ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW

700 EAST CAPITOL AVENUE
COL. DARWIN MARMADUKE HOUSE
P.O. BOX 1438
JEFFERSON CITY, MISSOURI 65102-1438
TELEPHONE 573-634-3422
FAX 573-634-7822

March 28, 2005

FILED

MAR 2 8 2005

Missouri Public Service Commission

Dale Roberts
Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

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

Dear Dale:

Enclosed please find an original and eight copies of the Missouri Independent Telephone Group's Opposition to SBC's Motion to Abate Rulemaking in the above referenced case.

Thank you for seeing this filed.

Sincerely,

Craig S. Johnson

CSJ:lw

Encl.

CC: Mike Dandino
Leo Bub
Kenneth Schifman
Carl Lumley
Marty Rothfelder
Rebecca DeCook
Trip England
Larry Dority

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 Process to Identify the Origin of IntraLATA Calls Terminated by Local Exchange Carriers	)))))	Case No. TX-2003-0301

THE MISSOURI INDEPENDENT TELEPHONE GROUP'S OPPOSITION TO SBC'S MOTION TO ABATE RULEMAKING

I. INTRODUCTION

The Missouri Independent Telephone Company Group ("MITG")[1] opposes SBC's motion to abate the Commission's proposed Enhanced Record Exchange ("ERE") Rulemaking.

Contrary to SBC's assertions, there is a demonstrated, long-standing need for the ERE in Missouri. The ERE was promulgated only after several years of deliberations. It should not be dropped cavalierly. The FCC's February 24, 2005 decision regarding T-Mobile's petition for Declaratory Ruling does not obviate the need for the ERE in Missouri. The FCC's March 3, 2005 Further Notice of Proposed Rulemaking regarding the future possibility of a unified intercarrier compensation regime does not obviate the need for the ERE in Missouri.

None of the provisions of the Commission's proposed ERE are in conflict with federal law. The ERE is intended to insure that all carriers handling traffic on the "LEC to LEC" (or "Feature Group C") network receive the information necessary to assure the provision of billing records for all compensable traffic. Today there is a need for billing

[1] Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company.

records for traffic that continues to be carried on the LEC to LEC network.

If the FCC's Unified Carrier Compensation Docket ever results in an actual rulemaking, and if those rules actually conflict with the ERE, the Missouri Commission can then evaluate if any provision of the ERE needs to be changed. The FCC has no direct jurisdiction over intrastate long distance or intrastate local calling, except for local calling which is made the subject of an interconnection agreement. Sections 251(d)(3), 251(f), 252(e)(2)(A)(ii), 252(e)(3), and 253(b) of the Act all preserve Missouri jurisdiction to adopt the ERE. The Act contains a specific provision by which it is the FCC's responsibility to affirmatively preempt state rules that conflict with the Act. See Section 253(d). If, after FCC adoption of a Unified Carrier Compensation Rules, SBC believes any provision of the ERE conflicts with, or should be preempted by, federal policy, there will be ample opportunity for such a claim to presented and considered.

II. WHY THE BUM'S RUSH?

The small rural ILECs have been attempting to resolve the matters of billing records and financial responsibility for intraLATA traffic. The STCG and MITG have been attempting this since the former PTCs first began clamoring for termination of the PTC Plan. For over 7 years the small ILEC efforts to obtain resolution has been dogged and delayed by SBC and the former PTCs at every turn. They have, in the following sequence, claimed that:

A. the small companies' access tariffs don't mean what they say;

B. the small companies are guilty of trying to "change" business relationships;

C. the small companies' fear of unidentified traffic and lost compensation are

unfounded;

