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March 13, 2001

**FILED<sup>2</sup>**

MAR 13 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 (Network Case)**

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of the Reply Brief of the Small Telephone Company Group. A copy of this Brief has been served on all attorneys of record.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel. I thank you in advance for your attention to and cooperation in this matter.

Sincerely,

*Brian T. McCartney*

Brian T. McCartney

BTM/da  
Enclosure  
cc: Parties of Record

FILED<sup>2</sup>

MAR 13 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

**REPLY BRIEF OF**  
**THE SMALL TELEPHONE COMPANY GROUP**

The Small Telephone Company Group ("STCG") stands by the specific positions taken in its Initial Brief, and the STCG offers the following Reply Brief in response to several assertions and proposals in the Initial Briefs of the Commission's Staff ("Staff"), Southwestern Bell Telephone Company ("SWBT"), Sprint Missouri, Inc. ("Sprint"), and GTE Midwest, Inc. d/b/a Verizon Midwest ("Verizon"). The fact that this Reply Brief does not address all assertions and proposals in the Initial Briefs of these parties does not indicate agreement with those assertions or proposals.

**I. INTRODUCTION**

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) 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. In fact, the Commission recently recognized SWBT as "an intraLATA IXC,

competing for business with other IXC's."<sup>1</sup> 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. Billing from originating records is the last vestige of the PTC Plan, and it is time for the Commission to finally put this last part of PTC Plan to rest.

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").<sup>2</sup> 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 IXC's must follow. Specifically, SWBT must take some responsibility for the traffic that SWBT delivers to the small companies' facilities for termination. This is what the small companies' tariffs require, and it is what other competitive IXC's such as AT&T, Sprint Long Distance, and MCI/WorldCom are required to do.

There are a number of reasons why SWBT and the other former PTCs must begin playing by the same rules as the rest of the IXC's. First, ending the originating records system will help assure that the former PTCs are not given an anti-competitive advantage over the other traditional IXC's. Second, ending the originating records system and adopting the STCG's proposal will

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<sup>1</sup> *Southwestern Bell Telephone Company's Complaint Against Mid-Missouri Telephone Company for Blocking Southwestern Bell's 800 MaxiMizer Traffic and Request for an Order Requiring Mid-Missouri to Restore the Connection*, Case No. TC-2000-325, *Report and Order*, issued Sept. 26, 2000.

<sup>2</sup> 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.

assure that the small companies are not unfairly prejudiced as a result of the former PTCs' interconnection agreements which allow CLECs and other carriers to "transit" traffic and have it delivered to the small companies without paying for termination. Third, the evidence shows that the small companies are not being compensated for all of the compensable traffic that is being delivered by the former PTCs. Adopting the STCG's proposal will solve this problem. Finally, adopting the STCG's proposal will eliminate the need for the small companies to intervene in other LECs' cases, such as the Local Plus cases, because the small companies will be assured that they receive compensation for *all* of the compensable traffic that they terminate.

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.

## **II. THE SMALL COMPANIES' PROPOSAL**

The former PTCs exaggerate the implications of the STCG's proposal. For example, Sprint claims that the small companies seek to force the PTCs to become "a collection agency for unidentified traffic."<sup>3</sup> This claim is misleading. Under the small companies' proposal, the former PTCs will be responsible for three types of traffic that they allow onto the network for termination to the small companies' exchanges: (1) Competitive Local Exchange Carrier (CLEC) traffic; (2) other Incumbent Local Exchange Carrier (ILEC) traffic (primarily from the former PTCs); and (3) unidentified traffic (i.e. traffic for which an appropriate originating record is not created). (*See* Tr. pp. 457-460) In other words, the STCG seeks to hold the former PTCs responsible for

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<sup>3</sup> Sprint's Initial Brief, p. 7

traffic that they allow on the network and deliver to the small companies for termination, just as the other traditional IXCs are held responsible today.

SWBT states, “The small LECs should now have *nearly all the records* they will need on terminating traffic to enable them to bill the carrier who originated a call and is responsible for paying for its termination.”<sup>4</sup> Apparently, SWBT believes that “nearly all” is good enough for the small companies. But this is neither equitable nor is it the law. The small companies are entitled to compensation for *all* of the compensable traffic delivered to them by SWBT and the other former PTCs for termination. It is unlikely that SWBT would settle for a system that provided it with “nearly all” of the records it needed for billing purposes.

SWBT complains that “the small LECs seek to position themselves to be virtually guaranteed payment for all of the traffic, with minimal effort.”<sup>5</sup> But isn’t this how effective business relationships should be designed? Shouldn’t an efficient and equitable compensation system make it easy and simple for service providers to be paid for their services? Shouldn’t the former PTCs that deliver unidentified traffic to the small companies be required to take some responsibility for it?

The small companies’ proposal is the most efficient and equitable business model. In a competitive environment, all interexchange carriers, including the former PTCs, must use this business arrangement. The IXC business model that is currently in use in Missouri and nationwide demonstrates that it is more efficient and less burdensome for the party with direct connections and established billing relationships to bear the responsibility for traffic that is carried

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<sup>4</sup> SWBT's Initial Brief, p. 41 (emphasis added)

<sup>5</sup> SWBT's Initial Brief, pp. 35-36

over its facilities and ends up at the small companies' exchanges. The former PTCs should bear the responsibility for traffic which they allow on their networks and deliver to the small companies for termination.

