BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Mid-Missouri Telephone Company,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. TC-2006-0127
	)	
Southwestern Bell Telephone Company,	)	
T-Mobile USA, Inc.	)	
	)	
Respondents.	)	

SBC MISSOURI'S REPLY

SBC Missouri's[1] Motion to Dismiss demonstrated that Mid-Missouri Telephone Company ("Mid-Missouri") has no legal basis to seek terminating access charges from SBC Missouri on T-Mobile USA, Inc.'s ("T-Mobile's") wireless traffic. In an effort to resist dismissal, Mid-Missouri, in its October 31, 2005 Reply, has resorted to misstating federal law and prior Commission decisions. Its claims against SBC Missouri should be dismissed.

1. Mid-Missouri Grossly Misstates Federal Law. Mid-Missouri claims that the Federal Communications Commission's ("FCC's") February 17, 2005 Declaratory Ruling on the T-Mobile Petition "control[s] this issue," and under that decision "it is lawful to apply access tariffs to this traffic."[2]

Mid-Missouri's disingenuous use of the *T-Mobile Declaratory Ruling* should be obvious from Mid-Missouri's complete failure to provide any language supporting its proposition or even

[1] Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri" or "SBC."
[2] Mid-Missouri's Reply to Motion to Dismiss at p. 3.

a page cite. Its inability to do so should not be surprising because the case stands for the exact opposite proposition. Aside from the fact that the tariffs the FCC held were lawful were not even access tariffs,[3] the FCC in the T-Mobile decision was careful to make clear its longstanding and preemptory ruling that access charges may not be applied to intraMTA traffic:

> In the *Local Competition First Report and Order*, the Commission determined that section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the exchange of intraMTA traffic between LECs and CMRS providers. The Commission states that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. The Commission reasoned that, because wireless license territories are federally authorized and vary in size, the largest FCC-authorized wireless license territory *i.e.*, the MTA, would be the most appropriate local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5). Thus, section 51.701(b)(2) of the Commission's rules defines telecommunications traffic exchanged between a LEC and a CMRS provider that is subject to reciprocal compensation as traffic "that, at the beginning of the call, originates and terminates within the same Major Trading Area."[4]

Every court and state commission that has considered this specific issue has found that traffic to or from a CMRS network that originates and terminates within the same MTA is subject to reciprocal compensation charges and not interstate and intrastate access charges, even where the traffic passes through an intermediary transiting carrier.[5]

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[3] In addition, the Commission is aware that these tariffs were not access tariffs because many of the tariffs being considered by the FCC had been approved by the Missouri Commission. See, 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 February 8, 2001 at pp. 17, 41-42 (noting MoPSC previously rejected application of access charges to intraMTA wireless traffic; and that while the wireless termination tariffs contained the traffic-sensitive elements from the ILEC access tariffs, the wireless termination tariff rates "in general, are lower than their access rates").

[4] In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92, 2005 Declaratory Ruling and Report and Order, FCC LEXIS 1212, para. 3 released February 24, 2005 (intermediate footnotes omitted, emphasis added).

[5] See SBC Missouri's Answer, Affirmative Defenses and Motion to Dismiss, filed October 28, 2005 at pp. 7-12 for a general survey of such decisions.

Just three months ago, the United Stated District Court for the Southern District of Iowa reached this same conclusion in a case brought against Qwest Corporation ("Qwest") by Iowa Network Services ("INS"), a centralized equal access service provider formed by the small independent LECs in Iowa.[6] There, INS sued Qwest for access charges on wireless-originated traffic that Qwest transited to INS for termination by the small independent LECs in Iowa.[7] In its opinion, the Federal District Court, citing a prior Eighth Circuit Opinion, noted as well-settled law the principle that intraMTA wireless traffic is not subject to interstate and intrastate access charges:

> On appeal from an earlier decision in this case, the 8th Circuit observed the following regarding the conclusions of the *Local Competition Order*:
>
> > The FCC decreed that "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5) [requiring LECs to establish reciprocal compensation arrangements], rather than interstate and intrastate access charges." [*Local Competition Order*, at *302, 11 FCC Rcd.] at para 1036 . . .[8]

And after a very thorough analysis, the Court both upheld the Iowa Utilities Board's prior rejection of INS' claims for access charges from Qwest as a transiting carrier and dismissed the suit INS brought as an independent claim in federal court seeking similar relief:

> The Court finds the Board's determinations that the traffic at issue here is "local" traffic and not long distance is supported by the 1996 Act and FCC decisions implementing and explaining the Act. The Board interpreted the FCC's definition of "local" traffic to include all traffic that both originates and terminates with the same MTA, which is the type of traffic in dispute. The Board concluded that this definition holds regardless of whether transiting carriers are involved in the

[6] Iowa Network Services, Inc. v. Qwest Corp., 385 F. Supp 2d 850 (S.D. Iowa August 17, 2005).
[7] INS also sought the Court's judicial review of the Iowa Utilities Board's determination that intraMTA wireless calls are local and not subject to access charges notwithstanding the fact that the originating and terminating carriers are interconnected indirectly through one or more additional carriers; the termination of such calls is subject to reciprocal compensation under 47 U.S.C. Section 251(b); and that Qwest, which provides a transiting service between the CMRS providers and INS, is not responsible for payment to INS of access charges or other compensation for its transport or termination of calls placed by subscribers of the CMRS providers. Iowa Network Services, Inc. v. Qwest Corp., 385 F. Supp 2d 850 at 855.
[8] Iowa Network Services, Inc. v. Qwest Corp., 385 F. Supp 2d 850, 860 (S.D. Iowa August 17, 2005).

