BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Chariton Valley Communications Corporation, Inc., for Approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri Pursuant to Section 252(e) of the Telecommunications Act of 1996	))))))	Case No. TK-2005-0300

STAFF RESPONSE TO SBC MISSOURI AND TO CHARITON VALLEY COMMUNICATIONS CORPORATION

COMES NOW the Staff of the Missouri Public Service Commission and for its response states:

1. On March 9, 2005, Chariton Valley Communications Corporation, Inc., filed an application with the Commission for approval of an interconnection agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri under the provisions of the federal Telecommunications Act of 1996. On April 13, the Staff recommended that the Commission reject the interconnection agreement if the parties do not submit a separate transit traffic agreement as an amendment to the interconnection agreement. On April 22, Chariton Valley and SBC Missouri filed their respective responses to the Staff's recommendation. On April 27, 2005, the Commission directed the Staff to respond to the pleadings of Chariton Valley and SBC Missouri.

Response to SBC Missouri

2. In its Response, SBC Missouri attempts to reply to the Staff's observation that "SBC's arguments do not explain what has changed to remove transit traffic provisions from interconnection agreements reviewed by this Commission." SBC Missouri claims at paragraph

9, et seq., that the Staff's question is answered by three intervening developments since 2001. The Staff will separately address and dispose of each alleged development.

3. SBC Missouri claims that one such intervening development is the FCC Virginia Arbitration Order. As SBC Missouri points out, the Order from the FCC's Wireline Competition Bureau noted the FCC has not had occasion "to determine whether incumbent LECs have a duty to provide transit service under [47 U.S.C. Section 251 (c) (2)]." [1] Nor did the Bureau find "clear Commission precedent or rules declaring such a duty."[2]

The Staff recommendation noted that in the FCC's Further Notice of Proposed Rulemaking concerning intercarrier compensation, released on March 3, 2005, the FCC stated "although many incumbent LECs, mostly BOCs, currently provide transit service pursuant to interconnection agreements, the [FCC] has not had occasion to determine whether carriers have a duty to provide transit service."[3] The FCC's discussion of transit service issues did not mention the Bureau's Virginia Arbitration Order. This Commission should give the Bureau's Order as much weight as did the FCC in its Notice.

4. SBC Missouri claims that a second intervening development is "the recent emergence of commercial agreements – recognized and explicitly encouraged by the FCC" in its UNE Remand Order. SBC Missouri points to three paragraphs in the Order where the FCC states that the transition mechanism does not replace or supersede any commercial arrangements carriers have reached.

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[1] Memorandum Opinion and Order, Petitions of WorldCom, Inc. Pursuant to Section 252 (e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, et al., CC Docket Nos. 00-281, 00-249, 00-251, DA 02-1731 (released July 17, 2002), para. 113.
[2] *Id.* at para. 117
[3] *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Further Notice of Proposed Rulemaking,*(released March 3, 2005), at para. 120.

The FCC did not, as SBC Missouri seems to infer, hold that carriers may sidestep their statutory obligations to submit an interconnection agreement for state commission approval by simply calling it a "commercial agreement."

5. SBC Missouri claims that a third intervening development is the Staff's recommendation for approval and the Commission's approval of a wireless interconnection agreement between ALLTEL and SBC Missouri in Case No. TK-2005-0014. SBC Missouri notes that the ALLTEL agreement and the Chariton Valley agreement both contain the provision that the wireless carrier "will not send to SBC – 13STATE local traffic that is destined for the network of a Third Party unless [wireless carrier] has the authority to exchange traffic with that Third Party."

It is not surprising that the same language appears in these two largely boilerplate agreements. And although one could argue about the meaning of the phrase "authority to exchange traffic," the Staff's objection to the Chariton Valley agreement is not directed to the inclusion of this language. The Staff objects to the carriers' failure to submit their entire agreement to the Commission. If SBC Missouri and ALLTEL also had a side agreement, it is the Staff's opinion the side agreement should have been submitted to the Commission.

6. At paragraph 15 of its Response, SBC Missouri suggests that the Commission need not worry about its transit traffic agreement with Chariton Valley because that agreement is filed with the FCC. The letter attached to SBC Missouri's Response states the Chariton Valley agreement is being filed pursuant to Section 211 (a) of the Communications act of 1934, as amended, and Section 43.51 of the FCC's rules.

Section 211(a) directs every carrier subject to the 1934 Act to file with the FCC copies of all agreements with other carriers in relation to any traffic affected by provisions of the 1934

Act. No citation of authority is needed to conclude that Section 211 (a) which has not been amended since its enactment cannot have amended or repealed any part of Section 251 and 252, which were enacted in 1996, and which require interconnection agreements to be submitted for state commission approval.

Response to Chariton Valley

7. In its Response, Chariton Valley stated:

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> 13. Chariton entered into the WSP Service Agreement because SBC offered it as a separate agreement, and was unwilling to offer transit services as part of a direct interconnection agreement.

* * *

> 16. In the negotiations for the interconnection agreement and Wireless Service Agreement, SBC notified Chariton Valley that it would not negotiate a transiting agreement unless Chariton Valley agreed that it was not subject to approval under the Telecommunications Act of 1996. Chariton Valley did not agree with SBC's position. However, in order to make transiting services available, Chariton Valley executed the WSP Service Agreement. In doing so Chariton Valley negotiated language allowing CV to submitted the agreement for approval upon Commission request.

* * *

8. The Federal Communications Commission (FCC) has previously rejected an incumbent local exchange carrier's (ILEC's) argument to narrowly limit the scope of agreements that must be submitted under 47 U.S.C. 252 for State approval.[4] In the Qwest case, the FCC concluded, "Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular

[4] *Quest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252 (a)(1),* WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276, October 4, 2002.

agreement is required to be filed as an 'interconnection agreement' and, if so, whether is should be approved or rejected."[5]

The Commission has previously determined that agreements of the type entered into between SBC Missouri and Chariton Valley are "unlawful" if not submitted to the Commission for approval. In Case No. TO-99-483, the Commission held that a "memorandum of understanding" entered into between Southwestern Bell Telephone Company and Intermedia Communications, Inc., constituted an interconnection agreement under Section 252 of the Act because it involved "the transmission and routing of telephone exchange service and exchange access" under section 251(c) (2) (a) of the Act. The Commisison also determined that, unless properly approved, such side agreements are "unlawful." The Commission should similarly conclude that the side agreement between SBC Missouri and Chariton Valley is also unlawful.[6]

Conclusion

Because it is the State commission's role, not SBC Missouri's, to decide whether a particular agreement is required to be filed, the Commission should direct SBC Missouri and Chariton Valley to file their entire agreement with the Commission for its review. If SBC Missouri and Chariton Valley are unwilling to submit their transiting traffic agreement for the Commission's review and approval, the Staff restates its previous recommendation that the Commission reject the interconnection agreement as discriminatory and against the public interest.

[5] *Id.* at para. 10

[6] *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996*, Report and Order, issued September 7, 2000, pp. 28-29.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of May 2005.

/s/ William K. Haas