MF
JK
CC:DC

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW
MARMADUKE HOUSE
700 EAST CAPITOL
P.O. BOX 1438
JEFFERSON CITY, MISSOURI 65102-1438
TELEPHONE 573-634-3422
FAX 573-634-7822

EUGENE E. ANDERECK
TERRY M. EVANS
ERWIN L. MILNE
JACK PEACE
CRAIG S. JOHNSON
RODRIC A. WIDGER
GEORGE M. JOHNSON
BEVERLY J. FIGG
WILLIAM S. LEWIS
VICTOR S. SCOTT

COREY K. HERRON
MATTHEW M. KROHN
LANETTE R. GOOCH
SHAWN BATTAGLER
ROB TROWBRIDGE
JOSEPH M. PAGE
LISA C. CHASE
OF COUNSEL:
MARVIN L. SHARP
PATRICK A. BAUMHOER
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)

July 17, 2000

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

Re: TO-99-483

Dear Mr. Roberts:

Enclosed please find a original plus 8 copies of Missouri Independent Telephone Group Reply Brief. MITG will not be filing proposed findings and conclusions, but instead will join in those filed by Cass County Telephone, et al. A copy of this letter and the enclosures have been served upon all attorneys of record.

Sincerely,

Craig S. Johnson

CSJ/mb
Enc.
cc: All Attorneys of Record

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TRENTON OFFICE
9th AND WASHINGTON
P.O. BOX 547
TRENTON, MISSOURI 64683-0547
660-359-2244
FAX 660-359-2116

SPRINGFIELD OFFICE
1111 S. GLENSTONE
P.O. BOX 4929
SPRINGFIELD, MISSOURI 65808-4929
417-864-6401
FAX 417-864-4967

PRINCETON OFFICE
207 NORTH WASHINGTON
PRINCETON, MISSOURI 64673
660-748-2244
FAX 660-748-4405

SMITHVILLE OFFICE
119 E. MAIN STREET
P.O. BOX 654
SMITHVILLE, MISSOURI 64089
816-532-3895
FAX 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

In the Matter of an Investigation	)	
For the Purpose of Clarifying and	)	
Determining Certain Aspects	)	
Surrounding the Provisioning of the	)	**Case No. TO-99-483**
Metropolitan Calling Area Service	)	
After the Passage fnd Implementation	)	
Of the Telecommunications Act of 1996.	)	

Missouri Independent Telephone Group Reply Brief

Comes now the MITG and submits the following Reply Brief. This Reply Brief will only address items raised in the Initial Briefs of other parties which were not adequately covered in the MITG's Initial Brief.

No "Transiting" Compensation for MCA Calls

The MITG agrees with ILECs SWB, GTE, and the Cass County Group that bill and keep intercompany compensation needs to be retained or imposed for all LECs-- CLECs and ILECs-- offering MCA service. If any form of usage sensitive compensation is utilized for MCA traffic, this will drive costs above the price of the service. The necessity of avoiding usage based compensation in order to retain MCA customer value has been the underpining of the ILEC objection to reciprocal compensation for MCA service.

SWB's request for usage sensitive "transiting" compensation is at odds with the ILEC position. At page 39 of its Initial Brief, SWB posits that "a transiting company, whoever that may be, is entitled to be compensated for transiting traffic that originates from one party, transits the transiting company's facilities, and terminates to a third party". The MITG believes this suggestion should be rejected forthwith, as it is inconsistent with the ILEC request to avoid usage sensitive compensation for MCA service. It is also inconsistent with the intercompany compensation in use for MCA since 1992.

First of all it is no mystery who the transiting company would be. While SWB may not want to name itself, it is clear that SWB is the dominant ILEC interconnecting with CLECs and other ILECs in each of the three MCAs. SWB has gone to great lengths to assure that as much traffic as possible traverses SWB's FGC ILEC facilities. SWB has not only negotiated interconnection agreements for traffic *it* exchanges with CLECs, but also has included provisions in those agreements addressing traffic destined for *third party ILEC*s such as the MITG and Cass County companies. By this action SWB has precluded or substantially minimized the possbility of any direct exchange of traffic between CLECs and the small ILECs. SWB has effectively assured that little or no traffic within the MCA will bypass SWB facilities. As a result the vast majority of all intercompany MCA traffic, whether ILEC to ILEC, ILEC to CLEC, and even CLEC to CLEC, will traverse SWB facilities. It is SWB that would obtain a revenue windfall if the transiting compensation proposal were implemented.

