LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION
312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456

AREA CODE 573
TELEPHONE 635-7166
FACSIMILE 635-0427

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
SARAH J. MAXWELL
CHARLES E. SMARR
MARK G. ANDERSON
DEAN L. COOPER
CHRISTINE J. EGBARTS
TIMOTHY T. STEWART
GREGORY C. MITCHELL

August 22, 1997

Mr. Cecil I. Wright
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Re: Case No. TW-97-333

Dear Mr. Wright:

Enclosed for filing in the above-referenced matter, please find an original and fourteen copies of the Reply Brief of the Small Telephone Company Group.

Please see that this filing is brought to the attention of the appropriate Commission personnel. Copies of the foregoing document are being provided this date to parties of record.

If there are any questions regarding this filing, please direct them to the undersigned. I thank you in advance for your cooperation in this matter.

Sincerely,

W.R. England, III

WRE/da
Enclosures
cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation into the Provision of Community Optional Calling Service in the State of Missouri.	)))	CASE NO. TW-97-333

REPLY BRIEF OF THE SMALL TELEPHONE COMPANY GROUP

Introduction

Calling scopes for rural customers have not changed to reflect advances in technology and the evolving makeup of rural communities. As a response to this problem, Community Optional Service ("COS") was developed after many years of effort by telephone customers, the Commission, and the industry. Today, COS is part of an integrated, three-part solution to the problems associated with rural calling scopes.[1]

The STCG stands by the specific positions taken in its Initial Brief; nevertheless, the STCG will address five issues in this Reply Brief: (1) classification of COS as toll or local, (2) alternatives to COS for rural customers, (3) the characterization of COS as a subsidized service, (4) true-ups, and (5) Internet usage. The fact that this Reply Brief may not address all of the arguments raised in the Initial Briefs of other parties does not indicate agreement with those arguments, only that the STCG believes its initial brief adequately addressed those arguments.

[1] The three-part solution being the Metropolitan Calling Area ("MCA"), the Outstate Calling Area ("OCA"), and the COS plans.

I. Should COS be classified as a Local or a Toll service?

Changing the classification of COS from toll to local would create numerous administrative and technical problems, and the Commission should not be led to believe that this would be an easy process. (Schoonmaker Surrebuttal, Ex. 8, p. 7) Some parties, however, have suggested that this would be a simple change. For example, the initial brief of Southwestern Bell Telephone Company ("SWBT") argues that COS should be classified as toll and states that "[t]here should not be any technical restraints preventing this classification, because COS has already been provided on a local or other non-toll basis from May 1990 until May 1993." (SWBT Initial Brief, p. 29) This statement is misleading, and it fails to address the serious difficulties that would arise if the classification of COS is changed from toll to local.

Although COS was once described as "other than toll", it has never been billed as local service on an access minute basis as is being proposed by SWBT. (Tr. 355) When COS was treated as non-toll, intercompany compensation occurred on a revenue sharing basis rather than on an access minute basis. (Id.) In TO-92-306, the Commission rejected continuation of the revenue sharing plan and determined that COS should be tariffed as toll by the Primary Toll Carriers ("PTCs") and intercompany compensation should be based upon access charges. Expanded Calling Scopes, 2 Mo. P.S.C. 3d 1, 31. The Commission consciously found that the use of access charges would be a more reasonable solution in terms of tariffing and intercompany compensation than the prior revenue sharing plan. Id.

Today, COS is classified as a toll service, and intercompany compensation continues to be handled like toll. (Tr. 786) Any proposal to change responsibility for the payment of compensation from the PTC to the originating Local Exchange Company ("LEC") will require significant changes

in administrative and carrier billing systems. (Schoonmaker Surrebuttal, Ex. 8, p. 3) Thus, the following "technical restraints" and other problems would indeed make the change from toll to local a complicated one.

A. COS Dialing and Recording of Traffic

One difficulty with changing the classification of COS from toll to local involves how the call would be dialed. Local calls are normally dialed on a seven-digit basis, but they are usually not recorded for compensation or billing purposes. (Id.) Decisions would have to be made as to whether these local calls should continue to be billed on a 1 plus 10 digit basis, as most COS providers are doing now, or on a different basis. (Id.) If the basis is on a seven-digit basis, such as that currently used by SWBT, technical specifications of switches and recording systems would have to be verified to see how and whether the calls dialed on a seven-digit basis could be recorded. (Id.)

