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April 13, 2005

MARVIN L. SHARP, *Of Counsel*

Secretary/Chief Administrative Law Judge
Missouri Public Service Commission
P.O. Box 360
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FILED

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**Missouri Public
Service Commission**

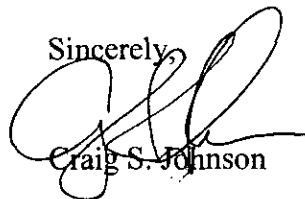
**Re: In the Matter of a Proposed Rule to Require All Missouri Telecommunications
Companies To Implement and Enhanced Record Exchange Process to Identify the
Origin of IntraLATA Calls Terminated by Local Exchange Carriers.
Case No. TX-2003-0301.**

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of The MITG's Reply to
SBC's Reply.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:sjo

enclosure

CC: PSC General Counsel
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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)	

MITG's Reply to SBC's Reply

The MITG submits this brief Reply to SBC's Reply of April 7, 2005.

SBC's Substantive Position

SBC asserts there is no current problem that exists regarding unidentified traffic or billing record provisioning. If that is so the rule poses no threat to SBC. The proposed rule creates only a procedure to address responsibility for unidentified traffic. If there is no unidentified traffic, SBC has no risk of responsibility. The proposed rule creates only minimum requirements regarding billing record provisioning. It does so to assure every carrier gets the billing records it needs to bill for its services. If there is no current deficiencies with billing record provisioning, SBC has no risk of having to correct deficiencies.

The MITG disagrees that there is no current problems. Unidentified traffic is ongoing. Billing record issues persist. It is time for the Commission to adopt the ERE, which will, at last, provide a framework around which these issues can be resolved.

Rulemaking/Procedural Matters

SBC's Motion to Abate was filed outside the rulemaking comment period. The Motion, as well as opposing comments, cannot be included in the rulemaking comments addressing substantive provisions of the rule. This does not mean the Commission is

compelled to, or should, ignore the FCC's T-Mobile decision.¹ The Commission is not required to be blinded to legal developments. The T-Mobile decision is a substantive regulatory decision of which the Commission is authorized to take administrative notice, either on its own motion or on motion by a party. If the Commission believes the T-Mobile decision dictates elimination of that provision of the ERE requiring the use of state tariffs in the absence of approved agreements (240-29.110), it can simply not adopt that portion in its Order of Rulemaking by noticing it is inconsistent with the T-Mobile decision.

This Commission should remain cognizant of the procedures available to rescind portions of any rule that have been preempted. Under Missouri law, if an administrative rule is believed to be preempted or no longer lawful, a party may petition for rescission of that rule. If the agency refuses to rescind, a declaratory judgment action may be filed in court. Under the Telecommunications Act, Section 253(d) provides a specific preemption procedure:

“(d) PREEMPTION.—If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”

Conclusion

Should the ERE be adopted, there will be ample opportunity for SBC to assert, and this Commission or the FCC to consider, whether any provision of the ERE has

¹ In contrast to the T-Mobile decision, the FCC's Inter-carrier Compensation Docket proceedings are only in comment stage. There is no FCC decision to consider as having any impact on the proposed ERE Rule.

actually been preempted by any intercarrier compensation decision the FCC makes in the future. The issues culminating in the proposed ERE have been pending, without resolution, since 1997. Too much work has gone into the ERE to merely discard it as possibly being inconsistent with what the FCC might do in the future. The ERE should be adopted. Adoption of the ERE now will not preclude SBC from later challenging any aspect of the rule it believes should be rescinded due to future decisions of the FCC.

Respectfully submitted,

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By 

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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 13th day of April, 2005, to:

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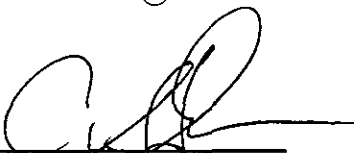
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