Secondly, SWB is seeking an unfair financial advantage. On the one hand SWB opposes (rightly so in the MITG's opinion) CLECs being able to obtain usage sensitive compensation when the balance of MCA traffic favors the CLEC. Yet the transiting proposal would create a financial advantage for SWB. It would provide SWB with a new revenue stream for every transiting minute, regardless of the relative balance of traffic between SWB and its interconnection agreement competitors.

Third, the creation of a new form of MCA transiting compensation would be inconsistent with the bill and keep that SWB supposedly desires to retain for MCA service. SWB has provided transiting services without compensation since the inception of MCA service. In each of the three MCAs, there are a plethora of calls that can be originated by an ILEC other than SWB, terminated by an ILEC other than SWB, but which are transported by SWB. SWB has never been paid for transporting these calls. It is inconsistent with retaining bill and keep to begin such compensation merely to include CLECs in the MCA plan.

At page 39 of SWB's Initial Brief SWB mischaracterizes the nature of MCA "bill and keep" compensation as being on a "per call" basis. MCA has never been bill and keep on a per call basis. MCA is bill and keep on a total service basis. ILECs bill and kept their end user revenue, which is not per call revenue. The ILECs also provide

transport and termination of all MCA calls originated by other ILECs without any additional compensation. Compensation is not tracked on a "per call" basis.

Compensation/tracking and recording calls

At pages 8 and 71 of its Initial Brief, SWB affirmatively states that it is indeed capable of separately tracking, recording, and blocking traffic it exchanges with carriers pursuant to interconnection agreements. Both aproved interconnection agreements and approved tariffs provide that carriers interconnecting with SWB are not to send traffic to small ILECs until an interconnection agreement between those carriers and the small ILECs is approved. However, as the Commission is well aware, those carriers have violated these provisions. As a result, there is a growing amount of traffic terminated to small ILECs without any ability on the small ILEC's part to identify the carrier, jurisdictionalize the traffic, obtain records, or achieve compensation.

Until the admissions of SWB in this case, SWB has steadfastly maintained that it was unable to identify this traffic, provide billing records for this traffic, or prevent it from completing until interconnection agreements are in place. Apparently now SWB is willing or able to do what it refused to do in the past.

CLECs collaborate in depriving small ILECs of terminating information and compensation. CLEC claims in their briefs that the amount of traffic going to small ILECs is "de minimus" does not square with the growing amount of uncompensated traffic sent by SWB to small ILECs. Even if it were de minimus, that does not justify violation of the terms of the interconnection agreements and Commission Orders approving them. The agreements and orders were clear that no traffic was to be sent third party small ILECs absent an approved interconnection agreement.

Neither SWB nor any CLEC has provided any information as to the amounts of this traffic. Although the interconnection agreements have been operational for quite some time, amazingly SWB and the CLECs have not even completed a basic record exchange and compensation systems between themselves, much less for traffic destined for small ILECs. As the CLECs have violated the Commission Orders approving interconnection agreements in this regard, their claims of de minimus traffic volumes should be viewed with skepticism.

Although the MITG is consenting to bill and keep for all CLEC and ILEC MCA traffic, there is still a need for the Commission to direct the industry to establish procedures to assure that non-compensable MCA traffic can be distinguished from compensable traffic. The MITG again requests that the Commission charge an industry group with the responsibility to develop such procedures, including the possible use of separate trunks for compensable traffic from the trunks noncompensable MCA traffic is placed upon.

For approximately two years, the failure to abide by the terms of interconnection agreements and orders approving them has resulted in several types of improper traffic terminating to small ILECs. This traffic consists of interLATA traffic SWB is prohibited from transporting, IXC traffic bypassing the appropriate small company tandems, traffic of CLECs who have no interconnection agreements with the small ILECs, and wireless carriers who have no interconnection agreements with the small ILECs. The Commission's belief and trust that these carriers would not send this traffic until interconnection agreements were approved has not come to fruition. The actions of SWB and these carriers has demonstrated this approach will not work.

