

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Possible Amendment)
To Section 4 CSR 240-29.040)

Case No. TX-2006-0444

AT&T MISSOURI'S REPLY TO MITG AND STCG'S COMMENTS

The Comments filed by the Missouri Independent Telephone Group ("MITG") and the Small Telephone Company Group ("STCG") on July 7, 2006, in this proceeding along with recent filings these parties made in other cases show that: (1) the current Category 11 billing records being provided by AT&T Missouri¹ on calls wireless carriers directly terminate to the LEC network are working just fine, even without Calling Party Number ("CPN");² (2) the MITG and STCG member companies are suffering no losses due to the lack of CPN in the Category 11 billing record on such traffic; and (3) the costs of including CPN in wireless Category 11 billing records far outweigh any claimed benefits.

Despite the misconceptions and half truths being peddled by these parties, it should by now be clear that, because of roaming, CPN cannot be used to appropriately jurisdictionalize the calls wireless carriers terminate to the LEC network; and that the wireless Category 11 records currently being provided for this traffic are simply being provided in the industry standard format being used across the country. The Commission should decline to amend 4 CSR 240-29.040.

1. Existing Wireless Category 11 Records are Adequate for Billing. Recent filings with the Commission in an unrelated case confirm that the existing wireless Category 11 records are wholly adequate for billing -- even without CPN. These filings corroborate MITG/STCG witness

¹ Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri will be referred to in this pleading as "AT&T Missouri." It previously conducted business as "SBC Missouri."

² AT&T Missouri points out that, as has been the case throughout these proceedings, the CPN of the wireless caller is passed through to the terminating carrier via SS7 signaling where available.

Robert Schoonmaker's³ testimony that the small LECs are able to use, and are using, the existing wireless Category 11 records to bill wireless carriers.⁴ Moreover, these filings unequivocally show that the wireless carriers, with one exception (applicable only to STCG), are actually paying the billed charges:

T-Mobile is the only wireless carrier in Missouri that has failed to pay for its use of Respondents' networks during the period of time between 2001 and 2005 when Respondents' wireless service tariffs were in effect. Every other wireless carrier operating in this state has played by the rules and paid for the traffic that it sent to Respondents' during this time period.⁵

While T-Mobile continues to refuse to pay STCG, the pleadings in that case demonstrate that this refusal has nothing to do with the adequacy of the Category 11 billing records or the inclusion of CPN in such records. Rather, the dispute between T-Mobile and STCG focuses on the validity of the small LEC wireless termination service tariffs,⁶ which T-Mobile continues to challenge in federal court.⁷ That dispute, however, exists only between T-Mobile and STCG. T-Mobile and the MITG have fully settled and T-Mobile is paying the MITG companies for terminating T-Mobile wireless traffic:

For those separate Rural companies that were part of the arbitration in Case No. IO-2005-0468, et al. (consolidated), T-Mobile is compensating those separate Rural companies at the rates which the Commission approved in the interconnection agreements, and has paid compensation for the prior period to the effective date of those interconnection agreements. The disputes concerning past compensation with those separate Rural companies have been resolved and T-Mobile has made all settlement payments.⁸

³ Mr. Schoonmaker was the MITG and STCG witness in Case No. TE-2006-0053.

⁴ See April 18, 2006, testimony of Robert Schoonmaker in Case No. TE-2006-0053, T. 340-341; and Exhibit 13 from Case No. TE-2006-0053.

⁵ STCG Response to Commission Order Directing Filing, Case No. TC-2006-0558, filed July 10, 2006, at p. 1 (emphasis in original).

⁶ See T-Mobile First Amended Complaint and Motion for Expedited Treatment, Case No. TC-2006-0486, filed June 28, 2006, at p. 2 ("the question of the lawfulness of the state tariffs upon which the Rural LECs base their call blocking proposal is currently before the Court of Appeals for the 8th Circuit") and at p. 4 ("if the 8th Circuit invalidates the tariff, then there would be no amount due to the Rural LECs and, as a result, no basis for call blocking at all").

