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February 1, 2005

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FILED²
FEB 01 2005

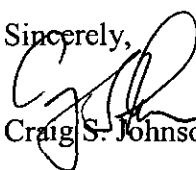
Re: Enhanced Record Exchange Rule Proposed
Case No. TX-2003-0301

**Missouri Public
Service Commission**

Dear Mr. Roberts:

Enclosed please find an original and eight copies of the Supporting Comments of the Missouri Independent Telephone Company Group. A copy of this letter and a copy of the enclosed comments have been served upon Staff Counsel, Office of Public Counsel, and the attorneys of record in TX-2003-0301

Thank you for seeing this filed.

Sincerely,

Craig S. Johnson

CSJ:lw

Encl.

CC: John Coffman
Dan Joyce
Bill Voight
Attorneys of Record, TX-2003-0301
MITG Managers

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Proposed)
Enhanced Record Exchange)
Rule, 4 CSR 240-29.010 to) Case No. TX-2003-0301
4 CSR 240-29.160)

FILED²
FEB 01 2005
Missouri Public
Service Commission

SUPPORTING COMMENTS OF THE
MISSOURI INDEPENDENT TELEPHONE
COMPANY GROUP

The Missouri Independent Telephone Company Group (MITG), consisting of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company, submit the following comments generally supporting the proposed Enhanced Record Exchange (ERE) rule:

Summary

The ERE would establish billing record and financial responsibility systems for intrastate intraLATA traffic. The MITG companies support the adoption of the proposed ERE.

The billing records and financial responsibility systems that the ERE would establish are different from the industry standard "FGD" or "IXC" systems long in use in the interstate and interLATA jurisdiction. The MITG still believes that the existing small company access tariffs require the "FGD" or "IXC" systems be used for intraLATA traffic terminating to the small rural ILECs.

Both small and large ILEC access tariffs provided that when FGD is made available, FGC will no longer be provided. As FGD has been made available since the termination of the PTC Plan, FGC should no longer be provided. The ERE should not have been necessary.

The ERE will necessitate the maintenance and operation of two different types of billing systems and compensation responsibilities for terminating traffic: First, the industry standard FGD or IXC system, and now a second non-standard ERE system for intrastate intraLATA traffic.

Nevertheless, adoption of the ERE will implement principles and practices that are preferable to the current lack of any enforceable terminating traffic relationship that has existed since the 1999 termination of the PTC Plan. It is time for improvement. For the last 5 years the small ILECs in Missouri have suffered the loss of compensation and increased collection expenses attendant with the following inherent deficiencies of an “originating responsibility” and “originating billing records” system:

- a. failure of the originating carrier to record traffic.
- b. failure of transiting carrier to record traffic.
- c. failure of originating carrier to provide billing records.
- d. failure of transiting carrier to provide billing records.
- e. inaccurate information provided by originating carrier.
- f. inaccurate information provided by transiting carrier.
- g. inadequate billing information provided by transiting carrier for wireless or CMRS traffic.

- h. dispute between originating and transiting carrier as to the propriety of traffic being placed on the "LEC to LEC" network, resulting in refusal of both originating and transiting carriers to pay the terminating LEC.
- i. inability of transiting carrier to distinguish between its own originating traffic and interconnected CLEC UNE-P traffic.
- j. refusal of originating carrier to provide billing records to terminating LEC, while at the same time demanding the transiting carrier not provide billing records, claiming such provision would violate confidentiality provisions of an agreement with the transiting carrier. This deprived the terminating LEC of any billing records for this traffic.
- k. as some originating records are not provided with individual call detail, the terminating LEC is rendered incapable of reconciling billing records to its own switch recordings. This places the terminating LEC in the position of being incapable to prove which carriers are failing to meet their "originating carrier" responsibilities.

Improvements adoption of the ERE will provide:

The improvements that adoption of the ERE will provide consists of the following:

1. It applies to every carrier placing traffic on the Feature Group C, or "LEC to "LEC" network.
2. It prohibits the placement of interLATA or interMTA traffic on the LEC to LEC network.

