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December 11, 2002

Secretary
Missouri Public Service Commission
P. O. Box 360
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FILED²

DEC 11 2002

Re: Case No. TO-99-593

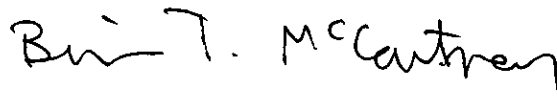
Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of the Small Telephone Company Group's Reply to SWBT's Opposition and Staff's Response to the Joint Motion to Adopt Business Relationship.

Please see that this filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this filing, please give me a call. I thank you in advance for your attention to and cooperation in this matter.

Sincerely,



Brian T. McCartney

BTM/da
Enclosures
cc: Parties of Record

FILED²

BEFORE THE PUBLIC SERVICE COMMISSION DEC 11 2002
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 REPLY
TO SWBT'S OPPOSITION AND STAFF'S RESPONSE
TO THE JOINT MOTION TO ADOPT BUSINESS RELATIONSHIP

Comes now the Small Telephone Company Group (STCG) and for its reply to the
SWBT's *Opposition* and Staff's *Response*, both filed on December 2, 2002, states as follows:

SUMMARY

The evidence in this case clearly shows that there is a problem with creating call records, exchanging call records, and "traffic measurement" between the former PTCs and the former SCs. The Commission recognized these "billing discrepancies" in its December 13, 2001 *Order Directing Implementation*, and the Commission directed Staff "to begin the rulemaking process to promulgate a rule that will codify the requirement that all Missouri telecommunications companies implement Issue 2056." Almost one year later, Staff has still not done so. Instead, Staff has devised a rule to codify the "de facto" Originating Responsibility Plan (ORP) that SWBT has forced upon the small companies while this case has been pending. The Commission has never adopted SWBT's ORP position in this case. Rather, the Commission's *Order Directing Implementation* left open the possibility of considering the STCG's business relationship proposal if OBF Issue No. 2056 did not reduce billing discrepancies. This is all the STCG now asks.

1. **The STCG's Proposal.** Staff concedes that the Commission left open the possibility of considering STCG's business relationship proposal.¹ The STCG proposal is really quite simple: in a competitive environment, the former PTCs must play by the same rules that other interexchange carriers (IXCs) follow when they deliver traffic to the STCG exchanges. Specifically, the former PTCs should be responsible for the traffic that they deliver to the small company exchanges. This is consistent with the business relationship in place during the PTC Plan, and it is consistent with the rules that SWBT's interexchange competitors such as AT&T and MCI/WorldCom follow. AT&T and MCI/WorldCom compensate the small companies for all of the traffic that is delivered over their trunks, regardless of whether AT&T and MCI/WorldCom originated the traffic. The existing Feature Group D (FGD) business relationship requires the party delivering the call to the tandem to pay for the traffic, regardless of whether they are a "transiting" carrier. Staff offers no compelling reason why SWBT should be treated differently.

2. **Staff's Proposed Rule Does Not Implement OBF Issue No. 2056.** On December 13, 2001, the Commission issued its *Order Directing Implementation*. That *Order* directed Staff "to begin the rulemaking process to promulgate a rule that will codify the requirement that all Missouri telecommunications companies implement Issue 2056." Nearly one year later, Staff has still not done so. Instead, Staff has proposed a record exchange rule that codifies a business relationship known as an Originating Responsibility Plan (ORP). The ORP would absolve SWBT of any responsibility for the unidentified and uncompensated traffic that it dumps on the former

¹ Staff's *Response*, filed Dec. 2, 2002, p. 4 ("It is true that the Commission did hint it might consider a change in the business relationship sometime in the future.").

SCs' networks. Staff claims that its proposed rule is "Issue 2056-like,"² but Staff's proposal does not implement OBF Issue No. 2056. Besides assuming a business relationship that this Commission has never specifically adopted (*i.e.* ORP), Staff's proposal is fundamentally flawed because it will not solve the problems identified in this case.

3. **OBF Issue No. 2056 will not solve the problems identified in this case.** On December 2, 2002, Staff conceded that OBF Issue No. 2056 would not solve the problems identified in this case:

[Staff] believes that the OBF's resolution of Issue 2056, *per se*, applies only to calls carried by IXC's, and that **the implementation of Issue 2056 would therefore not achieve the objectives that the Commission sought to achieve when it ordered the implementation of Issue 2056.**³

What Staff now proposes does not codify OBF Issue No. 2056 as ordered by the Commission, and no party now claims that OBF Issue No. 2056 is a possible solution.

