

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

In the Matter of the Petition for Arbitration)	
Of Unresolved Issues in a Section 251(b)(5))	Case No. TO-2006-0463
Agreement with Alltel Wireless and Western)	
Wireless		

RESPONSE OF ALLTEL TO PETITION FOR ARBITRATION

Pursuant to 47 U.S.C. § 252(b)(3) and Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-36.040(7), Alltel Communications, Inc. and WWC License L.L.C., all doing business in Missouri as Alltel Communications (“Alltel”), file their Response to Petition for Arbitration and states the following:

I. INTRODUCTION

1. While Alltel is without sufficient information to admit or deny certain allegations of paragraphs 1 through 7 of the Petition, Alltel does not contest those allegations.
2. Alltel admits as alleged in paragraph 8 of the Petition that Attachment D to the Petition is a proposed agreement and that it reflects certain terms agreed to between the parties and other provisions that are the subject of disagreement between the parties but denies that it reflects all language with respect to those disagreements. All other allegations of Petition paragraph 8 are denied.
3. The allegation of paragraphs 9 and 10 that the Commission has jurisdiction of this arbitration is admitted; however, the Act and rules speak for themselves and the further allegations are denied.
4. Paragraph 11 of the Petition is admitted.

5. Petition paragraph 12 is admitted except with respect to its allegation that the Petition sets forth Alltel's position on all unresolved issues.
6. The remainder of this response will identify Alltel's position with respect to the unresolved issues. The letter identification of issues will correspond to the issue letters assigned to each issue by the Petition.

II. Unresolved Issues

A. IntraMTA Wireless Termination Rate (Appendix 1)

The Parties disagree on the appropriate rate to apply for termination of "Local Traffic" via an indirect interconnection.

Alltel's Position: Petitioners' have not accurately stated Alltel's position on this issue. Alltel first advocates that bill and keep be required in accordance with applicable law or, in the alternative, if that result is not required, then Alltel proposes with respect to most Petitioners that the rates be those recently determined by the Commission in its combined decision in Case No. TO-2006-0147, In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc. and Case No. TO-2006-0151, In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with CingularWireless (collectively, the T-Mobile/Cingular Arbitration). With respect to any Petitioner for which Alltel has not proposed the T-Mobile/Cingular Arbitration rates, Alltel has proposed and will be supporting rates in accordance with Federal Communication Commission (FCC) requirements. FCC regulations (*e.g.* 47 C.F.R. §§ 55.505 and 51.511) require that Petitioners' reciprocal compensation rates be established by application of TELRIC

principles, and that each Petitioner establish its rate based upon that Petitioner's own separate network costs. In the absence of an appropriate TELRIC cost study from each Petitioner, the Commission cannot establish lawful reciprocal compensation rates.

Just as the Petitioners attempted in the T-Mobile/Cingular Arbitration, the cost studies submitted by Petitioners are based upon an outdated model (Hatfield 5.0a) that uses 10-15 year old default input data rather than actual Petitioner input data. For that reason, and many others, the model is not TELRIC-compliant, and the Commission cannot use that model as the basis for establishing reciprocal compensation rates for each Petitioner. (*See, e.g.* Cause Nos. PUD 2002-149 through 153, Oklahoma Corporation Commission, Final Order No. 468960, et al., October 22, 2002, wherein the Oklahoma Commission ruled that HAI 5.0a is not appropriate for use in establishing transport and termination rates.)

As reciprocal compensation rates can not be established in this proceeding and for other reasons, bill and keep is the appropriate compensation mechanism between the parties. FCC regulations (47 C.F.R. § 51.705) specify that bill and keep arrangements are an appropriate form of reciprocal compensation if a state commission finds that traffic is "roughly balanced." (47 C.F.R. § 51.713(b).) The Commission may presume that traffic is roughly balanced "unless a party rebuts such a presumption." (47 C.F.R. § 51.713(c).) The FCC also specifies that it is improper for ILECs to discriminate or pick and choose among different forms of 251(b)(5) traffic and charge and pay different rates for such traffic. In its 'ISP Order', the FCC said:

"... It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic at state reciprocal compensation rates, which are much higher than the caps we

adopt here, when the traffic imbalance is reversed. ...we will not allow them to “pick and choose” intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier.... if an LEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. ...”.¹

Therefore, if the Petitioners are exchanging, for example, ISP traffic on a bill and keep basis or at a rate lower than that proposed by Petitioners in this proceeding, then it is necessary for Petitioners to make that same rate or bill and keep arrangement available and applicable to 251(b)(5) traffic exchanged with Alltel. Further, if Petitioners are providing a more favorable relationship to an affiliate of Petitioners then they must make that available to Alltel.

In the present case, Petitioners have presented no traffic studies rebutting the presumption of roughly balanced traffic, have not presented proper TELRIC cost studies and may be exchanging ISP traffic on a bill and keep basis, or for a substantially lower rate, or on the basis of a more favorable affiliate arrangement. Therefore, the Commission should impose bill-and-keep as the proper method of compensation between Alltel and the Petitioners. Alltel reserves the right to submit testimony providing its analysis of Petitioners’ cost studies and responses to Alltel’s data requests.

B. InterMTA Factors (Appendix 2)

What interMTA traffic factors should the Parties utilize to determine traffic volumes where actual measurement is not used?

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic, Order on Remand and Report and Order, Released April 27, 2001, ¶ 81.

Alltel's Position: Alltel agrees with the interMTA factor of zero, listed for carriers on Attachment G to the Petition. As to Craw-Kan, which is seeking a factor of 7%, and Mark Twain Telco which is seeking a factor of 32%, Alltel will also accept those factors and, therefore, Issue B is resolved.

