STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 18th day of July, 1997.

In the Matter of Southwestern Bell Telephone Company's Tariff to Revise P.S.C. Mo.-No. 40, Wireless Carrier Interconnection Service.)))) **Case No. TT-97-524**

ORDER GRANTING REQUESTS FOR INTERVENTION AND SUSPENDING WIRELESS CARRIER INTERCONNECTION TARIFF

On June 5, 1997, Southwestern Bell Telephone Company (SWBT) submitted proposed revisions to its Wireless Carrier Interconnection Service Tariff, P.S.C. Mo.-No. 40, which includes tariff changes associated with wireless carrier originated calls which transit SWBT's network and terminate in the networks of other third-party local exchange companies (LECs). SWBT states in its cover letter that the tariff revisions are intended to conform with the decision of the Missouri Public Service Commission (Commission) in Case No. TC-96-112. The effective date of the tariff revisions was originally July 7, but the effective date was subsequently extended on several occasions to July 24.

On June 27, the Mid-Missouri Group of Local Exchange Companies (Mid-Missouri Group)[1] filed an Application To Intervene. The Mid-Missouri Group contends that SWBT's tariff filing is inconsistent with the Commission's Report And Order in Case No. TC-96-112. That case involved a

[1] For purposes of this proceeding the Mid-Missouri Group consists of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

complaint by United Telephone Company of Missouri (United) against SWBT for failure to pay terminating access charges owed to United for cellular-originated toll calls.[2] The Mid-Missouri Group claims that pursuant to the Commission's order, SWBT is the customer of the third-party LECs, and is responsible for compensating the LECs at the tariffed exchange access rates. Further, the third-party LECs have no means of tracking or blocking cellular traffic, and there is little or no incentive for either cellular carriers or SWBT to block cellular-originating traffic from termination in the exchanges of the LECs. The Mid-Missouri Group requests that it be granted intervention and that SWBT's tariff be suspended and a hearing held on this matter.

On July 1, the Small Telephone Company Group[3] filed a Application To Intervene And Motion To Suspend Tariff. The Small Telephone Company Group asserts that the tariff revision would severely restrict the areas where wireless calls could be terminated, since interconnection agreements between cellular carriers and third-party LECs could not be completed before the tariff would go into effect. The Small Telephone Company Group also states that before third-party LECs can enter into interconnection

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[2] SWBT had contracted with cellular carriers to provide end-to-end intraLATA termination at a rate of approximately $.04/minute.

[3] For purposes of this proceeding, the Small Telephone Company Group consists of: Alma Telephone Company, BPS Telephone Company, Bourbeuse Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

agreements with cellular providers, several issues will need to be considered regarding the LECs' ability to measure and bill for the wireless traffic terminating in their exchanges. In addition the Small Telephone Company Group claims that the proposed language in Section 6.9 of the tariff is inconsistent with other provisions in the tariff, including a provision which states that "terminating service may be used to access valid NXXs in the LATA . . . ."

On July 7, the Staff of the Commission (Staff) filed a response stating that it was not prepared to support or oppose the requests to suspend at this time. Also on July 7, SWBT filed a pleading in opposition to the applications to intervene. SWBT states that as a "customer," SWBT has the right to discontinue subscribing to the services of the member companies of the Mid-Missouri Group and Small Telephone Company Group. SWBT points out that the termination of cellular-originating calls is the ultimate responsibility of the cellular company, and that these calls merely transit SWBT's network. SWBT claims that the proposed tariff revision will require a wireless carrier interconnecting with SWBT to deal directly with third-party LECs when the wireless carrier seeks to terminate calls on the LECs' networks. SWBT also maintains that the tariff revision is not inconsistent with or contrary to the Commission's order in Case No. TC-96-112. In addition, SWBT submits that its tariff structure is consistent with the Federal Communications Commission's (FCC's) requirement that landline carriers and wireless carries negotiate reciprocal compensation arrangements for the termination of each other's traffic.

On July 11, the Mid-Missouri Group filed a reply, in which the Small Telephone Company Group concurs. The Mid-Missouri Group points out that SWBT is not changing the structure of the service it is providing, but is still agreeing to terminate the traffic of cellular companies on a LATA-wide basis. The rates charged by SWBT are substantially less than the terminating access rates for third-party LECs. The third-party LECs have no way to identify or block cellular-originating traffic, and cellular carriers have no incentive to commence negotiations with the LECs while cellular traffic is being delivered at SWBT's termination rate. The Mid-Missouri Group also notes that SWBT stated in its response to the intervention requests that it will not block cellular-originating traffic but will continue to complete these calls.