Another threshold problem with classifying COS as local will be measuring the traffic of such calls. If COS is classified as a local service, the LECs would experience major difficulties in measuring traffic. (Tr. 354) Although the LECs have effective systems in place to measure specific calls at the originating end, they do not have a reliable means to measure specific calls at the terminating end. (Id.) The switching technology employed in the current intraLATA network with Feature Group C signaling does not provide the capability to record the individual calls at the terminating end. (Schoonmaker Surrebuttal, Ex. 8, p. 3) Furthermore, even if the call could be recorded at that end, the terminating company would be unable to identify whether the call was a call from a COS subscriber or an intraLATA toll call. (Id.) Thus, the call would have to be recorded at the originating

end of the call. (Id.)

One possible solution to this problem would be to have the originating telephone company record this data, extract it from their billing systems when they get to the point of billing, and then pass those records on to the terminating telephone company. (Tr. 354) The terminating telephone company could then use these records to render a bill to the originating company for the amount of service that had been used. (Id.) However, such a complicated procedure has never been attempted at this level. (Id.)

B. Billing

Assuming that the call was successfully recorded at the originating end, the call record would enter the call billing processing systems looking the same as an intraLATA toll call from another non-COS subscriber calling the same target exchange. (Schoonmaker Surrebuttal, Ex. 8, p. 4) Thus, the billing system would have to identify and segregate the COS calls from the intraLATA toll calls. (Id.) This would probably take place at the same time the customer bill was prepared, although some companies' billing systems might do this earlier. (Id.) In most systems, the identifying element in the billing record that identifies the customer as a COS customer for a specific COS route (identification would be made by originating NXX code and the terminating NXX codes) is contained in the customer master record. (Id.) As the customer's bill is processed the system would check for this COS identifier. (Id.) If it was found, the system would then screen all the toll calls by originating and terminating NXX codes and remove from toll billing the identified COS calls. (Id.) These calls would then have to be summarized in some type of report. (Id.) Clearly, such modifications and additions

to each LEC's billing systems would involve additional administrative and technical challenges.

C. Intercompany Compensation

Intercompany compensation would also be a serious problem if COS is classified as local. (Id.) The process described thus far, which is similar to today's process, assures that the COS calls are removed from toll billing so that the end user customer's bill is rendered correctly. (Id.) However, it does not deal with the access billing process, the compensation mechanism that would be changed under the proposal made by SWBT to change the call to a local call with compensation paid to the terminating carrier. (Id.)

Telephone company access billing systems typically create a separate record of a toll recorded call shortly after the call record is created. (Id. at p. 5) Although this record duplicates much of the information in the toll record, it is sent through a separate processing system, the Carrier Access Billing System ("CABS"), in order to render the access bill. (Id.) Because the PTC currently pays access on both intraLATA toll and COS calls, these calls are handled the same way. (Id.) However, under a terminating compensation arrangement, COS and intraLATA toll calls would have to be handled differently since the access associated with the intraLATA toll call would continue to be billed to the PTC, but the COS call would not. (Id.) This would create a problem with the CABS, because normally when a call record is made for that system the billing system has no way to identify which type of call it is dealing with. (Id.)

Solving this problem would be a difficult process. Although there are probably several ways to make such an identification, a number of problems would be involved in each of them. (Id.) For

example, one possibility would be to include a subsystem that would take the identified toll calls that are removed from the toll billing process and create a negative record to be introduced into the access billing to "neutralize" the record that is already in that system. (Id.) In order for this to work, however, the CABS would have to recognize records with negative minutes. (Id.) This would be an abnormal situation which the systems may not handle without modification. (Id.)