3. It requires carriers placing traffic on the network to also place on the network sufficient billing information for the terminating LEC to properly bill the call to the financially responsible carrier.
4. It requires carriers creating billing records to include adequate information to jurisdictionalize or properly rate the call for billing purposes.
5. It provides carriers with the option to establish separate trunk groups for FGD/IXC traffic than for ERE FGC traffic, so that the different billing records and compensation responsibilities applicable to FGD/IXC trunks and FGC/LEC to LEC trunks can be separated.
6. It allows terminating LECs to bill from their own call information, rather than rely upon upstream originating or tandem carriers to provide billing records. It does not mandate the “fox guarding the henhouse” approach that a pure originating records/originating responsibility system would require.¹
7. It provides carriers with an expedited dispute resolution process applicable to objected invoices as well as to “unidentified” traffic.
8. It provides comprehensive procedures for halting the transmission of traffic from carriers not in compliance with the rule.

¹ In its August 31, 2000 Revised Award in Docket No. 21982, the Texas PUC recognized that the national practice in the United States economy is for the party remitting the service (the terminating carrier) to record and bill for the service it provides. Therefore the Texas PUC ordered that the terminating LEC be authorized to bill from its terminating records, unless all involved carriers agreed otherwise. The Texas PUC found that the use of terminating records was more efficient and less burdensome, and imposed less costs upon the terminating carriers than did SWBT’s 92/99 originating record system. This is highly preferable to an originating record system, which enables the originating carrier not to create records which will be used to bill that carrier. The originating record system has been analogized to “the fox guarding the henhouse”.

9. It ends the practice of the past 5 years wherein SBC, the dominant RBOC in Missouri, unilaterally determined and announced changes in billing record formats and compensation responsibilities to the rest of the LECs in Missouri.

Practical Difference Between Terminating and Originating Traffic

The large ILECs have frequently claimed that in the United States a "Calling Party's Network Pays", or "CPNP", applies. This is also referred to as an "Originating Responsibility" principle. At first blush this principle makes sense. However, there is a great deal of difficulty in applying it to terminating traffic.

Every call has both an "originating" side and a "terminating" side. On the originating side, all of the carriers necessary to make originating responsibility successful coexist in the originating exchange or tandem, where each carrier has chosen to do business.

For originating compensation, the originating carrier originates the call on trunks it has ordered to the originating LEC end office, or tandem serving that end office. The originating carrier's originating usage is measured by the LEC, and an originating billing record is created by the LEC. As the LEC secures all information necessary to bill originating compensation, there is no need to rely upon any other carrier for record information. The LEC uses the billing information to create its own bill to the originating carrier. This record information is provided to the originating tandem owner (if different than the originating LEC). Both the LEC and originating tandem owner use this billing information to bill to the originating carrier, which in turn is responsible to pay originating compensation.

The same simplicity does not exist for the terminating side of a call. Each month a LEC may terminate traffic originated by hundreds of carriers that do business in distant nations, distant states, distant LATAs, or distant MTAs. Most of those carriers confine their chosen location of business to the locations where they originate traffic. They do not have facilities to LECs in the distant locations where the calls terminate. It is impracticable for the terminating LEC to have enforceable business relationships with each and every carrier originating traffic that may terminate to that LEC.

The standard industry practice is for the originating carrier to contract with interexchange carrier(s) to carry calls to destinations where the originating carrier lacks its own facilities. When such a call is handed off to an interexchange carrier, the originating carrier discharges its compensation responsibility by contracting with the interexchange carrier to deliver the call to the terminating tandem.

This is why, for terminating traffic in the FGD/IXC jurisdiction, billing records and compensation responsibilities are determined at the terminating tandem. The interexchange carrier with the facilities to, and business relationship with, the terminating LEC, is responsible to pay terminating compensation. Like originating compensation, terminating compensation thereby becomes enforceable at the tandem serving the terminating LEC, as all carriers with facilities are present at the tandem.² It is simply impractical for any LEC to attempt to establish and maintain business relationships with

² If the originating carrier happens to also have facilities to the tandem serving the terminating LEC, as say AT&T, MCI, or Sprint may have, at the terminating tandem sufficient information is recorded allowing both the tandem owner and terminating end office owner to create a terminating billing record, and to bill the originating carrier for terminating compensation. In this situation, the originating carrier is also the carrier delivering the call to the terminating tandem, and therefore is responsible to pay terminating compensation as well as originating compensation.

every carrier that may originate traffic happening to terminate in that LEC's exchanges.

