

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Rule to)	
require all Missouri Telecommunications)	Case No. TX-2003-0301
Companies to Implement and Enhanced)	
Record Exchange Process to Identify the)	
Origin of IntraLATA Calls Terminated)	
by Local Exchange Carriers.)	

SPRINT COMMENTS

Sprint Missouri, Inc. and Sprint Spectrum L.P. d/b/a Sprint PCS (herein collectively referred to as 'Sprint') have been, and remain, adamantly opposed to the Enhanced Record Exchange Rule and urges the Missouri Public Service Commission ("Commission") to not go forward with its efforts to implement these rules, as published in the January 3, 2005 Missouri Register. In support of its position, Sprint offers the following comments.

Sprint submits that the proposed rules would create new and additional problems for both the industry and the Commission that would far outweigh any potential benefits. In fact, Sprint submits that there would be no potential benefit because this proposed rule is attempting to solve a problem that does not exist. Furthermore, the proposed rules conflict with both state and federal law.

Sprint is similarly situated to other small ILECs in Missouri for a significant portion of its network provisioning and traffic routed thereon. Sprint has 80 exchanges in Missouri. Of these 80 exchanges, 69 are served by a Sprint tandem; however, 11 Sprint exchanges with approximately 31,000 access lines are served by SBC's tandems in Kansas City and Springfield. As such, Sprint is in the same position as the small carriers in the state for these exchanges. Only five small carriers are served by Sprint's tandem

offices and these end-offices serve approximately 10,000 rural access lines. As noted above, Sprint is in the same network position as the small carriers for approximately 30,000 of its access lines or three times the number of access lines of the five small carriers served by Sprint. These five small carriers are listed below:

- Holway Telephone Company -- 2 exchanges, 564 access lines
- Iamo Telephone Corporation -- 4 exchanges, 1,243 access lines
- Kingdom Telephone Company -- 2 exchanges, 5,647 access lines
- MoKAN Dial -- 1 exchange, 835 access lines
- Rockport Telephone Company -- 3 exchanges, 1,942 access lines

In addition, SBC, AllTel, and CenturyTel all have offices that are served by Sprint. These carriers are also opposed to the proposed rule. These carriers together with Sprint have over 3 million access lines in Missouri.

Sprint is opposed to this rule for the following reasons, as discussed further, below:

1. There is no evidence or demonstration of a problem that would require such a rule;
2. The proposed LEC-to-LEC network definition contained in the rule is overly broad;
3. The Commission lacks jurisdiction over wireless carriers;
4. Federal law prohibits state commissions from enacting rules to modify interconnection agreements;
5. No exception allowed for technical infeasibility;
6. Alters current industry standards for record creation/exchange;
7. Certain provisions of proposed rule already are addressed in carriers' tariffs.
8. Proposed rule seeks a change in traditional business relationships;
9. Provisions of proposed rule are currently addressed in other PSC rules; and.
10. Blocking requirements proposed in the rule are unneeded and change the burden of proof.

Issue #1 -- No Evidence or Demonstration of Problem.

Sprint submits that unidentified traffic in Missouri is not a material issue as some proponents of the rule would have the Commission believe. To Sprint's knowledge, not one carrier has presented any quantification of benefits to be received under this proposed

rule. As noted above, five small carriers and three large carriers are served by Sprint's tandems; however, there have been no formal Commission complaints against Sprint regarding the transiting of traffic. Furthermore, Sprint has addressed the informal questions and inquiries that arise on an ongoing basis from the eight carriers in a timely manner such that no internal escalation has been required. Sprint recommends the Commission first measure the overall problem. Specifically, carriers that support this rule should quantify the amount of unidentified traffic. It may then be appropriate to perform an analysis to determine if the unidentified traffic is even compensable.

The complaints before the Commission regarding traffic on the LEC-to-LEC network have primarily been a result of carriers' objections to or questions regarding the appropriate compensation rates for such traffic. In other words, the complaints the Commission has recently addressed have been about compensation due for traffic or the traffic type being exchanged – not large quantities of “unidentifiable” traffic. As such, the proposed rule would have had no impact on the complaints before the Commission. While the proposed rule does address topics such as blocking and payment arrangements, these items are already addressed in the carriers existing tariffs, which have been approved by the Commission.

