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December 21, 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
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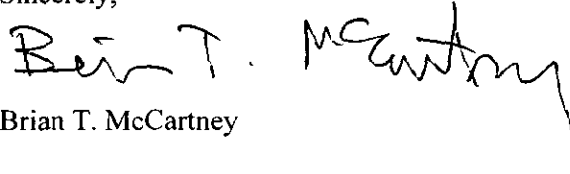
Re: Case No. TO-99-593

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of the Small Telephone Company Group's Application for Rehearing.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel. A copy of the attached is being provided to parties of record. Any questions regarding the attached may be directed to me at the above number. I thank you in advance for your cooperation in this matter.

Sincerely,


Brian T. McCartney

BTM/da
Enclosure
cc: Parties of Record

FILED²
DEC 21 2001
Missouri Public
Service Commission

FILED²

DEC 21 2001

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

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

Case No. TO-99-593

THE SMALL TELEPHONE COMPANY GROUP'S APPLICATION FOR REHEARING

COMES NOW the Small Telephone Company Group ("STCG"), pursuant to 4
CSR 240-2.160, and for its *Application for Rehearing* of the Commission's *Order*
Directing Implementation issued December 13, 2001, states as follows:

INTRODUCTION

1. The Commission's *Order Directing Implementation* is unlawful, unreasonable, and unsupported by competent and substantial evidence. First, the Commission's *Order* erroneously finds that the STCG proposal is "too drastic" to implement at this time. Second, the Commission's *Order* erroneously finds that the implementation of Ordering and Billing Forum (OBF) Issue No. 2056 will help resolve the problems with records and billing that have been identified in this case. The Commission should grant rehearing to further examine these issues.

2. When the Primary Toll Carrier (PTC) Plan ended, the business relationship between the former PTCs and the Secondary Carriers (SCs) changed. Although the former PTCs continued to deliver interexchange traffic to the small companies over their Feature Group C (FGC) connections, the former PTCs only accepted responsibility for a part of that traffic. The SCs were told that they would have to seek compensation for traffic originated by upstream carriers directly from those

upstream carriers. The STCG was concerned that this system leaves the small companies to bear the risk of recording errors by the former PTCs as well as unidentified traffic that is delivered by the former PTCs. The STCG's concerns were confirmed by the Network Test, which demonstrated that: (a) the former PTCs are not properly identifying all of the traffic that they deliver to Missouri's small companies; and (b) the small companies are not being compensated for part of the compensable traffic that is being delivered by the former PTCs.

HISTORICAL BACKGROUND

3. **The PTC Plan** On June 10, 1999, the Commission issued a *Report and Order* in Case No. TO-99-254 finding that the Primary Toll Carrier (PTC) Plan¹ was incompatible with competition. Accordingly, the Commission ordered the elimination of the PTC Plan. The Commission's *Report and Order* also ordered that this case (TO-99-593) be opened to address the small companies' concerns about missing records and unidentified traffic. Now, well over two years later, the Commission's *Order Directing Implementation* simply sidesteps these issues and adopts an unproven OBF Issue No. 2056 that will do little, if anything, to resolve the problems identified in this

¹ The Primary Toll Carrier ("PTC") Plan was established by the Commission in 1987 in Case Nos. TO-84-222 et al. Under the PTC Plan, all 1+ or 0+ intraLATA toll calls were completed by one of four incumbent local exchange companies ("ILECs") designated as Primary Toll Carriers (Fidelity, Sprint, SWBT, and Verizon). All other ILECs, including the STCG member companies, were designated as Secondary Carriers or SCs. The PTC Plan required each SC to deliver all 0+ or 1+ intraLATA toll calls to the tandem switch of the PTC which served the SC's central office. For over ten years, the PTCs completed all such calls, paid associated expenses, and retained all of the toll revenues associated with these calls, including the toll revenues paid by customers residing in the telephone exchanges served by the SCs.

case.

