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Case No.: TC-2002-57 *et al.*

Missouri Public
Service Commission

REBUTTAL TESTIMONY ON RE-OPENING
OF
WILLIAM H. BROWN
ON BEHALF OF
CINGULAR SOUTHWESTERN BELL WIRELESS, LLC

Atlanta, Georgia
February 19, 2004

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

Northeast Missouri Rural Telephone
Company *et al.*

Petitioners

v.

Southwestern Bell Telephone Company,
et al.

Respondents.

Case No. TC-2002-57 (consol.)

AFFIDAVIT OF WILLIAM H. BROWN

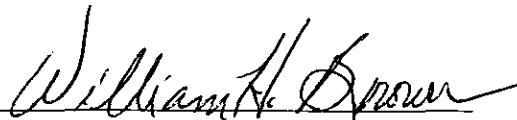
STATE OF GEORGIA

COUNTY OF FULTON

ss:.

I, William H. Brown, being duly sworn or affirmed, depose and state:

1. My name is William H. Brown and I am Senior Interconnection Manager for Cingular Wireless.
2. Attached hereto and made part hereof for all purposes is my rebuttal testimony on re-opening in the captioned case.
3. I hereby swear or affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


William H. Brown

Subscribed and sworn or affirmed
before me this 19th day of February, 2004.


Notary Public

My Commission expires:

Notary Public, Gwinnett County, GA
My Commission Expires August 3, 2005

1 **REBUTTAL TESTIMONY ON RE-OPENING OF WILLIAM H. BROWN**

2 **ON BEHALF OF**

3 **CINGULAR SOUTHWESTERN BELL WIRELESS, LLC**

4 **CASE NO. TC-2002-57 *et al.* (consolidated)**

5 **DATE: February 19, 2004**

6 **Q. Please state your name, address and occupation.**

7 A. My name is William H. Brown. I am Senior Interconnection Manager for Cingular
8 Wireless ("Cingular") and my office address is Glenridge Highlands Two, 1534D, 5565
9 Glenridge Connector, Atlanta, GA 30342. Cingular operates the licenses held in Missouri by
10 Cingular Southwestern Bell Wireless, LLC.

11 **Q. Are you the same William H. Brown who provided Rebuttal Testimony and**
12 **Surrebuttal Testimony in this docket?**

13 A. Yes.

14 **Q. What do you understand to be the procedural basis for re-opening?**

15 A. On June 3, 2003, the Commission entered an order on re-opening, which stated in part:

16 The Commission has reviewed the record in this matter and the
17 briefs submitted by the parties and has determined that it cannot
18 resolve this matter without certain additional evidence. Therefore,
19 the Commission will reopen the record herein for the limited
20 purpose of receiving this evidence.

21
22 The evidence in question concerns the proportion of the traffic at
23 issue that is interMTA, wireless-originated traffic and the
24 proportion that is intraMTA, wireless-originated traffic. In the
25 event that the parties are unable to adduce this evidence in any
26 other way, the Commission will require that they cooperate in the
27 performance of a traffic study or studies. The Commission will
28 convene a prehearing conference to hear from the parties how this
29 necessary evidence can best be provided.

30
31 At the prehearing conference, the parties or their representatives
32 should be prepared to discuss all matters relating to the evidence
33 referred to above.
34

35 Since the Commission entered its order, Cingular, through counsel, has engaged in continuing
36 discussions with the Complainants regarding a negotiated percentage of intraMTA traffic and
37 interMTA traffic and related traffic termination agreements. To date, we have come much
38 closer, but we have not reached agreement on exact percentages.

39 Nevertheless, on September 29, the Commission entered an order including the following
40 directive:

41 In its Order of June 3, 2003, the Commission advised the parties
42 that, in the event that they are unable to adduce this evidence in
43 any other way, they will be required to cooperate in the
44 performance of a traffic study or studies. The Commission will
45 now convene a prehearing conference to hear from the parties
46 whether such a study is in fact necessary or whether expert
47 testimony or some other evidence can suffice instead. The parties
48 will also be required to cooperate in developing a procedural
49 schedule.
50

51 On October 10, the parties submitted an agreed procedural schedule to respond to the
52 Commission's Order.

53 **Q. What is the purpose of your rebuttal testimony?**

54 A. First and foremost, I am responding to the testimony filed on behalf of Complainants
55 Northeast Missouri Rural Telephone Company (which includes the earlier claims of Modern
56 Telecommunications (by Gary Godfrey), Mid-Missouri Telephone Company (by Joe Knipp) and
57 by Chariton Valley Telephone Cooperative (by William Biere), and to the notices filed by the
58 other Complainants in this case, Alma Telephone Company, Choctaw Telephone Company, and
59 Mo-Kan Dial, Inc.