### **III. BUSINESS RELATIONSHIPS ARE PROPERLY BEFORE THE COMMISSION.**

Some parties argue that business relationships are not properly before the Commission in this case. For example, Staff tries to distinguish business relationships from "the technical subjects that the Commission established this case to investigate."<sup>6</sup> Likewise, Sprint argues that business relationships are outside the scope of this proceeding.<sup>7</sup> These arguments do not withstand scrutiny.

This case was opened to address the small companies' concerns about missing records and unidentified traffic. In fact, the Commission's *Report and Order* establishing this case recognized the small companies' concerns, but found no evidence at that time to support the small companies concerns.<sup>8</sup> Nevertheless, the Commission noted "some preliminary analysis from which one might conclude that there is a discrepancy between the terminating minutes measured by a few SCs and those minutes as reported by the PTCs."<sup>9</sup> Also, the Commission specifically recognized the small

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<sup>6</sup> Staff's Initial Brief, p. 2

<sup>7</sup> Sprint's Initial Brief, p. 2

<sup>8</sup> *In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity*, Case No. TO-99-254, et al., *Report and Order*, issued June 10, 1999.

<sup>9</sup> *Id.* at pp. 10-11

companies' concerns about "*a lack of business relationships with upstream carriers.*"<sup>10</sup> The Commission's *Report and Order* stated:

[M]any of the issues the SCs raise are not directly tied to the implementation of ILDP or to the resolution of the PTC plan. *They are, nonetheless, important issues that will need to be addressed as competition develops.* Accordingly, the Commission will establish a case to investigate signaling protocols, call records, trunking arrangements and traffic measurement.<sup>11</sup>

The Commission's identification of signaling protocols, call records, trunking arrangements and traffic measurement was descriptive rather than limiting. Moreover, the underlying reason for examining these technical matters was to address the small companies' concerns about missing and unidentified traffic.

The Commission now has compelling evidence that the small companies' concerns were founded. (See Ex. 40) SWBT claims that these issues "are being addressed by the industry itself, without Commission intervention."<sup>12</sup> However, the evidence in this case shows just the opposite. The network test was initiated only after the insistence of the small companies, and the network test has demonstrated: (1) the substantial discrepancies between the terminating minutes measured by the small companies and the records that they receive (or fail to receive) from the former PTCs and other carriers; (2) the former PTCs' inability to completely reconcile even *one hour of traffic* (after four months of effort); and (3) the unwillingness of the former PTCs to accept responsibility for unidentified traffic that they deliver to the small companies for termination.

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<sup>10</sup> *Id.* at p. 11

<sup>11</sup> *Id.* at p. 17

<sup>12</sup> SWBT's Initial Brief, p. 1

#### IV. THE PRESENT SYSTEM IS INHERENTLY FLAWED.

SWBT claims that the former PTCs “have no opposition to working cooperatively with [the small companies] to make sure that they have all the records they need to bill for the traffic they terminate. . . [and] the evidence shows that the former PTCs have acted on these concerns.”<sup>13</sup> But the evidence in this case shows the contrary. In fact, recent history demonstrates that SWBT has denied responsibility and filed complaints with the Commission rather than tracking down its own Local Plus recording error<sup>14</sup> or playing by the same rules that other interexchange carriers must follow.<sup>15</sup>

SWBT also claims that “[t]he system is audible<sup>16</sup> [sic] and has been successfully audited, most recently by Sprint, which has a far greater financial interest in the output of the system than any of the small LECs (since Sprint terminates substantially larger volume of intraLATA toll calls).”<sup>17</sup> Yet Sprint’s Initial Brief indicates otherwise. Sprint states, “*In some instances, Sprint*

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<sup>13</sup> SWBT’s Initial Brief, p. 5 (At page 19, SWBT states that it “continues to support efforts to improve existing systems to minimize errors. . . . The former PTCs have also been willing to work on an informal basis with any other company that believed it was not receiving the appropriate amount of records or compensation.”)

<sup>14</sup> *Southwestern Bell Telephone Company's complaint against Mid-Missouri Telephone Company (MMTC) concerning MMTC's plan to disconnect the LEC-to-LEC common trunk groups, and request for order prohibiting MMTC from disrupting customer traffic*, Case No. TC-2001-20, *Order Granting Request for Preliminary Relief*, issued July 18, 2000.

<sup>15</sup> *Southwestern Bell Telephone Company's Complaint Against Mid-Missouri Telephone Company for Blocking Southwestern Bell's 800 MaxiMizer Traffic and Request for an Order Requiring Mid-Missouri to Restore the Connection*, Case No. TC-2000-325, *Report and Order*, issued Sept. 26, 2000.

<sup>16</sup> SWBT obviously meant “auditable” here.

<sup>17</sup> SWBT’s Initial Brief, p. 19

*cannot correctly identify the originating carrier responsible for payment of terminating access charges on calls sent to Sprint from another PTC.*<sup>18</sup> The former PTCs need to get their story straight.

SWBT states “the larger LECs like Sprint, Southwestern Bell, and Verizon have created and currently maintain large data processing systems.”<sup>19</sup> Unfortunately, the evidence in this case demonstrates that these systems are not providing the small companies with adequate billing records. In fact, the network test has demonstrated that these “large data processing systems” are: (1) not designed to catch major errors in the network, such as the Local Plus recording error; and (2) incapable of reconciling just one hour’s worth of traffic for a handful of small companies, even after more than four months of effort. Even Staff recognizes the problems with the current arrangement.<sup>20</sup> Again, after more than four months, *the former PTCs are unable to reconcile just one hour’s worth of traffic that terminated to a subset of the small companies.*<sup>21</sup>

Finally, SWBT states, “LECs in the State were getting appropriate records on *the vast majority* of Southwestern Bell’s toll traffic.”<sup>22</sup> However, the law requires that the small companies be compensated for *all* of SWBT’s toll traffic that they terminate, not just “the vast

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<sup>18</sup> Sprint’s Initial Brief, p. 5

<sup>19</sup> SWBT’s Initial Brief, p. 14

<sup>20</sup> Kuss Rebuttal, Ex. 22, p. 2

<sup>21</sup> See SWBT’s Initial Brief, p. 21 (“[T]here still remained some areas for further investigation.”); Sprint’s Initial Brief, p. 10 (“The parties are still working though determining the records’ accuracy.”); and Sprint’s Initial Brief, p. 1 (“[S]everal questions remain unanswered and the evidence suggests that not all the information has been gathered.”)