⁷ See VoiceStream PCS v. BPS Telephone Company, et al., No. 05-4377 (8th Cir.).

⁸ T-Mobile First Amended Complaint and Motion for Expedited Treatment, filed June 27, 2006, Case No. TC-2006-0588 at p. 5.

2. No Evidence of Financial Losses Caused by the Lack of CPN in the Wireless

Category 11 Record. Neither the MITG nor the STCG have provided any evidence of financial losses caused by the lack of CPN in the wireless Exchange Message Interface (“EMI”) Category 11 record, even though specifically invited by the Commission to do so.⁹ Instead, they have merely offered half-hearted claims that it is “not known and is not currently capable of being ascertained,”¹⁰ and “not possible to determine.”¹¹ Certainly had any material level of losses existed, these parties would have made some effort to quantify them. The fact that they did not even bother to do so makes clear that no such losses exist.

Moreover, the recent conclusion of final settlements in the wireless complaint cases shows that MITG and STCG have not lost any revenue on the wireless traffic they terminate (payment, however, was significantly delayed due to litigation between MITG/STCG and the wireless carriers over the applicable rate). As the Commission is aware, both the MITG and STCG companies have filed numerous complaints with the Commission over the last several years to obtain terminating compensation on the calls wireless carriers terminated to the MITG and STCG exchanges. At this point, however, all of these cases except for Case No. TC-2002-1077 (the STCG case against T-Mobile USA, which is being challenged in federal court), have been resolved with the responsible

⁹ See Notice Opening New Case, Inviting Comments and Issuing Protective Order, issued May 24, 2006, in Case No. TX-2006-0444 at p. 2 (Specifically, the Commission sought: “How much revenue have terminating carriers lost because wireless CPN has not been included in the Category 11 records? How was that revenue number calculated? What percentage of overall revenue that is “lost” revenue number?”).

¹⁰ MITG Comments p. 4.

¹¹ STCG Comments p. 5.

wireless carrier and the individual terminating small ILEC agreeing on a full settlement. Those settlements have now been paid and the complaints have been dismissed with prejudice.¹²

And on a prospective basis, the wireless carriers are required to pay the lawful, Commission-approved rates for terminating intraMTA and interMTA wireless traffic (based on factors used to apply those rates) contained in the MITG and STCG's interconnection or traffic termination agreements. Neither MITG nor STCG have claimed that the wireless carriers are not doing so. And as Staff witness Bill Voight recently testified, there have been no material claims of unaccounted-for traffic:

Prior to establishment of the ERE rules, the Commission was inundated with docketed cases and informal allegations involving unaccounted-for, or "phantom" telephone traffic occurring on the LEC-to-LEC network. Now that the rules are in place, I am not aware of any instances or allegations of such traffic. In my opinion, the lack of CPN within the billing records does not negatively impact other aspects of the ERE rules, including the ten items identified above.¹³

3. The Cost of Equipment and System Changes Far Outweigh the Benefit, if any, of Including CPN in the Wireless Category 11 Record. AT&T Missouri has shown through sworn affidavits that its Lucent 5ESS™ tandems do not have the technical capability to populate CPN in the AMA switch records for wireless-originated calls, making CPN unavailable for inclusion in the EMI Category 11 billing records for this type of traffic.¹⁴ AT&T Missouri has demonstrated that Lucent Technologies would be required to develop this functionality as a new capability in its