The IXC/FGD terminating compensation system is the industry standard for most types of traffic, including interstate interLATA traffic, interstate intraLATA IXC traffic, intrastate interLATA IXC traffic, and intrastate intraLATA IXC traffic.

Departure from this industry standard was championed by SBC. After the Telecommunications Act of 1996, SBC took the position it was required to transit traffic at local reciprocal compensation rates, which were insufficient to cover terminating charges. This was the justification of SBC for distinguishing its transit role from the IXC role, whereby the delivering IXC charges the originating carrier an amount sufficient to cover the costs of terminating compensation.

SBC's position is the only attempted justification for adoption of the ERE. But this attempted justification no longer even exists. SBC now agrees that it is not required to transit traffic at local reciprocal compensation rates. SBC's position now is that it wants to voluntarily transit traffic subject to the following conditions:

- (1) SBC can charge market based rates,
- (2) SBC carries this traffic voluntarily pursuant to contract,
- (3) SBC can limit the quantity of traffic transported,
- (4) SBC will not be responsible to pay terminating compensation.

This should be contrasted with today's industry standard IXC/FGD structure, whereby IXCs:

- (1) do charge market based rates
- (2) carry the traffic voluntarily pursuant to contract
- (3) can limit the quantity of traffic carried
- (4) are responsible to pay terminating compensation for traffic of other carriers they deliver to the terminating tandem

With the exception of condition (4), SBC's role with respect to "transiting" traffic is no different than what IXCs traditionally do with respect to transit traffic. In all respects, save condition 4, SBC proposes to perform the very same role in the same manner as IXCs traditionally have done.

SBC is now an IXC with respect to the other LECs in Missouri.³ There is no justification for SBC to be treated differently than any other IXC. There is no justification to allow SBC to act as an IXC, but to have no responsibility to pay for terminating traffic it carries to the terminating tandem, as other IXCs have. There is no justification for adopting any system other than that in use in the IXC or FGD jurisdiction.

The ERE is being considered after more than eight years of small rural ILEC efforts to assure that the industry standard IXC/FGD terminating traffic relationship would replace the terminating traffic relationship used during the Primary Toll Carrier Plan (PTC Plan).

There is no dispute that, while the PTC Plan was in effect, both the large and small ILEC tariffs provided that, upon making Feature Group D available, Feature Group

³ In its September 26, 2000 Report and Order in TC-2000-325, et al., pages 8-11, the Commission held:

"SWBT also asserts that it should be allowed to continue to use FGC because it is a LEC, not an IXC, and FGC was created as a pathway for traffic from one LEC to another. SWBT is, of course, a LEC. However, when the PTC plan was eliminated, SWBT's relationship to the Respondents was changed. For the purpose of originating intraLATA interexchange traffic, SWBT is now essentially just another intraLATA IXC, which may, if it chooses to comply with the Respondents' respective tariffs, originate traffic in the Respondents' exchanges. As an intraLATA IXC, competing for business with other IXCs, SWBT must comply with the Respondents' tariffs by using FGD."

C would no longer be provided. During the three years prior to the end of the PTC Plan, the Commission has failed to decide the issue. It remains undecided now, even though the PTC Plan ended five years ago. During the past eight years the Commission has failed to determine whether the industry standard IXC/FGD terminating compensation systems should be applied to traffic on the "FGC" or "LEC to LEC" network.

Missouri History

Prior to the adoption of the PTC Plan, the Commission refused to adopt a "Terminating Compensation Arrangement" that was similar in design to the "originating responsibility" which underlies the ERE. Instead of an originating responsibility plan, the PTC Plan was adopted. During the PTC Plan, the PTC with the tandem serving the terminating LEC paid the terminating LEC compensation based on traffic that serving PTC originated, as well as traffic originated by other PTCs. Terminating to originating traffic ratios were used instead or in lieu of billing records for terminating traffic.