<sup>22</sup> SWBT’s Initial Brief, p. 21 (emphasis added)

majority.” It is unlikely that SWBT would accept a system that provided it with “the majority” of the records it needed for billing purposes. SWBT should be compensating the small companies for *all* of SWBT’s own toll traffic terminated by the small companies, as well as *all* of the unidentified traffic that SWBT delivers to the small companies for termination.

## **V. WHO SHOULD BEAR THE RISK?**

### ***A. The Small Companies Should Not Bear the Risk for the Former PTCs’ Mistakes or the Unidentified Traffic that the Former PTCs Allow onto the Network.***

The originating records system makes the small companies bear the risk for the former PTCs’ mistakes, as well as any unidentified traffic delivered via SWBT’s “transiting” arrangements. The former PTCs carry and deliver unidentified traffic to the small companies’ facilities for termination. However, SWBT claims that it is someone else’s traffic, and SWBT suggests that the small companies should look somewhere else for compensation. For example, SWBT states, “The problem has been that [the small companies] have not been interested in pursuing the responsible carrier who actually originated the traffic. . . . it is another carrier’s traffic.”<sup>23</sup>

The Commission should not be persuaded by SWBT’s argument. First, the traffic at issue is traffic delivered by SWBT over facilities that SWBT has ordered from the small companies. The small companies simply want compensation from the carrier that delivers the call to their facilities for termination. This is what the small companies’ tariffs require. This is the most efficient and equitable solution. This is what the traditional IXC’s such as AT&T, Sprint Long

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<sup>23</sup> SWBT’s Initial Brief, p. 3

Distance, and MCI/WorldCom must do. The STCG's proposal simply places the risk where it belongs – on the carriers that allow “unidentified” traffic to flow over their networks – rather than on the carriers that get stuck with this unidentified traffic at the end of the line.

SWBT compares itself to a “railroad in the middle [that] is not financially responsible for any terminating charges just because its tracks allow the physical connection between two other companies.”<sup>24</sup> Common sense and equity dictate against allowing the former PTCs to “railroad” this plan through the Commission over the small companies’ objections. The Commission should take time to consider the impacts of adopting and legitimizing the former PTCs’ proposal in this case. After reviewing the evidence in this case, the Commission must reject SWBT’s proposal.

SWBT states, “Neither Southwestern Bell nor any of the other former PTCs believe it is appropriate that the small LECs or any other carrier should be left ‘holding the bag’ on any unidentified traffic.”<sup>25</sup> Yet this is precisely the result of SWBT’s proposal. The small companies are left “holding the bag” for: (1) the former PTCs’ own errors; and (2) “unidentified” traffic that the former PTCs have allowed onto the network and delivered to the small companies for termination. SWBT’s proposal gives the small companies an impossible mission. It says to the small companies, “Here’s an unidentified call. You need to complete it, and then you need to find out who originated it. Unfortunately, there is absolutely no information that would allow you to do so. In fact, you don't have any way of knowing if it might actually be a SWBT customer’s call. But don’t worry. We will be happy to try and help you figure out this problem.”

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<sup>24</sup> CITE

<sup>25</sup> SWBT’s Initial Brief, p. 6

### *B. "Unfair Prejudice"*

SWBT claims that the small companies' proposal would "unfairly prejudice" the former PTCs. SWBT reasons, "Because upstream carriers are not parties to this case, such an approach subjects the former PTCs to liability for an upstream carrier's traffic with no means of recovery from that carrier, which is the one that actually originated the call and is responsible for paying for its termination."<sup>26</sup> SWBT is not as helpless as it would have the Commission believe. First, SWBT has direct connections with the carriers that "transit" this traffic. Second, SWBT's contracts and tariffs with these carriers give SWBT the right to block the traffic of those companies that fail to pay. Finally, SWBT has a "Hewlett-Packard Business Intelligence System" that, according to SWBT, will allow SWBT to identify all of this "unidentified" traffic.

Here again, SWBT tries to shift attention away from the problem revealed by the evidence in this case. The truth is that the originating records system unfairly prejudices the small companies. The small companies are terminating traffic that is delivered to their exchanges by SWBT and the other former PTCs, yet they are not receiving compensation for some of that traffic. Therefore, it is time for the Commission to end the originating records component of the PTC Plan, just like the Commission terminated the rest of the PTC Plan.

SWBT claims that "not all necessary parties are present to adjudicate the issue in this case,"<sup>27</sup> but this is not true. All of the former PTCs and the former Secondary Carriers ("SCs") are present in this case. In fact, part of the reason the small companies are here before the Commission again is that SWBT has entered into agreements that unfairly prejudice the small

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<sup>26</sup> SWBT's Initial Brief, p. 28

<sup>27</sup> SWBT's Initial Brief, p. 26

companies. The business relationship that was in place during the PTC Plan has ended, and the Commission must establish a new business arrangement to reflect Missouri's competitive environment.

