unified Intercarrier Compensation proceeding and sought comment from the industry on T-Mobile's petition.<sup>5</sup> As described in more detail below, the FCC ruled on T-Mobile's petition on February 24, 2005, rendering several provisions of the Missouri Commission's proposed rule contrary to federal law.

2. The FCC Intercarrier Compensation Proceeding. Through a Notice of Proposed Rulemaking released April 27, 2001, the FCC began a "fundamental reexamination of all currently regulated forms of intercarrier compensation."<sup>6</sup> There, the FCC sought to test the concept of a "unified regime" for the flows of payments among telecommunications carriers that result from the interconnection of telecommunications networks under current systems of regulation. The FCC specifically sought to test the viability of a bill-and-keep approach for such a unified regime and indicated its wish to "move forward from the traditional intercarrier

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<sup>4</sup> FCC Declaratory Ruling, p. 1, fn. 1.

<sup>5</sup> Comments Sought on Petition for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 19046 (2002).

<sup>6</sup> In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, released April 27, 2001, p. 1.

compensation regimes to a more permanent regime that consummates the pro-competitive vision of the Telecommunications Act of 1996.”<sup>7</sup>

On March 3, 2005, the FCC released its Further Notice of Proposed Rulemaking in that same docket to “begin the process of replacing the myriad existing intercarrier compensation regimes with a unified regime designed for a market characterized by increasing competition and new technologies”<sup>8</sup> In the Further Notice, the FCC expressed the concern that current intercompany compensation rules, which are based on artificial regulatory distinctions (such as the type of traffic at issue, the types of carriers involved, and the end points of the communication), cannot be sustained in today’s telecommunications marketplace:

These distinctions create both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions. The record in this proceeding makes clear that a regulatory scheme based on these distinctions is increasingly unworkable in the current environment and creates distortions in the marketplace at the expense of healthy competition. Additional problems with the existing intercarrier compensation regime results from changes in the way network costs are incurred today and how market developments affect carrier incentives. These developments and others discussed herein confirm the urgent need to reform the current intercarrier compensation rules.<sup>9</sup>

In the Further Notice, the FCC described in detail the proposals made in that docket by different industry groups for comprehensive reform of existing intercarrier compensation and solicited comments from the industry (specifically, the FCC sought comment on the legal and economic bases for the proposals, the end-user effects and universal service issues implicated by them, and how they would affect network interconnection). In addition, the FCC specifically

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<sup>7</sup> Further Notice p. 1.

<sup>8</sup> Further Notice p. 3.

<sup>9</sup> Further Notice, p. 3 (emphasis added).

sought comment on issues relating to the regulation of transit services and the adequacy of intercompany billing records currently being exchanged.<sup>10</sup>

Carriers from across the nation, representing all sectors of the telecommunications industry -- including most of the carriers involved in this state rulemaking case<sup>11</sup> -- are actively participating in the FCC's proceeding to develop a unified intercarrier compensation regime.

### **IMPACTS OF THE FCC'S ACTIONS ON THE PROPOSED ENHANCED RECORD EXCHANGE RULE**

#### **1. The FCC's Action on the T-Mobile Petition Has Rendered Portions of the Proposed Rule in Conflict with Federal Law.**

While the FCC on February 24, 2005, denied T-Mobile's petition, the FCC amended its rules on a prospective basis in a manner that renders unlawful many aspects of the proposed rules currently under consideration by the Missouri Commission in this proceeding. Specifically, the FCC took the following actions:

- Going forward, the FCC amended its rules to make clear its requirement for contractual arrangements by prohibiting LECs from imposing compensation obligations for non access CMRS traffic pursuant to tariff.<sup>12</sup> Existing wireless termination tariffs no longer apply upon the effective date of the FCC's amended rules.<sup>13</sup>
- The FCC amended its rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in Section 252 of the Act. A CMRS provider receiving such a request must negotiate in good faith and must, if requested, submit to arbitration by the state commission.<sup>14</sup> In absence of a

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<sup>10</sup> Further Notice, p. 3.