On July 15, Staff filed a memorandum containing its recommendation. Staff initially submits that the tariff revision is in no way a compliance filing relating to Case No. TC-96-112, as stated by SWBT in its cover letter. Staff next indicates that the purpose of the proposed tariff sheets is as follows: The proposed tariff sheets specify the rate charged by SWBT for transporting a wireless carrier's calls to another LEC's network, state that wireless carriers shall establish agreements with other LECs to directly compensate the LECs for termination of wireless traffic, state that wireless carriers shall indemnify SWBT against charges billed to SWBT by other LECs, state that the tariff applies except where there is a Commission-approved interconnection agreement between SWBT and a wireless carrier, and make several minor text changes. Staff further states that SWBT is attempting to remove itself from a situation in which it is responsible for paying a third-party LEC's access charges for terminating wireless traffic by requiring wireless carriers to indemnify it for charges the terminating LECs may impose on SWBT. Staff submits that this tariff filing provides wireless carriers with an incentive to negotiate interconnection agreements with third-party LECs.

In addition, Staff responds to the arguments raised by the Mid-Missouri Group and the Small Telephone Company Group in their applications to intervene. Staff first maintains that SWBT's tariff filing is consistent with the FCC's Interconnection Order, which places a duty on third-party LECs to establish reciprocal compensation arrangements with wireless carriers for the termination of wireless traffic. In addition, Staff notes that interconnection agreements between SWBT and other competitive LECs (CLECs) contain a standard provision requiring interconnecting CLECs to reach some agreement with third-party LECs for the termination of the CLEC's traffic. Staff also contends that the blocking of wireless traffic is against the public interest, and therefore Staff requested that SWBT revise its tariff language accordingly. This change is reflected in a substitute sheet filed on July 9.

Further, Staff disputes that the proposed tariff language creates inconsistencies. With regard to the example that was given, Staff states that terminating service may still be used to access valid NXXs in the LATA. The only difference is that SWBT would be indemnified. Furthermore, Staff states that it agrees with the Small Telephone Company Group that issues regarding the third-party LECs' ability to measure and bill for wireless traffic terminating in their exchanges must be addressed as the parties work out reciprocal compensation arrangements. However, Staff believes that these billing and tracking issues are not properly addressed in SWBT's tariff filing. Instead, Staff states that SWBT has assured Staff that it plans to make available to all third-party LECs a monthly report containing the information necessary to bill wireless carriers, including the identity of the originating wireless carrier, the terminating office, and the minutes-of-use (MOU).

With regard to the modification which was requested by Staff, Staff explains that it had two concerns with the original proposed tariff language. First, the language implied that SWBT would not carry wireless traffic destined for third-party LECs which did not have an interconnection agreement with the wireless carrier. Staff believes that the blocking of wireless traffic is against the public interest. Second, Staff is not aware of existing Commission-approved compensation agreements between wireless carriers and third-party LECs; therefore, in the absence of the blocking of wireless traffic, it is virtually certain that the tariff would be violated the moment it became effective. Staff believes that it is against the public interest for the Commission to approve tariff sheets which would automatically place several parties in violation thereof. The new language in SWBT's substitute sheet explicitly states that SWBT will not block calls that terminate in other LECs' networks without regulatory approval. While legal counsel for Staff is unaware of any authority under which SWBT may seek regulatory approval to block wireless traffic, Staff finds the amended tariff language acceptable if superfluous. Nevertheless, Staff's position is based upon the belief that the issue of authority to block wireless traffic can best be addressed in a future proceeding.

Finally, Staff notes that there are three interconnection agreements between SWBT and wireless carriers currently pending before the Commission, which may be affected by the Commission's decision on SWBT's wireless tariff filing. All three agreements contain provisions for wireless carriers to negotiate reciprocal compensation agreements with third-party LECs. The agreements were filed in Case No. TO-97-474, which involves AT&T Wireless Services, Inc.; Case No. TO-97-523, which involves

Ameritech Mobile Communications, Inc.; and Case No. TO-98-12, which involves Western Wireless Corporation.

In summary, Staff recommends approval of SWBT's proposed tariff sheets as amended. Staff states that without approval of this filing, there is little incentive for the wireless carriers to enter into interconnection agreements with third-party LECs, since wireless carriers currently receive LATA-wide termination at rates lower than the LECs' access rates. Staff submits that with the approval of this tariff filing, a wireless carrier will have to pay the charges a third-party LEC imposes on SWBT, unless the carrier negotiates a separate agreement with the third-party LEC.