During the PTC Plan, the small ILEC tariffs, Oregon Farmers Mutual Tel. Co. P.S.C. Mo. No. 6, contained language that provided that the IXC FGD terminating traffic relationship would apply after expiration of the PTC Plan. Sheet 82, Section 6.3.3 (A)(1) provides that when equal access/dialing parity became available, FGC end office switching will not be provided:

"Feature Group C switching is provided at an end office switch unless Feature Group D end office switching is provided in the same office. When FGD switching is available, FGC switching will not be provided."

The tariff also defined the PTCs as interexchange carriers. It was the expectation of the small ILECs that, upon termination of the PTC Plan, the former PTCs would be treated as other IXCs, and the FGD terminating traffic compensation principles would

apply. The Commission has agreed that the former PTCs are now interexchange carriers.⁴

TO-97-217, "In the Matter of an Investigation Concerning the Continuation or Modification of the PTC Plan When IntraLATA Presubscription is Implemented in Missouri", was initiated after a Staff Motion filed November 26, 1996. In that docket the small ILECs clearly stated that the FGD/IXC billing records and compensation responsibilities were required by their tariff after termination of the PTC Plan. The Commission failed to decide the issue. Upon state court reversal of the Commission decision in TO-97-217, the Commission transferred the issue to another docket, TO-99-254, entitled "In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity".

In TO-99-254 the small ILECs again maintained that the FGD/IXC billing records and compensation responsibilities were required by their tariff after termination of the PTC Plan. By Order dated June 10, 1999 in TO-99-254, the Commission ended the PTC Plan. For the second time the Commission failed to decide the small company issues. For the second time the Commission directed another docket to consider these "network" issues. The June 10, 1999 Order did order that after April 1, 2000 the small ILECs were was entitled to the use of industry standard category 11-01 records for any calls terminated to it.⁵

⁴ See the preceding footnote.

⁵ The ERE would substitute a new type of billing record different than the industry standard 1101 record. Whereas the industry standard 1101 identifies the IXC bringing the call to the terminating tandem as the financially responsible carrier, the ERE substitutes modifications to the 1101 which are designed instead to attempt to identify the originating carrier.

Docket TO-99-593 was created by the June 10, 1999 Order to address the small company issues. An extensive network test was conducted. Hearing was held in January of 2001. For the third time the Commission failed to address the issue. On July 30, 2001 the Commission instead opted to consider the former PTC's suggestion to utilize OBF Issue 2056. On December 13, 2001 the Commission Ordered the implementation of OBF Issue 2056.

Issue 2056 recognized that avoiding duplicative record systems was an advisable goal. The November 8, 2000 Resolution Statement for Issue 2056 contained the following:

“There is a need to maintain consistent methods for billing, which would eliminate the need for companies to maintain two different processes for IXC switched access, wireless, local/IntraLATA and toll interconnection services that are meet point billed.”

Issue 2056 recognized the right of the Missouri Commission, by “state directive”, to direct a state specific plan. The Commission had authority to apply Issue 2056 to the traffic being placed on the LEC to LEC network—the traffic in dispute. The MITG believed the December 13, 2001 Order directing implementation of Issue 2056 constituted this state directive. However, pursuit of Issue 2056 was abandoned, and on January 3, 2002 Staff was directed by the Commission to pursue a rulemaking. That direction led to the ERE, first published January 3, 2005.

Experience with Originating Records/Originating Responsibility

During the five years since termination of the PTC Plan the small companies have experienced actual failures of the “originating responsibility/originating record” system. SBC failed to record or pay for its own “Local Plus” and Outstate Calling Area traffic.

SBC failed to record Alltel wireless traffic. There have been other failures. There have been failures of records to provide sufficient information to rate the traffic, failures of records to identify a financially responsible carrier, and a general inability of the terminating LEC to reconcile its recordings with the billing records provided. This inability to reconcile its own recordings with the "official" originating records means the terminating LEC cannot identify with carriers are failing to meet the originating responsibilities.

