BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Chariton Valley Communications Corporation, Inc., for Approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri pursuant to Section 252(e) of the Telecommunications Act of 1996.	)))))	Case No. TK-2005-0300

SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC MISSOURI'S APPLICATION FOR REHEARING

Comes now Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri"), and hereby submits its Application for Rehearing ("Application") of the Commission's May 19, 2005, Order Rejecting Interconnection Agreement in this case ("Order"), pursuant to Section 386.500 RSMo. 2000. The Order was made effective May 29, 2005. In support of its Application, SBC Missouri states to the Commission as follows:

1. This case was opened when Chariton Valley Communications Corporation, Inc. ("Chariton") filed, on March 9, 2005, an application for approval of an Interconnection Agreement reached with SBC Missouri (hereinafter, "the ICA") after extensive negotiations.

2. On April 13, 2005, the Commission's Staff filed a recommendation ("Staff Recommendation") in which the Staff urged that the Commission's approval process be halted because, as Staff put it, the agreement "lack[ed] a complete transit provision." Staff Recommendation, p. 1. More particularly, although the Staff voiced no concern regarding any portion of the voluminous agreement that had been submitted by the parties, Staff nonetheless recommended that the Commission "reject the interconnection

agreement as discriminatory and against the public interest if the parties do not submit the transit traffic agreement to the Commission for approval under Section 252(e)." Staff Recommendation, p. 5.

3. The Commission's May 19, 2005, Order rejected the ICA, concluding that "transit traffic is an interconnection service and is therefore subject to Commission approval." Order, p. 4. The Order also found that "it is against the public interest to approve an interconnection agreement when the parties have also entered into a transit traffic agreement that is not before the Commission." Id.

4. The Commission's Order provides only limited discussion as to the basis of its findings and conclusions. Without accompanying legal analysis, the Commission's discussion simply determined that transit service falls within the definition of "interconnection service" under the federal Telecommunications Act of 1996 ("the Act").[1] The Commission thus reasoned that, since Chariton intended to use transiting that would be provided by SBC Missouri, the ICA was deficient because it did not include all of the interconnection terms to which the parties had agreed. The Commission found that it was "against the public interest to approve only part of an interconnection agreement, the whole of which should be before the Commission and, if approved, subject to adoption by other carriers." Id., pp. 3-4.

5. The Commission's Order is without sufficient legal basis, is contrary to law, and indeed, is contrary to its own prior precedent.

6. The FCC has never held that anything in its rules or the Act requires the provision of transit services. Section 251(a) of the Act requires all carriers "to

[1] The Order's lone citation (at n. 4) to the January 15, 2003, "Connecticut Telcom" Decision of the Connecticut Department of Public Utility Control ("Connecticut Commission") is unpersuasive. On December 8, 2004, the Connecticut Commission reopened its January 15, 2003 Decision.

interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." However, there is a difference between a duty "to interconnect indirectly" and a duty "to provide indirect interconnection." The FCC has never determined that Section 251(a) of the Act imposes the latter as any such duty. In any event, the requirements imposed by Section 251(a) are not subject to mandatory negotiation or arbitration under the 1996 Act. Section 251(c)(1), which is the provision that specifies the duties that ILECs must negotiate (and which therefore are subject to arbitration under Section 252), requires negotiation only of the duties that Sections 251(b) and 251(c) impose on local exchange carriers, not the duties that Section 251(a) imposes on them.

7. With respect to Section 251(c), the only duty to provide interconnection is set forth in 47 U.S.C. 251(c)(2), and that obligation is limited to interconnection of the requesting carrier "with the [incumbent] local exchange carrier's network." The duty of ILECs to provide interconnection, therefore, is limited to providing interconnection with the ILECs' networks, not with other carriers' networks. The FCC has never held that Section 251(c)(2) imposes a duty upon ILECs to provide or facilitate indirect interconnection and transit services between two other carriers.

8. This interpretation is consistent with the decision of the FCC's Wireline Competition Bureau ("Bureau") in the Verizon/AT&T/WorldCom/Cox arbitration for Virginia ("FCC Virginia Arbitration Order").[2] In that proceeding, Verizon argued that, while every carrier has a right to interconnect indirectly with any other carrier under 47

[2] Memorandum Opinion and Order, Petitions of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, et. al., CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (released July 17, 2002) ("FCC Virginia Arbitration Order").

