

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)	

**THE SMALL TELEPHONE COMPANY GROUP'S OPPOSITION
TO SBC'S APPLICATION FOR REHEARING AND REQUEST FOR WAIVER**

I. INTRODUCTION

The Small Telephone Company Group ("STCG") opposes SBC's Application for Rehearing of the Missouri Public Service Commission ("Commission") *Order of Rulemaking* adopting the final Enhanced Record Exchange ("ERE") Rule. SBC's Application for Rehearing lodges three complaints about the ERE Rule, but all of SBC's claims were considered and rejected in the Commission's *Order of Rulemaking*. Accordingly, SBC's Application for Rehearing must be denied. SBC also seeks a waiver of "at least one year" due to SBC's "belief" that passing wireless call information could be costly or technically difficult. SBC's request to delay the resolution of this six-year saga by another year is unreasonable. SBC offers no adequate evidence or explanation that satisfies the good cause requirement for an additional one year delay. Although SBC's Motion for a one year waiver must be denied under 4 CSR 240-2.060(4), the STCG does not oppose a brief variance of between 30-60 days to allow SBC to finalize its processes and systems for capturing and passing wireless calling party number information.

II. DISCUSSION

A. Calling Party Number ("CPN") Information

1. SBC objects to the ERE Rule's requirement that transiting carriers such as SBC include Calling Party Number ("CPN") information on the wireless calls that SBC passes or "transits" to small third-party carriers such as the STCG member companies. (*SBC Application*, p. 2.) First, SBC claims that existing industry standards do not require SBC to include CPN in the billing records for the wireless traffic that SBC delivers to small rural carriers and their customers. SBC misses the point. The ERE Rule was promulgated to address specific problems with the exchange of traffic between Missouri's three large "transiting" carriers and the smaller carriers that were on the receiving end of this transit traffic. During the hearing, it was established that SBC was providing a single number associated with each wireless carrier operating in Missouri. (Tr. 77-8.) The MITG explained, "Because of the absence of CPN, we did not get the information that would have helped us jurisdictionalize the traffic." (*Id.* at 78.)

2. The Commission examined this problem for more than five years before it established the ERE Rule, and the Commission clearly and specifically explained its rationale for the CPN requirement:

[W]e find that CPN will aid terminating carriers in establishing general auditing provisions for LEC-to-LEC network traffic. For example, CPN can be used to determine the party responsible for placing traffic on the LEC-to-LEC network. Stated differently, the presence of CPN will enable terminating carriers to gather specific information about calls sent for termination even though, due to roaming, the presence of CPN will not always permit determination of the proper jurisdiction of each and every telephone call.¹

Thus, SBC's CPN argument should be denied.

3. SBC's argument is also belied by the fact that CPN is included in records created by SBC for interexchange traffic delivered by traditional interexchange carriers (IXCs) to SBC's tandem, and it appears that CPN is also included in records created by SBC for competitive local exchange carrier (CLEC) traffic that is delivered by CLECs and "transited" by SBC. (See SBC Accessible Letter No. 05-007 (SW) issued and effective June 20, 2005.) (SBC "has been making mechanized detail call records available to the ILECs since November 2002 for traffic originated by end user customers of CLECs [T]hese mechanized detail call records also contain the telephone line numbers for these CLECs' end user customers.") SBC offers no explanation as to why its switches can capture and pass CPN for CLEC traffic but not wireless traffic.

4. SBC argues that the Commission has "misinterpreted" and "misunderstood" the Telcordia document. But the Telcordia document (that SBC did not enter into the record) appears to describe switch AMA records rather than billing EMI records. The AMA record format appears to allow the insertion of a specific number by carrier in the Originating Number field, and it appears that there are other fields which carried the CPN number that could be used populate an EMI record correctly. If there are any limitations on SBC's recording and switching facilities, then SBC should have placed evidence of such limitations into the record or addressed it in comments.

5. SBC claims that it will be "very costly and time consuming" to provide CPN for wireless calls. (*SBC Application*, p. 6.) Although this is the first time that this issue has

¹ *Order of Rulemaking*, MO Reg., Vol. 30, No. 12, issued June 15, 2005, p. 3780.

been raised with such urgency, SBC's complaints about costs and technical difficulties are nothing new to this case. The Commission properly weighed the evidence showing that SBC experienced an annual cost savings of approximately \$18 million upon the termination of the Primary Toll Carrier (PTC) Plan that gave rise to this rulemaking.² The record also demonstrates that small companies have had consistent and serious problems over the last five years receiving compensation for the "transit" traffic that SBC has delivered to small rural exchanges. The Commission found "that the difficulties experienced by terminating carriers extend far beyond the costly and frustrating experiences of non-payment of invoices."³