Another possibility would be to allow the call to go through the CABS the same as an intraLATA call, incorrectly including it in the originating CABS billing. (Id.) Summary information from the reports of COS calls removed from toll billing could then be used in a manual process to develop total access minutes and revenue to be manually adjusted out of the CABS bill to offset the calls for which access was incorrectly billed. (Id. at 6) However, this alternative also has drawbacks. A manual process such as this is subject to a greater likelihood of error, and it is also likely to be quite expensive. (Id.) Even assuming that the LEC develops an effective method to remove the access minutes from billing by the originating carrier, the issue which still remains is how the terminating carrier will be able to bill for the traffic terminated in its exchange. (Id.)

Because the terminating carrier cannot record and measure the COS traffic, this carrier must rely on data recorded by and received from the originating carrier to render a bill. (Id.) This data would typically be generated by a subsystem of the originating carrier's toll billing system which would take the COS records excluded from toll billing to provide the source of information. (Id.) This subsystem may generate individual call records or summary records of a day's activity that could be transmitted to the target exchange company, or it may generate a report of that activity. (Id.) This information would then be transmitted to the terminating carrier. (Id.)

The process by which the terminating carrier enters this data into its CABS to generate an access bill to the originating carrier would not be an easy one. (Id. at 7) Most LEC CABS systems have tables that carry one set of access rates for two interstate (interLATA and intraLATA) and two intrastate jurisdictions. (Id.) There is not normally an additional rate element table that could be used to include the rates excluding CCL (and including the "joint cost" rate element proposed by the Office of Public Counsel). (Id.) Since the LEC has to continue to bill access to interexchange carriers in each of these four jurisdictions, rating the terminating COS at non-standard intrastate intraLATA rates may have to be done in a separate system or on a manual basis. (Id.) Obviously, this would be impacted by each individual telephone company's CABS capabilities and by the format in which they receive their data from the originating carrier. (Id.)

D. "Technical Restraints"

Clearly, there are a number of "technical restraints" which would make changing the classification of COS from toll to local a complicated and difficult process. Such a change would take a great deal of time to review, evaluate, plan and implement. (Id.) The cost and amount of time would depend on the individual company's billing system capabilities and the extent of modifications needed to correctly process calls under the proposed terminating scenario. (Id.) Consequently, the Commission should not be lead to believe that changing the classification of COS from toll to local would be a simple process.

E. Looking Over the Fence

Another concern with changing the classification of COS from toll to local is the "looking over the fence" problem. United's initial brief urges the Commission to change the classification of COS from toll to local, and it suggests that the LECs should "receive and retain the COS revenue which should be cost based and vary by exchange." (United Initial Brief, p. 15) Under this proposal, each company would have its own rate for COS, which would lead to the problem of looking over the fence. For example, a SWBT customer that lives in Slater, Missouri could receive COS to Marshall at a price much lower than a non-SWBT customer living in Gilliam, Missouri could receive on a COS route to Marshall. (Tr. 149) This result seems contrary to the purpose of COS, which was designed as part of a statewide solution to the problems associated with Missouri's rural calling scopes. (See Mid-Missouri Group Initial Brief, p. 17)

F. Revenue Neutrality

Should the Commission decide to classify COS as a local service, there would have to be a complete reexamination of revenues for both the SCs and the PTCs. Because the PTCs have increased the prices for some discretionary services, they would have to determine what their extra revenues would be and make adjustment back to lower prices. (See Tr. 388) Because the small companies would experience a decrease in access revenues and an increase in costs, the small companies would have to find a way to make up a $2,765,517 revenue decrease. (Tr. 378) Thus, reclassifying COS as a local service would necessarily involve the complex process of recalculating the service's revenue neutrality for both the PTCs and SCs.

II. Alternatives to COS for Rural Customers

SWBT asserts that "[n]o carrier should be required to offer a specific expanded calling service due to the high level of competition that exists." (SWBT Initial Brief, p. 27) Staff suggests that "the need for COS will be eliminated by the migration of customers from the COS plan to other competitive services." (Staff Initial Brief, p. 9) These statements do not accurately portray the amount of competition that exists or the options available to rural customers.