After complaint proceedings forced SBC to begin paying terminating compensation for CMRS traffic, SBC created a Cellular Terminating Usage Summary Report (CTUSR). Originating CMRS carriers have failed to provide any originating call detail records to small ILECs. SBC's summary CTUSR format is an unsatisfactory billing record, as it fails to provide call detail. It fails to report originating NPA-NXX, terminating NPA-NXX, or traffic jurisdictional information. Because the CTUSR is a summary, it prevents an ILEC from being able to audit the billing records received in order to determine if any carrier is failing to provide records.

In the summer of 2004 SBC announced the end of the CTUSR in favor of an "IXC" record that SBC claimed would provide the small companies with the missing billing information. That was not the case. Instead of providing the caller's number, the new record simply puts in an assigned number representing the CMRS provider. Thus when the new "IXC" record is retrieved and assimilated, it provides no more information with respect to traffic jurisdiction than did the CTUSR. This record deficiency means the terminating LEC cannot reconcile traffic, and therefore cannot identify what carriers are failing to record and pay for traffic.

For years SBC terminated CLEC originated traffic to small ILECs. No records were provided at all, either by SBC or by the CLECs. Later, SBC began providing a CLEC UNE-P summary report. The report failed to provide either originating NPA-NXX or terminating NPA-NXX call detail. When small companies attempted to bill from this summary report, originating CLECs refused to pay. The CLECs claimed SBC had improperly placed the traffic on the FGC or LEC to LEC network instead of on the FGD/IXC network. They refused to pay. SBC claimed it had properly placed traffic on the FGC or LEC to LEC network. SBC refused to pay. Thus, a dispute that did not involve the terminating LEC resulted in lost compensation to the terminating LEC.

Support for ERE

Despite discontent with this history, the MITG support adoption of the ERE.

A comprehensive rule regarding the record exchange process utilized for intercompany compensation for telecommunications calls should address the following:

- a. where the record is to be created;
- b. what carrier is to create the record;
- c. the type of information included in the record;
- d. responsibility of carriers to forward information needed for the record;
- e. the type of record to be created ;
- f. to whom the creating carrier is to send the record;
- g. what carrier will be billed or responsible to pay compensation reflected by the record.
- h. a process for resolving record/compensation disputes.

The ERE does these things. While the MITG remains concerned about the inherent deficiencies of an originating carrier compensation structure, the ERE is a fair attempt to regulate such a compensation structure.

Termination of the ERE

If, after a reasonable amount of time, such as two years, under the ERE there is continued failures of an originating record/originating responsibility, the MITG would expect to be allowed to be heard to request the termination of the ERE, and that it be replaced with the industry standard FGD/IXC terminating compensation records and compensation responsibility.⁶

Miscellaneous

During these past 5 years the MITG companies have become aware of other abuses of carriers and traffic that should be corrected. The ERE does not address these matters. The Commission should consider the propriety of practices associated with carriers and traffic placed on the FGC "LEC to LEC" network.

For example, we are aware of instances of large ILECs refusing to recognize, or turn on, a CLECs phone numbers unless and until that CLEC signs an interconnection agreement. This is done even though the CLEC does not connect with or compete with the refusing ILEC. Such a failure to turn on numbers registered in the LERG is inappropriate. Insistence on interconnection agreements with all LECs that do not interconnect with the CLEC is inappropriate and unnecessary. Access tariffs cover these situations. Such insistence is nothing more than an attempt to convert tariffed compensation mechanisms to negotiated agreement mechanisms beyond the extent called for by the 1996 Act.

⁶ This request amounts to nothing more than a determination of the issues and motions the small ILECs have raised, but the Commission has not decided, during the past eight years.

Other times a CLEC that is engaged in terminating another carrier's traffic will request interconnection agreements with LECs the CLEC has no desire to connect with or to compete with. These requests are attempts to establish virtual NXXs, to falsely convert long distance traffic to reciprocal compensation traffic, and to establish free pathways to terminate non-telecommunications traffic.

The MITG does not suggest that these miscellaneous issues are properly within the purview of the ERE. However, the MITG does mention these issues as examples of further regulation that needs to be considered with respect to the competition being effected on the "LEC to LEC" network, which is different than that allowed on the IXC or FGD network.

Respectfully submitted,

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