SWBT complains that "the transport charges the former PTCs collect from the originating carriers are insufficient to cover the small LECs' charges."<sup>28</sup> But SWBT is responsible for this problem. SWBT's "transiting" rates simply compound the problem with the originating records system. SWBT should establish a more appropriate rate that would support a wholesale relationship, just as all of the other IXC's have done. (Tr. 150-51; *see also* Schoonmaker Direct, Ex. 1, p. 18)

Finally, SWBT claims that the former PTCs' interconnection agreements with CLECs "require the CLEC to be responsible for compensating all other carriers involved in handling the traffic its customers originate."<sup>29</sup> However, in the most recent case on the Metropolitan Calling Area (MCA) plan, it was established that the CLECs were not providing records to the small companies, and the Commission had to order the CLECs to provide such records.<sup>30</sup>

### *C. Staff's Proposal*

Even Staff recognizes that Sprint's 50/50 proposal does not provide an appropriate

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<sup>28</sup> SWBT's Initial Brief, p. 28 (Southwestern Bell's charges are \$.007 per minute.)

<sup>29</sup> SWBT's Initial Brief, p. 29

<sup>30</sup> *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service after the Passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-99-483, Report and Order, issued Sept. 7, 2000 ("[C]ompetitive local exchange carriers shall separately track and record Metropolitan Calling Area traffic and send reports to the small incumbent local exchange carriers for all non-MCA traffic.")

balancing of the risk between the former PTCs and the small companies.<sup>31</sup> Accordingly, Staff proposes a 75/25 sharing of the risk.<sup>32</sup> However, as explained in the STCG's Initial Brief, a "revenue ratio" would be a far more appropriate method of sharing the risk than Staff's proposed 75/25 ratio. A "revenue ratio" plan would provide more equal incentives for the parties to resolve problems. Alternatively, the Kansas plan that holds SWBT responsible for any unidentifiable traffic above 2% would also recognize the economic differences between the companies. Like the "revenue ratio" plan, the Kansas plan also does a better job than Staff's 75/25 proposal of taking into account the vast differences in size between the former PTCs and the small LECs, and it provides the former PTCs with the proper incentive to identify the traffic.

## **VI. ISSUES FOR COMMISSION DECISION**

1. **Signaling Protocols.** Is it necessary for the Commission to decide in this case what signaling protocols should be utilized for intrastate intraLATA traffic terminating over the common trunks between the former PTCs and the former SCs?

SWBT argues that the Commission should decline to take a position on the Feature Group D ("FGD") versus Feature Group C ("FGC") issue, and SWBT claims that "a declaration of policy would be wholly inappropriate."<sup>33</sup> However, SWBT is quite aware that the Commission has already made such a policy decision in terms of originating traffic in SWBT's recent MaxiMizer 800 complaint case. In that case, the Commission recognized that, "[a]s an intraLATA IXC, competing for business with other IXCs, SWBT must comply with the

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<sup>31</sup> Staff's Initial Brief, p. 5

<sup>32</sup> Staff's Initial Brief, p. 5 (Staff concedes that "the 75/25 allocation has not been discussed in any of the testimony that was presented in this case.")

<sup>33</sup> SWBT's Initial Brief, p. 12

Respondents' tariffs by using FGD."<sup>34</sup> The Commission's Staff has also indicated its support for the replacement of FGC with FGD. For example, in Case No. TT-2000-268, Staff stated "that the migration from FGC to FGD should be encouraged wherever possible."<sup>35</sup> Finally, virtually all the small companies' access tariffs specifically indicate that FGC will no longer be available when FGD signaling is implemented.

SWBT claims that FGC is "the national standard for handling LEC-to-LEC intraLATA toll traffic."<sup>36</sup> This statement does not tell the whole story. FGC is clearly not the standard for handling interLATA toll traffic, nor is it the standard for intraLATA toll traffic carried by the traditional IXC's such as AT&T, Sprint Long Distance, and MCI/WorldCom.

SWBT suggests that "FGC and FGD signaling protocols are equal when used for their designed purpose and are not considered by the industry as separate networks or discriminatory."<sup>37</sup> Although the STCG agrees that there is no "functionality difference" between FGC and FGD, the STCG believes that, as a practical matter, the former PTCs are using the FGC network in a way that could easily be seen as discriminatory. For example, SWBT will provide "transiting" service at a fraction of the price that traditional IXC's must charge to deliver calls to small company exchanges for termination. Under SWBT's "transiting" scheme, there is absolutely no incentive for an upstream carrier to establish a business relationship with the small

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<sup>34</sup> *Southwestern Bell Telephone Company's Complaint Against Mid-Missouri Telephone Company for Blocking Southwestern Bell's 800 MaxiMizer Traffic and Request for an Order Requiring Mid-Missouri to Restore the Connection*, Case No. TC-2000-325, Report and Order, issued Sept. 26, 2000.

<sup>35</sup> *In the Matter of ALLTEL Missouri, Inc.'s Proposed Tariff to Allow IXC Traffic to Utilize the Feature Group C Network*, Case No. TT-2000-268, Order Approving Stipulation and Agreement, issued Aug. 8, 2000.

<sup>36</sup> SWBT's Initial Brief, p. 13

<sup>37</sup> SWBT's Initial Brief, p. 12

company. Thus, the small companies are effectively precluded from establishing appropriate business relationships with other companies and are being forced to terminate compensable traffic for free.

