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December 20, 2001

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

FILED³

DEC 21 2001

**Missouri Public
Service Commission**

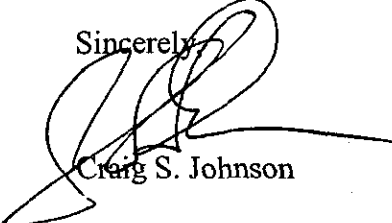
Re: Case No. TO-99-593

Dear Mr. Roberts:

Enclosed please find an original and eight (8) copies of the MITG's Motion for Ruling on Unresolved Issue and/or Motion for Rehearing. A copy of this letter and a copy of the enclosed Motion has been served upon all attorneys of record in this proceeding.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:sw

Enc.

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

FILED³
DEC 21 2001

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

Missouri Public
Service Commission

TO-99-593

**Motion for Ruling on Unresolved Issue
and/or Motion for Rehearing**

Comes now the Missouri Independent Telephone Group¹ (MITG), and hereby request rehearing of the Commission's December 13, 2001 Order Directing Implementation, and/or request a ruling on an unresolved and outstanding issue as to the effect of the approved, existing, and lawful tariffs of the small companies. This same tariff has been the basis for a Commission decision in TC-2000-325. The December 13 Order is unreasonable, unlawful, unjust and unreasonable in the following respects:

Unresolved Issue

1. For over three years the small companies have presented evidence to the Commission that their existing access tariff provides that, after FGD signaling is made available for intraLATA 1+ toll traffic, FGC signaling will no longer be provided. With the termination of the Primary Toll Carrier (PTC) Plan, and the contemporaneous provision of intraLATA toll dialing parity, the small companies have, in compliance with this tariff, made FGD signaling available for intraLATA 1+ dialed traffic to interexchange carriers (ICs) operating in small company exchanges. Under that tariff FGC signaling is now no longer to be provided. The

Commission's failure to recognize this has resulted in the former PTCs, now ICs, being allowed to continue to utilize FGC in violation of this tariff for over 2 and ½ years since termination of the PTC Plan.

This tariff has been approved by the Commission, as such has the force and effect as if it had been directly prescribed by the legislature², and has been in effect for years prior to the implementation of intraLATA toll dialing parity. The Commission has not addressed the effect of this tariff. The MITG hereby requests a ruling on this issue of law.

History

2. Continuation of the Primary Toll Carrier Plan , the implementation of intraLATA toll dialing parity, and the terminating traffic relationship that will exist between former PTCs and former SCs after termination of the PTC Plan, has been the subject of the following dockets:

TO-97-217, encaptioned "In the Matter of an Investigation Concerning the Continuation or Modification of the Primary Toll Carrier Plan when IntraLATA Presubscription is Implemented in Missouri".

TO-99-254. encaptioned "In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Toll Dialing Parity".

TO-99-593, encaptioned "In the Matter of the Investigation into Signaling Protocols, Call Records, Trunking Arrangements, and Traffic Measurement"³.

3. Dialing parity, presubscription, and equal access are provided to allow customers to choose their presubscribed interLATA or intraLATA 1+ interexchange carrier. Competitive

¹ Alma Telephone Company, Chariot Valley Telecommunications Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, moan Dial, Inc., and Northeast Missouri Rural Telephone Company.

² *Midland Realty v KCPL*, 300 US 687, 57 S.Ct. 345 (US Supreme 1937), affirming 93 SW2d 954 (Mo 1936).

³ This caption was selected by the Commission, either its Staff or Adjudication's Division, or Staff, and not by the small companies.

ICs are given equal access to the LEC networks so that they may compete on the same basis.

After implementation of dialing parity and equal IC access, the incumbent toll provider no longer receives all 1+ traffic and revenue.

The switching, interconnection, signaling protocols, and terminating traffic relationship for this equal access environment is referred to by approved access tariffs as "Feature Group D". For a monopoly single 1+ provider environment these are referred to as "Feature Group C". Since the implementation of interLATA presubscription, completed about 7 years ago, FGC has no longer been in use for interLATA toll. This docket, and its predecessor dockets, have dealt with intraLATA toll. The termination of the PTC Plan was due to the required implementation of intraLATA presubscription and equal carrier access.