¹² See Order Dismissing Party, Case No. TC-2002-57, issued June 26, 2002 (dismissing Petitioner Kingdom Telephone Company as it had dismissed all its claims against Respondents); Order Setting Prehearing Conference, Granting Motions to Dismiss Parties, and Denying Motion for Leave to Appear Pro Hac Vice, Case No. TC-2002-57, issued July 1, 2004 (dismissing Sprint, Ameritech, CMT Partners and Verizon Wireless as a result of settlements); Order Dismissing Parties and Directing Filing, Case No. TC-2002-57, issued February 1, 2006 at p. 2 ("... all parties to these matters except the Commission Staff, the Public Counsel, AT&T Missouri, T-Mobile, and the four Petitioners (Northeast Missouri Rural Telephone Company, Alma Telephone Company, Chariton Valley Telephone Corporation, and Mid-Missouri Telephone company) are dismissed from these cases, together with any and all claims raised with respect to their participation in these matters."); and Notice of Voluntary Dismissal and Notice Closing Case, Case No. TC-2002-57, et al., issued March 31, 2006 ("The Petitioners and T-Mobile USA Inc. have entered into and effectuated a Settlement Agreement which provides the complaints of Petitioners pending against T-Mobile be dismissed with prejudice to the re-filing thereof. Therefore, under Commission rule 4 CSR 240-2.116, this case is dismissed with prejudice.")

¹³ Direct Testimony of William L. Voight in Case No. TE-2006-0057 filed March 24, 2006, at pp. 2-3.

¹⁴ Jason Constable Affidavit, paras. 2, 5.

5ESS™ switches at an estimated cost ranging from \$900K - \$1.3M, and with an estimated development time of 6-12 months from a signed agreement.¹⁵ In addition, AT&T Missouri has demonstrated that it would incur additional costs to load and test the new software package, and costs (estimated to exceed \$100,000) to change its internal data processing systems that would be needed to generate a wireless EMI Category 11 record that includes CPN (if CPN becomes available in the AMA data).¹⁶

Neither the MITG nor the STCG have disputed these costs or provided any contrary information. Instead, they make unsupported claims that CPN is needed in the Category 11 wireless billing record for jurisdictional and general auditing purposes and that AT&T Missouri should be required to pay these costs because of the elimination of an outdated intercompany compensation arrangement back in 1999. None of these claims provide any basis for amending Section 4 CSR 240-29.040 to require inclusion of CPN in the wireless Category 11 billing record.

MITG's claims that "small ILECs terminating traffic need CPN and billing records in order to be able to determine call jurisdiction"¹⁷ is incorrect and has been refuted both by Staff and the Commission. While Staff indicated that CPN may be useful for general auditing, Staff testified that wireless CPN is not a reliable jurisdictional indicator for wireless traffic and not suitable for billing:

Because of instances that are sometimes characterized as "roaming," such calls might appear to be subject to reciprocal compensation when in fact they are subject to access charges. Depending on the number dialed, other calls might be mistaken as subject to access charges, when in fact they are subject to reciprocal compensation. As I have previously stated, wireless CPN is not a reliable jurisdictional indicator in all instances; CPN should be used only in establishing general auditing guidelines.¹⁸

And in fact, the Commission itself specifically prohibits it:

¹⁵ *Id.*, paras. 2, 7-8. A copy of Lucent's September, 2005 feature development estimate is attached to Jason Constable's Affidavit as Schedule 2HC. It should be noted that Lucent's response was a high-level response and made no firm commitments until a contract was signed. (As this estimate is nearly a year old, it is possible that Lucent's current cost would be higher.)

¹⁶ Jason Constable Affidavit, paras. 7-8; Chris Read Affidavit, paras. 2, 10-14.

¹⁷ MITG Comments p. 3.

¹⁸ Direct Testimony of William L. Voight filed March 24, 2006, in Case No. TE-2006-0053, at p. 8, lines 1-9.

. . . We also agree that Calling Party Number (CPN) cannot in all instances be used to determine the proper jurisdiction of wireless calls. We caution all terminating carriers that any attempt to use an OCN or CPN to determine the proper jurisdiction of wireless telephone calls on the LEC-to-LEC network is not permissible under our local interconnection rules.¹⁹

While Staff does support the use of CPN for general network auditing, STCG's use of Staff testimony on this subject²⁰ to support a request to amend 4 CSR 240-29.040 is misleading because Staff does not view this potential use²¹ as sufficient to warrant the imposition of a requirement to include CPN in the wireless billing record. On an overall basis, after balancing both the pros and the cons, Staff opposes requiring CPN to be included in the wireless billing record: "Succinctly stated, the Staff concluded that the cost exceeded the expected benefits."²²