A. OCA

SWBT argues that "MCA and OCA are now widely available to meet customer demands for extra-exchange calling." (SWBT Initial Brief, p. 9) This statement ignores both the service area for MCA and the relationship between the three services. First, MCA is available only in the areas surrounding Missouri's three largest metropolitan areas. (Schoonmaker Direct, Ex. 6, p. 9) Although MCA may be available to a large number of customers near these three cities, it is not available to customers living in outstate rural areas. Second, MCA and OCA were designed to complement COS and provide a comprehensive statewide answer to the problems associated with rural calling scopes. Together, COS and OCA were to "provide the full range of services to outstate exchanges." Expanded Calling Scopes, 2 Mo. P.S.C. 3d 1, 28 (1992). Abandoning one half of this two-part solution will leave customers in outstate exchanges without the "full range of services" envisioned in TO-92-306.

Furthermore, OCA would not be an attractive alternative to COS. Perhaps the most important reason is that OCA is likely to be more expensive. If COS customers who make an average amount

of calling per month (i.e. 7.75 hours) were required to pay OCA rates for this same amount of calling, they would experience an increase in their rates ranging from 77% to 303% under the OCA two hour plan, depending on time of day and distance of the call. Under the OCA five hour plan a residential customer would experience an approximate 109% increase. (See late-filed exhibit No. 40) OCA also lacks the certainty of a flat-rate plan and the capability for return calling to the petitioning exchange, both of which are a high priorities for COS customers.

B. "Competitive" 800 Number Services

If COS is eliminated, the rural customer is likely to pay much higher rates for a similar, "competitive" 800 number service. (Schoonmaker Rebuttal, Ex. 7, p. 3) ("[C]ustomers will pay considerably more . . . the prices will not be nearly as low as customers currently pay for COS.") In fact, a "competitive" 800 number service may be more expensive than the high toll rates which originally caused numerous customer complaints to the Commission and the legislature. (Schoonmaker Surrebuttal, Ex. 8, p. 7-8) This makes "migration of customers" from COS to "competitive services" unlikely.

C. Parity for Customers in Rural Missouri

United asserts that COS serves only a small group of customers and cites the number of COS customers as compared to total access lines in the state.[2] (United Initial Brief, p. 4) ("When compared to all access lines in the state, only about one-half of one percent (½%) of customers are COS

[2] This figure ignores the tens of thousands of customers who reside in COS target exchanges and have the ability to call COS subscribers in petitioning exchanges on a toll free basis.

subscribers.") The use of this figure is misleading, especially in light of the fact that the majority of customers have either EAS and/or MCA available to them. (Tr. 358) ("[T]here's only 7.4 percent of Bell's customers that don't have either MCA or EAS.") Obviously, these customers have the option of an expanded calling plan. Arguing that COS serves only a small percentage of Missouri customers ignores the state and federal telecommunication acts' requirements for comparable services at comparable prices for rural, high cost areas. (See Telecommunications Act of 1996, 47 U.S.C. §§ 254(b)(3), (g); §§ 392.185, 392.200.4(1), and 392.200.5 RSMo Supp. 1996)

III. Subsidies

Some parties characterize COS as a service involving inappropriate subsidy. (See, e.g., SWBT Initial Brief, p. 7) ("Current subsidy flows to COS customers are inappropriate.") However, the fact that COS would be priced below cost was apparent from the start. (Schoonmaker Rebuttal, Ex. 7, pp. 5-6) When the Commission modified COS in TO-92-306, it specifically recognized that the revenues from COS would be less than the expenses associated with the access charges paid for the service and provided for a "revenue neutral" calculation for SWBT and the other Primary Toll Carriers (PTCs). (Id.) The PTCs were allowed to raise both the COS rates themselves and rates other than the COS rates in order to offset the revenue losses associated with implementing the revised COS. (Id.)

