

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

In the Matter of the Request of Southwestern	)	
Bell Telephone, L.P., d/b/a AT&T Missouri, for	)	Case No. TE-2006-0053
A Waiver of Certain Requirements of 4 CSR	)	
29.040(4).	)	

**AT&T MISSOURI'S OPPOSITION TO STCG'S  
MOTION TO STRIKE**

The STCG,<sup>1</sup> through a motion to strike, seeks to prevent the Commission from seeing critical evidence that establishes that the Commission, in promulgating Rule 29.040(4), could not have intended to impose a new requirement on carriers to include Calling Party Number ("CPN") in the Category 11-01-XX billing record for wireless-originated calls. The Commission would not have imposed such a requirement without first gathering and considering evidence on such things as:

- Whether current industry standards require tandem switches to record CPN for Category 11 billing records for wireless-originated calls;
- Whether CPN is currently being provided in Category 11 billing records by carriers in Missouri and by carriers in other parts of the country (as opposed to being provided just in the signaling information transmitted with the call);
- Whether carriers in Missouri are technically capable of providing CPN in this type of billing record, and if not, what cost would be imposed on carriers by a requirement to develop this capability; and
- Whether inclusion of CPN in Category 11 billing records is necessary for terminating carriers to be able to bill wireless carriers for the completion of wireless-originated calls.

Clearly Rules 29.040(1) and (2) require carriers to deliver CPN in the signaling with each call, including on wireless calls, to downstream carriers. No party objected to this requirement and AT&T Missouri is in compliance with it.

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<sup>1</sup> The Small Telephone Company Group will be referred to in this pleading as the "STCG." The Missouri Independent Telephone Company Group ("MITG") on April 4, 2006, filed a "Joinder/Concurrence in Motion to Strike." But as the MITG did nothing more than indicate its bare concurrence with and joinder in STCG's Motion, AT&T Missouri's Opposition is directed to the claims made by STCG in its Motion. This Opposition, however, is intended to apply equally to the MITG.

But the fact that the Commission did not gather and consider any evidence in the course of the rulemaking regarding an additional requirement for tandem carriers to provide CPN in the Category 11 billing records for wireless calls demonstrates that it had no intent to impose such a new requirement. It is clear that the parties to the rulemaking proceeding would have submitted the type of evidence outlined above had the rule been written to impose such a requirement. The STCG's attempt to now prevent the Commission from seeing some of this evidence, which is clearly relevant to the Commission's determination as to the scope of the existing rule, is improper and should be denied.

1. The Evidentiary Standard. The test for relevancy is whether an offered fact tends to prove or disprove a fact in issue or corroborates other relevant evidence.<sup>2</sup> The Commission generally applies this standard and allows testimony to remain in the record unless "wholly irrelevant."<sup>3</sup>

2. Bifurcation and the Issue for this Phase of the Proceeding. The issue identified for determination in this phase of the proceeding is:

Does Commission rule 4 CSR 240-29.040(4) require the originating tandem carrier to include the calling party number ("CPN") as part of the Category 11-01-XX record that it provides for wireless-originated calls that transit the LEC-to-LEC network and terminate to other LECs?

In an attempt to support its motion to strike, STCG claims the parties that proposed the bifurcated schedule (i.e., STCG, MITG and Staff) did so to "simplify" the procedure by separating the "legal issues" of whether rule 29.040(4) requires CPN in the billing record from "the more subjective issue" of whether AT&T Missouri<sup>4</sup> should be granted a waiver of that provision.<sup>5</sup>

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<sup>2</sup> Oldaker v. Peters, 817 S.W.2d 245, 250 (Mo. banc 1991).

<sup>3</sup> In the Matter of Missouri Gas Energies Tariff Sheets Designed to Increase Rates for Gas Services in the Company's Service Area, Case No. GR-96-285, 2001 MoPSC LEXIS 742 at \*20; In the Matter of the Joint Application of Missouri Gas Company and UtiliCorp United for an Order Authorizing the Sale, Transfer and Assignment of Certain Rights, Properties and Assets, Case No. GN-94-252, 1994 MoPSC LEXIS 30 at \*3.

<sup>4</sup> Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri will be referred to in this pleading as "AT&T Missouri." It previously conducted business as "SBC Missouri."

<sup>5</sup> STCG Motion to Strike, p. 1.

AT&T Missouri opposed the bifurcation of this proceeding. AT&T Missouri explained that there is considerable overlap between these two issues and in the evidence that will be required for the Commission to fully understand and decide them. Resolution of both issues will necessarily involve a detailed inquiry into existing industry standards, the basis for the standards, how the standards have been implemented by manufactures and applied by carriers, the current practice in Missouri, and the significant financial and practical impact of requiring CPN to be included in intercompany wireless billing records. The Commission should not permit MITG and STCG to use the bifurcation of this proceeding to preclude AT&T Missouri from presenting its evidence to the Commission in these areas.

The Commission should also note that Staff, which supported bifurcation, did not view bifurcation as precluding the presentation of evidence concerning the impact of interpreting the rule to require the inclusion of CPN in billing records, as Staff has presented such evidence in its own testimony -- which STCG now also seeks to keep the Commission from seeing.