> transportation of the call from the originating customer to the end user being called. The Court finds these determinations are wholly reasonable and in accordance with the current state of the law governing telecommunications.[9]

Similarly, no basis exists under federal law for Mid-Missouri's claim against SBC Missouri and it should be dismissed

2. Mid-Missouri Misstates Prior Commission Orders. In an apparent effort to attempt to state a claim under prior Commission Orders, Mid-Missouri claims that "in three separate complaint proceedings, the Missouri Public Service Commission has held that SBC is responsible to pay access compensation to the terminating LEC for such traffic terminating prior to February 5, 1998."[10]

Any such decisions, however, have no relevance here. As the face of Mid-Missouri's Complaint makes clear, all the traffic at issue was passed after February 5, 1998.[11] Prior to February 5, 1998, SBC Missouri maintained a Wireless Carrier Termination Service Tariff under which SBC Missouri had held itself out to actually terminate wireless carrier calls throughout the LATA. But in Case No. TT-97-524, the Commission allowed SBC Missouri to substantially restructure the tariff to instead offer only transit across its own network when a wireless call was destined to another LEC's exchange, and not actual termination. Moreover, as evident from the Commission's Order in Case No. TO-2001-489, SBC Missouri interconnects and exchanges traffic with T-Mobile under a Commission-approved interconnection agreement, not SBC Missouri's Wireless Carrier Interconnection Service Tariff.[12] Thus, any Commission decisions

[9] Iowa Network Services, Inc. v. Qwest Corp., 385 F. Supp 2d at 870 (emphasis added).
[10] Mid-Missouri Reply, p. 1. Mid-Missouri, however, provided no case citations supporting its assertions.
[11] See, Mid-Missouri's Complaint, para. 6 (". . . between August 5, 2001 and January 13, 2005, SBC and T-Mobile have delivered to Complainant 1,266,436 minutes of use of T-Mobile originated traffic.")
[12] See, In the Matter of VoiceStream Wireless Corporation for Approval of its Interconnection Agreement with Southwestern Bell Telephone Company Under Section 252(e) of the Telecommunications Act of 1996, Case No. TO-2001-489, Order Approving Interconnection Agreement, issued April 17, 2001 (Voicestream Wireless has since changed its name to T-Mobile USA).

imposing liability under SBC Missouri's previous wireless interconnection tariffs have no application here because those tariffs were superseded and the traffic at issue here was not even passed pursuant to such tariffs.

In an effort to support its claim that "the only tariff applicable is Mid-Missouri's access tariff for which SBC Missouri was Mid-Missouri's access customer," Mid-Missouri asserts that the Commission's Order in Case No. TT-97-524 directed that "SBC and wireless carriers were not to send traffic to terminating LECs such as Mid-Missouri in absence of an approved interconnection agreement."

Mid-Missouri, however, misquotes the Commission's Report and Order in Case No. TT-97-524. The language from the Order directed SBC Missouri to reinsert language in its tariff stating that:

> Wireless carriers shall not send calls to SWBT that terminate in an Other Telecommunications Carrier's network unless the wireless carrier has entered into an agreement with such Other Telecommunications Carriers to directly compensate that carrier for the termination of such traffic.[13]

The Commission did not prohibit SBC Missouri from allowing that traffic to transit its network. As the Commission is aware, at the time it issued that Order, wireless traffic had been flowing in substantial volumes for years. If the Commission had issued such a prohibition, it would have disrupted cellular traffic across the entire State of Missouri. And in any event, as pointed out above, T-Mobile during the period the traffic at issue was sent did not interconnect with SBC Missouri under SBC Missouri's wireless interconnection tariff that was the subject of Case No. TT-97-524. Rather, T-Mobile interconnected with SBC Missouri pursuant to Commission-approved agreement. Mid-Missouri has pointed to nothing either in the Commission's Order

[13] In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Revise its Wireless Carrier Interconnection Service Tariff, P.S.C. Mo.-No. 40, Case No. TT-97-524 Report and Order, issued December 23, 1997 at pp. 21-23.

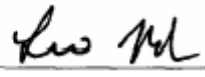
approving that interconnection agreement or the underlying agreement itself that would prohibit SBC Missouri from allowing T-Mobile's traffic to transit SBC Missouri's network.

Mid-Missouri has articulated no cognizable claim upon which liability can be imposed on SBC Missouri for any terminating charges associated with T-Mobile's wireless traffic. Accordingly, all claims against SBC Missouri should be dismissed.

WHEREFORE, SBC Missouri requests the Commission to enter an Order dismissing Mid-Missouri's Complaint.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SBC MISSOURI

BY 

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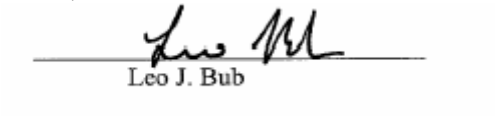
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by electronic mail on November 10, 2005.



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