

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

In the Matter of the Commercial Mobile Radio Services)	
(CMRS) Interconnection Agreement by and between)	
365 Wireless, LLC and Embarras Missouri, Inc. d/b/a)	File No. TK-2013-0417
CenturyLink Pursuant to Sections 251 and 252 of the)	
Telecommunications Act of 1996)	

**APPLICATION TO INTERVENE, NOTICE OF OPPOSITION,
AND REQUEST FOR HEARING**

COMES NOW the Small Telephone Company Group (STCG)¹ pursuant to Commission Rule 4 CSR 240-2.075 and for its Application to Intervene, states to the Missouri Public Service Commission (Commission) as follows:

1. For the purposes of this case, the STCG consists of the companies listed in Attachment A. The STCG member companies currently provide telecommunications services to members of the public located in those areas certificated to them by the Missouri Public Service Commission ("Commission"). The STCG member companies are "telecommunications companies" and "public utilities" as those terms are defined by §386.020 RSMo 2000 and are therefore subject to the jurisdiction, regulation and control of the Commission as provided by law. The STCG member companies are also "small incumbent local exchange carriers" as defined by §386.020(31) RSMo.

2. Correspondence, communications, orders and decisions in this matter should be addressed to:

¹ See Attachment A.

W.R. England, III
Brian T. McCartney
Brydon, Swearengen, & England P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
573/635-7166 (tel.)
573/634-7431 (fax)
trip@brydonlaw.com
bmccartney@brydonlaw.com

3. This case involves an application for approval of an interconnection agreement ("the Proposed Agreement") between Embarq Missouri, Inc. d/b/a CenturyLink ("CenturyLink") and 365 Wireless, LLC ("365").

4. The STCG has concerns about the transit provisions in the Proposed Agreement that would appear to allow 365 to "transit" traffic to the STCG companies without compensation or an approved agreement with the STCG companies for such traffic. The STCG companies had recent experience with an access rate avoidance scheme developed by Halo Wireless, Inc. ("Halo") to exploit this transiting arrangement. As a result of the Halo scheme, the STCG companies lost significant revenues and incurred substantial legal expenses. In fact, Halo's scheme is the subject of a pending Staff complaint case before the Commission.² Therefore, the STCG companies seek assurances, restrictions, and safeguards on transiting traffic to third parties before the Proposed Agreement is approved.

² Case No. TC-2013-0194, *PSC Staff, Complainant, v. Halo Wireless, Inc., and Transcom Enhanced Services, Inc.*, filed Oct. 16, 2012 (seeking referral to both the Missouri Attorney General and the U.S. Attorney "for prosecution of Halo, Transcom and the principals thereof for theft by deceit and for acting in concert to criminally defraud the recipient carriers of the millions of dollars of access charges that Halo and Transcom knew that they owed, did not pay, and attempted to conceal by the alteration of call records, in violation of state and federal law").

5. The STCG requests a hearing to address the Proposed Agreement and specifically those provisions that purport to allow 365 to deliver “transit” traffic to third party local exchange carriers (LECs) such as the STCG companies.

6. The federal Telecommunications Act of 1996 (“the Act”) establishes two grounds for the Commission to reject a negotiated agreement:

- (i) The agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) The implementation of such an agreement is not consistent with the public interest, convenience, or necessity.

47 U.S.C. § 252(e)(2)(A).

7. In this case, both grounds for rejection are present. The Proposed Agreement discriminates “against a telecommunications carrier not a party to the agreement” and is “contrary to the public interest” by allowing 365 to deliver wireline interexchange and interMTA wireless traffic to third-party LECs such as the STCG member companies via the “transit” arrangement. Indeed, a similar provision in Halo’s interconnection agreement with AT&T was the vehicle Halo used to deliver substantial minutes of traffic to the STCG companies without ever paying the Commission-approved rates.³ This places an increased burden not only on the STCG companies but also those companies and customers that do pay their bills and play by the rules. History has also shown that the transit provisions can consume the resources of the Commission and the Office of Public Counsel.

³ See *Halo Wireless, Inc. v. Craw-Kan Telephone Company*, Case No. TC-2012-0331, *Report and Order*, issued August 1, 2012.

8. On March 11, 2013, the Commission granted the STCG's application to intervene in opposition of a similar agreement between 365 Wireless and AT&T in File No. IK-2013-0394.

9. The STCG member companies each have an interest which is different from that of the general public and which may be adversely affected by a final order arising from this case. Until such time as sufficient assurances, limitations, and safeguards on the Proposed Agreement's transiting provisions are in place, the STCG opposes approval of the Proposed Agreement because it is discriminatory to non-party carriers and inconsistent with the public interest.

10. The STCG's decades of expertise and perspective on the provision of telecommunications services in Missouri will aid the Commission in resolving the issues related to this proceeding. Consequently, the STCG's intervention and participation in this case will serve the public interest.

WHEREFORE, the STCG respectfully requests that the Commission issue an Order granting this application to intervene, setting this matter for hearing, and granting such other relief as is reasonable in the circumstances.

Respectfully submitted,

/s/ Brian T. McCartney

W.R. England, III Mo. Bar #23975
Brian T. McCartney Mo. Bar #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, Missouri 65102-0456
573/635-7166 (tel.)
573/634-7431 (fax)
trip@brydonlaw.com
bmccartney@brydonlaw.com

Attorneys for the STCG

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was served electronically on this 20th day of March, 2013, to:

Lewis Mills
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov

General Counsel Office
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
staffcounselservice@psc.mo.gov

Tony Cash
General Counsel
365 Wireless, LLC
1500 Trotter's Cove
Atlanta, GA 30338
tony@365wireless.net

Becky Kilpatrick
CenturyLink
319 Madison Street
Jefferson City, MO 65101
Becky.kilpatrick@centurylink.com

Craig Johnson
Johnson & Sporleder, LLP
304 E. High St., Suite 200
Jefferson City, MO 65102
cj@cjaslaw.com

Cully Dale
Missouri Public Service Commission
P.O. Box 360
200 Madison St., Suite 800
Jefferson City, MO 65102
cully.dale@psc.mo.gov

/s/ Brian T. McCartney

ATTACHMENT A

BPS Telephone Company
Citizens Telephone Company of Higginsville, Mo.
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corporation
Green Hills Telephone Corporation
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
K.L.M. Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
Mark Twain Rural Telephone Company
McDonald County Telephone Company
Miller Telephone Company
New Florence Telephone Company
New London Telephone Company
Northeast Missouri Rural Telephone Company
Orchard Farm Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Peace Valley Telephone Company, Inc.
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.
Stoutland Telephone Company