Interconnection agreements were designed for, and only work for, traffic that two competitors directly interconnect to exchange with each other. When an interconnection agreement between two competitors attempts to control or direct how traffic to a third party carrier will be exchanged, the system breaks down. The system breaks down because it imposes a different obligation on small ILECs than is imposed upon SWB. SWB has not and would not accept reciprocal compensation traffic from a CLEC directly interconnected with Sprint, where Sprint "transits" the traffic to SWB over this indirect interconnection. There is no logical reason why the small ILECs should be forced into a posture large ILECs are not forced into.

CLECs seem to agree that interconnection agreements are designed for situations where the CLECS directly interconnect and directly compete with an ILEC.[1] This is support for the common sense approach the MITG has been advocating. Access tariffs

[1] At page 8 of its Initial Brief, Intermedia states that "The *interconnection* agreement provisions of the Telecommunications Act apply only to *competing carriers*, i.e. where the CLEC is seeking to directly compete head to head with the incumbent LEC in the incumbent LEC's particular exchange or exchanges.

should apply until superseded by an approved interconnection agreement. This is the mechanism established in the 1996 Telecommunications Act by which a requesting carrier can achieve reciprocal compensation instead of switched access. The Commission Orders approving interconnection agreements seem to recognize this. Unfortunately the Commission's Order rejecting tariff language inTT-99-428 fail to recognize that the interconnection agreement (IA) is the only vehicle available under the Telecommunication Act for wireless carriers as well.[2]

Under the small ILEC access tariff structure, SWB should be responsible for all traffic it delivers over its direct interconnection witht the small ILECs. If SWB contracts with another carrier to deliver its traffic to the small ILEC, SWB should recover sufficient compensation to cover its payments to the small ILECs. If SWB cannot, it should not agree to deliver that carrier's traffic. If that carrier believes it has sufficient local traffic to exchange with the small ILEC, it should obtain approval of a direct interconnection agreement with that ILEC by which to avoid paying access.

SWB's suggestion that the issues associated with distinguishing compensable CLEC traffic from noncompensable CLEC traffic can be left to TO-99-593 should be rejected. TO-99-593 was not designed for traffic other than ILEC's terminating traffic terminating to other ILECs. TO-99-593 was established solely to address protocols for terminating ILEC traffic upon termination of the PTC Plan. TO-99-593 was never designed to address the many other types of traffic SWB inappropriately has placed on the ILEC network.

The Commission should no longer countenance SWB's suggestions to continually postpone consideration of the taking of small ILEC facilities without compensation. SWB is not content to limit use of the direct interconnection between SWB and the small ILEC solely to SWB's traffic pending completion of TO-99-593. Instead SWB has placed new forms of CLEC, IXC, and wireless traffic over the SWB/small ILEC direct

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As such, it is only when a CLEC is seeking to directly compete with the independent small company LEC within that LEC's exchanges that the direct interconnection provisions of Sections 251 and 252 would come into play"

[2] Contrary to SWB's brief at page 74, the Order in TT-99-428 rejected the tariff on the basis it could result in access applying to intraMTA traffic, not on the basis reciprocal compensation should be applied when three carriers are involved in carrying the call.

interconnection. SWB has done so knowing there were no provisions in place for enforcement of terminating compensation. While the small ILECs wait SWB's cooperation in scheduling TO-99-593 for completion, SWB is making the terminating losses worse each billing month.

ANDERECK, EVANS, MILNE,
PEACE & JOHNSON, L.L.C.

By _____

Craig S. Johnson MO Bar No. 28179
700 East Capitol
Post Office Box 1438
Jefferson City, Missouri 65102
Telephone: (573) 634-3422
Facsimile: (573) 634-7822

ATTORNEYS FOR MITG

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 17 day of July, 2000, to all attorneys of record.

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Craig S. Johnson MO Bar No. 28179