

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

In the Matter of the Request of Southwestern	)	
Bell Telephone, L.P., d/b/a SBC Missouri	)	
for a waiver of Certain Requirements of	)	Case No. TE-2006-0053
4 CSR 240-29.040(4).	)	

**REPLY IN OPPOSITION TO JOINT MOTION TO DISMISS**

Comes now the Small Telephone Company Group ("STCG") and submits its Reply in Opposition to Joint Motion to Dismiss filed by the Staff of the Missouri Public Service Commission ("Commission") and Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri ("Joint Applicants").

1. On January 20, 2006, the Staff and AT&T Missouri filed a Joint Motion to Dismiss AT&T Missouri's request for a waiver of the requirement in Commission Rule 4 CSR 240-29.040(4) that the Calling Party Number ("CPN") be included in the Category 11-01-XX billing records for wireless originated calls. Joint Applicants requested that the request be dismissed as moot, because in its Respondent's Brief filed in Cole County Circuit Court in the review of the rulemaking order, the Commission, through its counsel, stated that the Commission no longer believes that the Category 11-01-XX records must include CPN for wireless originated calls. Based on this statement in a pleading filed in another venue, Joint Applicants now believe that a variance is no longer necessary, and the request to the Commission may be dismissed.

2. The Order of Rulemaking issued by the Commission in Case No. TX-2003-0301 adopting the Enhanced Record Exchange ("ERE") rule clearly stated that CPN was required in Category 11-01-XX records. The Commission stated:

We thus determine that transiting carriers shall include the CPN as part of the category 11-01-XX records created for wireless-originated traffic occurring over the LEC-to-LEC network. If any carrier determines that it cannot or should not include the originating CPN of wireless callers in the Category 11-01-XX billing record, it is free to petition the commission to be excluded from that aspect of our rule. Based on the comments and the record before us, we see no reason to exclude wireless CPN from the billing records generated by transiting carriers.<sup>1</sup>

Based on this statement by the Commission in its Order of Rulemaking, AT&T Missouri filed a request for variance of the requirement to include CPN in the category 11-01-XX records.

3. Section 386.270, RSMo 2000, states that “all regulations . . . prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.” The Commission cannot change its mind and invalidate the provisions of its order adopting the regulation by simply including a statement to that effect in a pleading. Section 386.280, RSMo 2000, states that “[e]very order, authorization or certificate issued or approved by the commission under any provision of this chapter shall be in writing and entered on the records of the commission.” The statement of the Commission’s counsel in a brief cannot be considered a written order or decision of the Commission, nor can such a statement invalidate the lawful order of the Commission issued in Case No. TX-2003-0301. Until such time as there has been a suit brought to invalidate the regulation and prosecuted to decision pursuant to the provisions of Chapter 386, the Order of Rulemaking issued in Case No. TX-2003-0301 is a valid and lawful order of the Commission and must be followed.<sup>2</sup> AT&T Missouri must either include CPN in

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<sup>1</sup>*Order of Rulemaking*, Case No. TX-2003-0301, 30 Mo. Register 1389, June 15, 2005.

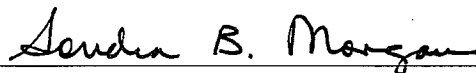
<sup>2</sup>*See, State ex rel. GTE North, Inc. v. Missouri Public Service Commission*, 835 S.W.2d 356 (Mo. App. 1992) (order of the Public Service Commission remains in force and is prima facie lawful until found otherwise by ultimate ruling of court at conclusion of appeal process).

the records of the wireless-originated calls or it must request a waiver from the Commission. Its request for waiver is not moot based on a statement in a pleading.

4. The STCG otherwise concurs in the Reply in Opposition to Joint Motion to Dismiss filed by the Missouri Independent Telephone Group ("MITG") in this proceeding.

Wherefore, the STCG respectfully requests that the Commission deny the Joint Motion of Staff and AT&T Missouri to dismiss its request for waiver and for any other relief appropriate in the circumstances.

Respectfully submitted,



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W.R. England, III                      Mo. Bar 23975  
Sondra B. Morgan                      Mo. Bar 35482  
Brydon, Swearengen & England P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102-0456  
(573) 635-7166  
(573) 634-7431 (fax)  
[smorgan@brydonlaw.com](mailto:smorgan@brydonlaw.com) (e-mail)

Attorneys for The Small Telephone Company  
Group

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic submission, hand-delivered or sent by U.S. Mail, postage prepaid, this 30<sup>th</sup> day of January, 2006 to:

Mr. Mike Dandino  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102

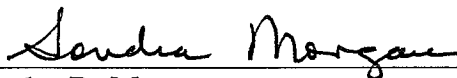
Mr. Keith Krueger  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

Mr. Craig Johnson  
1648A East Elm St.  
Jefferson City, Missouri 65101

Mr. Larry Dority  
Fischer & Dority  
101 Madison, Suite 400  
Jefferson City, MO 65101

Mr. Brett D. Leopold  
Sprint  
6450 Sprint Parkway, Bldg. 14  
Mail Stop KSOPHN0212-2A303  
Overland Park, KS 66251

Mr. Leo Bub  
AT&T Missouri  
One SBC Center, Room 3518  
St. Louis, MO 63101

  
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Sondra B. Morgan