BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of a Possible Amendment to Section 4 CSR 240-29.040	))	Case No. TX-2006-0444

MITG Motion to Strike, and
Response to AT&T's July 17, 2006 Reply to MITG and STCG Comments

For its Motion to Strike, and alternative Response to AT&T's July 17, 2006 Reply to MITG and STCG Comments, the MITG submits the following:

Motion to Strike

The MITG hereby moves to strike AT&T's July 17, 2006 Reply to MITG and STCG Comments from the record of this proceeding.

In support hereof, the MITG states that the Commission's May 24, 2006 Notice Inviting Comments, and the Commission's June 21, 2006 Order setting a July 7, 2006 deadline for comments, did not contemplate or authorize any filing of replies after the initial comments the July 7 deadline provided. The Commission did not include a schedule for reply comments in its June 21 Order. The MITG does not believe the initial comments constituted pleadings under Rule 4 CSR 240-2.080 (15) that triggered a right of response within 10 days.

Alternative Response to AT&T Reply

1. AT&T in its reply does not contest three primary points raised by the MITG:

(a) AT&T is violating the ERE by not providing terminating LECs with the correct *originating* Operating Company Number (OCN). This will result in small ILECs being required to bill the carrier that delivered the call *to AT&T*.[1] AT&T is billing the carrier that delivered the traffic to AT&T--the "FGD" "delivering" carrier financial responsibility. AT&T is utilizing the preferred business relationship for itself, but sending billing records requiring small ILECs to utilize the inferior relationship. There is nothing in the Commission's ERE that imposes this duality, it is solely of AT&T's doing.

(b) Since the 1996 Telecommunications Act the industry has increasingly focused on eliminating opportunities for traffic arbitrage. Contrary to this trend, AT&T's billing record directing small ILECs to bill the carrier that delivers the traffic to AT&T *creates* an opportunity for arbitrage detrimental to the small ILECs.

Different wireless carriers' interconnection agreements have different rates, and/or different interMTA factors with different small ILECs. A wireless carrier with higher rates/factors can deliver its traffic to a wireless carrier with lower rates/factors. This carrier in turn will deliver the traffic to AT&T. AT&T will then report the traffic as being originated by the delivering carrier with lower rates/factors than that of the true originating carrier. Relying upon AT&T's billing record will result in less revenue to the small ILEC.

Pervasive throughout AT&T's Reply is the assumption that its Missouri-Specific 11-01 billing records provide the *originating* OCN.[2] That is not the case. As a result, the small ILECs cannot ascertain if and to what extent arbitrage has been conducted.

(c) The ERE, on its face, without need for interpretation or construction, requires CPN in the Missouri-specific 11-01 billing record. The ERE requires the Missouri Specific 11-01 to be identical to industry standard 11-01 billing records, the sole

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[1] Even though the OCN may not correctly identify the true originating wireless carrier.

[2] 4 CSR 240-29.020(29) and 29.080(1) and (2) of the ERE require originating carrier OCN.

exception permitted being the substitution of OCN for a CIC. As CPN is contained in the industry standard 11-01 for wireless traffic, the ERE also requires CPN in the Missouri-specific 11-01.

2. AT&T's Reply contains other positions that the MITG disagree with.

3. AT&T's characterization of the small ILECs wireless carrier collection results as a "success", thereby indicating that the current billing records are suitable, is ridiculous. The result of the past litigation has nothing to do with the issue of whether the current billing records are currently adequate.

Most of the collection period involved the CTUSR, not the Missouri-specific 11-01 at issue here. The MITG disagrees that the collections constitute a "success" pertinent to whether CPN should be included in the billing records. Years of litigation in tariff proceedings at the state and federal level, years of complaint proceedings before this Commission, and continuing litigation in the courts hardly qualifies as a "success".

Litigation to be compensated for terminating services rendered is not the hallmark of a commercially reasonable business relationship. This litigation had its genesis when AT&T negotiated interconnection agreements covering transit traffic without including carriers terminating the traffic in the negotiations. This action permitted traffic to terminate (in violation of Commission Orders and interconnection agreements) before the small ILECs and wireless carriers had a consensus as to payment of terminating compensation. This forced small ILECs to resort to litigation to attempt to collect for services previously rendered.

4. AT&T's claim that there is 'no evidence" of financial loss due to lack of adequate billing records is also absurd. The litigation costs can be calculated. The

specific amount of loss intercompany compensation dollars cannot be calculated because there is no way to determine what rate applied to each call. The closest an MITG company could possible get would be to quantify what *amounts of traffic* were not compensated for. Even if that traffic quantification were accurate, without call jurisdiction and applicable rate information, lost *revenues* cannot be computed. In addition, because AT&T's record provides an opportunity for arbitrage, it would still be possible to have revenue loss even if the billing record provided call jurisdiction.

