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I. EXECUTIVE SUMMARY

In its initial comments, the Missouri Small Telephone Company Group (MoSTCG)¹ expressed its opposition to the Federal Communications Commission's (Commission) proposal to adopt a unified intercarrier compensation regime based on a bill and keep arrangement. The MoSTCG's opposition is primarily based upon the failure of the Commission to thoroughly investigate and consider the impact its proposal will have on end-users and/or universal service requirements. These reply comments will not further address the impropriety of the Commission's proposed bill and keep compensation scheme because many other commentors have more than adequately identified the legal and practical shortcomings in the Commission's proposal. These reply comments, however, will address specific criticisms raised by certain Commercial Mobile Radio Services (CMRS) providers who have criticized the Missouri Public Service Commission (MoPSC) for its action in approving intrastate wireless termination services tariffs for the MoSTCG.²

¹ See Attachment A.

² Not only have certain CMRS providers criticized the MoPSC in their written comments, but a number of them have also done so through *ex parte* presentations to the Commission.

First, the issue raised by CMRS providers (i.e. the exchange of traffic with small rural local exchange companies through “indirect” interconnection) is not an appropriate issue to be addressed by the Commission in this docket. In fact, this is an issue which, pursuant to the Telecommunications Act of 1996 (the Act), is squarely and exclusively within the jurisdiction of the state commission (in this case the Missouri PSC).³

Secondly, and more importantly, it is the CMRS providers who have failed to play by the rules. CMRS providers in Missouri are “indirectly” interconnected with the MoSTCG companies through the intermediate (or “transit”) facilities of Southwestern Bell Telephone Company (SWBT) in accordance with either: (a) SWBT’s intrastate wireless termination tariff; or (b) individual interconnection agreements with SWBT. In the case of SWBT’s wireless interconnection tariff, the MoPSC specifically directed CMRS providers not to deliver traffic to SWBT for termination to other local exchange companies (LECs) unless they had an agreement to do so. In the case of the interconnection agreements, CMRS providers voluntarily agreed that if they delivered “transit” traffic to SWBT for termination to other LECs, then they would have in place an agreement with those other LECs to terminate that traffic. To date, no CMRS provider has complied with the MoPSC’s directive or their own promise. Yet CMRS providers continue to send traffic through SWBT for termination to the MoSTCG companies.

³ In fact, many of the CMRS providers who have raised this issue in this docket actively participated in evidentiary hearings before the Missouri Public Service Commission, and they are now pursuing judicial review of the MoPSC’s decision approving the wireless termination tariffs.

The CMRS providers claim that they offered to enter into agreements with the MoSTCG companies, but that the MoSTCG companies have refused to negotiate. This is not true. The MoSTCG companies have always expressed a willingness to negotiate. What they have refused to do is to accept the unilateral demands of the CMRS providers as to certain terms and conditions. Instead, the MoSTCG companies have continually expressed a willingness to arbitrate their differences with the CMRS providers, but the CMRS providers have declined to do so. Why should they if they are presently terminating traffic for free? The CMRS carriers have no incentive to negotiate or arbitrate an agreement with the MoSTCG companies because any agreement they negotiate (or arbitrate) is going to cost them more than they pay today.

The MoPSC recognized that CMRS providers were “gaming the system” and approved an intrastate wireless termination service tariff which, among other things, requires CMRS providers to pay the MoSTCG companies for the termination of this wireless traffic. As the following comments will demonstrate, these tariffs are lawful, reasonable and entirely appropriate. More importantly, these tariffs do not negate the MoSTCG companies’ obligation pursuant to the Telecommunications Act of 1996 to negotiate interconnection agreements and/or local reciprocal compensation arrangements with CMRS providers. In fact, these tariffs are specifically subordinated to such agreements. Thus, the criticisms of the CMRS providers are without merit and should be summarily dismissed.