4. The access tariff the small companies concurred with, Oregon Farmers Mutual Tel. Co. P.S.C. Mo. No. 6, Access Service, contains the following sections with the following language pertinent to the relationship that would exist between former PTCs and former SCs during the term of the PTC Plan, and after the implementation of intraLATA presubscription/equal access, which occurred in 1999:

A. **2nd Revised Sheet 82**, Section 6.3.3 (A)(1) is the primary basis for this Motion. That tariff contains the following language indicating that when equal access/dialing parity became available, FGC switching will not be provided:

"Feature Group C switching is provided at an end office switch unless Feature Group D end office switching is provided in the same office. When FGD switching is available, FGC switching will not be provided."

B. **Original Sheet 44.1**, Section 2.6 defined PTCs as Interexchange Customers or "ICs under the tariff, hence PTCs are ICs, and have been ICs even during the term of the PTC Plan:

"Interexchange Customer(s) (IC)

Denotes any interexchange carrier (facility based or reseller) engaged for hire, which subscribes to the services offered under this Tariff to provide intrastate telecommunications services for its own use or for the use of its End Users. For purposes of this tariff, Primary Toll Carriers are also included in this definition."

C. **1st Revised Sheet 11**, Section 1.3, indicated that, while the PTC Plan was in effect, the tariff was *subject to* the terms of the PTC Plan:

"Local Exchange Carriers (LEC's) subject to this tariff are also subject to terms and conditions of the Conceptual Framework, Missouri Intrastate, IntraLATA Primary Carrier By Toll Center Plan filed in Case No. TO-84-222 et al., as modified and approved by the Missouri Public Service Commission."⁴

5. These tariff sheets are attached hereto as Attachments A, B, and C. They were admitted into evidence at hearing in this docket, TO-99-593 as Schedule 1 to Exhibit 4, David Jones Direct, and as Schedules 1 and 2 to Exhibit 5, David Jones Rebuttal.⁵

6. In support of these tariffs, there was also testimony submitted in this docket as to the distinction between FGC and FGD access billing and payment responsibility, the historical distinction between FGD for ICs and FGC for incumbent toll providers prior to presubscription/equal access, that FGD was intended for presubscription/equal access, and that FGC should be terminated. In this testimony the small company witnesses pointed out that the effect of this approved and lawful tariff language meant that, after termination of the PTC Plan, the FGD signaling and associated records and compensation relationship must apply to former PTCs as ICs under the tariff, that it would be contrary to this tariff for the Commission to order

⁴ The MITG has consistently maintained that this tariff language meant that certain terms of the access tariff that applied to interexchange carriers (ICs) did not apply to the PTCs during the term of the PTC Plan, as the tariff was subject to the terms and conditions of the PTC Plan.

⁵ These tariffs were in evidence and the subject of the hearings in TO-97-217 and TO-99-254, as well.

otherwise, and that the matters of “signaling protocols, call records, trunking arrangements, and traffic measurement” constitute the “business relationship” at issue in TO-99-593.⁶

The small companies have consistently, throughout dockets TO-97-217, TO-97-220, TO-99-254, and TO-99-593, asserted that this tariff language required the discontinuation of FGC after termination of the PTC Plan.

6. The Commission has previously ruled that, after termination of the PTC Plan, the relationship the former PTC has to its former SC is that of an IC. In its September 26, 2000 Report and Order in TC-2000-325, et al., pages 8-11, the Commission relied upon this very same language of Section 6.3.3(A)(7) of Oregon Farmers Access Tariff Sheet 82 that is the basis for this Motion. That tariff provides that “when FGD switching is available, FGC switching will not be provided”. Based upon this tariff, the Commission decided that a former PTC was subject to this tariff, and was required to utilize FGD, not FGC.

This decision was rendered despite SWBT’s contention that the small companies, even after termination of the PTC Plan, were “forbidden to impose the use of that (FGD) signaling protocol on SWBT”. The following excerpts from that decision demonstrate:

“Under the PTC plan, all intraLATA interexchange calls from the Respondent’s exchanges were required to be carried by SWBT. When the PTC plan was eliminated, the origination of interexchange traffic in the exchanges of the Respondents was opened to competition. The customers of Respondents were required, for the first time, to choose an intraLATA interexchange carrier. SWBT was, and is free to choose to compete to provide interexchange service to Respondents’ customers, but it has chosen not to enter that competition. **If SWBT does wish to compete to provide interexchange service to Respondent’s customers, it may do so by complying with the Respondents’ lawful tariffs, as do all other carriers that wish to originate interexchange intraLATA toll traffic within the exchanges served by the Respondents....The Respondents’ tariffs require that such service be provided over FGD, not FGC.**”

⁶ TO-99-593, Ex 1, Schoonmaker direct, pp 22-23; Ex 2, Schoonmaker rebuttal, pp 2-3, 9- 11; Ex 2, Schoonmaker rebuttal, pp 11; Ex 4, Jones Direct, pp 6-9; Ex 5, Jones rebuttal, pp 3-5, 7-11; Ex 6, Jones Surrebuttal, pp 3-4, 19-21; Ex 7, Larsen rebuttal, pp 4-6, 12-14; Ex 8, Larsen surrebuttal, pp 4-5.