3. Messrs. Constable, Read and Voight's Testimony are Relevant. In its motion to strike, STCG claims that both Staff and AT&T Missouri have included "irrelevant material beyond the scope of the stated issue" in their direct testimony, "primarily address[ing] the issue of the expense and difficulty AT&T Missouri would incur if it were required to provide CPN in the billing records for wireless calls."<sup>6</sup> While acknowledging (but not conceding) that this information "may be relevant" to the request for a waiver of the rule, STCG claims it is not relevant to the issue of "whether the rule requires CPN in their records" and that it is "extraneous information to interpret the language of the rule."<sup>7</sup>

STCG is mistaken. Here, Messrs. Constable, Read and Voight have offered evidence that tends to prove the Commission, in promulgating Rule 29.040(4), could not have intended to impose

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<sup>6</sup> STCG Motion to Strike, p. 2.

<sup>7</sup> Id.

a new requirement on carriers to include Calling Party Number (“CPN”) in the Category 11-01-XX billing record for wireless-originated calls. The Commission does not make decisions in a vacuum. It does not promulgate rules imposing new requirements on an industry it regulates without gathering and considering evidence on the ramifications of such a decision. Nor do parties to Commission rulemaking proceedings hold back relevant evidence when a rule which could have significant economic and operational impact is being considered. The parties did not present such evidence in the rulemaking proceeding precisely because the rule as proposed did not indicate any intent to impose a requirement that CPN be provided in the billing record. The evidence STCG seeks to exclude from Messrs. Constable, Read and Voight’s testimony is the type of evidence the Commission would have considered if it intended Rule 29.040(4) to impose such a new requirement:

- Whether carriers in Missouri were technically capable of providing CPN in Category 11 billing records for wireless-originated calls, and at what cost;
- And whether inclusion of CPN in the billing record was necessary for terminating carriers to be able to bill wireless carriers for the completion of wireless-originated calls.

The fact that the Commission did not gather and consider such evidence in the course of the rulemaking tends to prove that it had no intent to impose such a new requirement. The parties would have presented, and the Commission would have considered, such evidence before a rule with such far reaching changes was adopted.

(a) Jason Constable’s Testimony. STCG seeks to strike portions of Mr. Constable’s testimony in two areas. The first is that interpreting Rule 29.040(4) to require CPN in the Category 11 Record for wireless-originated traffic would impose a requirement beyond the technical capability of AT&T Missouri’s network. Specifically, Mr. Constable testified that AT&T Missouri’s Lucent tandem switches do not have the technical capability to capture CPN in the AMA switch records for wireless calls (which would make CPN unavailable for inclusion in Category 11

billing records produced by downstream processing systems). He also provided documentation from Lucent (the manufacturer of the switch) that such a function would require Lucent to develop a new switch feature at an estimated cost of \$900K-\$1.3M. In addition, Mr. Constable testified that very costly and burdensome changes would need to be made to AT&T Missouri's internal information processing systems that include CPN in Category 11 billing records for wireless-originated calls even after Lucent developed such a feature in its switches.

This evidence is relevant because it is the type of information that the Commission would have gathered and considered had it intended to impose a new requirement on carriers to include CPN in the Category 11 billing record on wireless-originated calls. The fact that this evidence was not presented by the parties or considered by the Commission tends to prove the Commission's rule did not impose such a new requirement.

Moreover, this evidence corroborates other relevant evidence (not subject to a motion to strike) provided by Mr. Constable and Mr. Read concerning their interpretation of applicable industry standards for the generation of AMA recordings by telephone company switches<sup>8</sup> and the creation of Category 11 billing records.<sup>9</sup> If capturing CPN for wireless-originated calls in AMA switch recordings and Category 11 records was an industry practice or requirement, Lucent would have already made this capability available. The fact that it did not and Lucent's response that such a new switch function would have to be developed at a cost ranging from \$900K to \$1.3M corroborates the absence of such a requirement in industry standards.

Second, STCG seeks to exclude Mr. Constable's testimony that requiring CPN as part of the Category 11 billing record for wireless-originated calls would provide little, if any benefit for AT&T Missouri or carriers that terminate wireless traffic. Specifically, Mr. Constable testified that

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<sup>8</sup> Constable Direct, pp. 7-10, Mr. Constable provided evidence that Telcordia Technology's Generic Requirements For Wireless Service Provider AMA (Telcordia document GR-1504) does not require CPN to be included in the AMA switch recordings for wireless-originated calls.

<sup>9</sup> Read Direct, pp. 13-21, (Mr. Read testified that the OBF EMI standards do not require CPN to be included in Category 11 EMI records for this type of traffic.)

AT&T Missouri already provides CPN to terminating carriers in the signaling it delivers with each call.<sup>10</sup> He also testified such a CPN requirement would be meaningless in any event because CPN is an unreliable factor in determining the proper rate to bill or in determining which carrier to bill.<sup>11</sup>

This evidence is relevant because it is the type of information that the Commission would have gathered and considered had it intended to impose a new requirement on carriers to include CPN in the Category 11 billing record on wireless-originated calls. The fact that it was not presented by the parties and considered by the Commission tends to prove the Commission's lack of intent to impose such a new requirement.

