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November 2, 2001

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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
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FILED³

NOV 02 2001

Missouri Public
Service Commission

RE: Case No. TO-99-593

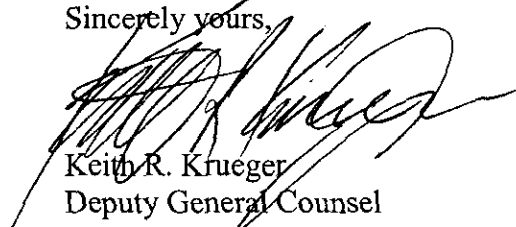
Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S RESPONSE TO MISSOURI INDEPENDENT TELEPHONE GROUP'S MOTION TO CONSOLIDATE FOR SUPPLEMENTAL HEARING.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,



Keith R. Krueger
Deputy General Counsel
(573) 751-4140
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KRK/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
NOV 02 2001

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

Alma Telephone Company, et al.,)
)
Petitioners,)

v.)

Case No. TC-2002-194

Southwestern Bell Telephone Company,)
et al.,)
)
Respondents.)

STAFF'S RESPONSE TO
MISSOURI INDEPENDENT TELEPHONE GROUP'S
MOTION TO CONSOLIDATE FOR SUPPLEMENTAL HEARING

COMES NOW the Staff of the Missouri Public Service Commission and, for its Response to the Motion to Consolidate for Supplemental Hearing that was filed by the Missouri Independent Telephone Group ("MITG"), states to the Missouri Public Service Commission as follows:

1. Rule 4 CSR 240-2.080(3), which is applicable to these proceedings and to the MITG's Motion to Consolidate for Supplemental Hearing, provides in full as follows:

Each pleading shall include a clear and concise statement of the relief requested and specific reference to the statutory provision or other authority under which relief is requested.

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2. Although MITG's motion is laden with facts, it does not clearly and concisely state what relief is requested. It is not clear whether MITG seeks merely a joint hearing on the matters at issue in either or both of these cases, or whether it seeks an actual consolidation of the two cases. Furthermore, MITG's motion contains absolutely no citation, whatsoever, to "the statutory provision or other authority under which relief is requested." The motion therefore fails to comply with the requirements of Rule 4 CSR 240-2.080(3). The Staff will, nonetheless, respond to the possible bases that the Staff perceives and upon which MITG may be relying for its motion.

3. It appears that MITG may be relying upon Rule 4 CSR 240-2.110(3), which provides in full as follows:

When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.

MITG has not, however, identified the "related questions of law or fact" that exist in these cases. Furthermore, although this rule specifically authorizes a joint hearing, it does not specifically authorize consolidation of cases, which is what MITG is apparently requesting.

4. It also appears that, by requesting consolidation of these cases for a supplemental hearing, MITG seeks to present additional evidence, which it wants the Commission to then consider in its resolution of the issues presented in Case No. TO-99-593 ("Signaling Protocol Case"). This is, in essence, a request to reopen the record in the Signaling Protocol Case. This procedure would, however, appear to run afoul of the provisions of Rule 4 CSR 240-2.110(8), which provides in full as follows:

A party may request that the commission reopen a case for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing with the secretary

of the commission a petition to reopen the record for the taking of additional evidence in accordance with these rules, and serving the petition on all other parties. The petition shall specify the facts which allegedly constitute grounds in justification, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

5. The parties filed their initial briefs in the Signaling Protocol Case on March 1, 2001, and they filed reply briefs on March 13, 2001. MITG's motion therefore fails to comply with the requirements of the first sentence of Rule 4 CSR 240-2.110(8), because it was not made "before briefs have been filed." The motion also fails comply with the second sentence of Rule 4 CSR 240-2.110(8), because MITG did not file "a petition to reopen the record for the taking of additional evidence." The motion also fails to comply with the last sentence of the rule, because it does not "contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing." Because MITG has failed to comply with the requirements of Rule 4 CSR 240-2.110(8), the Commission should reject MITG's apparent request that it receive additional evidence in the Signaling Protocol Case.

6. The subject matter of the Signaling Protocol Case is different from the subject matter of Case No. TC-2002-194 (the "Complaint Case"). The Commission created the Signaling Protocol Case by the Report and Order that it issued in Case No. TO-99-524 (the "Second PTC Case"). Ordered paragraph 7 of that Report and Order provided in full as follows:

That Case No. TO-99-593 is established to investigate signaling protocols, call records, trunking arrangements and traffic measurement.

Again, in the Order Directing Notice in the Signaling Protocol Case, the Commission stated that it had created the Signaling Protocol Case "to investigate the issues of signaling protocols, call records, trunking arrangements, and traffic measurement."

7. From the foregoing, it follows that the Commission established the Signaling Protocol Case to investigate various technical aspects of network arrangements for completing calls; and that the Commission did not create the case to address the "business relationships" between various parties. Although the case was not created to address business relationships, MITG and the Small Telephone Company Group have attempted to inject that issue into the case, over the objections of both Southwestern Bell Telephone Company and Staff.

8. The complaint filed by MITG in the Complaint Case, on the other hand, pertains almost exclusively to the business relationships between the parties to that case, because MITG brought that case for the purpose of addressing MITG's claim that it is not receiving compensation for services it is providing.

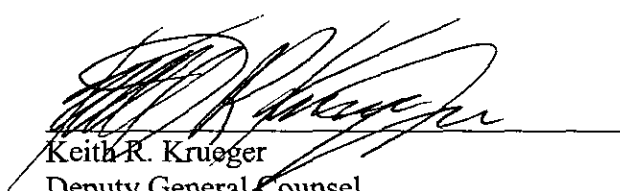
9. The Commission's principal focus and purpose in creating and conducting the Signaling Protocol Case was, and is, to improve the completion and measurement of calls made on the long distance networks. It is a general investigation, and it is prospective in outlook. The principal focus and purpose of the Complaint Case, as established by MITG, is to ascertain whether certain parties have failed to perform their obligations under applicable statutes, rules and tariffs, and, if so, to take remedial action as necessary. It is a specific investigation, and it is retrospective in outlook.

10. Because of the significant differences in the nature and purpose of these two cases, the type of relief that is either sought or that is appropriate, and the evidence that is relevant in each case, it is not appropriate to consolidate the Signaling Protocol Case and the Complaint Case. Furthermore, the Signaling Protocol Case is fully briefed, and it would therefore be inappropriate to present additional evidence to the Commission in that case. MITG's Motion to Consolidate for Supplemental Hearing should be overruled.

WHEREFORE, the Staff requests that the Commission overrule MITG's Motion to Consolidate for Supplemental Hearing.

Respectfully submitted,

DANA K. JOYCE
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 2nd day of November 2001.



Service List for:

Case No. TO-99-593 and TC-2002-194

Verified: November 2, 2001 (lb)

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