"The Respondents' tariffs would require SWBT to submit an Access Service Request, or Access Order and pay a modest fee. SWBT is also required to provide the Respondents with certain billing information, including a Carrier Identification Code (CIC). The Respondents' tariffs require that such service be provided over FGD, not FGC. SWBT asserts that it is unable to order access over FGD because it does not have access to the required Carrier Identification Code, and will have difficulty obtaining the use of a CIC. When using FGC, as SWBT was allowed to do under the PTC Plan, no CIC was necessary as SWBT was responsible for all IntraLATA toll calls. With the elimination of the PTC Plan that is no longer true. The Respondents must be allowed to identify who is using their networks. The only practical way that Respondents can make that identification is through the use of a CIC. **The fact that SWBT may have problems obtaining the use of a CIC does not allow it to ignore the Respondents' identification requirements.**"

"SWBT also asserts that it should be allowed to continue to use FGC because it is a LEC, not an IXC, and FGC was created as a pathway for traffic from one LEC to another. SWBT is, of course, a LEC. However, **when the PTC plan was eliminated, SWBT's relationship to the Respondents was changed. For the purpose of originating intraLATA interexchange traffic, SWBT is now essentially just another intraLATA IXC, which may, if its 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.**"

"...the Respondents were within their rights when they acted to prevent SWBT from continuing to originate MaxiMizer 800 traffic in their exchanges using FGC."

7. In TT-2000-268 Alltel was required to implement FGD instead of continuing FGC after intraLATA presubscription, based upon the same or similar tariff provisions.

8. This docket is concerned with terminating traffic. However the tariff makes no distinction between originating and terminating traffic. The plain language of the tariff requires the termination of FGC when FGD becomes available for all ICs, whether they are originating or terminating traffic. There is no basis that the MITG is aware of for the proposition that the precedent established in TC-2000-325 is not equally applicable to terminating traffic. The tariff was the basis for a ruling that FGD was required as of September 26, 2000.

9. The Commission has yet to make any decision as to the applicability of this tariff to terminating traffic. The Commission has failed to make such a decision since termination of the PTC Plan in 1999, over two years ago. The same tariff is in effect now, and has been in effect for the entire period since termination of the PTC Plan. The MITG is requesting a ruling from the Commission as to the effect of this tariff.

10. In its first Order eliminating the PTC Plan, dated March 12, 1998 in TO-97-217, the Commission, at pages 20-22 *discussed the FGC/FGD issue but deferred a decision* pending technical conference deliberations.

11. After remand of its decision in TO-97-217, TO-99-254 was initiated to investigate the PTC Plan and intraLATA dialing parity. In its June 10, 1999 Report and Order in TO-99-254 eliminating the PTC Plan, the Commission recognized the option of the PTC Plan parties to cancel the PTC Plan after implementation of presubscription, and again eliminated the PTC Plan coincident with presubscription (presubscription, and termination of the PTC Plan, thereafter occurred in small company exchanges between July and October of 1999).

The June 10, 1999 Report and Order *again addressed the issues of FGC versus FGD* signaling protocol, trunking arrangements, actual terminating usage compensation, and billing issues. The Order recognized the small company issue that their tariffs required FGD for terminating traffic:

“The parties submitted considerable testimony regarding the capabilities of Feature Group “C” (FGD) and Feature Group “D” (FGD). FGC signaling protocol is, and has been for a long time, used across the country by LECs. FGD was introduced at the beginning of interLATA competition, and is used by IXC’s. A small number of the SCs argue strenuously that all calls terminated to their customer, whether from IXC’s or LECs, should, or must, be terminated using FGD”.

Thereafter the Order mischaracterized the FGC/FGD issue and position of the small companies as “desiring more information” in order to bill originating carriers, as opposed to a correct statement that utilizing FGD, as the existing tariffs required, would make the IC (former PTC) responsible for the trunk responsible for traffic terminating on the trunk., as other ICs currently utilizing FGD were responsible.