II. REPLY COMMENTS

1. The History Behind the MoPSC’s Decision to Approve the Small Companies’

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Wireless Termination Service Tariff

During the late 1980s and most of the 1990s, interconnection of the wireless networks with the networks of the local exchange carriers (LECs) in Missouri primarily took place through the use of the Southwestern Bell Telephone Company's (SWBT) network. For many years predating the 1996 Act, SWBT had a wireless interconnection tariff in Missouri which allows the wireless carriers to terminate their wireless calls to SWBT's wireline network and the networks of the small companies. However, SWBT did not compensate Missouri's other LECs for terminating this wireless traffic.

In October of 1995, United Telephone Company of Missouri (now Sprint) filed a complaint against SWBT for failure to compensate Sprint for wireless traffic terminated on its network. After a hearing before the MoPSC, SWBT was ordered to pay Sprint its intrastate access rates for the terminating traffic.⁴ Subsequently, two other small LECs filed similar complaints which were decided in the same manner.⁵

⁴ *In the Matter of United Telephone Company of Missouri's Complaint against Southwestern Bell Telephone Company for Failure to Pay United Its Terminating Access for Cellular-Originated Calls Which Are Terminated in United's Territory*, Case No. TC-96-112, Report and Order, (1997 Mo. P.S.C. LEXIS 52) issued April 11, 1997.

⁵ *In the Matter of Chariton Valley Telephone Corporation and Mid-Missouri Telephone Company's Complaints against Southwestern Bell Telephone Company for Terminating Cellular*

Compensation, Case Nos. TC-98-251 and TC-98-340, *Report and Order* (1999 Mo. P.S.C. LEXIS 25), issued June 10, 1999.

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After the MoPSC issued its order in the Sprint case, SWBT filed revisions to its wireless carrier interconnection tariff which proposed to limit SWBT's role and responsibility in carrying the wireless traffic to that of a "transiting" function. The proposed changes removed SWBT's "end-to-end" offering to wireless carriers. The MoSTCG companies intervened in that case to oppose SWBT's proposed tariff because it effectively eliminated SWBT's responsibility to compensate the MoSTCG companies for the wireless traffic that was being delivered to them. The MoSTCG companies pointed out that it was unlikely they would be compensated by the CMRS providers if SWBT continued to transit and deliver the wireless traffic over its network. The CMRS providers had no incentive to enter into agreements with Missouri's numerous small companies, and the MoSTCG companies had no way to identify or measure the traffic that was being sent to them by SWBT.

Nevertheless, the MoPSC found that SWBT could discontinue offering the end-to-end termination service to the CMRS providers. The MoPSC did, however, direct SWBT to include a provision in its wireless tariff that stated, "Wireless carriers shall not send calls to SWBT that terminate in an Other Telecommunications Carrier's network unless the wireless carrier has entered into an agreement to directly compensate that carrier for the termination of such traffic."⁶ This provision was an attempt to ensure that the MoSTCG companies were compensated for the termination of this traffic.

As was feared by the MoSTCG companies, the CMRS providers continued to send, and

⁶ *In the Matter of Southwestern Bell Telephone Company*, Case No. TT-97-524, *Report and Order* (1997 Mo.P.S.C. LEXIS 139) issued Dec. 23, 1997.

SWBT continued to transport and terminate, the wireless traffic to the small company networks even in the absence of agreements. Although some contacts were made by the wireless carriers offering to enter into agreements, most of these suggested a “bill-and-keep” compensation arrangement which was unacceptable to the MoSTCG companies since they send little, if any, traffic to the wireless carriers. This is because most, if not all, of the traffic that originates from the MoSTCG companies is terminated by an interexchange carrier (IXC) who compensates the CMRS provider for the termination of the traffic. Thus, a bill-and-keep arrangement is inappropriate since the traffic at issue is primarily one-way (i.e. wireless to wireline).

