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March 21, 2003

FILED⁴

MAR 21 2003

Missouri Public
Service Commission

Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

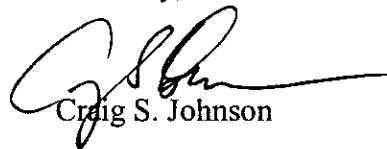
Re: Case No. TX-2003-0301

Dear Secretary:

Enclosed for filing please find an original and five (5) copies of Missouri Independent Telephone Group's Entry of Appearance/Response to Motion/Motion to Consolidate in the above-referenced matter.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:tr
Enc.

cc: MITG Managers
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**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

FILED⁴
MAR 21 2003
**Missouri Public
Service Commission**

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

Entry of Appearance/Response to Motion/Motion to Consolidate

Comes now Craig S. Johnson and Lisa Chase and herewith file their Entry of Appearance on behalf of the Missouri Independent Telephone Company Group (MITG), Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telecommunications Corp., Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company.

This pleading is filed now, rather than earlier, as the MITG was not served with a copy of Staff's Motion, despite the MITG companies being party to all phases of TO-99-593, the docket leading to Staff's Motion for Finding of Necessity for Rulemaking. Counsel for the MITG learned of Staff's motion as a result of industry meeting on March 14, 2003.

In response to Staff's Motion for Finding of Necessity for Rulemaking, and in Support of this Motion to consolidate this proceeding with further proceedings in TO-99-593, the MITG states as follows:

1. Staff's Motion for Finding of Necessity for Rulemaking is a direct result of several years of litigation in TO-99-254 and TO-99-593. In those dockets issues

regarding the financial rights and interests in what terminating telecommunications traffic signaling, trunking, billing records, and compensation systems and responsibilities would be used to replace those systems in use during the term of the Primary Toll Carrier Plan have been litigated but not yet resolved.

2. The MITG is concerned with the conversion of issues pending in contested case dockets to a rulemaking proceeding. It is likely that parties will have comments or opposition to portions of Staff's proposed rule. It is also likely that some parties may affirmatively present their own proposed rules, or their own alternatives to portions of Staff's proposed rule. It is a certainty that any rule proposed will address matters effecting the rights of the parties with respect to billing for, and receipt of, revenues they are entitled to received pursuant to Commission-approved tariffs, interconnection agreements, or traffic termination agreements. These are the issues pending in TO-99-593.

3. Staff's proposed rule is expected to address the type of billing record to be utilized, the responsibility for creation of the billing record, the responsibility for exchange or passing of the billing record, compensation for creation of the record, the determination of the responsible carrier to pay bills rendered based upon the record created, the consequences of failure of complete records to be provided, and record verification or audit rights and responsibilities. In short it is expected that proposed rules will address the substantive rights, interests, and obligations that thus far have been the subject of several years of proceedings and hearings conducted in TO-99-254 and TO-99-593.

4. A rulemaking docket may not provide the parties with full due process rights attendant to contested case proceedings. Rulemaking hearings may not provide as much detail as would contested case hearings. Understanding of such detail will be necessary for the Commission to understand the impact of proposed rules. The use of a rulemaking initiation procedures in lieu of completing contested case proceedings at this juncture could lead to communications between Staff and Commissioners regarding proposed rules being viewed as prohibited *ex parte* communications regarding issues pending in a contested case proceeding.

5. The MITG prefers that any and all proposed rules be first considered in TO-99-593 by contested case procedures before any resultant rule is published in the Missouri Register for comment and final approval.

6. The MITG is also concerned that, by now considering “enhanced record exchange rules”, the Commission may miss the opportunity to consider a simpler rule adopting specific industry standards, and which would adhere to the intent of earlier Orders of the Commission.

7. In its June 10, 1999 Order in TO-99-254, the Commission Ordered the provision of standard category 11 records to be utilized after April 1, 2000, and that these records be provided without compensation therefore. (This Order also created TO-99-593.)

8. In its December 13, 2001 Order in TO-99-593, the Commission found that the record exchange provided for in Issue 2056 would reduce billing discrepancies, would make it easier to resolve billing discrepancies, and would make it easier to shift to upstream carriers responsibilities for unidentified traffic and traffic for which no

compensation agreement exists. Based upon these findings Missouri carriers were directed to implement Issue 2056.