B. InterLATA calls and the LEC-to-LEC network.

6. SBC also complains that the ERE Rule "prohibits SBC Missouri from using its own in-state network facilities to terminate its customers' calls to another carrier in the state." (*SBC Application*, p. 7.)(emphasis added.) Of course, the Commission rejected SBC's argument, and the Commission fully recognized the problem highlighted by the emphasized phrase above:

We find nothing in our rules that restricts how SBC or any other carrier may provide service over its *own* facilities to its *own* customers. Rather we find that our rules are intended to and in fact do govern instances when one carrier uses *another carrier's* facilities in conjunction with its own facilities to provide service. . . . It is only when SBC (or another transiting carrier) chooses to send calls to another local exchange carrier that our interconnection rules intercede. In such instances, SBC is no longer merely "using its own network." **Rather, SBC (and other transiting carriers) are most certainly using the networks of other terminating carriers, often without the knowledge of those carriers.**⁴

² *Order of Rulemaking*, MO Reg., Vol. 30, No. 12, issued June 15, 2005, p. 3785.

³ *Id.* at p. 1377.

⁴ *Order of Rulemaking*, MO Reg. Vol. 30, No. 12, p. 1378 (emphasis supplied).

It is one thing for SBC to use its own network for its own traffic. It is an entirely different matter, however, when SBC seeks to use a small rural company's network for the use of SBC's own traffic without permission. The Commission recognized that "SBC may use its own network for its own purposes, but SBC's own network ends where another carrier's network begins – that is, at a meet-point or meet-point like interconnection facility."⁵

7. SBC also appears to view the ERE rule as an absolute prohibition with regard to transiting interLATA traffic. But the ERE Rule simply requires that SBC obtain approval from the small third party carrier before sending interLATA traffic over the LEC-to-LEC network:

. . . Nothing in this section shall prevent a tandem carrier from routing interLATA wireline traffic to a non-affiliated terminating carrier over the LEC-to-LEC network, provided such terminating carrier has agreed to accept such traffic from the tandem carrier and such acceptance is contained in a commission-approved interconnection agreement.

4 CSR 240-29.030(2)(published June 30, 2005)(emphasis added.) Thus, the ERE Rule does not prevent SBC from using the LEC-to-LEC network to deliver interLATA traffic to third parties. Rather, the Rule simply requires that SBC must get permission first.

8. SBC also claims that the Commission lacks jurisdiction to implement this ERE Rule provision, but the State law clearly provides the Commission with jurisdiction over network connections, so the Commission clearly had jurisdiction to promulgate this provision of the ERE Rule under Chapters 386 and 392 of Missouri's Revised Statutes. Federal law also gives the Commission broad authority over network connections between carriers, especially those involving relationships between intrastate networks. See 47

⁵ *Id.* at p. 1385.

U.S.C. §§ 251 and 252; see also *Southwestern Bell Telephone Co. v. United States*, 45 F.Supp. 403 (W.D. Mo. 1942)

9. The existing federal interstate, interLATA business relationship makes the carrier who owns the trunks financially responsible for the traffic. For example, SBC states that “the financially-responsible carrier is determined from the specific trunk over which the financially responsible wireless carrier (which had excess capacity on its facilities and agreed to handle the originating carrier’s calls) delivers the call to the LEC-to-LEC network.” (*SBC Application*, pp. 5-6.) Thus, SBC admits that in some instances the financially responsible carrier is the carrier with the trunks to the incumbent local exchange carrier (ILEC), not the originating carrier. Ironically, this sounds remarkably similar to the existing business relationship for all Feature Group D (FGD) interexchange carrier (IXC) traffic as well as the proposed business relationship that the small rural carriers have sought for over six years since the Primary Toll Carrier (PTC) Plan was eliminated. This information only supports the Commission’s decision to make SBC play by the same rules as other IXCs when it delivers interLATA traffic.

10. SBC must play by the same rules as all of the other interexchange carriers when SBC acts as an IXC and delivers interexchange traffic. The PTC Plan was terminated in part because SBC was anxious to cease providing service in small ILEC exchanges. Indeed, the elimination of the PTC Plan resulted in an annual \$18 million savings for SBC.⁶ In the *800 Maximizer* complaint case, the Commission found that SBC was acting as just another IXC when it was providing service in small ILEC exchanges after

⁶ *Order of Rulemaking*, MO Reg., Vol. 30, No. 12, issued June 15, 2005, p. 1385.

the PTC Plan was terminated.⁷ Accordingly, the Commission held that SBC would have to play by the same rules as any other IXC.