D. the industry should cooperate in a network test to discover *if* there was unidentified traffic;

E. yes, there is unidentified traffic;

F. yes, SBC caused much of the unidentified traffic;

G. SBC should not be responsible for unidentified traffic;

H. the solution to unidentified traffic should be found by the parties working together;

I. OBF Issue 2056 is the solution to these issues;

J. No, OBF Issue 2056 is not the solution to these issues;

K. the industry can solve these issues on its own without rulemaking;

L. an industry rulemaking is needed;

M. Now the rule needs to be abated.

After years of litigation and industry negotiation of the ERE, and Staff's rather Herculean efforts, we have what appears to be a workable rule. As things stand today, in Missouri there is a need for billing records and intercarrier compensation for intrastate interLATA traffic, intrastate intraLATA traffic, intrastate interMTA traffic, intrastate intraMTA traffic, as well as local traffic under approved reciprocal compensation agreements. The ERE is needed to assure that the proper parties are provided with the proper billing records, and have recourse when that does not happen.

SBC fails to articulate any legitimate reason why any component of the ERE needs to be abated at this time. Every reason SBC articulates can be adequately addressed after the ERE is adopted. SBC's motion is a rather transparent attempt to

forestall seven years' of effort underlying the ERE. It should be rejected.

III. T-Mobile Declaratory Ruling

The FCC's February 24, 2005 Declaratory Ruling regarding T-Mobile's Petition, at its simplest level, did two things: First, it held it was lawful for LECs to apply state tariffs to wireless originated traffic in the absence of an approved interconnection agreement. Second, it held that the FCC prefers negotiated agreements over the application of tariffs to this traffic. In order to make this preference effective, the FCC amended its rules to allow ILECs the right to request and arbitrate interconnection with the wireless carriers.

It is likely this Ruling will be challenged. The wireless carriers will likely challenge the new rules as being inconsistent with the 1996 Act based on the same legal arguments the FCC rejected. The ILECs will likely challenge the FCC's authority to adopt *rules* precluding state tariffs that the Courts have said were permissible under *statutes*. Alternatively, the ILECs may press for more rules changes giving them *all* powers of 'requesting carriers", such as including the power to adopt existing agreements.

If the T-Mobile decisions stands, the only provision of the ERE that may be inconsistent with the decision is **240-29.110**, which requires tariffs to be filed in the absence of commission-approved agreements. When the T-Mobile decision becomes final, that provision can then be addressed.

IV. Further Notice of Proposed Rulemaking

The FCC Unified Carrier Compensation Regime docket, CC Docket 01-92, has

been pending since 2001. The March 3, 2005 Further Notice is merely another in a lengthy series of actions, including the T-Mobile Petition, and including the announcements of solicitation of more rounds of comments from all of the carriers, NARUC, NASUCA, and the state bodies.

The FCC's recent notice simply seeks further comments on various new intercarrier compensation proposals. Therefore, it would be both premature and entirely speculative to delay the Commission's ERE Rule on the off chance it might conflict with something that the FCC may or may not actually do in the future. There have already been several rounds of comments on such issues as bill and keep, central office bill and keep, state tariffs, the use of "virtual NXXs", and numerous other issues. There will likely be several more rounds.

The FCC is under the leadership of a new chair. There is no assurance the future direction of the Unified Carrier Compensation Docket will remain the same as during the past four years. There is no assurance the Unified Carrier Compensation Docket will result in any changes to the current rules. There is no reason to believe that, if the eventual result of that docket does necessitate some change to the ERE, it cannot be adequately addressed by the Commission at that time.

V. The ERE Provisions SBC Challenges

SBC states that the current FCC actions at a minimum render 4 CSR 240-29.030, 240-29.070, and 240-29.I10 unlawful. The MITG would briefly address each of these proposed rules in light of the FCC decisions.