C. Interstate Versus Intrastate InterMTA Factors (Sections 4.1.2 and 4.1.3)

Alltel's Position: Without conceding the accuracy of Petitioners' proposed factors, in the interest of narrowing the unresolved issues, Alltel will accept the factors set forth in the Petition. Issue C is therefore resolved.

D. Direct Connection Language (Sections 1.1, 3.1, 3.2, 3.3, 3.4, 3.5 & 20.1)

Should the Parties include language in the interconnection agreement that addresses both direct and indirect interconnection rights and responsibilities?

Alltel's Position: Under the Telecommunications Act, the Parties are required to allow both direct and indirect interconnection. (47 U.S.C. § 251(a)(1).) Petitioners are all Incumbent Local Exchange Carriers and, therefore, have the duty to negotiate "interconnection" agreements to fulfill their obligations under both sections 251(a), (b) and (c) of the Telecommunications Act. Section 251(a)(1) requires Petitioners to allow interconnection both directly and indirectly with Alltel. Section 251(c)(2) further requires Petitioners to provide Alltel interconnection to Petitioners' network at any technically feasible point. Accordingly, each of these agreements should contain provisions for both direct and indirect interconnection. Although Petitioners' contend that they are exempt from 251(c) obligations, without waiving Alltel's right to challenge

the validity or applicability of that position, it is irrelevant because direct interconnection is required by 251(a) of the Telecommunications Act and the Petitioners cannot invoke a rural exemption from those obligations. Contrary to its claim of an exemption, Petitioners issued *bona fide* requests for interconnection and filed a Petition for Arbitration with this Commission, specifically seeking to enforce provisions of §§ 251(b) & (c) of the Telecommunications Act. Petitioners thus have waived any claim to be exempt from those provisions.

Alltel has proposed very reasonable language with respect to direct interconnection that will be needed to govern the terms of any direct interconnection established by either of the Parties. Under FCC regulations, CMRS Providers may request direct interconnection at any technically feasible point on the ILEC's network. (47 C.F.R. § 51.305(a)(2).) Thus, when Alltel requests direct interconnection, the point of interconnection should be located at any technically feasible point on the ILEC's network, or at any other mutually agreeable point off the ILEC's network. In the reverse situation, when an ILEC requests direct interconnection, the rule should be reversed. In that case, the point of interconnection should be at any technically feasible point on Alltel's network, or at any other mutually agreeable point off Alltel's network. The ILEC cannot force Alltel to accept a point of interconnection off Alltel's network. If the rule were otherwise, then an ILEC could avoid its obligation to interconnect indirectly simply by demanding direct interconnection and then forcing Alltel to build or lease interconnection facilities to a point of interconnection on the ILEC's network.

E. Reciprocal Compensation for Inter-exchange Carrier (IXC) Traffic (Section 1.1-Scope)

Do the parties' reciprocal compensation obligations apply to intraMTA traffic that one Party hands off to an IXC, or other third-party carrier, for termination to the other Party?

ALLTEL's Position: Even if traffic is handed off by one Party to an IXC and is delivered by the IXC to the other Party, the originating Party is still responsible for reciprocal compensation if the traffic is both originated and terminated within the same MTA. This issue was addressed by the Commission in the T-Mobile/Cingular Arbitration. The Commission agreed with Alltel's position on this matter. Alltel incorporates herein by reference the Commission's prior determination on this issue.

F. IntraMTA Traffic Ratio (Sections 4.3, Appendix 1)

If needed, what intraMTA Traffic Ratio should be established for use by Alltel in billing Petitioners for the termination of Petitioners' traffic?

Alltel's Position: As discussed above in Issue A, the Commission should establish bill-and-keep as the compensation method to be used by the Parties. If bill and keep or a lower ISP rate is not required, then billing will be reciprocal and symmetrical based upon the rates to be determined by the Commission for each Petitioner and Alltel must use a factor to determine the volume of traffic to bill to each Petitioner.

While such ratio should be based upon valid traffic studies submitted by Petitioners and Petitioners bear the burden of proof on this issue, in the event bill and keep or a lower ISP rate is not required to apply to all 251(b)(5) traffic as specified by the

FCC, then for the purpose of narrowing the issues, but without conceding the validity of the factors or Petitioners' studies, Alltel would accept Petitioners proposed factors.

Proposed Conforming Interconnection Agreement

Attached hereto as Exhibit 1 is a proposed interconnection agreement reflecting the acceptance by Alltel of certain positions of Petitioners as described above and Alltel's position on issues as stated above where they disagree with the Petition.

IV. CONCLUSION

Alltel respectfully requests that the Commission arbitrate each open issue listed above, adopt the position advocated by Alltel and approve separate interconnection agreements between Alltel and each Petitioner, in the form of Exhibit 1 hereto.

Respectfully submitted,

By: /s/ William D. Steinmeier
William D. Steinmeier (MOBar # 25689)
Mary Ann (Garr) Young (MOBar #27951)
William D. Steinmeier, P.C.
2031 Tower Drive
Jefferson City, MO 65109
Tel: (573) 659-8672
Fax: (573) 636-2305
Email: wds@wdspe.com
Myoung0654@aol.com

COUNSEL FOR ALLTEL
COMMUNICATIONS, INC.
AND WWC LICENSE, L.L.C.

Certificate of Service

I hereby certify that a copy of this document has been electronically transmitted to the Office of the General Counsel of the Missouri Public Service Commission, to the Office of Public Counsel, and to counsel for Petitioners, on this 2nd day of July 2006.

s/ William D. Steinmeier

William D. Steinmeier

EXHIBIT 1. – FILED AS A SEPARATE DOCUMENT.