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June 11, 2001

FILED

JUN 11 2001

Missouri Public
Service Commission

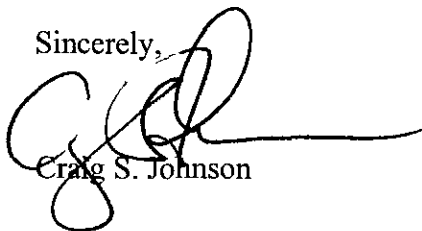
Mr. Dale Hardy Roberts
Secretary/Chief Administrative Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: TO-99-593

Dear Mr. Roberts:

Enclosed please find an original and eight copies of the MITG's Comments in reply to the June 6, 2001, Comments filed by Southwestern Bell and Sprint. A copy of this letter and a copy of the enclosures have been served upon all attorneys of record. Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

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Encl.

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED³
JUN 11 2001

Missouri Public
Service Commission

In the Matter of the Investigation)
Into Signaling Protocols, Call)
Records, Trunking Arrangements,)
And Traffic Measurement.)

TO-99-593

Reply of MITG to Comments of SWBT, Sprint

Comes now the Missouri Independent Telephone Group (MITG), and submits the following comments in opposition to the suggestion contained in the June 6, 2001 comments of Southwestern Bell Telephone Company (SWBT) and Sprint Missouri Inc. (Sprint) that further process or hearings are required in this docket:

1. The Commission's May 17, 2001 Order Directing Additional Notice was intended to give carriers (other than the former PTCs and former SCs) until June 6, 2001 in which to intervene or file comments regarding the Commission's consideration of issues that might impact carriers (other than former PTCs and former SCs). Pursuant to this Order, Notice was sent to all certificated Missouri telecommunications carriers.
2. Out of all of the other certificated Missouri telecommunications carriers, only three filed applications for intervention or comments. Only two were timely. On June 6 Green Hills Area Cellular Telephone and Mark Twain Communications companies filed timely applications to intervene and comments in support of the business arrangement the Commission's May 17 Order contemplated. NuVox Communications filed an Application to Intervene Out of Time, with no comments in favor of or against the business arrangements the Commission's May 17 Order contemplated. Of the scores

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or hundreds of IXC's or CLECs certificated in Missouri, none oppose the business arrangements contemplated in the Commission's May 17 Order.

3. The MITG does not believe that the May 17 Order contemplated comments being filed by the former PTCs or former SCs. These carriers have had plenty of due process in this docket. Nevertheless, on June 6, SWBT and Sprint filed comments. In these comments SWBT and Sprint reargue their position that carriers besides the former PTCs and former SCs should be made parties.

4. The MITG respectfully suggests that the comments of SWBT and Sprint are merely re-argument of their prior positions. Carriers other than the former PTCs and former SCs have been given ample opportunity to participate, but have failed to do so.

5. This docket concerns the business relationship built upon the unique interconnection existing between former PTCs and former SCs. That business relationship already has changed with termination of the PTC Plan, and this docket is to determine the new business relationship these carriers will use over that interconnection. All of the parties necessary to consider the future business relationship between former PTCs and former SCs have been present in this docket since its inception.

The result of this docket will not directly impact other telecommunications carriers. It simply makes no difference if other carriers participate or do not participate. After enactment of the Telecommunications Act of 1996, business relationships with these other carriers are determined either by access tariffs or by approved interconnection agreements (IA). No order in this docket is going to change existing access tariffs. No order in this docket will predetermine the terms of any future IA. No order in this docket will change the terms of an existing IA.

Other Carriers have been given ample opportunity to participate

6. As recited by the May 17 Order, all Missouri telecommunications carriers were given notice of this docket by Order of June 15, 1999, providing a previous opportunity to participate by apply to intervene by July 16, 1999, almost two years ago. By Orders of August 12, 1999 and October 14, 1999, Sprint (the IXC), Birch Telecom (CLEC), and AT&T (CLEC and IXC) were allowed to participate. On November 9, 2000 AT&T *withdrew* as a party, as did Birch on December 8, 2000. This confirms that both IXCs and CLECs were provided ample opportunity to intervene almost 2 years ago.

7. Despite the fact that adequate notice and opportunity to participate was previously provided, the Commission's May 17, 2001 provided yet another opportunity to participate, which has resulted in no significant additional participation.

This docket concerns the business relationship between former PTCs and former SCs

8. This docket had its genesis in the termination of the Primary Toll Carrier Plan (PTC Plan), which was initiated by the enactment of the Telecommunications Act of 1996. The Act required ILECs to implement intraLATA toll dialing parity. By Order of June 10, 1999 in TO-99-254, the Commission Ordered termination of the PTC Plan and the institution of this docket to consider the business relationship which would be used *between the former PTCs and the former SCs* over their access connections after termination of the PTC Plan.

9. No other IXC or CLEC has ever been covered by the PTC Plan. No other IXC or CLEC has any direct interest in the relationship between former PTCs and former SCs that will replace the relationship in place during the PTC Plan.

