

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

Northeast Missouri Rural Telephone Company	)	
And Modern Telecommunications Company,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. TC-2002-57, et al
	)	consolidated.
Southwestern Bell Telephone Company,	)	
Southwestern Bell Wireless (SWBT),	)	
Voicestream Wireless (Western Wireless),	)	
Aerial Communications, Inc., CMT Partners	)	
(Verizon Wireless), Sprint Spectrum LP,	)	
United States Cellular Corp., and Ameritech	)	
Mobile Communications, Inc.,	)	
	)	
Respondents.	)	

**SBC MISSOURI'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In compliance with the September 21, 2004 Order Setting Briefing Schedule in this case, SBC Missouri respectfully submits the following Proposed Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Complainant Northeast Missouri Rural Telephone Company ("Northeast") is a certificated local exchange company providing local exchange and exchange access telecommunications services in 11 exchanges in northeast Missouri.
2. Complainant Modern Telecommunications Company ("Modern") is a certificated local exchange company providing local exchange and exchange access telecommunications services in 3 exchanges in northeast Missouri.

3. Complainant Mid-Missouri Telephone Company ("Mid-Mo") is a certificated local exchange company providing local exchange and exchange access telecommunications services in 12 exchanges in west central Missouri.

4. Complainant Chariton Valley Telephone Company ("Chariton Valley") is a certificated local exchange company providing local exchange and exchange access telecommunications services in 18 exchanges in north central Missouri.

5. Complainant MoKan Dial, Inc. ("MoKan") is a certificated local exchange company providing local exchange and exchange access telecommunications services in one exchange in western Missouri. MoKan has a wireless termination service tariff approved by the Commission with an effective date of February 19, 2001.

6. Complainant Choctaw Telephone Company ("Choctaw") is a certificated local exchange company providing local exchange and exchange access telecommunications services in one exchange in southwest Missouri. Choctaw has a wireless termination service tariff approved by the Commission with an effective date of February 17, 2001.

7. Complainant Alma Telephone Company ("Alma") is a certificated local exchange company providing local exchange and exchange access telecommunications services in one exchange in west central Missouri. Alma has a wireless termination service tariff approved by the Commission with an effective date of February 17, 2001.

8. Respondent Southwestern Bell Telephone Company ("SWBT") is a local exchange carrier authorized to provide local exchange, exchange access, and intraLATA toll telecommunications services in exchanges located throughout the State of Missouri.

9. Respondent Southwestern Bell Wireless LLC d/b/a Cingular Wireless is a commercial mobile radio service (“CMRS”) provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
10. Respondent Voicestream Wireless is a CMRS provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
11. Respondent Aerial Communications, Inc. is a CMRS provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
12. Respondent CMT Partners is a CMRS provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
13. Respondent Verizon Wireless is a CMRS provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
14. Respondent Sprint Spectrum is a CMRS provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
15. Respondent United States Cellular Corporation is a CMRS provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
16. Respondent Ameritech Mobile Communications, Inc. is a CMRS provider licensed by the FCC to provide CMRS telephone services in a number of areas of the State of Missouri.
17. The wireless carrier Respondents each have interconnection agreements with SWBT. Many also have interconnection agreements with Sprint-Missouri, Inc. (“Sprint”). Under those interconnection agreements, SWBT and Sprint provide transiting services between the wireless carrier respondents’ networks and each of the Complainants’ networks.

18. Most, if not all, of the wireless carrier Respondents have offered to negotiate an interconnection agreement with each of the Complainants. Each of the Complainants rejected those offers to negotiate an interconnection agreement based, in part, on the assertion, made separately by each Complainant, that the Complainant was not obligated to negotiate with until such time as the wireless carrier established a direct interconnection with the Complainant.

19. As is explained more fully in the Conclusions of Law, below, calls that originate and terminate within the same major trading area ("MTA") and involve a wireless carrier have been deemed by the FCC to be local calls for purposes of intercarrier compensation. Missouri is divided into two MTAs that split the state on a roughly north-south line in the middle of the State.

20. Since February 17 or 19, 2001, Complainants MoKan, Choctaw and Alma have had a wireless termination service tariff in place, under which each of these Complainants has billed charges for terminating intraMTA wireless traffic.

21. Most, if not all, of the wireless carrier respondents have paid under protest all charges appropriately billed to by Complainants MoKan, Choctaw, and Alma under their wireless termination service tariffs.