The Commission should recognize the small companies' tariff provisions and express support for the elimination of FGC signaling. IntraLATA presubscription and FGD have been implemented statewide, and SWBT will soon begin providing interLATA service. Now that SWBT is poised to begin providing interLATA service, SWBT should begin using the same signaling protocol that all of the other IXC's use. As a policy matter, the Commission should recognize that, in the long run, *all* interexchange traffic should be delivered using the FGD signaling protocol. This will provide the most appropriate and level playing field for the former PTCs, the former SCs, and the traditional IXC's in a competitive environment.

**2. Traffic Measurement. How and where should intrastate intraLATA traffic terminating over the common trunks between the former PTCs and the former SCs be measured for purposes of terminating compensation?**

The small companies must have the right to make their own measurement of the use of their facilities. This is the most efficient and equitable method of traffic measurement in a competitive environment. The evidence in this case shows that the sum (of the originating records received by the small companies) does not always equal the whole (of the traffic terminating to the small companies). The STCG's proposal will ensure that the small companies are compensated for all of the compensable traffic that terminates to their exchanges.

The evidence in this case demonstrates that the originating records system is flawed,

inconsistent with competition, and ripe for error. SWBT blames its own employees rather than the flawed originating records system that allows mistakes to happen:

*Like errors that have occurred in the past, the errors that caused problems with some of Southwestern Bell's Local Plus and OCA traffic were not defects in the originating records systems. Rather, they were human errors made by company employees in performing isolated network switch translations. . . . [T]hese mistakes hardly justify dismantling a system that has been successfully used by the industry for over 12 years.*<sup>38</sup>

The Commission should not be fooled by this argument. These errors are just one example of the inherent flaws in the originating records system. Even worse, the originating records system makes the small companies bear the risk for SWBT's mistakes. The Commission should recognize that this system is inconsistent with competition, just like the Commission did with the rest of the PTC Plan. Accordingly, the Commission should eliminate this last remnant of the PTC Plan and adopt the STCG's proposal.

SWBT notes that similar originating records systems are used for billing access on LEC-originated calls in other SBC Communications, Inc ("SBC") states<sup>39</sup> and Verizon's operating states.<sup>40</sup> However, this argument gives the STCG much concern and no comfort. As the Bell Operating Companies receive long distance authority in each of these states, the small companies fear that the amount of "unidentified" traffic flowing over SWBT's FGC network will only

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<sup>38</sup> SWBT's Initial Brief, p. 22

<sup>39</sup> See SWBT's Initial Brief, p. 16 (Arkansas, California, Illinois, Indiana, Kansas, Michigan, Nevada, Ohio, Oklahoma, Texas, and Wisconsin)

<sup>40</sup> *Id.* (Alabama, Kentucky, New Mexico, North Carolina, Oregon, Pennsylvania, South Carolina, Virginia, and Washington)

increase and, concomitantly, the small companies will be compensated for less and less of the traffic that they terminate.

**3. Call Records. What call records should be utilized for intrastate intraLATA traffic terminating over the common trunks between the former PTCs and the former SCs?**

SWBT claims that “all originating records correctly identify the originating responsible carrier.”<sup>41</sup> This sentence is doublespeak. “Originating records” identify “the originating carrier,” just as blue skies are blue and rainy days are rainy. But these statements have nothing to do with the problem. The problem is that traffic is being delivered to the small companies by the former PTCs without appropriate billing information, and the small companies are not receiving appropriate originating records for all of the traffic that they are terminating. The sum of the originating records received by the small companies does not equal the whole of the traffic that the small companies are terminating.

SWBT claims that the former PTCs “have been producing Category 11 records since April 2000 and the small LECs have been successfully using them to bill terminating access to Southwestern Bell, and the other former PTCs.”<sup>42</sup> Unfortunately, the evidence in this case does not support this statement. The network test reveals that SWBT did not and has not produced records for all of the traffic that SWBT delivered to the small companies during this time period. (See Ex. 40) For example, Mid-Missouri’s experience with SWBT’s missing Local Plus traffic shows exactly the opposite of “successfully” using the former PTCs’ records to bill terminating

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<sup>41</sup> SWBT’s Initial Brief, p. 15

<sup>42</sup> SWBT’s Initial Brief, p. 25.

access. The Commission should allow the small companies to use their own records. This is the most appropriate solution in a competitive environment.

4. **Trunking Arrangements.** What changes, if any, should be made to the existing common trunking arrangements between the former PTCs and the former SCs?

SWBT complains that “establishing separate trunk groups for MCA or other types of traffic would be costly and inefficient.”<sup>43</sup> However, MCA traffic between SWBT and some of the six small companies participating in the MCA plan is already being carried on separate trunk groups. Also, SWBT and Sprint reported in the technical committee meetings held during 1998 that all of the MCA traffic they interchange in the Kansas City area was carried on separate trunk groups. (Schoonmaker Rebuttal, Ex. 2, p. 13) Implementing a few separate trunk groups will cause no significant change in overall network efficiency, and it will be consistent with current industry practice.

5. **Business Relationships.** What business relationship should be utilized for payment for intrastate intraLATA traffic terminating over the common trunks between the former PTCs and the former SCs?

*A. The Commission's Authority over Business Relationships*

Staff and Verizon confuse the Commission's clear authority to regulate the business relationships between telecommunications companies with the Commission's lack of authority to regulate a public utility company's management decisions. Staff states, “[T]he Commission does

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<sup>43</sup> SWBT's Initial Brief, p. 25

not ordinarily enter orders for the primary purpose of regulating the business relationship between utilities that are subject to its jurisdiction.”<sup>44</sup> Likewise, Verizon claims that the Commission “does not have the statutory authority to mandate a change in the business relationships between former PTCs and the small ILECs.”<sup>45</sup> Staff and Verizon should both know better.