5. CPN is an appropriate jurisdictional indicator, an industry standard that has been used for years, even for wireless traffic. There is no justification for departing from the industry standard only for wireless traffic that happens to be transited to AT&T for termination.

AT&T has taken positions before the FCC that CPN is appropriate for billing wireless traffic. AT&T stated that automatic number identification, a substitute for CPN under the ERE, is appropriate to use in billing wireless traffic:

> Because long distance carriers provide no other information to local carriers as to the geographic location of wireless subscribers who place or receive telephone calls, **it has been standard industry practice for years to use calling and called party telephone numbers to determine the jurisdiction of, and thus appropriate access charges for, wireless originated calls.**"[3]

In 2005 AT&T filed a Notice of Ex Parte with the FCC regarding solutions to phantom traffic.[4] In order to assure appropriate call jurisdiction detail, AT&T urged the FCC to require the provision of calling party number (CPN). AT&T's insistence before this Commission that CPN is unnecessary is suspect.

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[3] *In the Matter of SBC Communications Inc. Petition for Declaratory Ruling Concerning Terminating Switched Access Charges for Wireless-Originated Calls*, FCC WCB Docket No. 04-424, filed November 12, 2004.

[4] FCC Docket No. 01-92

This Commission has approved utilizing CPN to determine call jurisdiction for purposes of traffic studies supporting traffic factors in interconnection agreements.[5]

Recently, on June 30, 2006, the FCC reiterated that in an industry standard call, CPN is passed in order to determine jurisdiction. The FCC directed that CPN be used even for prepaid calling card calls, that carriers are required to transmit CPN, and that the CPN could not be replaced with another number associated with the platform upon which prepaid call card calls are provisioned. See June 30, 2006 Declaratory Ruling and Report and Order, In the Matter of Regulation of Prepaid Calling Card Services, WC Docket No. 05-68, FCC 06-79, at ¶¶ 32-34.

6. AT&T attempts to leave the impression that its $18,000,000 annual loss from providing toll under the PTC Plan was a real loss. This attempt runs afoul of ratemaking principles in effect under the PTC Plan, when AT&T was rate of return regulated. AT&T's toll rates, which were averaged to cover AT&T's lower costs in urban areas as well as higher costs in rural areas, were statutorily presumed to provide sufficient revenue for a reasonable return to AT&T.

The 1999 Order directing AT&T to provide industry standard 11-01s was in return for permitting AT&T to save $18,000,000 from no longer being required to provide toll in the higher cost rural areas after elimination of the PTC Plan. In addition to enjoying this savings, AT&T continued to offer toll in the more lucrative urban areas.

The Order was also in response to AT&T's request that it be permitted to utilize its billing systems to provide terminating billing records to the small ILECs after

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[5] *BPS Telephone Company, et al. v. Voicestream Wireless Corporation et al.*, TC-2002-1077 (January 27, 2005); *In the Matter of the Petition of Alma Telephone Company for Arbitration of Unresolved Issues Pertaining to a Section 251(b)(5) Agreement with T-Mobile USA, Inc.*, IO-2005-0468 (October 6, 2005)

termination of the PTC Plan. It is irrelevant to that Order that AT&T's initial savings may have dissipated in the years since, of which claim there is no proof.

AT&T's attempted point in this regard has nothing to do with the adequacy of the current Missouri-specific 11-01 billing record, and whether CPN should be included in that record. AT&T is simply trying to get out of the very deal it proposed, and the Commission ordered, at termination of the PTC Plan. It makes no difference what the cost of making the Lucent switches CPN compliant is. Poviding industry standard 11-01 billing records was an essential part of the deal AT&T proposed, and the Commission accepted. The Commission has no reason to change the deal now.

Conclusion

Despite AT&T's Reply to the comments of the MITG, the MITG stands by those comments. The MITG stands by its responses to the Commission questions. The MITG respectfully requests that the Commission schedule a pre-hearing conference at this time, with provisions for a hearing or some other manner of determining whether the ERE will be amended to more specifically, and without any interpretational argument, require CPN in Missouri-specific 11-01 billing records for wireless-originated traffic transited on the "LEC to LEC" network.

WHEREFORE, having responded to AT&T's Reply to MITG and STCG Comments, the MITG requests that the Commission schedule a pre-hearing conference, with provisions for a hearing in order to determine whether the ERE needs to be, and will be amended, to more specifically, and without any interpretational argument, require CPN in Missouri-specific 11-01 billing records for wireless-originated traffic transited on the "LEC to LEC" network.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was electronically mailed to the attorneys of record in this proceeding this 21st day of July, 2006.

_/csj/___________________
Craig S. Johnson