4. The Commission's *Report and Order* establishing this case recognized the small companies' concerns about the recording and reporting of traffic with an originating records system in a competitive environment. The Commission noted the possibility of discrepancies between the terminating minutes measured by the small companies versus the minutes as reported by the originating carriers, such as the PTCs.² The Commission also specifically recognized the small companies' concerns about "**a lack of business relationships with upstream carriers.**"³ The Commission's *Report and Order* stated that the issues raised by the small companies were:

important issues that will need to be addressed as competition develops. Accordingly, the Commission will establish a case to investigate signaling protocols, call records, trunking arrangements and traffic measurement.⁴

The Commission's underlying reason for this case was to address the small companies' concerns about missing and unidentified traffic, yet the Commission's *Order Directing Implementation* does nothing to resolve these concerns.

² *In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity*, Case No. TO-99-254, et al., *Report and Order*, issued June 10, 1999, pp. 10-11

³ *Id.* at p. 11 (emphasis added)

⁴ *Id.* at p. 17 (emphasis added)

THE NETWORK TEST

5. On July 16-17, 2000, the parties conducted a Network Test to compare originating and terminating recordings for a group of selected companies. The results of the Network Test confirmed the STCG's concerns about the use of originating records as the basis of compensation for terminating traffic. For the nine small companies analyzed, ***less than 75% of the terminating calls had matches from the originating records.***⁵ Stated another way, the originating records (which the small companies use to bill terminating access) only captured 75% of the total traffic terminating to the small companies. The other 25% of the terminating traffic was "unidentified" (i.e. the originating carrier was unknown) and therefore unbillable. On an individual company basis, the percentage of matched records was ***as low as 41.1%.***⁶ The results of the Network Test clearly demonstrate that the originating records being produced by the former PTCs are not providing an accurate and complete picture of the total amount of traffic terminating to the small companies.

6. **SWBT's Local Plus recording problem** The Network Test also revealed that SWBT was not recording Local Plus traffic in a number of its switches and exchanges around the state. Although Local Plus was implemented in December of 1998, SWBT's Local Plus recording problem was not identified until August of 2000. SWBT's unrecorded Local Plus traffic amounted to several hundred thousand dollars of access revenue to various small companies throughout the state. SWBT's Local Plus

⁵ Ex. 40, p. 12

⁶ *Id.*

recording problem illustrates the serious shortcomings of the PTCs' originating records system. It is also a lesson in the serious impacts the originating records system can have on small companies such as Mid-Missouri Telephone Company, which was ***not being compensated for more than 50% of the traffic it was terminating for the former PTCs***. To date, the former PTCs have still failed to account for all of the unidentified traffic delivered to just nine of the small companies for a one-hour period.

THE STCG PROPOSAL IS NEITHER "DRASTIC" NOR UNREASONABLE

7. To address the inherent problems with the originating records system in a competitive environment, the small companies propose that they be allowed to use their own terminating records. This proposal is clearly within the scope of an investigation into "call records" and "traffic measurement" that the Commission initially referenced when it opened this case.

8. The small companies' proposal would hold the former PTCs responsible for three types of traffic that they deliver to the small companies' exchanges: (1) Competitive Local Exchange Carrier (CLEC) traffic; (2) other Incumbent Local Exchange Carrier (ILEC) traffic (primarily from the other former PTCs); and (3) unidentified traffic (i.e. traffic for which an appropriate originating record is not created). Under this proposal, the former PTCs will be responsible for traffic that they allow on the network and deliver to the small companies for termination, ***just as the other traditional IXCs such as AT&T and MCI/WorldCom are held responsible today, and just as the former PTCs were responsible for this traffic under the 10+ years of the PTC Plan.***

9. The Commission's *Order Directing Implementation* characterizes the STCG proposal as a "drastic" measure, but this is not true. Rather, the STCG proposal would simply require the former PTCs play by the same rules that the other IXC's do. There is no question that the former PTCs are now acting as IXC's and providing interexchange service, yet they do not want to play by the same rules that the IXC's do.

10. The former PTCs should be held responsible for the traffic that they deliver to the small companies' exchanges. This is no different than the former PTCs' prior responsibilities under the PTC Plan. This case was established to consider the obligations of the former PTCs and the SCs with regard to this traffic in a post-PTC environment. Thus, the STCG proposal is neither a "drastic" departure from: (a) the present IXC business relationship; nor (b) the business relationship that existed between the SCs and the PTCs during the more-than-ten-year history of the PTC Plan.