9. OBF Issue 2056 had been presented in TO-99-593 by GTE as a solution to the issues. The Commission and GTE believed that application of Issue 2056 was a useful idea. If not there would have been no reason for the Commission to Order implementation of Issue 2056.

10. After the Order, in industry implementation meetings the former PTCs took the position that Issue 2056 would not be applied to the traffic in dispute because Issue 2056 did not apply where different "state-approved" procedures existed:

"Compensation for LEC carried access traffic under negotiated and existing state settlement plans will not be affected by OBF 2056 and originating compensation does not apply to local traffic originated by a CLEC or CMRS. The MECAB Issue 7, Section 6.5 states: "While the industry recognized that settlement plans between LECs are used, these are state or contract specific and are not included in the MECAB guidelines."

This position was similar to the following excerpt from the record of a preliminary OBF Issue 2056 committee meeting of November 15-18, 1999:

"It was questioned if the intent was to change existing processes developed as a result of state directives or contractual agreements. It was advised that MECAB doesn't control state directives or contractual agreements today, so nothing would change, unless the contract referred to specific MECAB guidelines."

11. MECABs, as it incorporates and assimilates issues such as Issue 2056 into current MECABs systems or documents, recognize the right of the Missouri Commission, by "state directive", to determine whether MECABs will be applied, or not applied, to certain types of traffic. The Missouri Commission has the authority to direct that the parties apply current MECABs editions, which assimilate Issue 2056, to the traffic in dispute. The MITG believed the Commission's Order of December 13, 2001,

directing implementation of OBF Issue 2056, was in fact this Commission's directive to apply MECAB/OBF Issue 2056 to the traffic in dispute. The MITG does not believe the position of the former PTCs, who advocated adoption of Issue 2056 in the first place, was fair or reasonable. It made no sense for TO-99-593 to be delayed pending implementation of Issue 2056 unless the Commission *did* intend its Order to be a "state directive" to apply OBF Issue 2056 to traffic placed on the "LEC to LEC" network—the traffic in dispute in TO-99-593.

12. Subsequently Staff concluded that implementation of OBF Issue 2056 would not solve the problems the Commission sought to address. However the MITG is not sure that the Commission realizes that the reason underlying Staff's conclusion was the former PTCs refusal to apply Issue 2056 to the traffic they placed on the "LEC to LEC" network. The issue of whether Issue 2056 should have been applied to the traffic in question was never decided, at least not subsequent to the Order directing its implementation.

13. The MITG is concerned that the Commission has failed to consider the advisability of issuing a "state directive" to apply MECABs/Issue 2056 to the traffic in question. If determined that the issuance of such a directive is feasible, it is likely such a directive would reduce the number of issues remaining for determination, and may make further rulemaking efforts simpler than what the Commission is otherwise likely to entertain.

14. The MITG suggests that, in addition to conducting consideration of rules proposed by Staff or any other party in TO-99-593, that the scope of future proceedings include consideration of a state directive to apply MECABs/Issue 2056 to the traffic in

question. The MITG suggests that, in its order consolidating rulemaking proceedings with TO-99-593, the Commission direct that any party proposing a rule explain how that proposed rule is consistent with prior Commission Orders in TO-99-254 and TO-99-593, specifically addressing the Commission's Order directing standard category 11 records, and the Commission's Order directing implementation of Issue 2056

Wherefore, on the basis of the foregoing, the MITG respectfully requests that this docket be consolidated with future proceedings in TO-99-593, and that in future proceedings the Commission consider both the necessity of, and terms of, any rule regarding this subject matter, and that the Commission Order any party proposing a rule to explain how that proposed rule is consistent with prior Commission Orders in TO-99-254 and TO-99-593, specifically addressing the Commission's Order directing standard category 11 records, and the Commission's Order directing implementation of Issue 2056..

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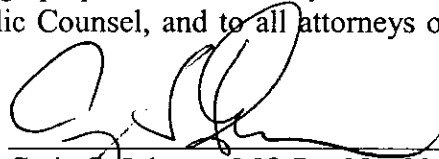
By 

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ATTORNEYS FOR MITG

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 21st day of March, 2003, to Staff general counsel, to the Office of Public Counsel, and to all attorneys of record to TO-99-593.



Craig S. Johnson MO Bar No. 28179