Issue #2 -- LEC-to-LEC Network Definition Overly Broad.

The proposed rule defines the LEC-to-LEC network so broadly that it impacts interexchange carrier (IXC) traffic which, heretofore, has not been the target of this case. Specifically, proposed rule 240.29.10 states:

InterLATA wireline telecommunications traffic, and interstate/interMTA wireless traffic shall not be transmitted over the LEC-to-LEC network, but must originate and terminate telecommunications traffic with the use of an interexchange carrier

point of presence, as defined in 4 CSR 240-29.020 (31) of this chapter”.

Also, proposed rule 240.29.30 states:

No carrier shall terminate traffic on the LEC-to-LEC network, when such traffic was originated by or with the use of feature group A, B or D protocol trunking arrangements

AT&T, MCI, Sprint Long Distance, and other interexchange carriers (IXCs) do not have a direct connection to every end-office in the state of Missouri, as this is cost prohibitive. Rather, IXCs have established direct connections to access tandems throughout the state and to only selected end-offices. These carriers use a point of presence; however, these carriers also use the LEC-to-LEC network for traffic termination. For example, Sprint's Platte City exchange near the Kansas City International airport is served by SBC's McGee Street tandem in downtown Kansas City. AT&T, MCI, Sprint Long Distance and other IXCs do not have a direct connection with Sprint's Platte City end-office; rather, the IXCs deliver the traffic to SBC at its McGee tandem office and SBC routes the FGD originated traffic to Sprint's Platte City office over the LEC-to-LEC network.

Furthermore, the definition of the LEC-to-LEC network is inconsistent with other provisions of the proposed rule. Again, proposed rules 240.29.010 and 240.29.030(4) prohibit interLATA traffic and/or FGD traffic from terminating using the LEC-to-LEC network; however, proposed rule 240.29.050(1) clearly contemplates that traffic from IXCs will be combined with traffic from wireless carriers and LECs. As such, proposed rule 240.29.050(1) allows LECs to separate the IXC traffic into separate trunk groups.

Issue #3 -- Commission Lacks Jurisdiction For Wireless Carriers.

The PSC lacks appropriate jurisdiction of wireless carriers to effectuate many provisions found in the proposed rule. Wireless services are exempt from Commission jurisdiction under Mo. Rev. Stat. Sec 386.020(53)(c), and the Commission cannot by rule provide the jurisdictional basis to impose rules for wireless carriers. In addition to the Commission's lack of state statutory authority over wireless carriers, the Commission is preempted by 47 USC 332(c)(3)(A) from enforcing provisions as to wireless carriers. Section 332 of the Communications Act provides that "no State or local government shall have any authority to regulate the entry of ... any commercial mobile service. Section 332(c)(3)(A). By requiring that wireless carriers comply with certain obligations in order to deliver calls to other carriers, e.g. establishing traffic requirements, the Commission is imposing entry requirements.

Furthermore, the FCC has primary jurisdiction over interconnection rules, especially between wireless carriers and LECs, and the Commission may not impose requirements that are contrary to the FCC's interconnection rules. Section 251(c)(2) allows carriers to interconnect at any technically feasible point. Many of these aspects concerning wireless interconnection are addressed in interconnection agreements with ILECs in Missouri and have already been approved by the Commission. The Commission's rule imposing specific requirements for interMTA traffic is preempted by the FCC's rule.

Issue #4 -- Federal Law Prohibits State Commissions From Enacting Rules to Modify Interconnection Agreements.

Proposed rule 4 CSR 240-29.030(7) mandates that carriers amend their negotiated or arbitrated interconnection agreements or seek permission from the Commission to

continue to exchange traffic on the terms of those agreements. Federal courts have concluded that a state commission cannot use its rulemaking authority to change the terms of an interconnection agreement. *Pacific Bell v. Pac-West Telecomm, Inc., et al.*, 325 F.3d 1114, 1127 (9th Cir. 2003). Interconnection agreements under Section 252 of the Telecommunications Act of 1996 have the binding force of law. See 47 U.S.C. § 252(a)(1). “[T]he point of § 252 is to replace the comprehensive state and federal regulatory scheme with a more market-driven system that is self-regulated through negotiated agreements.” *Pacific Bell*, 325 F.3d at 1127. Accordingly, the proposed rule that purports to use a state rulemaking to amend existing interconnection agreements is a violation of federal law.