When discussions between the MoSTCG companies and the CMRS providers came to an impasse, the CMRS providers chose not to pursue the matter before the MoPSC, which only they can pursuant to the Act. Negotiations took place with Sprint PCS three years ago, but these negotiations were fruitless because of a fundamental disagreement about responsibility for traffic delivered to a CMRS provider by an IXC. Sprint PCS filed an informal complaint with the FCC against the MoSTCG companies, and the MoSTCG companies filed a response.⁷ No action was taken by the FCC, and the issue remains unresolved.⁸

Although there were no agreements between the CMRS providers and the MoSTCG companies, the CMRS providers continued to send traffic through SWBT for termination to the MoSTCG companies. When the MoSTCG companies attempted to bill the CMRS providers for

⁷ *In the Matter of the Informal Complaint of Sprint Spectrum, L.P. v. BPS Telephone Company et al*, File No. IC-98-16655.

⁸ Significantly, neither Sprint PCS nor any other CMRS providers has pursued this matter before the MoPSC.

this traffic, the CMRS providers refused to pay, citing the fact that there were no agreements or tariffs specifically addressing this traffic. For example, in an August 16, 1999 response to an invoice from one of the MoSTCG companies, Sprint PCS offered the following:

Since Sprint PCS does not have an agreement in place with Citizens Telephone Company, and *because Citizens Telephone Company has no applicable CMRS tariff*, this invoice cannot be verified.⁹

Accordingly, the MoSTCG companies filed tariffs with the MoPSC that proposed to offer a new wireless termination service. The tariffs were designed to establish rates and conditions for that service which apply only to intraMTA, wireless-to-wireline traffic where the originating wireless carrier and the terminating LEC are indirectly interconnected and the traffic is transported by an intervening LEC. The tariffs only apply when there is no approved compensation arrangement or interconnection agreement between the LEC and the wireless carrier.

The MoPSC approved these tariffs, realizing that the tariffs would create an incentive for the CMRS providers to enter into agreements to compensate the MoSTCG companies for the termination of wireless traffic where nothing else had worked.

2. The Missouri wireless tariffs are lawful.

There is nothing in either state or federal law prohibiting approval of the MoSTCG companies' tariffs. The MoPSC has previously approved a wireless tariff for SWBT, and the

⁹ *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce its Wireless Termination Service*, Case No. TT-2001-139 (see Exhibit No. 4, Schedule RCS-3) (emphasis added)

MoSTCG companies' tariffs are no different from SWBT's PSC Mo No. 40 Wireless Interconnection Tariff. SWBT has the same obligations to negotiate reciprocal compensation arrangements that the MoSTCG companies do under the Act. The existence of SWBT's tariff in no way precludes any CMRS provider from obtaining reciprocal compensation arrangements with SWBT. In fact, most CMRS providers have obtained interconnection agreements with SWBT rather than purchase service under SWBT's tariff. The CMRS providers have the same right pursuant to the MoSTCG companies' tariffs.

Absent an approved interconnection agreement, the MoSTCG companies may lawfully apply tariffed rates to terminating wireless traffic. States may enforce tariff provisions which are not inconsistent with the Act. In the *Mark Twain* wireless tariff case, none of the CMRS providers had negotiated interconnection agreements with the MoSTCG companies. Thus, the tariffs are not inconsistent with an interconnection agreement between the small companies and the wireless carriers. In fact, the tariffs specifically provide that they will be superceded by an agreement under the Act.

All that the CMRS providers need do to supercede the MoSTCG companies' tariffs is to request interconnection and negotiate or arbitrate an interconnection agreement containing reciprocal compensation rates, just as they have done with SWBT. The Act obligates the MoSTCG companies to negotiate interconnection agreements and reciprocal compensation agreements.¹⁰ If an agreement cannot be reached through negotiation, then the MoSTCG

¹⁰ 47 U.S.C. § 251

companies are subject to mandatory arbitration under the Act.¹¹ Thus, the CMRS providers are in sole possession of the right and the means under the Act to compel an interconnection agreement through mandatory arbitration. For reasons which they fail to reveal to this Commission, they have not done so.