11. The small companies' proposal is the most efficient and equitable business model for a competitive environment. This model is currently used by traditional IXC's such as AT&T and MCI both in Missouri and nationwide because it is more efficient and less burdensome for the party with direct connections and established billing relationships to bear the responsibility for traffic that is carried over its facilities and ends up at the small companies' exchanges. In a competitive environment, the former PTCs must bear the responsibility for the traffic which they allow on their networks and deliver to the small companies for termination. Unfortunately, the Commission's decision continues to hold the former PTCs harmless for the unidentified traffic that they deliver to the small companies.

12. There are many reasons why the former PTCs must begin playing by the same rules as the rest of Missouri's IXC's. First, ending the originating records system will assure that the former PTCs are not given a competitive advantage over the other traditional IXC's. Second, ending the originating records system and adopting the STCG's proposal will assure that the small companies are not unfairly prejudiced as a result of the former PTCs' interconnection arrangements which allow CLECs and other carriers to "transit" traffic and have it delivered to the small companies without paying for termination. Finally, the evidence shows that the small companies are not being compensated for all of the compensable traffic that is being delivered by the former PTCs. Adopting the STCG's proposal will solve this problem and assure that the small companies receive compensation for *all* of the compensable traffic that they terminate.

13. **Who should bear responsibility for their mistakes and the traffic that they allow on the network?** The Commission's *Order Directing Implementation* states that the small companies' proposal "would not resolve the issues this case was created to address, but would instead shift the burden of addressing them to other companies." The Commission's *Order* erroneously characterizes the STCG proposal. The small companies simply seek compensation for traffic that SWBT and the other former PTCs deliver to the small companies over network connections with the small companies. The traffic at issue is traffic delivered by the former PTCs over facilities that the former PTCs have ordered from the small companies. The small companies simply want compensation from the carrier that delivers the call to their facilities for termination. This is the most efficient and equitable solution, and this is what the traditional IXC's

such as AT&T, Sprint Long Distance, and MCI/WorldCom must do.

14. **Who should bear the risk?** The Commission's *Order Directing Implementation* opines that holding the "upstream" carriers responsible for the unidentified traffic that they allow onto the network it is "too drastic a measure to take as a first step." Yet the *Order* offers no valid reason why the former PTCs should be absolved of responsibility for the unidentified traffic that they allow onto the network and deliver to the small companies. Nor does the *Order* offer any legitimate reason why the small companies should be forced to bear the risk for the former PTCs' mistakes. The originating records system makes the small companies bear 100% of the risk for the former PTCs' mistakes, as well as for any unidentified traffic delivered via SWBT's "transiting" arrangements. **Even Sprint recognized that it is inappropriate for the small companies to bear all of the risk for other companies' unidentified traffic, so Sprint proposed a 50/50 sharing of this risk. (Tr. 75) And in Kansas, SWBT agreed to bear responsibility for any difference in unidentified traffic that exceeds 2% each month. (Tr. 565)**

15. **The Network Records Test proved that the former PTCs carry and deliver unidentified traffic to the small companies' facilities for termination.**

Under the Commission's *Order Directing Implementation*, the small companies are still left "holding the bag" for: (1) the former PTCs' own errors; and (2) "unidentified" traffic that the former PTCs have allowed onto the network and delivered to the small companies for termination. The STCG's proposal simply places the risk where it belongs – on the carriers that allow "unidentified" traffic to flow over their networks –

rather than on the carriers that get stuck with this unidentified traffic at the end of the line.

**OBF ISSUE NO. 2056 WILL NOT SOLVE THE PROBLEMS
IDENTIFIED IN THIS CASE**

16. OBF Issue No. 2056 is an optional industry proposal that has not been adopted by or even fully presented to Missouri's telecommunications industry. Moreover, the Commission has no evidence before it that Issue No. 2056 has been adopted by the wireless telecommunications industry or telecommunications carriers in other neighboring states such as Kansas and Illinois. Because the Commission's *Order* does not apply to these carriers (because they are not Missouri telecommunications companies subject to the Commission's jurisdiction), they will still be able to send traffic to the small companies (over SWBT's network) without any requirement to create the necessary records to facilitate compensation billing. This is arbitrary and unreasonable.