Issue #5 -- No Exception for Technical Infeasibility.

Proposed rule 240.29.040(2) states that “all telecommunications carriers that transit LEC-to-LEC traffic for another carrier shall deliver originating caller identification to other transiting carriers and to terminating carriers”. One concern Sprint has with the proposal is that the rule does not allow an exception for technical limitation or infeasibility. Sprint has one route where the facilities between it and the end-office do not have the technical ability to deliver such information. As such, Sprint recommends the rule be clarified to allow for current limitations that exist.

Issue #6 -- Alters Industry Standards for Records Creation/Exchange.

Proposed rule 240.29.040(6) is intended to prohibit carriers from altering caller identification information when delivering the call. If this rule ultimately goes forward, Sprint would support this aspect of the rule. Specifically, the proposed rule states:

- (6) The originating telephone number shall be the telephone number of the end user responsible for originating the telephone call.

Under no circumstances in sections (1), (2), (3), (4) and (5) above shall any carrier substitute an originating telephone number other than the telephone number of the end user responsible for originating the telephone call.

Sections (1), (2) and (5) all address the delivery of caller identification information; however, Sections (3) and (4) address the billing records that are produced days or weeks after the call has been placed. In some circumstances, it is appropriate and acceptable to modify the call record. Carriers should follow industry-standard procedures in the creation of the call detail records. Sprint submits that this proposed rule be limited to only Sections (1), (2) and (5), if the Commission ultimately determines that such a rule is actually needed.

Issue #7 -- Provisions of Proposed Rule Currently Addressed in Carrier Tariffs.

Certain aspects of the proposed rule are currently addressed in Sprint's tariffs which have been approved by the Commission and in effect for decades. While Sprint has not reviewed the tariffs of other carriers, Sprint anticipates that other LECs are similarly situated. Proposed rule 240.29.50(1) allows for the end-office carrier to request segregated trunks; however, Sprint's tariff clearly states that it retains the discretion. Also, proposed rule 240.29.90 addresses payment arrangements. Payment arrangements are governed by carrier tariffs (and interconnection agreements), all approved by the Commission, as well.

Sprint submits that carrier practices for both (a) trunk segregation and (b) payment arrangements have long been established by carriers in their network design and tariffs, and there is no need for a rule. Sprint has not received any complaints regarding its tariffed practices. Furthermore, if the Commission proceeds with the proposed rules it

would result in an inconsistency for Sprint in regards with its tariff. In this instance, Sprint submits that its tariffs govern, not the proposed rule.

Issue #8 -- Proposed Rule Seeks A Change in Business Relationship.

Certain carriers have been advocating for years that tandem carriers be held financially liable for any unidentified transit traffic, and the Commission has flatly rejected this change in business relationship. Sprint submits that these carriers, who support the rulemaking initiative, are trying, yet again, to persuade the Commission to change the business relationship. The proposed rule contains provisions that accomplish just that.

Issue #9 -- Provisions of Proposed Rule Already Contained in Commission Rules.

Two provisions of the proposed rule are duplicative and already contained within other, existing PSC rules. Specifically, proposed rule 240.29.060 addressing end-user blocking is duplicative of provisions of Chapter 32. Also, proposed rule 240.29.150, which addresses CPNI, is duplicative of provisions already found in Chapter 33. Sprint submits that the Chapter 32 and 33 rules are more than adequate to address the issue and if further provisions are justified that these respective rules should be revised.

Issue #10 -- Blocking Requirements Are Unneeded and Change The Burden of Proof.

Sprint submits that the blocking requirements are not needed as carriers have blocking provisions today in their wireless termination tariffs and interconnection agreements. Blocking occurs today in Missouri without the need of detailed rules. Also, the process outlined in the proposed rule inappropriately removes the legal burden of proof. Under the proposed rule, a small LEC is allowed to unilaterally declare any upstream carrier out of compliance with the PSC rules and initiate blocking procedures.