The CMRS providers argue that: (1) because their networks are indirectly interconnected (through SWBT) to the networks of the MoSTCG companies; and (2) because traffic between them and the MoSTCG companies both originates and terminates within the same MTA, any compensation scheme other than local reciprocal compensation arrangements (such as tariff rates) is unlawful. The CMRS providers' argument is without merit. Indirect interconnection does not automatically result in local reciprocal compensation arrangements. Such arrangements must be requested and negotiated (or arbitrated if voluntary negotiations fail). The Commission has stated that a carrier's duty under Section 251(a) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers:

¹¹ 47 U.S.C. § 252

refers solely to the physical linking of two networks, and not to the exchange of traffic between networks. In the *Local Competition Order*, we specifically drew a distinction between ‘interconnection’ and ‘transport and termination,’ and concluded that the term ‘interconnection,’ as used in section 251(c)(2), does not include the duty to transport and terminate traffic.¹²

The Commission explained:

¹² *Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc., v. AT&T Corp.*, File No. E-97-003, 16 FCC Rcd 5726; FCC 01-84; 2001 FCC LEXIS 1422, *Memorandum Opinion and Order* (rel. March 13, 2001; adopted March 8, 2001) at ¶ 22, 23

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Local exchange carriers, then, are subject to section 251(a)'s duty to interconnect *and* section 251(b)(5)'s duty to establish arrangements for the transport and termination of traffic. Thus, the term interconnection, as used in section 251(a), cannot reasonably be interpreted to encompass a general requirement to transport and terminate traffic. Otherwise, section 251(b)(5) would cease to have independent meaning, violating a well-established principle of statutory construction requiring that effect be given to every portion of a statute so that no portion becomes inoperative or meaningless. Moreover, section 252 of the Act indicates that 'interconnection' and 'transport and termination' are separate and distinct duties. Section 252 established a process for the negotiation and arbitration of intercarrier agreements, and this process involves separate pricing standards for interconnection on the one hand, and for transport and termination of traffic on the other. It would be difficult to reconcile these separate pricing standards if the requirement to interconnect incorporated a requirement to transport and terminate traffic.¹³

In short, indirect interconnection does not presuppose reciprocal compensation; rather, a carrier must request and negotiate a reciprocal compensation arrangement under the Act.

The CMRS providers have the authority to initiate arbitration procedures with the MoPSC if they truly seek an agreement and believe the MoSTCG companies are not negotiating in good faith. However, no CMRS provider in Missouri has followed through with arbitration. While some CMRS providers have made overtures at negotiating a reciprocal compensation arrangement, the truth is that the CMRS providers currently have no incentive to conduct good-faith negotiations or arbitrations to achieve such an agreement.

3. The Missouri wireless termination tariff rates are just and reasonable.

¹³ *Id.* at ¶ 26

Under Missouri law, the MoSTCG companies' rates must be just and reasonable.¹⁴ The MoSTCG companies' wireless termination rates were developed by calculating each company's intrastate access rates for the traffic sensitive functions and facilities that are used to terminate wireless traffic. The MoSTCG companies' access rates have been approved by the MoPSC, and they are deemed lawful and reasonable until proven otherwise.¹⁵

¹⁴ Section 392.200.1 RSMo 2000.

¹⁵ Under Section 386.270 RSMo 2000, all rates fixed by the Commission are prima facie lawful unless and until they are found otherwise. See also *State ex rel. GTE North v. Missouri Public Service Comm'm*, 835 S.W.2d 356, 364 (Mo. App. W.D. 1992).

The wireless termination service tariff rates range from roughly \$0.05 to \$0.074 per minute.¹⁶ These rates are, on average, substantially lower than the MoSTCG companies' forward-looking costs as developed by the HAI model.¹⁷ The uncontraverted evidence before the MoPSC was that the MoSTCG companies' forward-looking costs on average produced a rate of \$0.0949 per minute.¹⁸

The Act requires that forward-looking costs be used for reciprocal compensation agreements, but this is not true for tariff rates. For example, SWBT's tariffed wireless termination rates are neither forward-looking, nor are they reciprocal. SWBT's wireless tariff allows SWBT to charge an "access-like" rate for the termination of wireless traffic in the absence of an interconnection agreement, and there is no reason why the MoSTCG companies should not have the same right.

