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June 6, 2001

FILED[2]
JUN 6 2001
Missouri Public
Service Commission

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

Re: Case No. TO-99-593

Dear Mr. Roberts:

Enclosed for filing on behalf of Green Hills Area Cellular Telephone, Inc. d/b/a Green Hills Telecommunications Services and Mark Twain Communications Company, please find an original and eight (8) copies of an Application to Intervene.

Please see that this filing is brought to the attention of the appropriate Commission personnel. A copy of the enclosed document is being provided to parties of record. I thank you in advance for your cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

BTM/da
Enclosure
cc: Parties of Record

FILED[2]
JUN 6 2001
Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Investigation into Signaling Protocols, Call Records, Trunking Arrangements, and Traffic Measurement.	))))	CASE NO. TO-99-593

APPLICATION TO INTERVENE

COME NOW Green Hills Area Cellular Telephone, Inc. d/b/a Green Hills Telecommunications Services ("Green Hills") and Mark Twain Communications Company ("Mark Twain")(collectively referred to as "Applicants"), and in support of their Application to Intervene pursuant to 4 CSR 240-2.075 in the above-captioned matter state that:

1. Applicants currently provide telecommunications services to members of the public located in those areas certificated to them by the Missouri Public Service Commission ("Commission"). Applicants are "telecommunications companies" as defined by § 386.020 RSMo 2000 and are both competitive local exchange companies ("CLECs").

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

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3. Green Hills and Mark Twain file this Application to Intervene in the instant proceeding on the grounds that the issues in this case will directly affect their interests as providers of telecommunications services in Missouri.

4. As Missouri CLECs receiving traffic over common trunk groups, the Applicants have an interest in this proceeding which is different from that of the general public, and the Applicants' expertise in and perspective on the provision of telecommunications services in this State will aid the Commission in resolving the issues related to this proceeding. Consequently, the Applicants' intervention and participation will serve the public interest.

5. On May 17, 2001 the Commission issued its *Order Directing Additional Notice* in Case No. TO-99-593 allowing an additional intervention period and inviting comment on additional issues raised in the case. Applicants offer the following comments:

A. 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 intraMTA wireless transited by another LEC to the terminating LEC)?

Yes. Green Hills and Mark Twain support the position advanced by the Small Telephone Company Group ("STCG") in this proceeding. Now that intraLATA dialing parity has been implemented and the Primary Toll Carrier (PTC) Plan has been eliminated, the business relationships between Missouri's small local exchange companies (LECs), competitive local exchange companies (CLECs) and the former PTCs must also reflect the competitive environment.

The most appropriate and reasonable business relationship in a competitive environment is to have companies bill from their own records. This is the same model that is used for competitive interexchange carriers (IXCs) such as AT&T, Sprint Long Distance, and MCI/WorldCom. The former PTCs are providing interexchange service, and the former PTCs should be treated like the other IXCs. The business model proposed by the STCG is the most efficient, the most equitable, and provides the proper incentives for all of the companies involved.

In Case No. TO-99-227, the Commission recently recognized Missouri's competitive environment and found that SWBT had satisfied the Section 271 requirements of the federal Telecommunications Act of 1996 ("the Act").[1] Thus, pending federal approval, it is likely that SWBT will soon begin offering interLATA toll services in Missouri through an affiliate. Now that SWBT is poised to provide interLATA toll service in Missouri, it should follow the same rules and requirements that all of the traditional IXCs must follow. Specifically, SWBT must take responsibility for the traffic that SWBT delivers to the small companies' facilities for termination. This is what the other competitive IXCs such as AT&T, Sprint Long Distance, and MCI/WorldCom are required to do.

Accordingly, the Commission should adopt the STCG's proposal and end the anti-competitive, discriminatory, and inherently flawed originating records system supported by the former PTCs.

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[1] See *Southwestern Bell Telephone Company's application to provide notice of intent to file an application with the FCC for authorization to provide in-region interLATA telecommunications services in Missouri*, Case No. TO-99-227, *Order Finding Compliance with the Requirements of Section 271 of the Telecommunications Act of 1996*, issued March 6, 2001.