240-29.030

All this rule would do is require compliance with the ERE by any carrier placing traffic on the LEC to LEC network. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.070

All section 1 of this rule would do is mirror the existing FCC rule that the jurisdiction of calls to and from wireless customers is determined by the location of the wireless customer at the time the call is initiated. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

All section 2 of this rule would do is prohibit the delivery of interstate interMTA traffic on the LEC to LEC network. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.110

This rule requires tariffs to be filed in the absence of commission-approved interconnection agreements. The MITG agrees that this rule is ostensibly in violation of the T-Mobile Declaratory Ruling. However, that ruling is not yet final. There has been no determination the FCC is authorized to so preempt the use of state tariffs. When and if this decision becomes final, and preemption issues resolved, the Commission can then determine if this section should remain or be eliminated.

In addition, SBC states that the current FCC actions may impact other provisions of the ERE, those provisions being 240-29.040, 240-29.050, 240-29.080, 240-29.090, 240-29.120, 240-29.130, and 240-29.140. The MITG would briefly address each of

these proposed rules in light of the FCC decisions.

240-29.040

All this provision of the ERE does is assure the originating carrier is identified to all carriers that may be billing for traffic crossing their portion of the "LEC to LEC network". SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.050

This provision of the ERE allows terminating LECs to establish separate trunks for "LEC to LEC network" or Feature Group C traffic and IXC or "Feature Group D" traffic. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.080

This provision of the ERE establishes a system for terminating billing record creation. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.090

This provision merely establishes minimum standards for the submission of billing records, bills, and payments. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.120

This rule establishes provisions for blocking originating carrier by the transiting carrier if the originating carrier fails to pay transit or termination charges. SBC fails to

articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.130

This rule establishes provisions for terminating carriers to request originating tandem carriers block traffic of originating carriers not discharging their responsibilities. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

240-29.140

This rule establishes provisions for terminating carriers to block the traffic from transit carriers that fail to discharge their responsibilities. SBC fails to articulate any reason why this provision is in conflict with the two FCC decisions. There is no such reason.

VI. CONCLUSION

The Commission should deny SBC's motion to abate the proposed ERE rulemaking. It is long past time for the Commission to ensure that everyone using the STCG networks pays their fair share. The ERE Rule is a good first step towards resolving this problem. There is nothing about the two recent FCC decisions that now require any changes to the ERE. If and when those decisions reach finality, and they do require changes to the ERE, the Commission can take the appropriate action with respect to the ERE at that time. The Commission should move forward with the proposed ERE Rule.

Respectfully submitted,

ANDERECK, EVANS, MILNE,
PEACE & JOHNSON, L.L.C.

By _____

Craig S. Johnson MO Bar No. 28179
The Col. Darwin Marmaduke House
700 East Capitol
Post Office Box 1438
Jefferson City, Missouri 65102
Telephone: (573) 634-3422
Facsimile: (573) 634-7822
Email: CJohnson@AEMPB.com

ATTORNEYS FOR MITG

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this _____ day of March 2005, to:

Mike Dandino
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Leo Bub
SBC Missouri
One Bell Center, Room 3518
St. Louis, MO 63101

Rebecca DeCook
AT&T Communications of the Southwest, Inc.
1875 Lawrence Street, Ste 1575
Denver, CO 80202

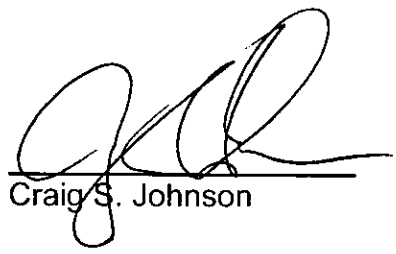
Kenneth Schifman
Sprint Missouri, Inc. d/b/a Sprint
6450 Sprint Parkway
MS: KSOPHN0212-2A303
Overland Park, KS 66251

W.R. England, III Mo. Bar 23975
Brian T. McCartney Mo. Bar 47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102–0456
Attorneys for the STCG

Carl J. Lumley
Leland B. Curtis
Curtis, Oetting, Heinz,
Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105

Larry Dority
Fischer & Dority
101 Madison Street, Suite 400
Jefferson City, MO 65101

Marty Rothfelder
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
mcrothfelder@rothfelderstern.com



Craig S. Johnson