The Commission again failed to decide these terminating compensation issues, and established TO-99-593 to “investigate signaling protocols, call records, trunking arrangements and traffic measurement”.

12. In January of 2001, a hearing in TO-99-593 was held. The tariff issue was directly presented to the Commission. On May 17, 2001 the Commission entered an Order Directing Additional Notice. On July 30, 2001 the Commission entered an Order Directing Filing. Lastly, on December 13, 2001, the Commission entered its Order Directing Implementation.

13. The December 13 Order *fails to address or resolve the tariff issue*. Instead it directs the Parties to implement OBF Issue 2056 as a reasonable step toward resolving the issues related to call records and traffic measurement.

14. In its December 13 Order Directing Implementation, the Commission appears to criticize the small company’s request to “change the business relationship”, as opposed to addressing signaling protocols, call records, trunking arrangements, and traffic measurement.

The Order seems to suggest that the “business relationship” is outside the scope of TO-99-593.

The Order states:

“These groups proposed that the Commission change the business relationship that currently exists among telecommunications companies so that the former primary toll carriers (PTCs) are responsible for terminating traffic based on terminating recordings for all terminating traffic based on terminating recordings....”

15. This language exalts the caption the Commission selected for TO-99-593 over the substance of the issues for which TO-99-593 was created. The tariff issue was presented prior to the creation of TO-99-593. The tariff issue was again presented in the hearing in TO-99-593. The small companies did not select the caption of this case as being "investigation into signaling protocols, call records, trunking arrangements, and traffic measurement". The small companies throughout the history of considering termination of the PTC Plan have insisted its existing tariffs control the business relationship that would apply to all ICs, former PTCs and other ICs.

16. The Commission's prior Orders in TO-97-219 and TO-99-254 addressed, but did not decide, the issues of the effect of the tariff, signaling protocols, terminating traffic recording, terminating traffic compensation, terminating traffic billing records, IC trunking, PTC Plan trunking, what terminating traffic ICs were responsible for in a FGD environment, and what traffic PTCs were responsible for during the PTC Plan. These issues comprise the terminating traffic "business relationship" between the former SCs and former PTCs.

15. The Commission's May 17, 201 Order Directing Additional Notice in TO-99-593 did contemplate that the "business relationship" was included in the scope of this proceeding:

"Accordingly, the Commission is providing additional notice to all telecommunications companies in the state of Missouri., and allowing ad additional intervention period. The additional issues raised are:

Should the Commission change the business relationship that currently exists among telecommunications companies so that the former primary toll carriers (PTCs) are responsible for all terminating traffic based on terminating recordings (with the exception of interstate feature group A, interstate intraLATA, IXC, MCA, and intimate wireless transited by another LEC to the terminating LEC)?"

16. This issue has been in litigation before the Commission for over three years. The PTC Plan was terminated over two years ago. Over two years ago the small companies "made

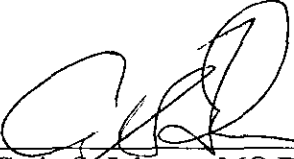
FGD switching available". Under the express language of the tariffs, it has been over two years since the small companies were entitled to no longer provide FGC switching. It is unreasonable, unlawful, and unjust for the Commission to continue to fail to rule on the issue of the effect of the tariff existing at the time of PTC Plan termination.

17. Continuing to fail to resolve this issue continues to harm the small companies, and consequently their customers. Continuing to allow former PTCs to utilize the FGC network provides them the basis to deliver traffic to the small companies without being responsible to compensate for all traffic delivered, as FGD ICs are required to do. This causes loss of recoverable minutes of compensation, which in the future will prevent access rate reductions, as there are fewer compensated minutes with which to recover the costs of access. This in turn creates disincentive for ICs to actively participate in rural markets, thus reducing carrier choices for rural customers.

18. There is no just reason for further delay with respect to resolution of this tariff issue.

WHEREFORE, on the basis of the foregoing the MITG respectfully requests that rehearing be granted, and that the Commission address the effect of the existing tariff, and enter an Order directing that small companies subject to this tariff are entitled to no longer make FGC available to any IC.

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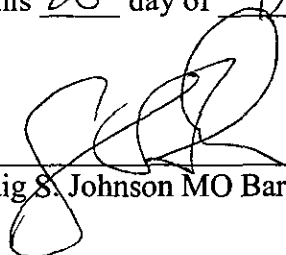
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 20 day of December, 2001, to all attorneys of record in this proceeding.


Craig S. Johnson MO Bar No. 28179