Of particular significance is the fact that SWBT has failed to provide any evidence comparing revenue losses associated with implementing COS originally with current losses. SWBT has this information, yet they chose not to introduce it into evidence. This calls into question SWBT's

conclusion that COS is being inappropriately subsidized. SWBT's subsidy argument also fails to acknowledge the fact that, on average, customers of the STCG member companies incur over three times the amount of intraLATA toll charges as customers of SWBT. (Tr. 668-669, 755-756) According to these figures, SC exchange customers pay much more toll, on average, than do SWBT exchange customers. (See Mid-Missouri Group Initial Brief, p. 14)

IV. True-ups

The issue of whether the Commission should order parties to perform additional true-ups or switch from T/O ratios to actual usage is not necessary to resolve in this proceeding. The STCG agrees with Staff that this issue was not fully addressed in this proceeding. (See Staff Initial Brief, p. 24) The STCG does not take a position on whether a docket should be initiated at this time to address the issue of true-ups or switching from T/O ratios to actual usage minutes;[3] however, the STCG does wish to respond to two issues related to truing-up T/O ratios: (1) SWBT's suggestion that the Commission's order was misinterpreted, and (2) SWBT's implication that Mark Twain Telephone Company attempted to take advantage of the one-time true-up.

A. The One-Time True-Up

When the Commission modified COS in TO-92-306, it was well aware that some SCs would "experience revenue gains based upon use of access charges for intercompany compensation." (Expanded Calling Scopes, 2 Mo. P.S.C. 3d 1, 33.) Due to the uncertainty of revenue neutrality

[3] This issue may be addressed in the PTC plan review, Case No. TO-97-217 et al.

calculations, the Commission decided "that no adjustments should be made to access charges at the beginning of implementation." (Id. at 34.) Instead, the Commission chose to true-up actual revenue gains by the gaining LECs and refund the access revenue gain to PTCs." (Id.) These refund calculations were to be based upon a comparison of the period six months prior to the implementation of the modified COS with the six-month period following implementation. (Id.) This method allowed for changes in usage caused by the modified expanded calling plans. (Id.)

The Commission determined that a technical committee should be formed to address these revenue neutrality calculations. (Id. at 35) The minutes of the implementation committee indicate that the parties did indeed have the opportunity to discuss the true-up procedure and develop means to assure revenue neutrality. (See late-filed Ex. 41) Any party that was not satisfied with this arrangement could have sought further guidance from the Commission, yet none of the parties did so.

B. Mark Twain's True-Up

SWBT asserts that Mark Twain Telephone Company "gamed the process the Commission set up [for true-ups] by holding back on the establishment of new routes until after they made their one-time access charge adjustment." (SWBT Initial Brief, p. 15) This statement implies that there was something sinister about Mark Twain's implementation of several COS routes pursuant to an order from the Commission in September of 1995 because the routes were implemented three months after the date when SWBT and Mark Twain reached agreement on the appropriate access rate true-up and adjustment. This is simply not the case.

The access rate and true-up process was required by the Commission in its order in Case No. TO-92-306. Since Mark Twain implemented the Green Top to Kirksville COS route in May, 1993, **the end of the period included in the true-up analysis was November, 1993, nearly two years before Mark Twain implemented additional routes in response to orders from the Commission**. (Schoonmaker Surrebuttal, Ex. 8, p. 19) If Mark Twain had wanted to "game the system", it would have rushed these routes into service much earlier (e.g. December of 1993).[4] Apparently, SWBT has confused the time when Mark Twain and SWBT actually agreed to the true-up (i.e. 1995) with the date when the true-up period actually ended (i.e. November of 1993). (Id.)

V. Internet

As indicated by Judge Roberts during the hearing, a number of issues concerning the Internet came up which "went beyond what was necessary to resolve this case." (Tr. 838) Although the STCG agrees that much of the Internet discussion did exceed the scope of this docket, the STCG believes that it is nevertheless necessary to respond to SWBT's arguments concerning the Internet in its Initial Brief. Specifically, the STCG would like to respond to SWBT's claim that using COS to provide Internet access "violates several COS tariff provisions." (SWBT Initial Brief, p. 17) This statement is misleading in terms of: (a) the history of COS, (b) the nature of Internet service, and (c) the tariff provisions themselves. Further, SWBT's bold assertion that the provisioning of Internet service by SCs evidences incentives that are "out of whack" does not stand up to the facts.

[4] The ending date of the true-up period (six months) was not always the date that access rate adjustments were agreed to and implemented by the parties. In many cases, true-up adjustments and access rate adjustments took place many months after the end of the true-up period.