(b) Chris Read's Testimony. STCG seeks to strike five areas of Mr. Read's testimony. First, STCG seeks to strike Mr. Read's testimony concerning the technical inability of AT&T Missouri's Lucent tandems to capture CPN in the wireless AMA recordings; the approximate \$1 million plus cost from Lucent Technologies to develop this technical capability in its switches; the technical inability of AT&T Missouri's internal data processing systems to create Category 11-01-XX billing records with CPN on wireless-originated calls even if its Lucent switches could capture CPN in AMA recordings; and the significant changes AT&T Missouri would have to make to its usage processing and carrier access billing systems to include CPN for wireless-originated calls in its Category 11 records.

As explained above with respect to similar evidence STCG seeks to strike from Mr. Constable's testimony, this evidence is relevant because it is the type of information that the parties would have presented and the Commission would have gathered and considered had it intended to impose a new requirement on carriers to include CPN in the Category 11 billing record on wireless-

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<sup>10</sup> Constable Direct, pp. 2, 13-14. (Mr. Constable also testified that during the rulemaking AT&T Missouri only opposed the requirement to deliver CPN with each call -- contained in Rules 29.040(1) and (2) -- to the extent those rules could be construed to require the delivery of CPN in situations when it was not provided to AT&T Missouri by the originating carrier (in which case it would not have such information to deliver to downstream carriers).)

<sup>11</sup> Constable Direct, p. 15.

originated calls. The fact that it was not tends to prove the Commission's lack of intent to impose such a new requirement.

Second, STCG seeks to strike Mr. Read's testimony that interpreting rule 29.040(4) to require CPN on Category 11 billing records would produce little, if any, benefit to AT&T Missouri or to the carriers that use AT&T Missouri's Category 11 billing records for intercarrier compensation purposes. Like Mr. Constable, Mr. Read testified that CPN is already being provided to terminating carriers in signaling transmitted with the call and that CPN is unreliable for use in billing wireless calls. Again, this is the type of information that would have been gathered and considered by the Commission if it intended to impose a new requirement to include CPN in the wireless Category 11 billing record. The fact that it was not tends to prove the Commission's lack of intent to impose such requirement.

Third, STCG also moves to strike as speculative and irrelevant, Mr. Read's testimony that CLECs have participated in OBF discussions regarding identification of wireless-originating traffic and that not one of them has suggested CPN as part of the solution, from which he concluded that they too realized there is no benefit from making such a change and that any change to the current record being made for this traffic would force costs on CLECs and likely lead to disputes. This information is not speculative, as Mr. Read was simply relating his personal observations from his involvement at the OBF and his opinions based on his observations. This information is also relevant, as it is the type of information that would have been gathered and considered by the Commission if it intended to impose a new requirement to include CPN in the wireless Category 11 billing record. The fact that this evidence was not presented and considered by the Commission in the rulemaking tends to prove that the proposed rule contained no such requirement.

Fourth, STCG seeks to strike as speculative, Mr. Read's testimony that had the proposed rule required the provision of CPN in billing records associated with wireless-originated traffic, AT&T Missouri would have provided specific comments during the rulemaking opposing such

proposal, explaining that industry standards did not support such a requirement and that it would be expensive and time consuming to develop the capability, with little or no benefit. This evidence is neither irrelevant nor speculative. As Mr. Read explained, had the rule proposed to require CPN in the Category 11 billing records, it should be expected that AT&T Missouri and other companies would have explained that such a requirement was not currently feasible, expensive, and time consuming to develop.

And fifth, STCG seeks to strike as irrelevant Mr. Read's testimony that no party's written comments during the rulemaking indicated an understanding that the rule required Category 11 billing records for wireless calls to include CPN. To the contrary, such evidence simply reflects other party's written comments on the disputed portion of the rule and tends to prove that other parties also understood the proposed rule not to require the inclusion of CPN in the Category 11 billing records for wireless-originated traffic.

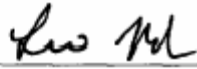
(c) Bill Voight's Testimony. STCG seeks to strike evidence presented by Staff witness Bill Voight's testimony of when Staff learned of the vendor cost to equip AT&T Missouri's Lucent switches with the functionality to capture CPN for wireless calls traversing the LEC-to-LEC network and that Staff is unwilling to recommend AT&T Missouri be required to make the investment. STCG also seeks to exclude Mr. Voight's testimony that the consequences of varying from the Telcordia standards were not fully understood until October, 2005. As is the case with much of the evidence STCG seeks to exclude from Messrs. Constable and Read's testimony, Mr. Voight's testimony confirms that such vital information was not conveyed to the Commission, which tends to prove that the proposed rule contained no such requirement.



WHEREFORE, AT&T Missouri respectfully requests the Commission to deny STCG's Motion to Strike.

Respectfully submitted,

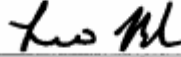
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## **CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on April 13, 2006.



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