Carriers that do not want to have their traffic blocked must file a complaint against the small carrier – thus, shifting the burden of proof.

* * *

Sprint reiterates that there is no reason for the proposed rule to go forward. However, if the Commission determines to do so, Sprint's specific issues with the proposed rules are identified below:

4 CSR 240-29.010 The LEC-to-LEC Network

Sprint recommends the following modification as FGD originated traffic terminates over the LEC-to-LEC network. This rule would require direct connection to every end-office by every IXC if the LEC-to-LEC network could not be used by IXCs (see Issue #2 above for more detail). Also, the PSC does not have statutory authority over wireless carriers (see Issue #3 above for more detail):

The LEC-to-LEC Network is that part of the telecommunications network designed and used by telecommunications companies for the purposes of originating, terminating, and transiting local, intrastate/intraLATA, interstate/intraLATA, and wireless telecommunications services that originate via the use of feature group C protocol, as defined in 4 CSR 240-29.020 (13) of this chapter. ~~InterLATA wireline telecommunications traffic, and interstate/interMTA wireless traffic shall not be transmitted over the LEC-to-LEC network, but must originate and terminate telecommunications traffic with the use of an interexchange carrier point of presence, as defined in 4 CSR 240-29.020 (31) of this chapter.~~

4 CSR 240-29.020 Definitions

Sprint recommends the following definition be modified as the PSC does not have statutory authority over wireless carriers (see Issue #3 above for more detail):

(34) Telecommunications Company means, for the purposes of this chapter only, a telecommunications company that includes those companies included within the definition as set forth in section 386.020(51) RSMo Supp. 2003 ~~and also includes companies providing radio communications services under license granted pursuant to the Federal Communications Commission's commercial mobile radio services (CMRS) rules and regulations.~~

4 CSR 240-29.030 General Provisions

Sprint recommends the elimination of the following provision as the PSC does not have statutory authority over wireless carriers (see Issue #3 above for more detail).

- (2) No originating wireless carrier shall place interstate interMTA traffic on the LEC-to-LEC network.

Sprint recommends the elimination of the following as this provision mandates separate trunk groups for FGC traffic (see Issue #2 above for more detail):

- (4) No carrier shall terminate traffic on the LEC-to-LEC network, when such traffic was originated by or with the use of feature group A, B or D protocol trunking arrangements.

Sprint recommends the elimination of the following provision as the proposed rule seeks to supersede existing, and Commission approved, interconnection agreements (see Issue #4 above for more detail):

- (7) All carriers with existing interconnection agreements allowing for the exchange of traffic placed on the LEC-to-LEC network shall take appropriate action to ensure compliance with this chapter unless the commission has granted a variance from the requirements of this chapter.

4 CSR 240-29.040 Identification of Originating Carrier for Traffic Transmitted over the LEC-to-LEC Network

Sprint recommends the following clarification (see Issue #5 above for more detail):

- (2) All telecommunications carriers that transit LEC-to-LEC traffic for another carrier shall deliver originating caller identification to other transiting carriers and to terminating carriers, WHERE TECHNICALLY FEASIBLE.

Sprint recommends the following clarification (see Issue #6 above for more detail):

- (6) The originating telephone number shall be the telephone number of the end user responsible for originating the telephone call. Under no circumstances in sections (1), (2), ~~(3)~~, ~~(4)~~ and (5) above shall any carrier substitute an originating telephone number other than the telephone number of the end user responsible for originating the telephone call.

4 CSR 240-29.050 Option to Establish Separate Trunk Groups for LEC-to-LEC Telecommunications Traffic

The following provision should be eliminated as it is in conflict with Sprint's tariff (PSC MO #26, 6.2.3(A)(6) page 187 which states "different types of FGC or other switching arrangements may be combined on a single trunk group at the option of the Telephone Company" (see Issue #7 above for more detail).

- (1) At its discretion, a terminating carrier may elect to establish separate trunk groups for IXC and LEC-to-LEC traffic. Terminating tandem carriers shall work cooperatively with, and abide by requests of, terminating carriers to establish separate trunking arrangements for IXC and LEC-to-LEC traffic occurring between a terminating tandem carrier and a terminating end office.