10. IXC toll relationships with ILECs comprising the former PTCs and the former SCs are set forth in existing approved access tariffs.

11. CLEC local relationships with ILECs comprising the former PTCs and the former SCs are set forth in IAs approved by this Commission under the provisions of the Telecommunications Act of 1996.

This Commission has previously recognized that business relationships between IXCs and ILECs are determined by access tariffs, that business relationships between CLECs and ILECs are determined by approved interconnection agreements. This Commission has previously *refused* to allow strangers to one business relationship to become parties in the Interconnection Agreement proceedings of other carriers.

12. In its September 26, 2000 Report and Order in the maximizer 800 complaint of SWBT versus several former SCs, TC-2000-325, the Commission held that, for interexchange traffic, even a former PTC acting in its IXC capacity must comply with another ILEC's access tariffs just as would any other IXC.

13. With respect to IAs between CLECs and ILECs, only those two interconnecting carriers are affected by their IA. Strangers to an interconnection are not entitled to participate in other carriers' IA proceedings. Strangers to an interconnection are not to be affected by approval of an IA to which they are not party. The following Orders of this Commission so indicate:

a. In its September 6, 1996 Report and Order in TO-96-440, the approval of an IA between SWB and Dial US, the Commission refused to allow the MITG (then the Mid-Mo Group) to intervene. The rationale was that third party carriers were not discriminated against by the approval of an IA addressing traffic terminating to a carrier not a party to that IA. The terms of the business relationship between Dial US and Choctaw could only be determined in an IA between Dial US and Choctaw.

b. In its December 23, 1997 Report and Order in TT-97-524, SWB's Tariff filing to revise its wireless interconnection tariff, the Commission held that wireless carriers interconnecting with SWB could not send traffic to third party LECs prior to the approval of an IA between the wireless carrier and each other such third party LEC.

c. In its May 7, 2001 Order in TO-2001-455, the Commission refused the MITG's application to intervene in the arbitration of an IA between SWBT and AT&T, holding that even if the business relationship between SWB and AT&T addressed traffic terminating to third party LECs, those third party LECs were not proper parties to the IA.

Even though in the SWB/AT&T arbitration the Commission is addressing issues such as the placement of both local and toll traffic on shared transport (costing and pricing issue 30), the routing of AT&T PIC'ed calls over FGC versus FGD facilities (costing and pricing issue 31), the routing of AT&T overflow traffic on SWB common transport facilities (costing and pricing issue 36), the combining of both toll and local traffic in an IA (network interconnection and architecture issue 5), the joint provision of exchange access to IXC customers (network interconnection and architecture issue 5), allowing AT&T to provide a local trunk to SWB's tandem (network interconnection and architecture issue 20), all of which may predetermine and adversely impact the traffic terminating to MITG members subtending SWB, the MITG has been refused participation.

14. Former SCs have been refused participation in IAs of SWB and other ILECs because the interests of former SCs are not to be discriminated against or impacted by the business relationships between the two carriers to an approved IA. The business

relationship between a former SC and a CLEC will be determined in the IA approved between them.

15. Former SCs have not been allowed to participate in the business relationship between former PTCs and CLECs. Applying the same rules to CLECs, there is no reason to recognize a *right or necessity* for CLECs to participate in the determination of the business relationship between the former PTCs and former SCs? The suggestion of Sprint and SWB that it is now necessary to involve the CLECs in the establishment of a new business relationship between the former SCs and the former PTCs is inconsistent with today's regulatory environment. There is no need for CLECs to be party to the business relationship used over the interconnection between a former PTC and former SC, just as there is no need for former SCs to be a party to the business relationship used over the interconnection between a former PTC and a CLEC.

Conclusion

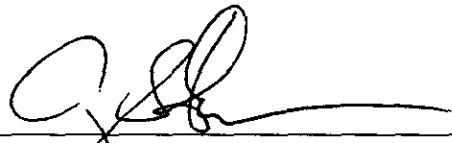
16. If every newly certificated carrier had to be given an opportunity to participate in this docket, this docket might never end, as new carriers are certificated monthly by the Commission.

17. This docket has been pending for in excess of two years. The MITG believes that the comments of Sprint and SWB are intended for delay and a second bite at the issues already tried.

18. Carriers other than former PTCs and former SCs were not necessary parties to this docket. Nevertheless, they have been provided with ample opportunity to participate in this docket, and they have failed to exercise their right to participate.

19. The time is now ripe for a final Report and Order in this docket, based upon the record developed at the January 2001 hearing already conducted in this docket.

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

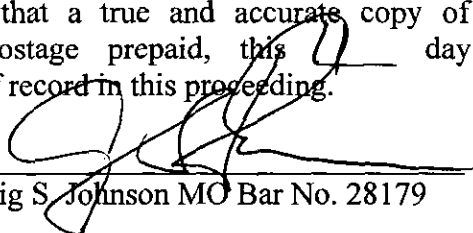
By 

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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 9 day of June, 2001, to all attorneys of record in this proceeding.


Craig S. Johnson MO Bar No. 28179