<sup>11</sup> Parties involved in this state rulemaking proceeding that are also actively involved in the FCC's Unified Intercarrier Compensation Regime rulemaking proceeding include: Allegiance Telecom, Inc. (since acquired by XO Communications), Alltel Communications, Inc., CenturyTel, Inc., GVNW Consulting, Inc. (which represents the STCG group), Mid-Missouri Cellular, the Missouri Independent Telephone Group ("MITG"), the Missouri Public Service Commission, Nextel Wireless, the Small Telephone Company Group ("STCG"), SBC Communications, Inc., Sprint, and T-Mobile Wireless (formerly VoiceStream Wireless).

<sup>12</sup> FCC Declaratory Ruling, pp. 1-2, 6 and 9; Appendix A (amendment to the Code of Federal Regulations).

<sup>13</sup> FCC Declaratory Ruling, p. 9.

<sup>14</sup> FCC Declaratory Ruling, pp. 6, 10-11.

request for an interconnection agreement, no compensation is owed for termination.<sup>15</sup>

- Recognizing that the establishment of interconnection arrangements between incumbent LECs and wireless providers may take more than 160 days, the FCC also established interim compensation requirements.<sup>16</sup>

At a minimum, these actions taken by the FCC have rendered unlawful the following provisions of the Commission's proposed enhanced record exchange rule:

- 4 CSR 240-29.030 (general provisions, subparagraph 2 prohibiting wireless carriers from placing interstate interMTA traffic on the LEC-to-LEC network).
- 4 CSR 240-29.070 (special provisions for wireless-originated traffic transmitted over the LEC-to-LEC network).
- 4 CSR 240-29.110 (duty to file tariffs for compensable telecommunications traffic in the absence of Commission-approved interconnection agreements).

These proposed rules can no longer stand given the mandatory requirements imposed by the FCC. Any attempt to require LECs to file tariff rates for the termination of wireless traffic (even in the absence of an interconnection agreement) is now precluded by the FCC's ruling prohibiting LEC wireless termination tariffs. And any attempt by the Commission to prohibit certain types of traffic, such as interstate or interMTA wireless traffic, from being placed on the LEC-to-LEC network impermissibly conflicts with the FCC's requirement that interconnection and the exchange of traffic are matters to be negotiated between carriers.

2. The FCC in Its Intercarrier Compensation Rulemaking Will Be Addressing Many of the Specific Issues the Missouri Commission Attempts to Cover In Its Proposed Rule.

The FCC, in its March 3, 2005 Further Notice, announced that it is now moving forward in its development of a "unified" system to handle intercarrier compensation on all types of

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<sup>15</sup> FCC Declaratory Ruling, p. 9, fn. 57.

<sup>16</sup> FCC Declaratory Ruling, p. 11.

telecommunications traffic exchanged between carriers. As part of this effort, the FCC is specifically seeking to address transit traffic and the adequacy of billing records currently being exchanged by carriers. Given the FCC's intent to address the issues the Missouri Commission is attempting to cover with its proposed Enhanced Records Exchange Rule, the Commission should abate its rulemaking.

The FCC embarked on this reform effort because it views the existing patchwork of intercarrier compensation rules (which establish different rates for the same network functions depending on the type of traffic and service provider involved) as no longer sustainable due to increasing competition, new service offerings that blur the distinctions between local and long distance services, and new technologies (such as VoIP). The FCC sees the existing rules as creating market distortions and regulatory arbitrage opportunities that impede the development of healthy competition.

To address these problems, the FCC has conducted a comprehensive, top-to-bottom review of the existing intercarrier compensation system, at both federal and state levels. It has received and put out for comment several specific proposals made by diverse groups within the industry for reforming the existing system. Explaining its goals, the FCC stated that any new intercarrier compensation regime should:

- promote economic efficiency, and, in particular, encourage efficient use of, and investment in, telecommunications networks and the development of efficient competition;<sup>17</sup>
- preserve universal service and address universal service implications of any reduction in intercarrier payments, particularly with respect to rural carriers;<sup>18</sup>

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<sup>17</sup> Further Notice, para. 31.

<sup>18</sup> Further Notice, para 32.

