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October 18, 2002

FILED²

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**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Re: In the Matter of Northeast Missouri Rural
Telephone Company's and Modern Telecommunications
Company vs. Southwestern Bell Telephone Company,
Southwestern Bell Wireless (Cingular), Voicestream
Wireless (Western Wireless), Aerial
Communications, Inc., CMT Partners (Verizon
Wireless), Sprint Spectrum LP, United States
Cellular Corp., and Ameritech Mobile
Communications, Inc., et al.
Case No. TC-2002-57, et al. - **CONSOLIDATED**

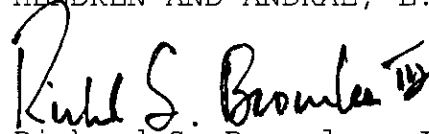
Dear Mr. Roberts:

Please find enclosed for filing on behalf of United
States Cellular Corporation the original plus eight (8)
copies of the Initial Brief.

Should you have any questions concerning the enclosed
filing, please give me a call. Thank you.

Very truly yours,

HENDREN AND ANDRAE, L.L.C.



Richard S. Brownlee, III

RSB:sa
Cc: Jim Naumann
Mary Davis
All Counsel of Record

Northeast Missouri Rural Telephone Company)
And Modern Telecommunications Company,)
Petitioners,)
v.)

Southwestern Bell Telephone Company,)
Southwestern Bell Wireless (Cingular),)
Voicestream Wireless (Western Wireless),)
Aerial Communications, Inc., CMT Partners)
(Verizon Wireless), Sprint Spectrum LP,)
United States Cellular Corp., and Ameritech)
Mobile Communications, Inc.,)
Respondents.)

Missouri Public
Service Commission

This Commission has twice concluded that access charges are inappropriate for terminating intraMTA wireless traffic. See *In the Matter of Mid-Missouri Group's Filing to Revise its Access Service Tariff*, P.S.C. Mo. No. 2, Case No. TT-99-428 *et al.*, Report and Order of January 27, 2000; *In the Matter of Mid-Missouri Group's Filing to Revise its Access Service Tariff*, P.S.C. Mo. No. 2, Case No. TT-99-428 *et al.*, Report and Order of April 9, 2002 (the "Alma decisions"). In addition, a number of authorities, including the Iowa Board of Public Utilities, the FCC and a federal district court have interpreted and applied federal law in exactly

the same manner as the Commission's *Alma* decisions. Most recently, the United States District Court for the District of Montana stated (at pp. 7-8 of its slip opinion):

The Court notes for the benefit of the parties that this case presents very similar issues to those presented in *3-Rivers Telephone Coop., Inc. v. U.S. West Communications, Inc.*, 125 F.Supp.2d 417 (D. Mont. 2000), which was previously decided by this Court. In that case the Court relied on the FCC ruling entitled *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC Docket 96-325. The FCC Ruling provided the following at T1036:

Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and *intrastate access charges*. (emphasis added by District Court).

In the instant case there is an attempt by the plaintiff to force a CMRS provider to pay an access charge for calls terminating at the plaintiff's facilities. This attempt is being made under the argument that the indirect method of transit used by the CMRS providers makes them subject to an access charge. Such an attempt is in direct contravention of the ruling promulgated by the FCC in the above-mentioned case. A party may receive an access charge for a long distance telephone call. However, when the call is considered local traffic, the appropriate compensation is reciprocal compensation pursuant to the rules set out by the FCC in 47 C.F.R. 20.11.

The Court is not inclined to reverse its decision in the *3-Rivers* case or to "clarify" its opinion to allow the plaintiff in this case to levy access charges for local traffic which originates and terminates within the same

Major Trading Area. Such a clarification would result in the abrogation of the FCC ruling relied upon in *3-Rivers*.

Mid-Rivers Telephone Cooperative Inc. v. Qwest Corp., CV 01-163-BLG-RFC, (D. Mont filed April 3, 2002).

Consistent with the quoted language from the federal court, this Commission's application of federal law is correct and need not be revisited. Similarly, the Iowa Board's decision in *In re: Exchange of Transit Traffic*, Iowa Utilities Board Docket No. SPU-00-7, *Order Affirming Proposed Decision and Order*, issued March 18, 2002, is directly on point and interprets federal law exactly as the Commission has in its *Alma* decisions. The record reflects that there does not appear to be any court or other regulatory body that has ruled in a manner inconsistent with the *Alma* decisions.