A. The History of COS

First, the history of COS evidences no controversy over Internet usage until this proceeding. Internet usage was simply not a factor that was considered when COS and MCA were implemented. (Schoonmaker Surrebuttal, Ex. 8, p. 11) At that point in time, Internet service was not being used by the public to any significant extent, and its usage was not considered when these services were implemented either in terms of the financial impacts of the service or of any special tariff provisions that should be included in regard to the Internet. (Id.)

B. The Nature of Internet Services

SWBT mischaracterizes the nature of Internet service and the way in which an Internet provider uses the local network to provide access to its Internet service. Typically, an Internet service provider ("ISP") purchases a group of local telephone numbers with trunk hunting capabilities between them and publishes a single number to its customers as the number to access its Internet service. When customers call that number, the telephone company switch "hunts" through the group of lines to find an unused line and completes the call to that line.(Id.) The ISP has a bank of modems with an individual modem attached to each line. The "far side" of the modem is typically connected to a router and other equipment which allows access to the Internet service. (Id.)

SWBT's conclusions are based upon what appears to be a misperception of Internet service. For example, SWBT's Initial Brief states that "[t]hese COS calls are simply being forwarded through SCs' and their Internet networks to other end users, who could be located anywhere in the world." (SWBT Initial Brief, p. 17) Further, SWBT asserts that "[t]he actual COS subscriber (the SC or its

affiliate) is not communicating in any way with the target exchange caller." (Id.) In both of these statements SWBT apparently assumes that telecommunications service starts at the Internet subscriber and ends somewhere at the far end of the Internet. However, this is not a realistic or appropriate view of most of today's uses of the Internet. (Schoonmaker Surrebuttal, Ex. 8, p. 14)

When today's Internet users access the ISP, that call is terminated by the ISP, answer supervision is returned, and there is often an exchange of information (e.g. an account number or name and a password) to verify that the user has a valid account with the ISP. (Id.) The Internet user then gains access to a wide variety of services. (Id.) Many of these services, such as e-mail, local "bulletin board" services, access to local "home pages" and "chat group" services are provided by the local ISP's equipment and no connection is made to the Internet. (Id.) Internet users can also request to be connected to the Internet backbone network, over which they can extract information from other data bases or information services, access and/or participate in other "chat-groups" or "bulletin board" services, or download information from electronic publishing sources. (Id.) It is important to note that: (1) the Internet is a separate and distinct network, and (2) access to this network has to be permitted by the ISP's equipment after the call has been terminated locally. (Id.)

Thus far, the Commission has declined to regulate ISPs, and provisioning Internet access via COS appears to be more accurately described as providing an information service rather than telecommunications service. Information services are defined in the Telecommunications Act of 1996, which states:

> The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, **but does not include any use of any such capability for the**

management, control, or operation of a communications system or the management of telecommunications service.

47 U.S.C. § 153(20)(1996) (emphasis added) This definition clearly describes what the typical user of Internet service is doing. Thus, while Internet service is provided via telecommunications, it involves the functions described in this definition that go far beyond telecommunications. This distinction has also been addressed in a recent Federal Communications Commission ("FCC") order. In FCC 97-157 (CC Docket #96-45), the FCC addressed the question of what services would be subject to paying the universal service assessment. The FCC, dealing directly with this issue, stated:

> 789. The office of Senator Stevens asserts that information services are inherently telecommunications services because information services are offered via "telecommunications." We observe that ISPs alter the format of information through computer processing applications such as protocol conversion and interaction with stored data, while the statutory definition of telecommunications only includes transmissions that do not alter the form or content of the information sent. When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service **and is distinguishable from the Internet service provider's service offering**. The language in section 254(h)(2) also indicates that information services are not inherently telecommunications services. Section 254(h)(2) states that the Commission must enhance access to advanced telecommunications and information services. If information services were a subset of advanced telecommunications, it would be repetitive to list specifically information services in that subsection.

