

# GOLLER, GARDNER AND FEATHER

PROFESSIONAL CORPORATION

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Robert W. Hedrick  
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April 9, 2004

Mr. Dale Roberts  
Executive Secretary  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
Jefferson City, MO 65101

FILED<sup>4</sup>

APR 09 2004

Missouri Public  
Service Commission

Re: Consolidated Case No. TC-2002-57

Dear Judge. Roberts:

Enclosed please find for filing the original and eight copies of the Position Statement of United States Cellular Corporation in the above-referenced case.

I have caused copies of the enclosed document to be served on all parties of record by United States mail, postage prepaid, or e-mail.

Very truly yours,



Paul H. Gardner

PHG:kn  
Enclosures

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

Northeast Missouri Rural Telephone Company  
and Modern Telecommunications Company,

Petitioners,

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.,

Respondents.

**FILED<sup>4</sup>**

APR 09 2004

Missouri Public  
Service Commission

Case No. TC-2002-57, et. al.  
consolidated

**POSITION STATEMENT OF U.S. CELLULAR CORPORATION**

U.S. Cellular, pursuant to the Commission's orders and in preparation for the May 20, 2004, hearing in this matter, provides the following as a statement of its positions on the issues before the Commission.

**Introduction**

While U.S. Cellular recognizes that the status of the case is that the upcoming hearing is a reopening for a limited purpose, U.S. Cellular reiterates the positions it took in its Position Statement of July 12, 2002. U.S. Cellular continues to believe that unilateral tariffs are not the appropriate mechanism for the bilateral exchange of traffic that includes federally-regulated wireless traffic. U.S. Cellular also reasserts its belief that access or access-based rates are not appropriate for

intraMTA traffic, and that traffic exchanged in the absence of an agreement to the contrary is appropriately considered to be exchanged on a “bill and keep” basis.

**Issue I: Unopposed InterMTA Factors**

**Should the Commission adopt the factors specified in the List of Issues for the purpose of determining interMTA traffic in this Complaint case?**

**U.S. Cellular’s Position:**

U.S. Cellular believes that voluntary stipulations which are not opposed by any party, whether negotiated or proposed by the complaining parties, are an efficient way to narrow and resolve the issues in this matter. As the List of Issues notes, no party opposes such stipulated factors, including U.S. Cellular; U.S. Cellular believes the Commission should adopt such factors in its resolution of this Complaint case.

**Issue II: Contested InterMTA Factors**

**What factors should be adopted based on the evidence for traffic between the petitioners and wireless carrier respondents listed in the List of Issues?**

**U.S. Cellular’s Position:**

U.S. Cellular believes that Issue II and Issue III below are related. The factors proposed by Complainants are opposed by U.S. Cellular. As a starting point, the petitioning LECs have the burden of proving all issues relevant to their case—including the jurisdictional factors. U.S. Cellular contends that Petitioners have not met their burden of proving the factors.

U.S. Cellular contends that the only evidence on the appropriate factors for U.S. Cellular comes from the testimony of U.S. Cellular witness Naumann, and from Staff Witness Scheperle. The evidence then supports either a factor of 12% of both Northeast Missouri and Chariton Valley,


or 26% for Northeast and 33% for Chariton Valley. These "tower count" methods of determining factors are closer to the FCC's suggested methodologies than the "studies" conducted by MITG. U.S. Cellular believes witness Naumann's testimony supports the Commission approving the 12% figure as this is the methodology that has been used and accepted throughout U.S. Cellular's territory.

**Issue III: Burden of Proof**

**Who has the burden of proof on the interMTA factors that will be used for the purpose of determining interMTA traffic in this Complaint case?**

U.S. Cellular's Position:

U.S. Cellular believes that Missouri law is well settled on this issue: the petitioner(s) in a complaint case before the Commission bear the burden of proof in proving each affirmative issue that is part of their case. See, e.g., State ex rel. GS Techs. Operating Co. v. Public Serv. Comm'n of Missouri, 116 S.W.3d 680, 693-94 (Mo. App. W.D. 2003)(holding on burden of proof and collecting citations). Here, where petitioners are seeking retrospective and forward-looking payments that are, of necessity, based on an allocation of traffic between inter- and intraMTA (among other jurisdictional determinations), and that allocation directly and substantially impacts the amount of payment petitioners will receive, such apportionment factors are an affirmative issue of petitioners' case. Accordingly, it is the petitioners' burden to present evidence proving the interMTA factors. Respectfully submitted this 9<sup>th</sup> day of April, 2004.

  
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**CERTIFICATE OF SERVICE**

I hereby certify that coies of the foregoing have been mailed, or electronically mailed to all counsel of record this 9<sup>th</sup> day of April 2004.

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