## **CONCLUSIONS OF LAW**

### **ISSUE 1 – TRAFFIC SUBJECT TO A WIRELESS TERMINATION TARIFF**

1. The Complainants with Wireless Termination Service Tariffs -- Alma, Choctaw and MoKan -- have each established a basis for charging the wireless carrier Respondents for terminating intraMTA calls after the effective dates of their Wireless Service Termination Tariffs. The evidence shows that most, if not all, the wireless carrier Respondents have paid or is

paying all invoices appropriately rendered under those tariffs until such time as the order approving those tariffs is reversed or vacated. Therefore, Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. have not established that the wireless carriers are in arrears on tariff payments.

## **ISSUE 2 – TRAFFIC NOT SUBJECT TO A WIRELESS TERMINATION TARIFF**

2. Complainants cannot charge access rates for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Complainants' respective networks.

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"). Although the Court of Appeals for the Western District of Missouri has reversed and rescinded this decision to the Commission "for reconsideration of the amended tariffs under the Commission's state regulatory authority," the tariff amendment in that case – which in the court's view may allow the imposition of access charges on intraMTA wireless traffic under certain circumstances – was not in effect when the traffic at issue here was passed.

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.

This Commission's application of federal law is correct and need not be changed. 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, the wireless carrier Respondents do not acquire transit services from SWBT's wireless service tariff. Rather, they acquire transit service through Interconnection Agreements with SWBT and Sprint.

3. The terms and conditions of SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40) have no relevance in this case because the wireless carrier Respondents do not buy transit services from SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40).

4. Intrastate interMTA traffic is subject the Complainants' intrastate access tariff rates.

5. As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their intrastate access tariffs. The Commission will accept the non-opposed interMTA factors proposed by petitioners to establish the percentage of interMTA traffic terminated to petitioners. Petitioners, however, have not met their burden of proving that the contested interMTA factors are accurate and the Commission rejects them.

6. Under the Act, the appropriate inter-company compensation for wireless interconnection is to be set through negotiations between the carriers. If a rate or compensation mechanism cannot be agreed to, Complainants and the wireless carrier Respondents should ask the Commission to arbitrate the matter.

7. The wireless carrier Respondents (like other carriers) seek to transit their traffic through the large LECs' networks to gain efficiencies for themselves and their customers. For example, SBC Missouri's network has been in place for years and extends to nearly every other telephone company in the state (Sprint Missouri also is a tandem company that transmits traffic to terminating company). Thus, by establishing a direct connection with SBC Missouri or Sprint Missouri, wireless carriers can indirectly reach nearly all other telephone companies in the LATA, including most of the Complainants. The alternative would be for the wireless carriers to physically build their networks to all other carriers operating in the state, which wireless carriers have indicated would be inefficient for them. The Act recognizes these inefficiencies and is why it makes provision for carriers to interconnect their networks indirectly with other carriers.

8. It is inappropriate to impose any financial obligation on such transiting carriers for transited traffic. Under accepted industry standards, the originating carrier -- the one who has the relationship with the calling party -- is generally responsible for compensating all downstream carriers involved in completing the call, not the transiting carrier. As reflected in the FCC's Notice of Proposed Rulemaking in its Unified Carrier Compensation Regime docket:

Existing access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC or CMRS, to compensate the called party's carrier for terminating the call. Hence, these interconnection regimes may be referred to as "calling-party's-network-pays" (or "CPNP"). Such CPNP arrangements, where the calling party's network pays to terminate a call, are clearly the dominant form of interconnection regulation in the United States and abroad.<sup>1</sup>

9. It is inappropriate to allow a carrier unilaterally to be able to direct a transiting carrier to block incoming transit traffic. Carriers seeking to block a specific carrier's incoming transit traffic must seek specific authority from the Commission. Until such authority is granted

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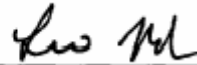
<sup>1</sup> In the Matter of Developing a Unified Carrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, released April 27, 2001, para. 9 ("Unified Carrier Compensation NPRM") (emphasis added).

by the Commission, transiting carriers have no obligation to block transit traffic at any other carrier's request. In the event the Commission authorizes such blocking in a particular case, the carrier requesting the blocking is responsible for the transiting carrier's cost of implementing the blocking, consistent with the Commission's prior Order in Case No. TT-2001-139.<sup>2</sup>

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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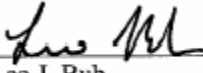
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<sup>2</sup> Report and Order, Case No. TT-2001-139, issued February 8, 2001 ("the requesting small LEC must pay SWBT the cost of blocking the traffic").



## **CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on October 22, 2004.

  
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