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May 11, 2005

**FILED**

MAY 11 2005

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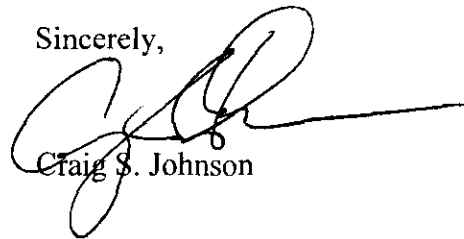
**Re: In the Matter of the Necessity of Approval of Transiting Services Agreements Under Section 252 of the Telecommunications Act of 1996, and Related Issues.**

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of the Request or Motion for a Determinations of the Necessity of Approval by the Missouri Public Service Commission of Transiting Services Agreements Under Section 252 of the Telecommunications Act of 1996, and Related Issues.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CSJ:sjo

Enclosure

CC: PSC General Counsel  
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**FILED**

**MAY 11 2005**

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

**Missouri Public  
Service Commission**

**In the Matter of the Necessity of Approval  
of Transiting Services Agreements Under  
Section 252 of the Telecommunications Act  
of 1996, and Related Issues.**

**Case No. \_\_\_\_\_**

**REQUEST OR MOTION OF MISSOURI RSA NO. 5 PARTNERSHIP  
d/b/a CHARITON VALLEY WIRELESS AND CHARITON VALLEY  
COMMUNICATIONS CORP. FOR A DETERMINATION OF THE NECESSITY OF  
APPROVAL BY THE MISSOURI PUBLIC SERVICE COMMISSION OF  
TRANSITING SERVICES AGREEMENTS UNDER SECTION 252 OF THE  
TELECOMMUNICATIONS ACT OF 1996, AND RELATED ISSUES**

COMES NOW Missouri RSA No. 5 Partnership d/b/a Chariton Valley Wireless ("CVW") and Chariton Valley Communications Corporation ("CVC") and hereby requests that the Commission establish a general docket for the purposes of determining whether or not "transit services agreements", such as the WSP Service Agreement entered into between Chariton Valley Wireless with SBC Missouri ("SBC") and such as the WSP Service Agreement entered into between Chariton Valley Communications and SBC, are or should be filed with the Missouri Public Service Commission for approval pursuant to Section 252(e) of the Telecommunications Act of 1996. In support of this Request, CVC and CVW state as follows:

1. CVC and CVW are Missouri entities providing commercial mobile radio service pursuant to FCC license, and operating in Missouri.
2. SBC Missouri is an incumbent local exchange company certificated by the Commission to provide local service in Missouri.

3. The issue of whether transiting services agreements are required to be approved under Section 252 of the Telecommunications Act is an issue that has confronted the Commission in TO-2005-0166, TK-2005-0300, and TK-2005-0304. It will continue to confront the Commission unless resolved in an expedient manner.

4. In these three dockets the issue has arisen in the context of a Section 252 request for approval of an interconnection agreement. Such requests are required to be approved or rejected within 90 days, and are not conducive to the orderly resolution of a new and generic issue such as whether transit service agreements are required to be submitted for approval.

5. CVC and CVW both have interconnection agreements for which approval has been requested in TK-2005-0300, and TK-2005-0304. In those dockets the Missouri Commission Staff has recommended that the interconnection agreements, which no entity disputes must be approved under Section 252, be rejected unless related transit service agreements between CVC, CVW, and SBC, also be submitted for approval. SBC opposes submitting same for approval. SBC has filed a copy of the WSP or transiting service agreement in TK-2005-0300.

6. CVC and CVW state that, if in this docket it is determined that the transit service agreements they have entered into with SBC must be submitted for Section 252 approval, they will do so. CVC and CVW state that the creation of this docket will obviate Staff's basis for recommending rejection of the interconnection agreements submitted for approval in TK-2005-0300, and TK-2005-0304.

7. CVC and CVW request that the Commission enter an Order creating this docket to resolve this issue, provide notice to all ILECs, CLECs, and CMRS providers giving

them a reasonable opportunity to participate, establish a prehearing conference to ascertain the procedures and schedules under which this issue will be resolved, and if resolution will require a hearing to hold such a hearing.

8. Section 251 (a) of the Telecommunications Act created a general duty of all telecommunications carriers to connect “indirectly”. Section 251 (b) (5) created a duty of ILECs to establish reciprocal compensation arrangements for local traffic with CMRS providers and CLECs. Section 251 (c) (1) created the additional duty of ILECs to negotiate in good faith in accordance with Section 252 agreements to fulfill the duty to establish 251(b) (5) reciprocal compensation arrangements. Section 251(c) (2) created the additional duty of ILECs to provide a requesting carrier interconnection with the ILECs’ network. Section 252 required state Commission approval or arbitration of agreements negotiated pursuant to section 251.

9. There appears to be no dispute that, where a CLEC or CMRS provider requests direct interconnection and an agreement with an ILEC for the reciprocal exchange of local traffic, this type of “direct” interconnection agreement must be submitted for Section 252 approval.