4. **The Commission has not ordered an Originating Responsibility Plan in this case.** Staff has devised an ORP rule that would codify SWBT's position without Commission approval and outside of the hearing process. Staff's proposal would force an ORP rule upon the former SCs without a proper hearing. Staff's proposed ORP has never been examined and approved by the Commission in this case.⁴ Rather, Staff's *Status Report* clearly shows that Staff devised the proposed ORP rule during September and October meetings with SWBT before

2 Staff's *Status Report*, filed Dec. 2, 2002, p. 2 (Staff claims that it seeks "to incorporate 'Issue 2056-like' record exchanges into the LEC-to-LEC network.")

3 Staff's *Status Report*, filed Dec. 2, 2002, p. 2 (emphasis added).

4 In fact, the Commission rejected a similar SWBT ORP proposal after a full review in 1986. *In the Matter of the Missouri InterLATA Access Charge and intraLATA Toll Pool*, Case No. TO-85-130, 28 Mo. P.S.C. (N.S.) 535 (1986).

providing the STCG and other interested parties with copies on November 14, 2002.⁵

5. **The issue is ripe.** Staff claims, “At this time, it does not make sense for the Commission to give serious consideration to a proposal to change the business relationships.”⁶ How much longer does Staff believe the small companies must wait? It has been well over three years since the PTC Plan was eliminated, and the problems of unidentified, unreported, and uncompensated traffic have not been resolved. The Commission has yet to determine the appropriate business relationship between former PTCs and former SCs to permanently replace the relationship that was in use during the PTC Plan. Until the business relationship issue is resolved, the small companies will be forced to bear the risk for the former PTCs’ recording mistakes and the unidentified traffic that the former PTCs allow onto the network. Staff’s proposed rule would do nothing but codify the “de facto” ORP that the former PTCs have imposed on the former SCs while this case has been pending. SWBT’s ORP proposal was never ordered by the Commission. The Commission should examine both the STCG and SWBT proposals before adopting a rule that would codify SWBT’s position.

6. **The Commission did not reject the STCG’s Proposal.** Staff claims that the Commission “*specifically rejected* the proposal of the MITG and STCG.”⁷ Staff is mistaken. The Commission’s *Order Directing Implementation* directed the parties to “implement Issue 2056

5 Staff’s *Status Report* details the following private meetings with SWBT:

September 27, 2002: Staff meeting with five representatives of Southwestern Bell Telephone Company (“SWBT”) to discuss technical aspects of how the system works, how calls are routed and how records are exchanged.

October 30, 2002: Conference call among members of the Staff and representatives of SWBT to discuss Staff’s proposed “Enhanced Records Exchange Rule.”

6 Staff’s *Response*, p. 4.

developed by the Ordering and Billing Forum as soon as is reasonably practicable.” The *Order* explained that implementing OBF 2056 was “a first step.” But contrary to Staff’s claim, the Commission did not reject the STCG’s proposal. Rather, the Commission explained:

This is not to say that the Commission will not consider in the future the changed business relationship that the STCG and the MITG propose; but it is too drastic a measure to take as a first step.

Thus, the Commission did not “specifically reject” the STCG proposal as Staff now claims. Rather, the Commission simply directed the parties to try OBF Issue No. 2056 first. Staff concedes that the “first step” – OBF Issue No. 2056 – will not solve the problems identified in this case. It should come as no surprise that the STCG would now like the Commission to consider its business relationship proposal.

7. **The Joint Motion is not an Application for Rehearing.** SWBT claims that the Joint Motion is an untimely application for rehearing. Nothing could be further from the truth. The small companies have participated in workshops and discussions with Staff and the former PTCs for almost an entire year after the Commission issued its *Order Directing Implementation* in hopes that OBF Issue No. 2056 could solve some of the problems identified in this case.⁸ Unfortunately, OBF Issue No. 2056 has done nothing to solve the problems, and Staff now concedes that OBF Issue No. 2056 does not address the problems identified in this case. As explained above, the Commission’s *Order* left open the possibility of considering the STCG’s proposal in the event that OBF Issue No. 2056 did not resolve the problems. This is all that the STCG now asks.

⁷ Staff’s *Response*, p. 3 (emphasis in original).