### ***1. The Commission's Statutory Authority over Telecommunications Companies***

Section 386.320 RSMo 2000 gives the Commission general supervisory authority over all of Missouri's telephone companies and the power to examine “the manner in which their lines and property, owned, leased, controlled or operated are managed, conducted and operated . . .” Chapter 392 RSMo 2000 contains other specific authority for the Commission to examine the business relationships between telephone companies.

For example, Section 392.240 RSMo 2000 provides the Commission with authority to: (1) find that the practices of a telephone company that affect rates are unjust, unreasonable, unjustly discriminatory or unduly preferential; (2) “determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service thereafter to be installed, to be observed and used *and to fix and prescribe the same by order to be served upon every telecommunications company to be bound thereby*,” and (3) order physical connections between the lines of two telecommunications companies and establish the division of the costs of such connections, as well as the division of the rates or charges over such facilities. (emphasis supplied)

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<sup>44</sup> Staff's Initial Brief, p. 3

<sup>45</sup> Verizon's Initial Brief, p. 3

Thus, the Commission has clear authority to make decisions about the business and network relationships between the parties to this case.

## **2. Examples of the Commission's Authority**

The Commission clearly made policy decisions and implemented changes in the business relationships between companies when it first established and then eventually terminated the PTC Plan in the former PTC cases. Past Commission orders<sup>46</sup> provide countless other examples of the

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<sup>46</sup> See e.g. *In the Matter of the Missouri InterLATA Access Charge Pool and IntraLATA Toll Pool*, Case Nos. TO-84-222, et al. *Report and Order*, 28 Mo. P.S.C. (N.S.) 535 (1986); *In the Matter of the Missouri InterLATA Access Charge Pool and IntraLATA Toll Pool*, Case Nos. TO-84-222, et al., *Order*, 29 Mo. P.S.C. (N.S.) 249 (1987); *In the Matter of the Investigation of Experimental Extended Measured Service*, Case Nos. TO-87-131, *Report and Order*, 30 Mo.P.S.C.(N.S.) 45 (1989); *In the Matter of the Investigation of Experimental Extended Measured Service*, Case Nos. TO-87-131 et al., *Order Directing Changes in Community Optional Service and Revenue Deficiency Tariffs*, 30 Mo.P.S.C. (N.S.) 148 (1990); *In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges*, Case No. TO-92-306, *Report and Order*, 2 Mo.P.S.C.3d 1 (1992); *In the Matter of an Investigation of Concerning the Continuation or Modification of the Primary Toll Carrier Plan when IntraLATA Presubscription Is Implemented in Missouri*, Case No. TO-97-217 et al., *Report and Order*, issued Mar. 12, 1998; *In the Matter of an Investigation into the Provision of Community Optional Calling Service in Missouri*, Case No. TW-97-333, *Report and Order*, issued Oct. 17, 1997; *In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity*, Case No. TO-99-254, et al., *Report and Order*, issued June 10, 1999; *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service after the Passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-99-483, *Report and Order*, issued Sept. 7, 2000; *Southwestern Bell Telephone Company's complaint against Mid-Missouri Telephone Company (MMTC) concerning MMTC's plan to disconnect the LEC-to-LEC common trunk groups, and request for order prohibiting MMTC from disrupting customer traffic*, Case No. TC-2001-20, *Order Granting Request for Preliminary Relief*, issued July 18, 2000; *In the Matter of ALLTEL Missouri, Inc.'s Proposed Tariff to Allow IXC Traffic to Utilize the Feature Group C Network*, Case No. TT-2000-268, *Order Approving Stipulation and Agreement*, issued Aug. 8, 2000; *Southwestern Bell Telephone Company's Complaint Against Mid-Missouri Telephone Company for Blocking Southwestern Bell's 800 MaxiMizer Traffic and Request for an Order Requiring Mid-Missouri to Restore the Connection*, Case No. TC-2000-325, *Report and Order*, issued Sept. 26, 2000.

Commission's authority over the business relationships between companies. So does Missouri case law.<sup>47</sup>

### ***3. Verizon confuses business relationships with management decisions.***

Verizon cites a number of cases to support for its position that the Commission does not regulate the business relationships between companies. None of the cases cited by Verizon are on point.

*State ex rel. City of St. Joseph v. Public Service Comm'n*, 30 S.W.2d 8 (Mo. 1930) was an appeal of a Commission order fixing the value of a water company's property for ratemaking purposes. The *St. Joseph* case dealt with the water company's right to make management decisions, not the Commission's authority to regulate the business relationships between two telecommunications companies.

*In the Matter of an Investigation of Integrated Gas Resource Planning Rules*, Case No. GO-95-329, 3 Mo. P.S.C. 3d 436, 1995 Mo. PSC LEXIS 17, dealt with a Staff motion to establish planning rules for gas utilities in Missouri. In that case, "the Commission determined that the wisest course of action [was] to postpone consideration as to whether the Commission should go forward with some type of planning rule for gas." The *Gas Resource Planning Rules*

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<sup>47</sup> *Oak Grove Home Telephone Co. v. Round Prairie Telephone Co.*, 209 S.W. 552, 553[4] (Mo. Ct. App. 1919); *State ex rel. Rice v. Public Service Comm'n*, 220 S.W.2d 61 (Mo. banc 1949); *State ex rel. GTE v. Public Service Comm'n*, 537 S.W.2d 655 (Mo. Ct. App. 1976); *State ex rel. AT&T v. Public Service Comm'n*, 701 S.W.2d 745 (Mo. Ct. App. 1985); *State ex rel. Intern. Telecharge v. Public Service Comm'n*, 806 SW2d 680 (Mo. Ct. App. 1991); *State ex rel. MoKan Dial v. Public Service Comm'n*, 897 SW2d 54 (Mo. Ct. App. 1995).

case had absolutely nothing to do with the Commission's authority to regulate the business relationships between two interconnected telecommunications companies.