- be competitively and technologically neutral, and limit arbitrage opportunities (i.e., the FCC indicated that it was “interested in not only similar rates for similar functions, but also in a regime that would apply these rates in a uniform manner for all traffic”);<sup>19</sup>
- address the implications of intercarrier compensation reform on network interconnection rules (“it is important to have clear rules regarding how and where carriers interconnect and the allocation of responsibilities for any facilities needed to connect two networks.”);<sup>20</sup> and
- contain a detailed transition plan.<sup>21</sup>

The changes that the FCC is considering are not limited to interstate traffic, but encompass intrastate traffic as well. (In order to help ensure it had appropriate jurisdiction to require changes at the state level, the FCC has directed that each reform proposal must explain the FCC’s legal authority to adopt it, particularly to the extent the plan reforms intrastate compensation mechanisms.)<sup>22</sup>

In response to concerns raised by various carriers, the FCC is now specifically addressing the issue of transit traffic. In its Further Notice, the FCC sought comment on issues such as:

- its legal authority to impose transiting obligations on carriers, and in particular on whether the statutory language regarding the duty to interconnect directly or indirectly under Section 251(a) of the Act should be read to encompass an obligation to provide transit service;<sup>23</sup>
- whether it should exercise its authority (assuming it has it) to require the provision of transit service;<sup>24</sup>

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<sup>19</sup> Further Notice, para 33.

<sup>20</sup> Further Notice, para. 34.

<sup>21</sup> Further Notice, para 36.

<sup>22</sup> Further Notice, paras. 35, 78-82.

<sup>23</sup> Further Notice, paras. 127-128.

<sup>24</sup> Id., para 129.

- the extent to which providers (including non-incumbent LECs) make transit service available in the marketplace at reasonable rates, terms and conditions;<sup>25</sup>
- the extent to which rules implementing transit service obligations are warranted;<sup>26</sup>
- if rules requiring the provision of transit services are warranted, whether transit service obligations under the Act should extend solely to incumbent LECs or to all transit service providers, including competitive LECs;<sup>27</sup>
- the need for rules governing the terms and conditions for transit service offerings;<sup>28</sup> and
- the appropriate pricing methodology, if any, for transit service.<sup>29</sup>

As part of its inquiry into transit services, the FCC recognized the important role intercarrier compensation billing records play and specifically included billing record issues in its investigation:

. . . We recognized that the ability of the originating and terminating carriers to determine the appropriate amount and direction of payments depends, in part, on the billing records generated by the transit service provider. Thus, we ask carriers to comment on whether the current rules and industry standards create billing records sufficiently detailed to permit the originating and terminating carriers to determine the appropriate compensation due.<sup>30</sup>

And the FCC specifically focused on whether there was a need for additional information to be provided and whether it should impose obligations on the transit carrier to provide specific billing information:

We seek further comment on the extent to which billing information in a transiting situation may be inadequate to determine the appropriate intercarrier

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<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id., para 130

<sup>28</sup> Id., para 131.

<sup>29</sup> Id., para 132.

<sup>30</sup> Further Notice, para. 133 (emphasis added).



compensation due, and we ask carriers to identify possible solutions to the extent that billing problems exist today. Specifically, we request comment about whether to impose an obligation on the transiting carrier to provide information necessary to bill, including both the identity of the originating carrier, and the nature of the traffic.<sup>31</sup>

Given the FCC's stated intent to reform the current system of intercompany compensation, and to specifically address transiting and billing record issues, it would be inappropriate for the Commission to go forward with its proposed Enhanced Record Exchange Rule. No evidence has been presented of any urgent need for the promulgation of such a rule at the state level. Yet if implemented, the rule will be very disruptive and impose significant costs on tandem LECs in the state. It would be truly unfortunate if carriers operating in Missouri were required by the Commission to make costly changes to their operations (e.g., billing record formats, trunking arrangements) only to have to change them again when the FCC completes its rulemaking. On balance, relatively little harm, if any, will result from the Commission abating this proceeding until the FCC completes its rulemaking.

Moreover, under some proposals actively being considered by the FCC, transit traffic would be deemed an interstate common carrier service subject to regulation by the FCC and beyond state commission jurisdiction.<sup>32</sup> If the FCC adopts such proposal, the Missouri Commission would have no authority to maintain most of the rules it is proposing in this rulemaking. Other parties, including the FCC, have proposed moving to a "bill-and-keep" regime.<sup>33</sup> Recognizing that possibility, the FCC has questioned whether the exchange of records

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<sup>31</sup> Further Notice, para. 133 (emphasis added).