(emphasis added)

Missouri statutes also shed some light on this issue. Missouri's definition of "telecommunications service" specifically excludes "electronic publishing services". Section 386.020(55) RSMo Supp. 1996. Although not all services offered over the Internet are electronic publishing services, many of them are. (Schoonmaker Surrebuttal, Ex. 8, p. 16) In such cases, SWBT's assumption that Internet use always involves a continuous telecommunications service from

the Internet user to the far end of the Internet does not fit when electronic publishing services are being accessed. (Id.)

Also, if use of Internet forms a continuous communications path from the end user to the far reaches of the world, then it would not appear that SWBT or its affiliate could properly participate in such "calling" because it would violate the terms of SWBT's Modified Final Judgment ("MFJ") prohibiting "interLATA" services.[5]

C. The Tariff Provisions

SWBT's brief also expresses a belief that some of the small companies are violating the COS tariff restrictions on "resale and sharing" of COS because they are selling COS to ISPs. The STCG does not believe that SWBT has accurately interpreted or represented this tariff provision. Further, the STCG does not believe that use of COS by ISPs to connect end users with Internet information services is a sharing or resale of COS by the ISP. Rather, the ISP purchases the service, whether local, toll, or COS, in order to provide its customers an access vehicle for them to purchase the Internet information services that the provider offers. (Schoonmaker Surrebuttal, Ex. 8, p. 13) The ISP does not resell the telecommunications service to customers;[6] rather, it consumes those services to provide its customers access to the information services which it does sell. (Id.) Similarly, the ISP does not share those communications services with its Internet customer, it provides the use of those services as the vehicle by which the Internet customer can gain access to the purchased Internet services. (Id.)

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[5] U.S. v. AT & T, et al., 582 F.Supp. 131 (D.D.C. 1982), aff'd., 103 S.Ct. 1240 (1983).

[6] The issue of reselling appears to be moot since all parties agree these services must be resold per the Federal Telecommunications Act of 1996.

SWBT can point to no express prohibition in the COS tariff of Internet service or multi-line hunt groups. In both the OCA and MCA tariffs the subject of multi-line hunt groups is specifically mentioned, although the treatment is somewhat different. (Schoonmaker Surrebuttal, Ex. 8, p. 20) SWBT's OCA tariff states that "OCA is available to multiline customers on a per account basis only." (Id.) The MCA tariff states that "In situations where a hunting arrangement between access lines is provided by the Telephone Company, no MCA line may be configured to hunt to a non-MCA line." (Id.) There are no corresponding provisions in the COS tariff. (Id.) The COS tariff lacks any specific mention of multi-line hunt groups, and there is clearly no prohibition such as the one included in the MCA tariff. (Id.) Since these tariffs were designed and implemented at the same time, the omission was presumably not unintended.

SWBT also argues that ISPs are "aggregators" and are therefore prohibited from using COS to provision Internet service. The law does not support such an argument. Missouri statutes define a traffic aggregator as "...any person, firm, partnership or corporation which furnishes a telephone for use by the public and includes, but is not limited to, telephones located in rooms, offices and similar locations in hotels, motels, hospitals, colleges, universities, airports and public or customer-owned pay telephone locations, whether or not coin operated." § 386.020(57) RSMo Supp. 1996. The STCG ISPs do not fit this definition. Rather, an ISP provides Internet information services to the public, purchasing local exchange telephone company telecommunications services to provide access to those information services. (Id. at pp.16-17)

Finally, SWBT's "tariff violation"argument also seems curious in light of the way the small rural telephone companies have chosen to implement the Internet service. (Id. at p. 18) These small

companies have chosen to implement Internet service by locating the Internet service in the petitioning exchange rather than the target exchange. (Id.) This decision has prevented a scenario where a telephone company could misuse COS to enrich themselves by generating calls solely to generate access usage. (Id.) The small companies have located the Internet service location in the petitioning exchange, so SWBT pays no terminating access on the actual terminating minutes from the target to the petitioning access because terminating access paid is based on minutes derived from the originating minutes times the T/O ratio. (Id.)