On July 17, 1997, the Small Telephone Company Group filed a response to Staff's recommendation. The Small Telephone Company Group submits that the substitute language requested by Staff will not resolve the problem of companies being in violation of the tariff on the effective date, since SWBT will not block wireless traffic, but instead this traffic will still be sent to third-party LECs' networks without compensation arrangements being in place. The Small Telephone Company Group also expressed concern that a situation could arise where the third-party LECs bill SWBT for terminating wireless traffic, and SWBT refuses to pay the LECs because the traffic has been terminated in violation of the tariff.

The Commission has reviewed SWBT's proposed tariff revisions, the various pleadings filed in this case, and Staff's recommendation, and finds that the tariff revisions should be suspended. The Commission initially finds, as suggested by Staff, that SWBT's tariff revisions are not a compliance filing in conjunction with Case No. TC-96-112. The Commission's decision in that case did not require SWBT to file tariff revisions.

Instead, the Commission held that SWBT was the customer of United for purposes of the termination of cellular traffic under SWBT's cellular interconnection tariff, and that in the absence of some other consensual agreement regarding payment, termination of cellular traffic must be paid for under United's access tariff.

The Commission has carefully reviewed the tariff language and the concerns of the Mid-Missouri Group and the Small Telephone Company Group, and determines that those concerns are sufficient to require the suspension of SWBT's tariff revisions. The tariff language requires wireless carriers to establish compensation agreements with third-party LECs, thus wireless carriers will be in violation of the tariff *ab initio*. The Commission finds that it is unclear whether SWBT contemplates that third-party LECs will bill SWBT or the wireless carriers for termination of wireless traffic, and it is unclear whether SWBT could use this tariff language to avoid paying proper charges billed by third-party LECs.

The Commission determines that it would be appropriate to suspend the tariff sheets filed by SWBT for a period of 120 days in order to allow time for a more thorough review of the issues. The Commission will therefore suspend the tariff sheets filed by SWBT for a period of 120 days from the current effective date of July 24 to November 21.

The Commission will also establish a procedural schedule and set a hearing date, in order to facilitate an expeditious resolution of the issues. In addition, the Commission finds that the following conditions should be applied to the procedural schedule:

(1) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in

issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(2) Testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless a protective order has first been established by the Commission. The party that considers information to be proprietary or highly confidential should request a protective order. Any testimony or schedule filed without a protective order first being established shall be considered public information.

(3) The Commission will schedule a prehearing conference in this case to allow the parties the opportunity to resolve procedural and substantive issues.

(4) The hearing memorandum will set forth the issues that are to be heard and decided by the Commission. Any issue not contained in the hearing memorandum will be viewed as uncontested and not requiring resolution by the Commission. The briefs to be submitted by the parties shall follow the same format established in the hearing memorandum. The briefs must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(5) The Commission emphasizes the importance of the deadline for filing the hearing memorandum. The Commission Staff will be responsible for preparing and filing the hearing memorandum and, unless the Commission orders otherwise, the hearing memorandum shall be filed on the date set. Each party is expected to provide Staff with its position on each unresolved issue at least two business days prior to the established filing deadline.

(6) The Commission's general policy provides for the filing of the transcript within two weeks after the hearing. If any party seeks to

expedite the filing of the transcript, such a request shall be tendered, in writing, to the administrative law judge at least five days prior to the date of hearing. The administrative law judge will determine whether the request should be granted.

(7) It is appropriate to limit the length of the briefs to 30 pages. All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080(7).

(8) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the administrative law judge, and opposing counsel.

IT IS THEREFORE ORDERED:

1. That the applications to intervene filed by the Mid-Missouri Group of Local Exchange Companies on June 27, 1997 and by the Small Telephone Company Group on July 1, 1997 are granted.

2. That the following tariff sheets filed by Southwestern Bell Telephone Company on June 5, 1997, as amended on July 9, 1997, are hereby suspended for a period of 120 days from July 24, 1997 to November 21, 1997.

3. That the following procedural schedule is adopted for this case:

Prehearing Conference	-	**July 31, 1997 10:00 a.m.**
SWBT files direct testimony	-	**August 18, 1997 3:00 p.m.**

Staff, OPC, & intervenors file rebuttal testimony	-	September 4, 1997 3:00 p.m.
All parties file surrebuttal/ cross-surrebuttal testimony	-	September 18, 1997 3:00 p.m.
Hearing memorandum	-	September 25, 1997
Hearing	-	October 10, 1997 10:00 a.m.
Simultaneous briefs	-	October 31, 1997

The hearing will be held in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.

4. Anyone wishing to attend who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the arbitration hearing at: Consumer Services Hotline — 1-800-392-4211 or TDD Hotline — 1-800-829-7541.

3. That this order shall become effective on July 24, 1997.

BY THE COMMISSION

Cecil I. Wright

Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton,
Drainer, Murray and Lumpe,
CC., concur.

ALJ: Bensavage