¹⁶ *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce its Wireless Termination Service*, Case No. TT-2001-139 *Report and Order* (2001 Mo. P.S.C. LEXIS 760) issued Feb. 8, 2001, p. 22.

¹⁷ *Id.* at p. 23.

¹⁸ *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce its Wireless Termination Service*, Case No. TT-2001-139, Exhibit 3 (Schedule RCS-2) and Exhibit 11 (Attachment A).

In fact, the rates in SWBT's wireless interconnection tariff, which was approved by the MoPSC, includes rates that are actually higher than SWBT's current access rates.¹⁹ The Commission's pricing rules, including the provisions that require the use of forward-looking economic costs, apply only to negotiated or arbitrated reciprocal compensation agreements under the Act. They do not apply to tariffs filed in the absence of such agreements. Thus, the only requirement for the small companies' tariffed rates is that they must be just and reasonable, and the MoSTCG companies' tariff rates satisfy this test.

4. Access Rates Can and Do Apply To Local (i.e. Intra-MTA) Traffic.

The CMRS providers proclaim that access rates cannot, under any circumstances, apply to intraMTA traffic. However, the law and the standard industry practice demonstrate otherwise. While intraMTA wireless calls may be defined as local, it does not necessarily follow that intercompany compensation may only be accomplished through local reciprocal compensation rates. For example, access charges can and do apply in situations where intraMTA wireless traffic is carried by an interexchange carrier (IXC) because that traffic is handled and treated as interexchange traffic.

First, the Act did not do away with access charges. Rather, Section 251(g) of the Act specifically maintains the existing access charge regime, and the Commission has made it abundantly clear that the existing access charge regime should be maintained. The Commission

¹⁹ *Id.*, Exhibits 14 and 17.

considered the dual roles of access and local reciprocal compensation in its *Interconnection Order*.

At paragraph 1033, the Commission stated:

Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. **By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call.** In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. This reading of the statute is confirmed by section 252(d)(2)(A)(i), which establishes the pricing standards for section 251(b)(5). Section 251(d)(2)(A)(i) provides for "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. **We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.**²⁰

At least three carriers are involved in completing intraMTA wireless calls between the CMRS providers and the MoSTCG companies. When the intermediary carrier is an IXC, the Commission has clearly provided that access charges continue to apply, even if the wireless call is within the MTA. At paragraph 1043 of the *Interconnection Order*, the Commission explained:

²⁰ *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-325, *First Report and Order*, 1996 FCC LEXIS 4312, rel. Aug. 1, 1996 (emphasis added)(footnotes omitted).

As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, **most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC**, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. **Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.**²¹

This language reveals that access charges are entirely appropriate in a situation where an IXC is involved in terminating a wireless call, even one that originates and terminates within the same MTA. Another recent Commission decision supports this view as well. In 2000, the Commission decided a complaint case involving several paging carriers and local exchange carriers (LECs). In that case, the Commission observed:

Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. **Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.**²²

²¹ *Id.* (emphasis added)(footnotes omitted)

²² *TSR Wireless, LLC, et al. v. US West Communications, Inc., et al.*, File Nos. E-98-13 et al., *Memorandum Opinion and Order*, FCC 00-194 (2000 FCC LEXIS 3219) rel. June 21, 2000,

This language could not be any clearer: where an IXC is involved in carrying an intraMTA wireless call, access charges can and do apply.

p. 19, ¶ 31 (emphasis added)(footnotes omitted).

