

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

In the Matter of the Application of Southwestern
Bell Telephone Company, d/b/a AT&T Missouri, for
Approval of an Interconnection Agreement under the
Telecommunications Act of 1996 with 365 Wireless, LLC

**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.

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3. This case involves an application for approval of an interconnection agreement (“the Proposed Agreement”) between Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T”) 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 potentially present. The Proposed Agreement has the clear potential to discriminate “against a telecommunications carrier not a party to the agreement” and be “contrary to the public interest” by appearing to allow 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. As was revealed by Halo's scheme, the Proposed Agreement has the potential to discriminate against the STCG companies in that it could allow 365 to send wireline-originated interexchange traffic to STCG company exchanges in violation of the STCG's switched access tariffs and in the absence of the appropriate billing records or compensation for the use of the STCG's facilities and services as required by Missouri's Enhanced Record Exchange (ERE) Rule.

9. Halo also employed the transit arrangement to deliver significant amounts of interMTA wireless traffic,⁴ and the STCG has concerns about 365's ability to use of the "transit" arrangement to deliver such wireless traffic. The STCG member companies have established agreements with all national wireless carriers operating in the state of Missouri, including AT&T Mobility, Sprint PCS, T-Mobile, US Cellular, and Verizon Wireless. These agreements have been approved by and are on file with the Commission. The Proposed Agreement has the potential to allow 365 to send wireless traffic to the STCG companies over the transit arrangement without entering into an approved agreement to establish the rates, terms, and conditions for such interconnection. To date, 365 has not requested an agreement with the STCG companies.

10. The STCG seeks intervention for the reasons discussed above, and its 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

⁴ See *e.g. Id.* at pp. 27, 69.

Proposed Agreement because it is or has the potential to be discriminatory to non-party carriers and inconsistent with the public interest.

11. The STCG's decades of expertise in 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 in the above-captioned proceeding, setting this matter for hearing, and granting such other relief as is reasonable in the circumstances.

Respectfully submitted,

/s/ Brian T. McCartney

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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 1st day of March, 2013, to:

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/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