C. Separate Trunk Groups

11. SBC makes two claims to support its objections here. First, SBC claims that the Commission lacks authority for the separate trunk group requirement in the rule. (*SBC Application*, p. 11.) The Commission's authority was extensively addressed in its *Order of Rulemaking* and needs no further discussion here.⁸ Moreover, SBC's argument is at odds with its position about separate trunk groups in Case No. TO-2005-0166.⁹

12. Second, SBC says that claims of phantom traffic are "unsubstantiated" and "anecdotal." (*SBC Application*, p. 12.) SBC's claims contradict the overwhelming weight of the evidence in this case and the cases that gave rise to it.¹⁰ For example, Mr. Schoonmaker testified during the hearing:

Even after adjusting for that [Local Plus] traffic, and again as part of the record of that case, the — after adjusting for that area of the record, the record still showed there was ***in excess of ten percent difference between the terminating record that the companies were recording and the originating records that were being provided for billing purposes.***

(Tr. 60)(emphasis added). The ERE Rule properly allows the small ILECs to request separate trunk groups with SBC when a real problem occurs (such at SBC's failure to record Local Plus traffic¹¹) rather than being required to wait for SBC to identify and fix its

⁷ 800 *MaxiMizer Complaint*, Case No. TC-2000-325, *Report and Order*, issued Sept. 26, 2000 ("For the purpose of originating intraLATA interexchange traffic, SWBT is now essentially just another intraLATA IXC.")

⁸ See *Order of Rulemaking*, MO Reg., Vol. 30, No. 12, issued June 15, 2005, p. 1377.

⁹ *Id.* at p. 1394.

¹⁰ *Id.* at p. 1376.

¹¹ The Network Test revealed that SBC was responsible for the Local Plus recording

own mistakes (while the small ILECs are left without compensation).

D. Variance Request

13. SBC asks for a variance or waiver for "at least" one year from the wireless CPN requirement, but SBC offers no evidence or explanation for why it would be technically impossible to include CPN in wireless records. Indeed, CPN is routinely passed with wireless calls such that the wireless numbers are identified on landline Caller ID systems. Moreover, SBC offers no explanation as to why it is able to pass CPN for CLEC traffic but not wireless traffic. Because SBC offers no adequate evidence or explanation that satisfies the "good cause" requirement for an additional one year delay (after more than six years since the case that gave rise to this rulemaking was opened), SBC's motion for a one year waiver must be denied under 4 CSR 240-2.060(4).

14. If SBC expected the Commission to consider such a lengthy delay, then SBC should have provided timely and sufficiently detailed documentation regarding the necessary steps to comply with the rule and a realistic timeframe for accomplishing implementation. Instead, SBC offered only that it "believes" some of its switches do not have the technical capacity to comply with the ERE Rule. It is worth noting that SBC is the only one of the former PTCs to raise this eleventh hour complaint about wireless CPN. The other former PTCs have sought neither rehearing nor waiver. Therefore, if the Commission chooses to consider SBC's request, then the Commission should require SBC

problem which resulted in Mid-Missouri Telephone Company not being compensated for more than 50% of the traffic it was terminating. The evidence in TO-99-593 clearly demonstrated that the sum of the parts (i.e. the originating records received by the small companies) does not equal the whole (i.e. the terminating traffic delivered to the small companies by SBC).

to establish, at hearing and under oath, the nature and extent of any technical obstacles to implementation of the ERE Rule. The Commission should provide Staff and other parties with reasonable notice and an opportunity to participate in any such hearing.

15. Nevertheless, the STCG does not oppose a brief variance of 30-60 days to allow SBC to finalize its processes and systems for capturing and passing wireless CPN to the small rural carriers.

III. CONCLUSION

The Commission should deny SBC's Application for Rehearing because the Commission has already addressed and rejected the claims raised by SBC. Although SBC's request to delay implementation of the ERE Rule by an additional year must be rejected, the STCG does not oppose a brief waiver or variance of 4 CSR 240-29.040(4) for no longer than 30-60 days. SBC must be required to submit complete justification for its waiver and variance requests, setting forth with particularity and documentation the precise and specific nature of any technical obstacles in the SBC billing system to passing CPN.

Respectfully submitted,

/s/ Brian T. McCartney

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

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 25th day of July 2005, to:

Mike Dandino
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
mike.dandino@ded.mo.gov

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
lb7809@sbcsbc.com

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

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

Craig Johnson
Missouri Independent Telephone Group
700 E. Capitol
P.O. Box 1438
Jefferson City, MO 65102
cjohnson@aempb.com

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

Larry Dority
Fischer & Dority
101 Madison Street, Suite 400
Jefferson City, MO 65101
lwdority@sprintmail.com

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

/s/ Brian T. McCartney
W.R. England, III/Brian T. McCartney