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At least two CMRS providers offering comments in this docket also unequivocally state that where an IXC delivers a call to a CMRS provider, that CMRS provider is entitled to be paid access charges. Sprint's Initial Comments argue that wireless carriers are entitled to receive access charges from IXCs.²³ Sprint "believes that CMRS [providers] are entitled to assess access charges for access services provided to IXCs."²⁴ Sprint states, "Given the Commission's finding that CMRS carriers provide access services, it necessarily follows that CMRS carriers are entitled [to] recover access charges from IXCs that use their networks to terminate their interexchange traffic."³⁰ Yet Sprint PCS has argued before the MoPSC that the MoSTCG companies should also be responsible for compensating Sprint PCS for this intraMTA traffic. Apparently, Sprint PCS seeks to be compensated three times for the same call: once from Sprint's own end-user customer based on "air-time" charges; once from the MoSTCG company based on local reciprocal compensation charges; and once from the IXC that serves the MoSTCG's end-user customer based on access charges.

²³ Sprint does not distinguish between interMTA or intraMTA traffic. In fact, in the Mark Twain wireless tariff hearings before the MoPSC, Sprint PCS admitted that it charges and receives access charges on all traffic, including intraMTA traffic, that is delivered to it by IXCs. In only one case has an IXC refused to pay Sprint PCS its access charges, and in that case Sprint PCS has filed suit against the IXC in federal court to enforce payment. Clearly, Sprint PCS believes it has the legal authority to apply access charges to local or intraMTA traffic.

²⁴ Sprint Initial Comments, p. 38.

Voicestream Wireless argues that IXCs “have no right to free use of CMRS networks in the termination of their long distance traffic, as the Commission has already held.”³¹ Voicestream Wireless explains:

³⁰ *Id.* at p. 39.

³¹ Voicestream Initial Comments, p. 15.

[A] CMRS carrier’s provision of network access is fundamentally different than its interconnection for local traffic. Local interconnection generally involves a reciprocal arrangement, with a LEC sending traffic to a CMRS carrier and a CMRS carrier, in turn, sending traffic to LECs. . . . This reciprocity does not exist with interexchange traffic. CMRS carriers generally provide their own long distance services to their mobile customers The relationship between a CMRS carrier and IXC is thus largely one-way – a non-reciprocal arrangement.³²

Voicestream Wireless also states, “IXCs do not have the right to use CMRS networks for free – especially given that the arrangement between CMRS and IXC is largely a one-way, non-reciprocal arrangement.”³³ Finally, Voicestream recognizes the difficulties involved with negotiating an agreement when one party is receiving termination for free. Voicestream comments, “Negotiating with IXC is not promising, because they have no incentive to negotiate in good faith to change the *status quo* (given they have received free interconnection for years).”³⁴ This is the same problem that was presented to the Missouri STCG companies by the CMRS providers operating in Missouri that had been receiving free termination for years.

Finally, the record in the *Mark Twain* case before the MoPSC revealed that ALLTEL Communications, Inc. (ACI) believes that access charges are appropriately applied to traffic delivered by an IXC.³⁵ The record before the MoPSC also established that SWBT’s own wireless tariff applies access-based rates to intraMTA wireless traffic in the absence of an agreement under

³² *Id.* at pp. 15-16.

³³ *Id.* at p. iii

³⁴ *Id.* at p. 17.

³⁵ *In the Matter of Mark Twain Rural Telephone Company’s Proposed Tariff to Introduce its Wireless Termination Service*, Case No. TT-2001-139, Ex. 1, p. 9

the Act.³⁶ Thus, although the CMRS providers may argue that there is no possibility that access can apply to intraMTA wireless traffic, the facts and their own actions demonstrate otherwise.

**5. Bill and Keep is Not an Appropriate Compensation Mechanism for Wireless Traffic
Between CMRS Providers and Missouri Small Companies
Because the Traffic is Not in Balance.**

³⁶ *Id.* at Tr. 377, 381-82; 391-92; *see also* Ex. 16

Bill and keep is not an appropriate compensation mechanism when the traffic between two carriers is not in balance. Under the Commission's present rules, a bill and keep arrangement may only be imposed upon a finding that two companies' costs are symmetrical and the traffic between the two carriers is reasonably balanced and is expected to remain so.³⁷ Such a finding cannot be made with regard to the CMRS traffic being delivered to the MoSTCG companies' exchanges for termination. Rather, the traffic between the MoSTCG companies and the CMRS providers is not at all balanced since in most cases the MoSTCG companies do not handle the interexchange traffic that is destined for the CMRS providers.