D. "Out of Whack" Incentives

Finally, SWBT makes the assertion that it raises the "side issue" of Internet usage in order to illuminate "out of whack" incentives between the SCs and the PTCs. This argument seems curious in light of the fact that the primary motivation of the small companies to enter the Internet service was to provide services desired by the customers in their communities.(Schoonmaker Surrebuttal, Ex. 8, p. 11) Internet service is an important resource for rural communities because it allows instant access to a wide variety of information and eliminates previous barriers of distance, expense, and time. Providing Internet access to rural communities helps strengthen those communities by offering services which will help encourage individuals to stay in the communities and improve educational opportunities. (Id. at pp. 11-12) For example, many rural schoolchildren are now able to use Internet access to do research and retrieve files from their school's computer systems. (Id. at p. 12) Additionally, most of the small companies that provide Internet access service also provide local dial-up access to school teachers and school administration personnel through a contract with MOREnet,

which allows educators access to the Internet from their homes. (Id.) Toll-free Internet access also allows local businesses and government agencies use the Internet to access state information. Thus, the small telephone companies' "incentives" in providing Internet access are closely tied to improving the services available to rural communities.

Most of the communities where the small companies provide Internet service had no other ISPs at the time they implemented Internet service, and provisioning Internet service has not been a profitable proposition for the small companies thus far. (See late-filed Ex. 44) Although a few other providers have begun providing Internet service in some of those communities since the small telephone companies implemented Internet service, the telephone company remains the only Internet provider in most of these communities. This is yet another indicator of the financial unattractiveness of providing Internet service in rural areas. (Schoonmaker Surrebuttal, Ex. 8, p. 13) The small companies are not out to make a mint by providing Internet services;[7] they are simply trying to find a way to provide Internet access in the areas they serve in a manner that they can at least break even.

Conversely, SWBT's discussion of "incentives" appears more geared towards profit than service to rural communities. A plan that would require rural customers to pay toll charges in order to access the Internet would effectively discourage and perhaps disallow Internet use by rural customers. Interestingly, SWBT seems to propose just that while at the same time claiming that they "are not trying to discourage use of the Internet." (SWBT Initial Brief, p. 21)

[7] In fact, profit and loss figures for Northeast Missouri Rural Telephone Company reveal that its Internet operation is operating at a substantial loss. See late-filed Ex. 44(H.C.).

Conclusion

The STCG continues to believe that COS is important service which should be preserved in some form. The STCG stands by the specific positions taken in our initial brief, and supports, in descending order, the 800/888 number proposal, the one-way reciprocal plan, and the one-way only plan.

Respectfully submitted,

W.R. England, III Mo. Bar #23975
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102-0456
(573) 635-7166

Attorney for
The Small Telephone Company Group

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was either hand-delivered or sent via facsimile, this 22nd day of August, 1997, to:

Cherlyn McGowan
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Paul S. DeFord
Charles W. McKee
Lathrop & Gage
2345 Grand Blvd., Suite 2500
Kansas City, Missouri 64108

Paul Gardner
Goller, Gardner & Feather
131 E. High Street
Jefferson City, Missouri 65101

Paul G. Lane
Diana J. Harter
Leo J. Bub
Southwestern Bell Telephone Company
100 N. Tucker, Room 630
St. Louis, Missouri 63101-1976

Linda K. Gardner
United Telephone Company of Missouri
5454 W. 110th Street
Overland Park, Kansas 66211

Mark W. Comley
Newman, Comley & Ruth
P.O. Box 537
Jefferson City, Missouri 65102

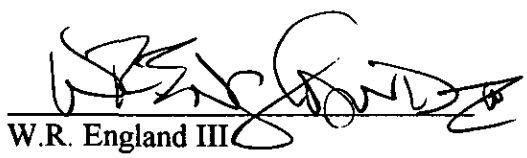
Craig S. Johnson
Andereck, Evans et al.
301 East McCarty, Box 1438
Jefferson City, Missouri 65102-1438

Carl J. Lumley
Leland B. Curtis
Curtis, Oetting, et al.
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105

James C. Stroo
Associate General Counsel
GTE Telephone Operations
1000 GTE Drive, Box 307
Wentzville, Missouri 63385-0307

Julie E. Grimaldi
Sprint Communications Company
8140 Ward Parkway, 5E
Kansas City, Missouri 64114

Michael Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102



W.R. England III