10. However, with respect to the obligations imparted by the duty to connect “indirectly”, the 1996 Act does not make it clear that there is a duty to negotiate reciprocal compensation arrangements over an “indirect” interconnection. Further, if three or more carriers are involved in an “indirect” interconnection, it is not clear whether the intermediate, or “transiting” interexchange carriers’ role in providing indirect interconnection links is to be performed pursuant to agreement, and whether such agreement is required to be submitted for Section 252 approval.

11. In establishing interconnection and reciprocal compensation rules, the FCC determined in 1996 that reciprocal compensation was for interconnection between two carriers for the reciprocal exchange of local traffic, and that each party to such an arrangement would pay the other to transport and terminate the local traffic it originated. The FCC in its August 1996 Interconnection Order also specified that traffic carried from one carrier to another by an interexchange carrier was not subject to reciprocal compensation. Following the FCC Interconnection Order, section 251 and 252 provisions of the Act were implemented by the telecommunications industry.

12. In an early arbitration in Kansas, the Kansas Corporation Commission agreed with SBC and held that, in its ILEC capacity, SBC had no obligation to accept or terminate "transit" traffic received from CLECs. Kansas held that it was the ILEC's option to decide whether or not it would accept "transit" traffic, or whether it would instead insist on negotiating its own direct interconnection agreements. Thus SBC was allowed the right to refuse to accept "indirect" traffic transited to it by a "transiting" carrier.

13. Thereafter in Missouri SBC negotiated direct interconnection agreements with CLECs and CMRS providers. These agreements also included "transit" provisions whereby SBC would transit traffic to other LECs "indirectly" connected to the CLEC or CMRS provider via SBC's network. These other LECs were not invited to, and did not, participate in these negotiations, and were not allowed to oppose such transit traffic provisions. At that time SBC took the position that it had an obligation under the Act's "indirect interconnection" provisions to transit traffic at reciprocal compensation rates. SBC also took the position that, contrary to the Kansas arbitration decision it had obtained, other ILECs in Missouri had an obligation to accept transit traffic and must negotiate reciprocal

compensation agreements with carriers they did not directly connect with. Therefore the interconnection agreements between SBC, CLECs, and CMRS providers contained both direct interconnection and indirect or transit service provisions. These agreements, including the transit traffic provisions, were submitted to This Commission for approval under, and were in fact approved pursuant to Section 252 of the Act.

14. Thereafter, the FCC in an arbitration arising from the state of Virginia made a decision indicating that perhaps ILECs did not have any obligation to “transit” traffic at reciprocal compensation rates.

15. After the FCC decision, SBC changed its position in Missouri. Now SBC says it will “voluntarily” provide transiting services to CLECs and CMRS providers, but it will only do so at “market” rates, not reciprocal compensation rates. In agreeing to continue to provide “voluntary” transit services to CLECs and CMRS providers, SBC still assumes that other carriers terminating such “transit” traffic have some sort of obligation to accept transit traffic on the terms SBC negotiates without including such carriers in that negotiation.

16. Consistent with this changed position, SBC no longer includes both its direct interconnection reciprocal compensation provisions with transit traffic provisions in the same agreement, and submits that agreement for approval pursuant to section 252. Instead, direct interconnection agreement provisions are submitted for approval. Indirect interconnection provisions, or transiting service provisions, have been placed in a separate agreement with language that it will not be submitted for approval.

17. Although in the past transiting service agreements were presented to the Commission for approval under Section 252, with SBC’s change of position SBC has also concluded, without the agreement or acquiescence of this Commission or any other party,

that transiting service agreements are not subject to approval under Sections 251 and 252 of the Act.

**Relief Requested**

18. This Commission should address and resolve the following questions:
  - a. Are transit services are provided pursuant to the Section 251 (a) obligation to indirectly interconnect?
  - b. Are transit service agreements rendered pursuant to the Section 251 (b) obligation to enter reciprocal compensation arrangements?
  - c. Is it appropriate for transit services to be made available pursuant to private agreement as opposed to publicly available access tariff offerings?
  - d. Does the 1996 Telecommunications Act contemplate that agreements to provide transit services are required to be submitted for Commission approval pursuant to Section 252?
  - e. Is it appropriate for transit services to be provided at any rates other than reciprocal compensation rates?
  - f. Do LECs have an obligation to accept transit traffic, or do they have the right to elect direct interconnections out of preference to negotiate their own terms and conditions of traffic terminating to them?
19. Correspondence, orders, and decisions in this matter should be addressed to:

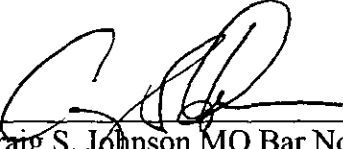
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WHEREFORE, CVW and CVC respectfully request that the Commission open a docket, notify telecommunications carriers of their opportunity to participate, and address and resolve the issues as are set forth in this Request, along with such other relief as is reasonable in the circumstances.

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

By   
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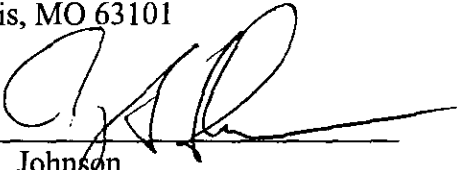
### CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was hand delivered or mailed, via U.S. Mail, postage prepaid, this 11<sup>th</sup> day of May, 2005, to the following parties:

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