U.S.C. § 251(a), there is nothing in the Act that permits carriers to transform that right into a duty on the part of ILECs to provide transit services and thus facilitate the duty of other carriers to interconnect indirectly.[3]

9. The Bureau noted that the Commission has not had occasion "to determine whether incumbent LECs have a duty to provide transit service under [47 U.S.C. § 251(c)(2)]."[4] Nor did the Bureau find "clear Commission precedent or rules declaring such a duty."[5] The Bureau also did not specifically determine whether ILECs have a duty under 47 U.S.C. § 251(a) to provide transit services. Rather, the Bureau concluded that "any duty Verizon may have under section 47 U.S.C. § 251(a) of the Act to provide transit service would not require that service to be priced at TELRIC."[6] Thus, the Bureau has confirmed that no Commission rule requires carriers to provide indirect interconnection and transit services, and even if carriers are obligated to do so, they are permitted to charge market rates for those services.

10. The Commission's Order is also contrary to its own prior precedent. For example, the Commission's May 13, 2005, Order in TK-2005-0285 ("Level 3 Order") approved an ICA entered into between Level 3 and SBC Missouri, determining that "[t]here is no reason to believe that an interconnection agreement must include specific provisions for transiting traffic in order to be approved." Level 3 Order, p. 5. Moreover, the Commission noted that the terms of the parties' ICA did not present any potential discrimination concerns relative to other carriers because "those terms are made available to other carriers." Id. Likewise, in Case No. TK-2005-0114, on December 21, 2004, the

[3] FCC Virginia Arbitration Order, ¶ 113.
[4] FCC Virginia Arbitration Order, ¶ 117.
[5] FCC Virginia Arbitration Order, ¶ 117.
[6] FCC Virginia Arbitration Order, ¶ 117.

Commission approved on December 21, 2004, a Cellular/PCS Interconnection Agreement between ALLTEL and SBC Missouri -- even though that agreement provided no rates, terms or conditions associated with transit traffic, but nonetheless clearly contemplated the passage of such traffic.[7]

11 Finally, the undisputed facts refute any potential claim of discrimination. SBC Missouri stated in pre-filed direct testimony filed in case No. TO-2005-0166 that "SBC Missouri will continue to offer a transit service for carriers that would prefer to use SBC Missouri's network to reach third party carriers."[8] SBC Missouri made the point even more plain in pre-filed rebuttal testimony filed in that case when, in explaining that "the terms of SBC Missouri's transit service are contained in a separate commercial agreement," SBC Missouri stated unequivocally that "SBC Missouri has made this Transit Traffic Service Agreement available for all carriers interested in having SBC Missouri transit traffic for them."[9] (emphasis added). Additionally, SBC Missouri files consummated Transit Traffic Service Agreements with the FCC. For these reasons alone, Staff's apparent discrimination concern is without any factual basis.

WHEREFORE, for the above reasons, SBC Missouri respectfully requests that the Commission grant its Application for rehearing in this case, and for such other and further relief as may be just and appropriate in the circumstances.

Respectfully submitted,

[7] Section 30.1 of the General Terms and Conditions provides that "ALLTEL will not send to SBC-13STATE local traffic that is destined for the network of a Third Party unless ALLTEL has the authority to exchange traffic with that Third Party." The matter of "Transit Traffic," although referenced within the table of contents to the Interconnection Trunking Requirements Appendix, does not appear within the body of that appendix.
[8] Case No. TO-2005-0166, Direct Testimony of J. Scott McPhee, p. 20 (pre-filed January 24, 2005).
[9] Case No. TO-2005-0166, Rebuttal Testimony of J. Scott McPhee, pp. 5-6 (pre-filed February 7, 2005).

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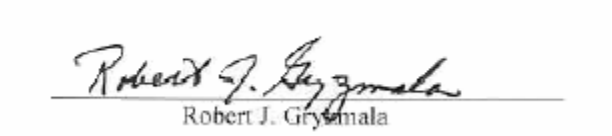
I hereby certify that copies of the foregoing have been electronically mailed to all counsel of record this 27th day of May, 2005.



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