

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Rule to Require)	
All Missouri Telecommunications Companies)	
To Implement an Enhanced Record Exchange)	Case No. TX-2003-0301
Process to Identify the Origin of IntraLATA)	
Calls Terminated by Local Exchange Carriers)	

**THE SMALL TELEPHONE COMPANY GROUP'S
OPPOSITION TO SBC'S MOTION TO ABATE RULEMAKING**

I. INTRODUCTION

The Small Telephone Company Group ("STCG")¹ opposes SBC's motion to abate the Commission's proposed Enhanced Record Exchange ("ERE") Rulemaking. The former Primary Toll Carriers ("PTCs") have a long history of raising incomplete or unrelated industry and Federal Communications Commission ("FCC") proposals in hopes of delaying or derailing a solution to the problems of unauthorized, uncompensated, and/or unidentified traffic that have been documented in this case and the cases that have preceded it. Thus, SBC's citation of the FCC's recent "further" notice of proposed rulemaking should come as no surprise. SBC's motion is nothing more than a variation on the "OBF 2056" red herring raised by Verizon that prevented a decision in the underlying contested Case No. TO-99-593. The Commission should deny SBC's transparent attempt to further stall this proposed rulemaking.

¹ BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Mo., Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Mark Twain Rural Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company

During the hearing in this case, Commissioner Appling asked, “How do you explain you can’t ride a train without paying?” (Tr. 112) The Commission’s proposed ERE rule is an important first step towards ending the free ride that some carriers have taken on the networks of the small rural ILECs. SBC’s request to delay this necessary rulemaking will do nothing but prolong the free ride. The FCC’s second notice of proposed rulemaking in the intercarrier compensation docket has done nothing to preempt state rules, and the FCC’s decision on wireless tariffs would only affect a minor portion of the ERE rule. To the extent that any of the provisions in the rule *may* be preempted in the future, those provisions can easily be rescinded. The Commission has been trying to solve these problems for many years, and the Commission should reject SBC’s 11th hour request to derail this rulemaking.

II. DISCUSSION

A. The FCC’s Further Notice of Proposed Rulemaking

The FCC’s investigation of intercarrier compensation issues has been going on for nearly four years, and the FCC has not adopted any new intercarrier compensation scheme since first opening its docket in April of 2001. The FCC’s recent notice simply seeks further comments on various new intercarrier compensation proposals. Therefore, it would be both premature and entirely speculative to delay the Commission’s ERE Rule on the off chance it might conflict with something that the FCC may or may not actually do in the future.

On the other hand, the Network Test in Case No. TO-98-593 demonstrated that there is a real problem with unidentified traffic and the exchange of records in Missouri.

Specifically, the Network Test revealed that SBC had failed to provide compensation or records for substantial amounts of traffic to a number of Missouri's small companies. More than four years later, Missouri's small rural carriers still bear 100% of the risk for SBC's recording "errors" or mistakes and 100% of the risk that any other carrier riding SBC's network fails to provide records or pay for service. This situation is clearly unfair, and the Commission's Staff spent many months working with the industry and the Commission to develop the ERE Rule. SBC's motion should be denied.

B. The FCC's Declaratory Ruling on T-Mobile's Petition

In February of 2005, the FCC issued a decision holding that the STCG wireless termination service tariffs were lawful under the FCC's existing rules. On a going forward basis, however, the FCC prohibited such tariffs and granted small rural carriers, such as the STCG member companies, the right to compel negotiations with wireless carriers under the Act. As a threshold matter, the FCC's decision regarding wireless tariffs is not yet final and is likely to be appealed. And as a practical matter, even if the FCC's wireless tariff decision is ultimately upheld it would only require minor revisions to the Commission's ERE Rule. The Commission can easily decline to adopt those few provisions relating to wireless tariffs, or it could opt to rescind the rules if the FCC's decision is upheld. The wireless tariff provisions are only a small subset of the issues addressed by the ERE rule, and there are many other important provisions that should be retained. The Commission should decline SBC's invitation to throw the baby out with the bath water.

C. The Missouri Commission's Proposed ERE Rule Is Necessary and Needed.

SBC claims that there is a "lack of evidence that there is any urgent need for a rule

at the state level.” (SBC’s motion, p.1) Nothing could be further from truth. In fact, there is a wealth of evidence in the underlying cases that led to the Commission’s proposed ERE rule. On July 16-17, 2000, the parties conducted a Network Test in Case No. TO-99-593 where the terminating usage recorded by a group of small companies was compared with the originating records provided by the former PTCs. The initial results of the Network Test confirmed the STCG’s concerns; for the nine small companies analyzed, ***less than 76% of the terminating records had matches from the originating records.*** (See Ex. 40 in Case No. TO-99-593.)

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 thus unbillable. ***On an individual company basis, the percentage of matched records was as low as 41.1%.*** STCG witness Schoonmaker testified:

[A]bout 76 percent of the terminating records, which the companies were recording at their locations, had a corresponding originating bill record – billing record that was coming from the primary toll carriers. And for one of the companies, it was actually less than 50 percent of the records had a matching originating record.

(Tr. 59) These results demonstrated that the originating records being produced and/or passed by the former PTCs did not provide an accurate and complete picture of the total amount of traffic terminating to the small companies.

SBC's Local Plus recording problem illustrates the shortcomings of the originating records system. It is also a lesson in the serious impacts the current system can have on small companies. For example, Mid-Missouri Telephone Company was not being compensated for more than 50% of the traffic it was terminating. The evidence clearly demonstrated that the sum of the parts (i.e. the originating records received by the small companies) does not equal the whole (i.e. the traffic terminating to the small companies).

Even after correction for SBC's Local Plus problems, the Network Test established that the small companies were receiving records for fewer total minutes than they were actually terminating. Mr. Schoonmaker testified:

Even after adjusting for that [Local Plus] traffic, and again as part of the record of that case, the – after adjusting for that area of the record, the record still showed there was ***in excess of ten percent difference between the terminating record that the companies were recording and the originating records that were being provided for billing purposes.***

(Tr. 60)(emphasis added). Thus, the Network Test and subsequent studies show that the small companies are not compensated for some of the traffic being delivered by the former PTCs.

There is no dispute that the STCG received unidentified and uncompensated traffic from the former PTCs. Unidentified and uncompensated traffic continues to be delivered by the former PTCs. The STCG member companies presently bear 100% of the risk for such traffic. The former PTCs have been held financially harmless for this traffic, so they have no incentive to address the problem. The proposed ERE rule is a first step towards

solving this problem and assuring that the small companies receive compensation for all of the compensable traffic they terminate.

V. CONCLUSION

The record evidence in this case and the preceding cases demonstrate that there is a problem with unauthorized, unidentified, and uncompensated traffic in Missouri. The Commission should deny SBC's motion to abate the proposed ERE rulemaking. It is long past time for the Commission to ensure that everyone using the STCG networks pays their fair share. The ERE Rule is a good first step towards resolving this problem, and there are few, if any, provisions in the ERE rule that could conflict with the FCC's recent rulings. Therefore, the Commission should move forward with the proposed ERE Rule.

Respectfully submitted,

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Certificate of Service

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