Sprint recommends the following provision be eliminated as it seeks to change the business relationship between tandem carriers and end-office carriers which the Commission has consistently rejected (see Issue #8 above for more detail):

- (2) A transiting carrier may opt to not install separate trunk groups to a requesting terminating carrier if the transiting carrier assumes financial responsibility for all compensable transiting traffic delivered to the terminating carrier.

Clarify the following provision as segregated traffic still rides the LEC-to-LEC network albeit on separate trunks. If the proposed rule were enacted as currently stated, what are the tandem providers to do with segregated traffic?

- (4) After a terminating carrier elects to establish separate trunk groups for IXC and LEC-to-LEC traffic, IXC traffic shall not be placed on the LEC-to-LEC trunks between the terminating tandem carrier and terminating end office.

4 CSR 240-29.060 Special Privacy Provisions for End Users Who Block Their Originating Telephone Number

Eliminate the entire rule. Call blocking rules were recently enacted as part of Chapter 32 and currently address most aspects of this proposal. If further revisions are justified, Chapter 32 should be revised.

4 CSR 240-29.070 Special Provisions for Wireless-Originated Traffic Transmitted over the LEC-to-LEC Network

Eliminate the following provision as the PSC does not have statutory authority over wireless carriers (see Issue #3 above for more detail).

- (2) Interstate, interMTA wireless-originated traffic shall be routed by wireless carriers to the facilities of an interexchange carrier.

4 CSR 240-29.080 Use of Terminating Record Creation for LEC-to-LEC Telecommunications Traffic

Sprint recommends the elimination of this proposed rule in its entirety. The estimated fiscal impact for Sprint is \$400,000 and, as noted above in Issue #1, there is absolutely no demonstration or other evidence to support this initiative. Sprint acknowledges that the current process of creating originating records is not perfect; however, creating terminating records based on caller ID information is extremely problematic and will cause numerous other issues to arise.

4 CSR 240-29.090 Time Frame for the Exchange of Records, Invoices, and Payments for LEC-to-LEC Network Traffic

Eliminate the following provision as this item is addressed in Sprint's tariffs and is inconsistent with the new rule [MO PSC #26, Section 2.4.1 (B) (3) (a) page 51] (See Issue #9)

- (2) Upon receiving a correct invoice requesting payment for terminating traffic placed on the LEC-to-LEC network, the originating carrier shall submit payment within thirty (30) days to the telecommunications company that submitted the invoice.

4 CSR 240-29.100 Objections to Payment Invoices

Sprint recommends the elimination of this proposed rule in its entirety as (1) carriers have long established billing resolution procedures and (2) it seeks a change in the business relationship between tandem carriers and end-office carriers which the Commission has consistently rejected. Furthermore, Sprint questions whether the proposed procedures are adequate to ensure a fair process.

4 CSR 240-29.110 Duty to File Tariffs for Compensable Telecommunications Traffic in the Absence of Commission-Approved Interconnection Agreements

No Issues.

4 CSR 240-29.120 Blocking Traffic of Originating Carriers and/or Traffic Aggregators by Transiting Carriers

General Issue Regarding Blocking for Rule 120, 130, 140, & 150

The process outlined in the proposed rule inappropriately moves the legal burden of proof. Under the proposed rule, a small LEC is allowed to unilaterally declare any upstream carrier out of compliance with the PSC rules and initiate blocking procedures. Carriers that do not want to have their traffic blocked must file a complaint against the small carrier – thus, having the burden of proof.

4 CSR 240-29.130 Requests of Terminating Carriers for Originating Tandem Carriers to Block Traffic of Originating Carriers and/or Traffic Aggregators

See Rule 120 above.

4 CSR 240-29.140 Blocking Traffic of Transiting Carriers by Terminating Carriers

See Rule 120 above.

4 CSR 240-29.150 Confidentiality

Eliminate the entire rule. CPNI rules were recently enacted at part of Chapter 33 and currently addresses most aspects of this proposal. If further revisions are justified – Chapter 33 should be revised.

4 CSR 240-29.160 Audit Provisions

No Issues.

Respectfully submitted,

~~SPRINT~~



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