8. **The STCG's Comments to the FCC.** SWBT claims that the STCG's position in this case is contrary to the STCG's position before the FCC.⁹ SWBT has taken the STCG's comments to the FCC out of context. The STCG comments quoted by SWBT were filed in response to an entirely different business relationship proposal – a unified “bill and keep” arrangement that would completely restructure intercompany compensation. The existing business relationship, which the FCC dubbed “Calling Party's Network Pays” (CPNP) is not the same as the ORP that SWBT seeks to impose on the STCG. Under CPNP, traditional IXCs such as AT&T and MCI/WorldCom compensate the small companies for all of the traffic that is delivered over their trunks. This is true whether AT&T and MCI/WorldCom originated the toll call from one of their subscribers or if they were simply transporting and terminating the call as an underlying carrier for another toll provider who is providing service on a “resale” basis. What the STCG seeks to establish in this case is the same CPNP business relationship that exists in the interLATA jurisdiction.

9. **Staff's Procedural Arguments are Unfair and Unreasonable.** Staff claims “this case was not established for the purpose of examining or changing the business relationships between the parties.”¹⁰ But when the Commission opened this case it 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.¹¹ The Commission specifically recognized the STCG's concerns about “**a lack of business relationships with upstream**

8 In fact, the STCG and MITG pressed for and hosted the first industry meeting to discuss implementation of OBF 2056.

9 SWBT's *Opposition*, p. 3.

10 Staff's *Response*, p. 4.

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

carriers.”¹² In addition, the Commission issued additional notice and identified the business relationship issues in its *Order Directing Additional Notice* issued on May 17, 2001:

During the course of this proceeding, certain issues have been raised that may be beyond the scope of the original notice. Accordingly, **the Commission is providing additional notice to all telecommunications companies in the state of Missouri, and allowing an additional intervention period.** The additional issues raised are:

- Should the Commission change the business relationship that currently exists among telecommunications companies so that the former primary toll carriers (PTCs) are responsible for all terminating traffic based on terminating recordings (with the exception of interstate feature group A, interstate intraLATA, IXC, MCA, and intraMTA wireless transited by another LEC to the terminating LEC)?
- Should the Commission require the former PTCs and the former secondary carriers (SCs) to divide the responsibility for unidentified traffic or discrepancies between originating recordings and terminating recordings?
- Should the Commission allow the former PTCs, at the request of a former SC, to block traffic for non-compensation?

(emphasis added) Thus, Staff has no room to argue that the business relationship between the former PTCs and the former SCs is not an issue in this case. Nevertheless, if Staff continues to raise procedural objections, then the Commission should simply open a new case to address the business relationship issue.

10. **Staff has no evidence to support its claims.** Staff claims that the STCG’s proposal may require “substantial modification to existing network trunking arrangements,” and that such modifications “may impose significant costs on the industry.” There is no way that Staff can

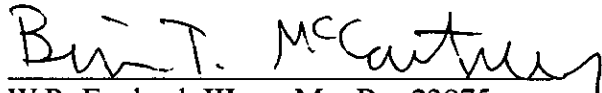
¹² *Id.* at p. 11 (emphasis added).

know either of these things unless there is a hearing on the STCG proposal. Also, Staff's arguments ignore the evidence that the former SCs are not being compensated for all of the traffic that SWBT is delivering to their exchanges, and it is clear that SWBT does not want to accept responsibility for the unidentified and uncompensated traffic that it continues to dump on the small companies' networks. None of Staff's objections are valid reasons to reject the STCG's request without an opportunity for a full and fair hearing.

CONCLUSION

The evidence is undisputed in this case that there is a problem with record creation, record exchange, and the measurement of unidentified and uncompensated traffic. The Commission attempted to address these problems by ordering the implementation of OBF Issue No. 2056, but Staff now admits that OBF Issue No. 2056 will do nothing to resolve these problems. Staff explains that this is why it has proposed an "enhanced records" rule rather than an OBF Issue No. 2056 rule. The problem with Staff's proposal is that it assumes and codifies the "de facto" ORP that has been imposed by the former PTCs on the former SCs since the PTC Plan was eliminated. SWBT's ORP proposal has never been aired before the Commission. Instead, it was drafted during private meetings between SWBT and Staff. The STCG is willing to subject its proposal to the "light of day" in a hearing before the Commission. The Staff/SWBT proposal should receive no less scrutiny.

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 11th day of December, 2002, to:

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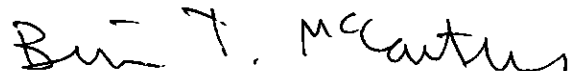
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