*In the Matter of General Telephone Co. of the Midwest*, Case No. 17,566, 18 Mo. P.S.C. (N.S.) 141 (July 13, 1973), 1973 Mo. PSC LEXIS 38, was a rate case involving one company, GTE Midwest (now Verizon), and it did not address the Commission's authority to regulate the business relationships between two telecommunications companies. Rather, it simply found that the Commission would not regulate a company's internal management decisions.

*Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Comm'n*, 262 U.S. 276, 43 S. Ct. 544, 67 L. Ed. 981, 1923 U.S. LEXIS 2642, 31 A.L.R. 807 (1923), involved the valuation of a telephone company's property. In that case, the United States Supreme Court reversed the Commission's findings as to the value of a telephone company's property, and the Court stated that it was "not empowered to substitute its judgment for that of the directors of the corporation." *Id.* at U.S. 289, S. Ct. 547. However, the Court did not address the Commission's authority to regulate the business relationships between two telecommunications companies.

In *GST Technologies, Inc. v. Kansas City Power and Light Co.*,<sup>48</sup> the Commission recognized that it is "without authority to award money, or to alter, construe or enforce their special contract."<sup>49</sup> But the Commission is not being asked to do any of these things in this case. Rather, the Commission is asked to: (1) recognize the application of the small companies' tariffs, which were approved by and are on file with the Commission, *now that the special PTC contracts*

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<sup>48</sup> Case No. EC-99-553, *Report and Order*, issued July 13, 2000

<sup>49</sup> *Id.* at pp. 22-23 (internal citations omitted)

*are no longer in effect*; and (2) eliminate a flawed “originating records” system that is inconsistent with a competitive environment.

None of the cases cited by Verizon call into question the Commission’s authority to put an end to the anti-competitive, discriminatory, and flawed system of originating records exchange. This system is no longer viable in a competitive environment. The Commission has the authority to terminate it, just as it did with the rest of the PTC Plan, and the Commission has clear statutory authority to adopt the STCG’s proposal.

#### ***4. Confiscation***

Although Staff recognizes that there is a problem, Staff is unwilling to address the problem in this proceeding. The majority of Staff’s Initial Brief is spent arguing that “business relationships are not properly an issue in this case.”<sup>50</sup> However, Staff admits that “business relationships” were indeed identified as Issue No. 5 in this case, and Staff concedes, “It is not desirable, however, for the SCs to continue to provide services for which they do not receive the appropriate compensation.”<sup>51</sup> What Staff fails to add is that it is also unlawful for the Commission to force the small companies into a position where they do not receive compensation for the use of their facilities. To do so would be clearly confiscatory.

In *Smith et al. v. Illinois Bell Telephone Co.*, 270 U.S. 587; 46 S. Ct. 408 (1926), the United States Supreme Court explained:

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<sup>50</sup> Staff’s Initial Brief, p. 1

<sup>51</sup> Staff’s Initial Brief, p. 4

It thus appears that, following the decree of the state court reversing the permanent order in respect of the second schedule and directing further proceedings, the commission, for a period of two years, remained practically dormant; and nothing in the circumstances suggests that it had any intention of going further with the matter. For this apparent neglect on the part of the commission, no reason or excuse has been given; and it is just to say that, without explanation, *its conduct evinces an entire lack of that acute appreciation of justice which should characterize a tribunal charged with the delicate and important duty of regulating the rates of a public utility with fairness to its patrons, but with a hand quick to preserve it from confiscation. Property may be as effectively taken by long-continued and unreasonable delay in putting an end to confiscatory rates as by an express affirmation of them.*

*Id.* at 409-10 (emphasis added). Therefore, the Commission should adopt the STCG's proposal and end this situation before it becomes worse.

#### ***B. Commission and Industry Precedent***

Sprint and SWBT claim that the business relationship issue has already been decided by the Commission.<sup>52</sup> However, Staff dispels this argument:

Ms. Dunlap maintains that the Commission has already decided against such a proposal in Case Nos. TO-99-254, TO-96-440 and TT-97-524. In contrast, I don't believe these Commission decisions clearly rejected such a proposal. In Case No. TO-99-254, the Commission only declined to order such a plan as being unnecessary to resolve the issues in that Case. In Case No. TO-96-440 concerning interconnection agreements, the Commission *did not make any general findings concerning compensation arrangements* other than specifically addressing the situation of SWBT's Metropolitan Calling Area (MCA) service when provided through another party. In Case No. TT-97-524, concerning revisions to wireless carrier interconnection agreements, *again it appears that the Commission did not make any general findings concerning compensation arrangements beyond the situation of SWBT's relationships with a particular type of traffic carrier.*<sup>53</sup>

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<sup>52</sup> See e.g. Sprint's Initial Brief, pp. 2-3; SWBT's Initial Brief, p. 4

<sup>53</sup> Kuss Rebuttal, Ex. 22, pp. 4-5 (emphasis added)

Sprint and SWBT's claims that the Commission has already determined the appropriate business relationship between the former PTCs and the small companies in a competitive environment are inaccurate.