³⁷ See 47 CFR 51.705 and 51.713.

The MoPSC has held that the CMRS carriers are primarily liable for the traffic that they originate and have delivered to the MoSTCG companies over their indirect interconnection with SWBT. Pursuant to the existing network interconnection arrangements between the MoSTCG companies and the IXC's, the vast majority of the traffic from the MoSTCG companies' end-users to the CMRS carriers' NPA-NXX's originates and terminates as interexchange traffic rather than local traffic. In other words, nearly all of the traffic destined for the CMRS providers from the MoSTCG companies' exchanges is delivered by IXC's, not by the MoSTCG companies, because it is outside the MoSTCG companies' local calling scope. Thus, the obligation to provide compensation for the traffic rests with the IXC's.³⁸ The CMRS providers have chosen not to pursue compensation arrangements or request interconnection agreements with the MoSTCG companies. Because the MoSTCG companies deliver very little, if any, traffic to the CMRS providers, bill and keep is not even an option for a negotiated or arbitrated agreement under the Commission's present rules.

6. There is no Failure in the Current System; There is Only a Failure by the CMRS Providers to Play by the Rules.

The 1996 Act provides a clear set of procedures for establishing interconnection agreements and/or local reciprocal compensation arrangements. However, the CMRS providers argue that the existing procedures are not working, and that the Commission must step in and

³⁸ Indeed, the Initial Comments of Sprint PCS and Voicestream Wireless indicate their expectation to be compensated by the IXC's.

preempt state commissions in their regulation of CMRS interconnection.³⁹

Ironically, the existing procedures are not working because CMRS providers have failed (or refused) to play by the rules. They have failed (or refused) to request and pursue interconnection agreements and/or establish reciprocal compensation arrangements with small LECs. They have failed (or refused) to create or produce records of the wireless traffic they send to small LECs so that the CMRS providers can be held accountable for this traffic. And then the CMRS providers claim the system is not working. It is no wonder the system is not working, the conscious action (or inaction) of the CMRS providers has ensured its failure. The CMRS providers should not be rewarded for their misconduct by dismantling an intercompany compensation system that seems to work for all the other carriers who have agreed to play by the rules. Instead, the Commission should reject the claims of the CMRS providers and instruct them to negotiate the appropriate agreements with the small LECS and, if such negotiations are not successful, to pursue arbitration before the state commissions as envisioned by the 1996 Act.

III. CONCLUSION

The Commission should not eliminate the current intercarrier compensation regime and replace it with bill and keep. A bill and keep arrangement would have very negative impacts upon end-user rates and universal service funding requirements, especially for small rural LECs. The Commission should reject the arguments raised by several of the CMRS providers in their

³⁹Although the CMRS providers cite §332 of the Act as the necessary authority for this preemption, they fail to note that §332 only deals with direct interconnection and what is at issue here is indirect interconnection.

Initial Comments and *ex parte* presentations. The issues raised by the CMRS carriers are squarely within the jurisdiction of the MoPSC, and the CMRS carriers are actively arguing these issues before the MoPSC and litigating them in Missouri's courts. The Commission should not reward the CMRS providers for their failure to pursue appropriate agreements with the MoSTCG companies under the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, on this 5th day of November, 2001 to the following:

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ATTACHMENT A

BPS Telephone Company
Cass County Telephone Company
Citizens Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Farber Telephone Company
Fidelity Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corp.
Green Hills Telephone Corp.
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
McDonald County Telephone Company
Mark Twain Rural Telephone Company
Miller Telephone Company
New Florence Telephone Company
Peace Valley Telephone Co., Inc.
Rock Port Telephone Company