B. Should the Commission require the former PTCs and the former secondary carriers (SCs) to divide the responsibility for unidentified traffic or discrepancies between originating recordings and terminating recordings?

No. Proposals such as Sprint's 50/50 sharing do not provide an appropriate balancing of the risk between the former PTCs and the small companies. First of all, Sprint's proposal does not take into account the huge size differences between small LECs (both CLECs and ILECs) and the former PTCs. For smaller CLECs such as Mark Twain, a $100,000 difference in revenue equates to over 15% of total revenues, while the same amount would equate to substantially less that 0.01% of SWBT's revenues.

Second, Sprint's proposed 50/50 split does nothing to solve the incentive problems. A 50/50 split provides no incentive for large carriers to track down their own recording problems since they will be responsible for only half of any unidentified traffic. For example, if SWBT has another Local Plus recording problem, it would only be held responsible for 50% of its Local Plus traffic for which it fails to create proper records. In essence, SWBT would be getting a 50% discount on the termination of its traffic.

If the Commission does choose to adopt some type of shared responsibility plan, then the Commission should adopt a shared responsibility plan that is based upon a ratio of the intrastate or total revenues received by the two involved companies as discussed by STCG witness Schoonmaker during the hearing. (*See* Tr. 136-38) A "revenue ratio" plan would provide more equal incentives to the parties to find a resolution to the problem since both have the same percentage of their revenues at risk.

C. **Should the Commission allow the former PTCs, at the request of a CLEC or ILEC, to block traffic for non-compensation?**

Yes. Hopefully, call blocking of noncompensated intrastate intraLATA traffic will occur only in rare circumstances once an appropriate business relationship is established between the former PTCs and Missouri's small CLECs and ILECs. It may be necessary, however, for the small CLECs and ILECs to request the former PTCs that are responsible for the common trunk to block inappropriate traffic.

The Commission addressed the issue of blocking for small LECs earlier this year in Case No. TT-2001-139,[2] where the Commission noted that the Telecommunications Act of 1996 does not prohibit blocking the traffic of a carrier that violates tariff provisions and fails to pay for the termination of their traffic. The Commission explained:

> With respect to SWBT, at least, the traffic-blocking provision can be viewed as simply a request that SWBT enforce the provisions of its own tariff, because the wireless-originated traffic at issue in this case is violative of SWBT's own tariff. The originating CMRS carriers do not, as SWBT's tariff expressly requires, have existing agreements with the terminating small LECs.[3]

Blocking is a serious matter, and Green Hills and Mark Twain recognize that specific contractual procedures must be followed before any blocking may occur.

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[2] *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service*, Case No. TT-2001-139, *Report and Order*, issued Feb. 8, 2001.

[3] *Id.* at p. 43

D. **Should the Commission hold additional hearings on this matter?**

No. Applicants do not request additional hearings in this matter. The Commission has held a lengthy hearing, and the parties have thoroughly briefed the issues. The record is complete in this case, and it is now time for the Commission to issue a decision. It has been well over two years since the Commission terminated the PTC Plan, and the record clearly demonstrates that the present system is not providing all of the appropriate records for terminating traffic. In a competitive environment, Missouri's small CLECs and ILECs must be allowed to bill for all of the traffic that they terminate. Given the inherent shortcomings in the existing system, the Commission should adopt the STCG's proposal to use terminating recordings for all CLECs and ILECs. The use of terminating recordings is the most appropriate solution for a competitive environment.

WHEREFORE, Green Hills and Mark Twain respectfully request that the Commission issue an *Order*: (1) authorizing their intervention in the above-captioned proceeding, (2) adopting in its entirety the business relationship proposed by the Small Telephone Company Group ("STCG") in this proceeding for all CLECs and ILECs; and (3) for such other orders as are reasonable in the circumstances.

Respectfully submitted,

Brian T. McCartney

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 6th day of June, 2001 to:

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