In reaching this conclusion, Staff specifically noted that the lack of CPN within the billing record does not prevent the terminating carrier from identifying the wireless carrier responsible for payment:

In spite of the potential ramification for lack of CPN, lack of CPN does not prevent the terminating carrier from knowing the responsible wireless carrier to whom the bill should be sent . . . Knowledge of the responsible wireless carrier for wireless-originated calls traversing the LEC to LEC network is accomplished by the originating tandem carrier inserting a "per trunk billing number" in place of the CPN within the billing record. The "per trunk billing number" is a number which uniquely identifies the wireless carrier directly connected to the LEC-to-LEC network; hence, the party responsible for paying terminating compensation.²³

Staff also concluded that the lack of CPN in the billing records for wireless-originated calls does not defeat the Commission's purpose in adopting the Enhanced Record Exchange Rules, nor does it negatively impact other aspects of these rules:

¹⁹ Order of Rulemaking Adopting 4 CSR 240-29.010, Mo. Reg. Vol. 30, No. 12 (June 15, 2005) pp. 1377-1378.

²⁰ STCG Comments p. 3, quoting Mr. Voight's Direct Testimony from Case No. TE-2006-0053 at p. 6.

²¹ It should be noted that the only potential ramification from the wireless billing record's lack of CPN was on its use for such auditing purposes: "In my view, this is the only potential ramification of not including the CPN as part of the tandem-created billing records for wireless-originated telephone calls traversing Missouri's LEC-to-LEC network." Direct Testimony of William L. Voight in Case No. TE-2006-0053, filed March 24, 2006, at p. 6, line. 16-18.

²² Id., p. 10, line 18.

²³ Id., p. 6, lines 21-23 and p. 7, lines. 4-9.

In my opinion, it would not. In addition to addressing the legal liabilities and establishing certainty for the business relationship of transiting traffic, the ERE rules have largely accomplished the objective of reducing the number of billing discrepancies, and making it easier to resolve those that might arise. The rules provide a means to identify unidentified traffic, and help to ensure just compensation for the exchange of LEC-to-LEC traffic, including transiting traffic. In order to satisfactorily accomplish these objectives, the ERE rules established the following: (1) a requirement for carriers to pass CPN to downstream carriers and ultimately to end users on each and every telephone call,¹ (2) an option for terminating carriers to utilize separate trunk groups to better manage their networks, (3) an option for terminating carriers to create accurate terminating billing records should they choose not to rely on records developed by a third-party, (4) a requirement for billing records to be created in a timely and consistent manner, (5) a requirement for invoice payments to be made in a timely manner, (6) an option for carriers to object to inaccurate billing invoices, (7) a requirement for carriers to ensure customer privacy provisions, (8) a requirement for carriers to maintain confidentiality of customer billing records, (9) implementation of a system of general auditing provisions and, (10) establishment of a system to block (reroute) LEC network traffic.

Prior to establishment of the ERE rules, the Commission was inundated with docketed cases and informal allegations involving unaccounted-for, or “phantom” telephone traffic occurring on the LEC-to-LEC network. Now that the rules are in place, I am not aware of any instances or allegations of such traffic. In my opinion, the lack of CPN within the billing records does not negatively impact other aspects of the ERE rules, including the ten items identified above.²⁴

¹ End users must, of course, have Caller ID available to receive CPN.

MITG claims that the small LECs need CPN in wireless billing records in order to be able to “monitor interconnection agreement traffic factors and in order to negotiate new factors when appropriate.”²⁵ But as the STCG’s Comments show, the small ILECs can, if they have a business reason to do so, capture and record CPN at their own switches: “terminating carriers do not need to ‘reconfigure’ their equipment to capture the originating CPN since terminating carriers currently receive CPN in real time in their switches.”²⁶ And if they wish to use this CPN information to monitor existing interMTA factors or to develop new ones, they have the ability to correlate the CPN information they record at their switches with the wireless EMI Category 11 billing records

²⁴ Id., pp. 2-3 (emphasis added).