SWBT claims that originating carrier responsibility is "the standard practice that has existed<sup>54</sup> [sic] in the industry for years."<sup>55</sup> SWBT claims that the STCG's proposed business relationship would "completely overturn established industry precedent."<sup>56</sup> These statements are misleading. As explained in the STCG's Initial Brief, the business relationship proposed by the STCG is almost exactly the same as the business relationship adopted for the competitive interLATA environment (which SWBT is about to enter in Missouri). Conversely, the "originating records" system is hold-over from the PTC Plan which is no longer viable in Missouri's competitive environment.

### *C. Incentives*

SWBT claims that "imposing a requirement to pay for another carrier's traffic would discourage interconnection between carriers."<sup>57</sup> This is not so. SWBT admits that "by establishing a direct connection with Southwestern Bell, other carriers can indirectly reach all

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<sup>54</sup> Indeed, it is now time for the originating records system to "exit" Missouri's competitive environment. (SWBT obviously meant "existed" here.)

<sup>55</sup> SWBT's Initial Brief, p. 31

<sup>56</sup> SWBT's Initial Brief, p. 26 (SWBT also argues at page 31 of its Initial Brief that the Commission "confirmed" the principle beneath the "originating records" plan in the prior PTC case, but the PTC Plan has been terminated, and it is time for this last flawed remnant of it to be laid to rest.)

<sup>57</sup> SWBT's Initial Brief, p. 33

other telephone companies in the LATA.”<sup>58</sup> If a CLEC can have its traffic terminated to the small companies without paying for it via SWBT's “transiting” structure, then why would a CLEC bother to interconnect with the small companies, and why would the CLEC bother to establish a business relationship with the small companies? It is SWBT's transiting structure that discourages interconnection between other carriers and the small companies.

The former PTCs complain that they would have to renegotiate their interconnection agreements with other carriers in order to take into account the increased cost of the small companies terminating rates. (*See e.g.* Sprint's Initial Brief, p. 7) This is just a smokescreen. First, it is likely that the former PTCs will have to renegotiate their interconnection agreements soon anyway as a result of recent federal decisions and the Commission's pending cost dockets. Second, many of these agreements are due to expire shortly anyway.

Finally, the former PTCs cannot contract around the small companies' tariffs or Commission orders. An argument similar to the former PTCs' argument was raised recently in Case No. TO-99-483 (the MCA case), and it was rejected by the Commission. Under Section 392.240 RSMo 2000, the Commission has general authority over the rates and charges that are charged or collected by telecommunications companies operating in Missouri. Moreover, a Commission order “will supercede the terms of a contract agreement between two telephone

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<sup>58</sup> SWBT's Initial Brief, p. 33

companies as to the service rates they charge each other.”<sup>59</sup> The former PTCs cannot be allowed to contract around the small companies’ existing and lawful tariffs.

Efficiency and the public interest are clearly furthered by making the former PTCs responsible for the CLEC and unidentified traffic that they deliver to the small companies for termination. The former PTCs have direct interconnections and business relationships with the carriers that use their “transiting” arrangement, and they are the best positioned to police their own networks.

**6. Call Blocking. What procedure or arrangement, if any, should be utilized to prevent noncompensated intrastate intraLATA traffic from continuing to terminate over the common trunks between the former PTCs and the former SCs?**

SWBT seeks to charge hourly rates and overtime for blocking noncompensated traffic that it is delivering to the small companies. SWBT “believes that a rate of \$30.93 for the first half hour and \$21.32 for each additional half hour would be appropriate. If this work is performed on an overtime basis, then appropriate overtime rates would apply.”<sup>60</sup>

Although the STCG is not opposed to paying a nominal flat fee to have traffic blocked, it is wholly inappropriate for SWBT to charge hourly rates for blocking traffic that it should not be delivering to the small companies in the first place. The STCG will only assent to paying a

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<sup>59</sup> *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service after the Passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-99-483, Report and Order, issued Sept. 7, 2000 (citing *Oak Grove Home Telephone Co. v. Round Prairie Telephone Co.*, 209 S.W. 552, 553[4] (Mo. Ct. App. 1919))

<sup>60</sup> SWBT's Initial Brief, p. 41 (citing Hughes Rebuttal, p. 13)

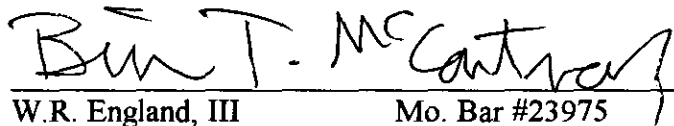
nominal fee because that is all that it would cost their member companies to do the blocking themselves on a directly connected facility.

Alternatively, the Commission may choose to adopt a secondary liability and indemnity relationship, as the Commission did in Case No. TT-97-524, when other carriers do not pay for their service. Under this relationship, the former PTC should be secondarily liable to the former SC for noncompensated traffic. Upon payment to the former SC, the former PTC would have indemnity rights against the non-paying carrier.

## **VII. CONCLUSION**

The Commission should adopt the STCG's proposal. The network test has demonstrated that terminating recordings are accurate and reliable and that the originating record system has been and continues to be unreliable. In a competitive environment, the Commission should place all interexchange carriers on equal footing and prevent the small companies from bearing the risk for the former PTCs' recording mistakes and the unidentified traffic that the former PTCs allow onto the network.

Respectfully submitted,



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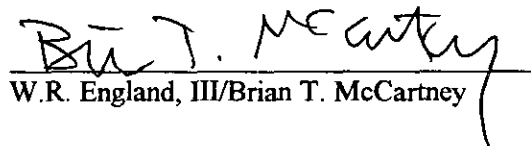
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