17. **OBF Issue No. 2056 does not address the primary issues in this case.**

The implementation of Issue No. 2056 will eliminate the use of 11-50-xx summary usage records and some of the transfer of records between LECs, ***but it will not address the primary issues that are being considered in this case.*** Issue No. 2056 is not intended to create record flows where they do not exist, or to change flows related to intraLATA messages. In fact, Issue No. 2056 does not appear to affect the termination of intraLATA toll and the billing and measurement of that traffic. (See Tr. 112) Issue No. 2056 is not a solution that can address the immediate problems of the

originating records system, and it is unclear if it will ever do so. This is evidenced by numerous statements contained within the notes from Issue No. 2056 itself. For example:

1. "It was questioned if the intent was to change existing processes developed as a result of state directives or contractual agreements? ***It was advised that MECAB doesn't control state directives or contractual agreements today, so nothing would change, unless the contract referred to specific MECAB guidelines.***"⁷

2. "A participant advised that today there may not be record exchange between local or Intra-LATA usage. Was the intent to change this? ***It was explained that if record exchange was not required today, then this process would not change.***"⁸

3. "It was also questioned if the existing category 92 record process would be changed. ***However, it was stated that Category 92 records are not addressed in this forum but is a state/company driven process that would not be changed by this issue.***"⁹

These statements, combined with the description of the changes, indicate that Issue No. 2056 does not deal with creating new records for local or intraLATA usage where they are not currently being generated, nor does it deal with changes in the Category 92 record process that is still being used by the former PTCs. Thus, the fundamental issues related to the errors and omissions in the recordings that are being made and passed to the small companies are not addressed by Issue No. 2056.

⁷ See Notes from OBF Issue No. 2056, Part B, p. 8 (emphasis added)

⁸ *Id.* (emphasis added)

⁹ *Id.* at p. 9 (emphasis added)

18. Issue No. 2056 in Missouri. The Commission's *Order Directing Implementation* has no effect upon wireless carriers in Missouri or other states because the Commission has no jurisdiction over wireless carriers. Likewise, the *Order* has no effect upon telecommunications carriers in other neighboring states that operate within the same LATA.¹⁰ Thus, the *Order* does nothing to solve the problem of unidentified and uncompensated traffic that is sent by these carriers and delivered by Southwestern Bell. For example, the Commission's *Order* does nothing to prevent a carrier in Kansas City, Kansas from sending uncompensated traffic to a Missouri small company over SWBT's facilities.

CONCLUSION

19. The Commission's *Order Directing Implementation* is unlawful, unreasonable, and unsupported by competent and substantial evidence. Specifically, the Commission's *Order* erroneously states that: (a) the STCG proposal is drastic; and (b) the implementation of Issue No. 2056 will help resolve the problems with records and billing that have been identified in this case.

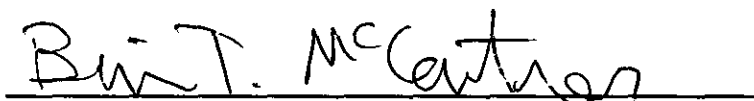
20. In a competitive environment, Missouri's small companies must be allowed to bill for all of the traffic that they terminate. The most appropriate and reasonable business relationship in a competitive environment is to have companies bill from their own records. The Network Test demonstrated that terminating recordings are accurate and reliable and that the originating record system has been and

¹⁰ Both the Kansas City LATA and the St. Louis LATA extend across state boundaries into Kansas and Illinois, respectively.

continues to be unreliable. In a competitive environment: (1) all interexchange carriers should be placed on equal footing; and (2) the small companies should not be forced to bear the risk for the former PTCs' recording mistakes and the unidentified traffic that the former PTCs deliver to the small companies. Efficiency and the public interest are clearly furthered by making the former PTCs responsible for the CLEC and unidentified traffic that they deliver to the small companies for termination. It is time for the Commission to end the originating records component of the PTC Plan, just like the Commission terminated the rest of the PTC Plan.

21. WHEREFORE, the STCG respectfully requests that the Commission reconsider and rehear *Order Directing Implementation* in this case.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 21st day of December, 2001, to:

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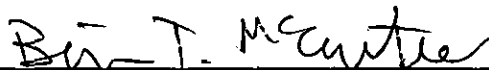
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