²⁵ MITG Comments p. 3.

²⁶ STCG Comments p. 4.

AT&T Missouri provides (i.e., matching their terminating recordings with the EMI Category 11 billing records by comparing the terminating number, the date and time of the call) as the small LECs have done in previous cases:

To date, wireless carriers have been unable (or have refused) to provide the necessary information that would identify the jurisdiction of a wireless-originated call on a call-by-call basis. Accordingly, terminating carriers have used originating and terminating telephone numbers in order to obtain or to develop jurisdictional factors for purposes of billing access charges on interMTA traffic.⁴ Without originating CPN in the wireless records, terminating carriers have been required to perform special studies to capture and compare originating CPN [from their own recordings] with a Category 11-01 wireless records.²⁷

⁴ See, BPS Telephone Company, et al. v. VoiceStream Wireless Corporation, et al. TC-2002-1077 (January 27, 2005) (CPN information was used by Mark Twain Rural Telephone Company to perform a traffic study to determine that 70% of the traffic from T-Mobile callers that terminated to the Mark Twain exchanges was interMTA and *In the Matter of the Petition of Alma Telephone Company for Arbitration of Unresolved Issues Pertaining to a Section 251(b)(5) Agreement with T-Mobile USA, Inc.*, IO-2005-0468 (October 6, 2005) (the Commission stated, “the BPS decision is guidance for the Commission’s accepting the validity of the studies that Chariton Valley, Mid-Missouri and Northeast submitted. The Commission accepted the methodology of an NPA-NXX study to ascertain traffic jurisdiction.”).

Moreover, claims that CPN and the wireless Category 11 billing record is needed to regularly monitor interMTA factors is overblown. It has been AT&T Missouri’s experience that the interMTA factors are generally based on very rough estimates or are simply a negotiated number acceptable to the parties from a business perspective. Often, the factors have no relation to actual traffic flows in the state. For example, the factors in the interconnection agreement between New London Telephone Company, Orchard Farm Telephone Company and Stoutland Telephone Company with T-Mobile USA have no connection to the traffic flows between these companies in Missouri. Rather, that agreement is actually a multistate agreement negotiated by these three LECs’

²⁷ STCG Comments pp. 5-6.

holding company, TDS. The interMTA factors contained in that agreement apply to approximately 100 affiliated small LECs spread across 25 states.²⁸

Although such agreements usually limit a party's ability to update interMTA factors only once per year,²⁹ the Commission should be able to see from its records that few, if any, carriers in Missouri have updated interMTA factors in wireless interconnection agreements midstream. And in any event, if the revenue differential on potentially misbilled inter and intraMTA traffic was material, the MITG and STCG would have attempted to quantify such a potential revenue loss in its Comments as it was invited to do by the Commission. Its failure to provide such an estimate raises an inference that such differential is de minimus at best. This conclusion is also supported by the fact that many of the small ILECs in the state have set interMTA factors at zero rather than attempting to negotiate a larger factor.³⁰

MITG and STCG claim that AT&T Missouri can afford to fund Lucent's software development work to add the capability of capturing wireless CPN in the 5ESS tandem switch recordings because of an \$18 million "savings" from the PTC Plan's elimination. Aside from being irrelevant, this claim is misplaced. Under the plan, AT&T Missouri (then, SWBT) provided intraLATA toll to the small ILEC customers at SWBT's tariffed toll rates, which were insufficient

²⁸ See the Multistate Wireless Traffic Exchange Agreement between TDS Telecommunications Corporation and T-Mobile USA, dated January 1, 2005, filed as Schedule 3 to AT&T Missouri witness Chris Read's Rebuttal Testimony, filed April 7, 2006, in Case No. TE-2006-0053, pp. 36 of 40 through 38 of 40, and p. 40 of 40. This agreement was approved by the Missouri Commission in Case No. TO-2006-0324 on March 23, 2006.

²⁹ *Id.*, p. 24 of 40 ("the parties agree to cooperate in good faith to amend this agreement to reflect this revised interMTA percentage and such revised percentage will be effective on amendment to this agreement. Such studies or reexaminations will be conducted no more frequently than once annually").