<sup>32</sup> Further Notice, para. 124.

<sup>33</sup> Under a bill-and-keep approach, neither of the interconnecting networks charges the other network for terminating traffic that originates on the other carrier's network. Rather, each network recovers from its own end-users the cost of both originating traffic delivered to the other network, and terminating traffic received from the other network. Further Notice, para. 37.

would be necessary in the future: “Parties should explain whether this obligation to exchange information is necessary if we move to a bill-and-keep regime.”<sup>34</sup>

At the very least, adopting the proposed Enhanced Record Exchange Rule now -- without knowing how the FCC will resolve the various intercompany compensation, transiting or records issues it has raised -- would be premature. Any action by the FCC imposing transit service obligations on carriers or adopting rules governing the terms and conditions for transit service offerings will likely impact the following sections of the Missouri Commission’s proposed Enhanced Record Exchange Rule:

- 4 CSR 240-29.030 - General Provisions (specifies that carriers may originate, transit and terminate traffic utilizing the LEC-to-LEC network only in compliance with the Enhanced Record Exchange Rule and prohibits the use of the LEC-to-LEC network for certain purposes);
- 4 CSR 240-29.050 - Option to Establish Separate Trunk Groups for LEC-to-LEC Telecommunications Traffic (enables terminating carriers to require separate trunk groups for IXC traffic and provides that transit carriers can avoid this purported requirement if they assume financial responsibility for all transiting traffic delivered to the terminating carrier);
- 4 CSR 240-29.120 - Blocking Traffic of Originating Carriers and/or Traffic Aggregators by Transiting Carriers (establishes parameters and procedures enabling transiting carriers to block traffic of originating carriers for failure to comply with these rules);
- 4 CSR 240-29.130 - Request of Terminating Carriers for Originating Tandem Carriers to Block Traffic of Originating Carriers and/or Traffic Aggregators (establishes parameters and procedures for terminating carriers to request originating tandem carriers to block traffic of carriers failing to comply with these rules);
- 4 CSR 240-29.140 - Blocking Traffic of Transiting Carriers by Terminating Carriers (establishing parameters and procedures for blocking transiting carriers’ traffic for failure to comply with these rules).

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<sup>34</sup> Further Notice, para. 133.

In addition, any action by the FCC adopting rules to address billing record issues will likely impact the following sections of the Missouri Commission's proposed Enhanced Records Exchange Rule:

- 4 CSR 240-29.040 - Identification of Originating Carrier for Traffic Transmitted Over the LEC-to-LEC Network (establishes a means of identifying to transiting and terminating carriers all carriers who originate traffic transmitted over the LEC-to-LEC network);
- 4 CSR 240-29.080 - Use of Terminating Record Creation for LEC-to-LEC Telecommunications Traffic (establishes a system of terminating records for LEC-to-LEC traffic);
- 4 CSR 240-29.090 - Timeframe For the Exchange of Records, Invoices, and Payments for LEC-to-LEC Network Traffic (establishes minimum standards for submission of billing records, invoices and payments between carriers who originate, transit and/or terminate LEC-to-LEC traffic).

But in any event, it is apparent the FCC views rules concerning intercompany billing records as matters for resolution at the national level, not on a state-by-state basis: "Parties should address whether such solutions are best implemented by this commission, industry organizations, or some combination of the two."<sup>35</sup>

WHEREFORE, SBC Missouri respectfully requests the Commission to (1) reopen the record in this rulemaking proceeding for consideration of the FCC's recently released Declaratory Ruling and its Further Notice of Proposed Rulemaking, and (2) abate this rulemaking until the FCC has completed its investigation in the Unified Intercarrier

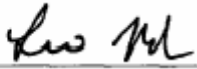
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<sup>35</sup> Further Notice, p. 61.

Compensation docket and issues rules or determinations concerning intercarrier compensation,  
transit traffic and intercompany billing records.

Respectfully submitted,


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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on March 17, 2005.

  
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