Complainants argue that their claim here is different because the wireless carriers have violated the Commission's Order in Case No. TT-97-524. However, U.S. Cellular does not acquire transport services from SWBT's wireless service tariff. Rather, it acquires its transport service from SWBT through an October 13, 1997 Interconnection Agreement.

As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their tariffs. None of the Complainants alleged in their amended complaints nor presented evidence at the hearing that the traffic being terminated to them through SWBT is other than intraMTA traffic. Moreover, each of the Complainants with Wireless Termination Service Tariffs -- Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. -- have billed U.S. Cellular at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

This case, as a complaint case, is not an appropriate vehicle for the Commission to establish a rate for the Complainants without wireless termination service tariffs or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks. Complainants are currently being compensated under a *de facto* bill and keep insofar as they are retaining compensation they would otherwise be obligated to pay U.S. Cellular for terminating intraMTA traffic to U.S. Cellular, and they are collecting originating access on intraMTA wireless calls where they would otherwise be obligated to pay for transport and termination. The Complainants are not entitled to other compensation until they negotiate appropriate interconnection agreements with U.S. Cellular.

As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their tariffs. None of the Complainants alleged in their amended complaints or presented evidence at the hearing that the traffic being terminated to them through SWBT is other than intraMTA traffic. Moreover, each of the Complainants with Wireless Termination Service Tariffs -- Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. -- have billed U.S. Cellular at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

It is not appropriate for the Complainants to attempt to impose secondary liability on SWBT for traffic terminated to their customer and originated by U.S. Cellular because the Complainants are being compensated through a *de facto* bill and keep arrangement as described in Paragraph Nos. 4 and 5 above and because the Complainants have refused to engage in good faith negotiations to establish interconnection agreements directly with U.S. Cellular.

Because the Complainants have refused to negotiate in good faith for an appropriate interconnection agreement, they are estopped from making any claim based on the absence of an interconnection agreement. Moreover, because Complainants are already receiving compensation through the *de facto* bill and keep arrangement, they are estopped from seeking additional compensation.

There is no basis for Complainants' conditioning negotiations for an interconnection agreement on U.S. Cellular establishing a direct connection. The interconnection obligations of TA96 do not distinguish between direct interconnection and indirect interconnection. TA96 defines the very first duty of all telecommunications carriers as the duty "to interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers. " 47 U.S.C. § 251(a)(1) (emphasis added). Section 251(b)(5) obligates local exchange carriers to establish reciprocal compensation, and Section 251(c)(1) requires local exchange carriers to engage in good faith negotiations to establish those arrangements. Nothing in TA96 or the FCC's rules requires wireless carriers to directly interconnect as a prerequisite to negotiating an interconnection agreement.

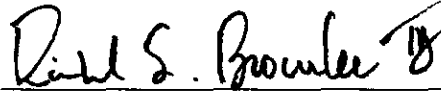
Contrary to the allegations of the various Complaints, the terms and conditions of SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40) have no relevance to U.S. Cellular because U.S. Cellular does not buy transport services from SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40).

Complainants have already recovered the compensation, if any, that is due for intraMTA traffic terminated prior to the effective date of a Complainants' Wireless Termination Service Tariff. Each Complainant has been compensated under a *de facto* bill and keep insofar as it has retained compensation it would otherwise be obligated to pay U.S. Cellular for terminating

intraMTA traffic to U.S. Cellular, and each Complainant is collecting originating access on intraMTA wireless calls where it would otherwise be obligated to pay for transport and termination. Even if the Commission were to determine that Complainants have not been compensated or have not been adequately compensated through the *de facto* bill and keep arrangement, Complainants are estopped from seeking compensation by their refusal to engage in good faith negotiations for appropriate interconnection agreements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was mailed, first class mail, postage pre-paid, the 18 day of October, 2002 to:

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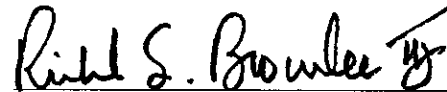
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