³⁰ See the wireless interconnection or traffic termination agreements between Cass County Telephone and U.S. Cellular, approved January 4, 2006, in Case No. TO-2006-0233; between Steeleville Telephone and U.S. Cellular, approved January 3, 2006, in Case No. TO-2006-0234; between Ellington Telephone and U.S. Cellular, approved January 10, 2006, in Case No. TO-2006-0238; between Grand River Mutual Telephone and U.S. Cellular, approved January 11, 2006, in Case No. TO-2006-0245; between Lathrop Telephone and U.S. Cellular, approved January 11, 2006, in Case No. TO-2006-0246; between New London, Orchard Farm and Stoutland Telephone Companies and Cingular, approved November 10, 2005, in Case No. TK-2006-0154; between Choctaw Telephone and Cingular, approved May 24, 2004, in Case No. TK-2004-0514; between Goodman Telephone and T-Mobile, approved November 5, 2003, in Case No. TK-2004-0165; between Ozark Telephone and T-Mobile, approved November 5, 2003, in Case No. TK-2004-0166; and between Seneca Telephone and T-Mobile, approved November 5, 2003, in Case No. TK-2004-0167.

to cover the small ILEC's originating and terminating access charges SWBT was required to pay. These losses were intensely magnified during the later years of the plan when SWBT introduced flat-rated calling plans (like 1+ Saver Direct), which increased the traffic, and the small ILECs failed to update their T/O ratios to account for such plans being used for Internet access (which increased SWBT's terminating access charge expense far beyond any actual increase in terminating traffic). The elimination of these losses, which were not contemplated as part of the PTC Plan's creation, can hardly be characterized as a gain to AT&T Missouri that would somehow offset imposing a substantial and unnecessary current expense.

Moreover, there is no evidence that such "savings" continue to exist. Circumstances have changed dramatically since 1999. With the advent of competition, many other carriers are now carrying this traffic. Traffic patterns have changed drastically. Billing is now based on actual traffic measurements and outdated. T/O ratios are no longer used. Additionally, the flat-rated plans SWBT previously provided are no longer being offered. AT&T Missouri will realize no benefit from Lucent's updating its switch software to include wireless CPN in AMA recordings and it is wholly inappropriate to impose this \$1 million plus expense on it based on such irrelevant and unsubstantiated claims.

4. Conclusion. Here, AT&T Missouri is simply providing wireless Category 11 records in the standard Ordering and Billing Forum ("OBF") EMI format being used across the country. As the Commission itself found in Case No. TE-2006-0053, "for wireless calls, it is not industry-standard practice to include the CPN in that field." This conclusion was fully supported by the sworn testimony of AT&T Missouri network witness Jason Constable concerning the content of AMA switch recordings and AT&T Missouri witness Chris Read, who has been a member of the OBF since 1997 and personally participated in the creation of the OBF EMI document that set the standards for the content of wireless Category 11 billing records and in the maintenance of those

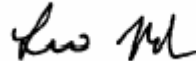
standards.³¹ The only evidence of a carrier including CPN in a wireless Category 11 billing record was that of Sprint (now Embarq), which only recently began doing this, and only for Missouri. Sprint's producing a wireless billing record in all its other operating states similar to AT&T Missouri's record -- as do BellSouth, Verizon and CenturyTel -- fully supports the Commission's interpretation of the OBF EMI guidelines.

WHEREFORE, AT&T Missouri respectfully requests the Commission to enter an order finding it unnecessary to amend 4 CSR 240-29.040 to require CPN to be included in the Category 11 billing records exchanged between telecommunications carriers for calls wireless carriers directly terminate to the LEC network.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.,
D/B/A AT&T MISSOURI

BY



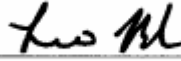
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³¹ See AT&T Missouri witness Chris Read Rebuttal Testimony in Case No. TE-2006-0053, filed April 17, 2006, at pp. 2-3.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on July 17, 2006.



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