60 **Overview**

61 **Q. Please provide an overview of your testimony?**

62 A. First of all, while I understand the Commission's interest in the actual breakdown on
63 intraMTA and interMTA traffic for each of the wireless carriers in relation to each of the
64 Complainants, I do not believe it is sufficient cause for the Commission to re-open this record.
65 Rather, the absence of evidence on a critical issue in Complainants' cases is cause to dismiss the
66 cases because Complainants have failed to meet their burdens of proof.

67 However, if the Commission determines that traffic studies are appropriate, I believe the
68 proper Commission order is to direct the parties to conduct a study or to negotiate a percentage.
69 Given the relative expense of a comprehensive traffic study in comparison to the value of the
70 traffic at issue, it is my expectation that such an order will hasten the successful conclusion of
71 negotiations that are already ongoing. For the reasons described later in my testimony, I do not
72 think the evidence submitted by the Complainants in this re-opening is a reliable basis on which
73 to determine interMTA/intraMTA percentages or that it provides the Commission with a record
74 basis to make any findings regarding intraMTA and interMTA traffic percentages. Moreover, it
75 is not for the Complainants to try, as three of them have attempted to do in their testimony, to
76 pass off a truncated traffic report for an appropriate traffic study or negotiated rate.

77 Second, Complainants' most recent testimony demonstrates yet again that these cases are
78 not about *whether* Complainants get paid for terminating wireless traffic, but about *how much*
79 they will get paid to terminate wireless traffic. Cingular (by which I include its predecessor,
80 Southwestern Bell Wireless) has offered on more than one occasion to negotiate a reciprocal
81 compensation agreement with each of Complainants. At the last hearing on this matter, Cingular

made a standing commitment to respond to any request made by the Complainants to negotiate reciprocal compensation agreements.

Despite the substantial evidence submitted in this docket showing the willingness and efforts of several wireless carriers to negotiate reciprocal compensation arrangements with Complainants, Complainants steadfastly refused to negotiate until recent efforts in relation to the re-opening of this docket. What has always been clear is that Complainants do not want reciprocal compensation; rather, they want this Commission to impose the highest possible exchange access rate on this traffic while the Complainants continue to stonewall legitimate reciprocal compensation discussions.

Finally, as I will explain later in my testimony, the traffic reports submitted by Complainants are not probative of actual intraMTA/interMTA percentages because they cannot be substantiated on the basis of underlying records, they reflect substantial data irregularities, and they do not use an appropriate measure for where the wireless calls originate. Moreover, of the three FCC options cited by Complainants, there is a more obvious and appropriate solution, *i.e.*, that the parties be ordered to exchange the information necessary to calculate extrapolated factors for use in negotiating an appropriate reciprocal compensation agreement.

Q. How does the Complainants' most recent testimony demonstrate their goal to obtain exchange access rates to the exclusion of appropriate reciprocal compensation?

A. In their most recent testimony, each of the three Complainants repeats the number of minutes at issue in this docket and then estimates the "value" of this traffic to his company. Biere Testimony at 11; Godfrey Testimony at 4 and Knipp Testimony at 4-5. Significantly, each estimates the value by assuming that 100% of the minutes he is describing as billed at the highest available access rate, *i.e.*, the rate for intrastate intraLATA access. This highlights, I believe, the

central dynamic driving this case, Complainants' demand that they be compensated at their highest access rates rather than a proper reciprocal compensation rate as envisioned and authorized by Sections 251 and 252 of the Telecommunications Act of 1996 and the FCC's rules.

Q. Please explain how this complaint is driven by the difference between exchange access rates and appropriate reciprocal compensation rates.

A. The three Complainants, Northeast, Mid-Missouri and Chariton Valley, have advised Cingular that they have current intrastate intraLATA access rates of \$0.149367/minute; \$0.124897/minute; and \$0.078859/minute, respectively. Across the nation and across wireline carrier types (both regional bell operating companies and independents), standard reciprocal compensation rates are closer to \$0.01/minute and are frequently bill and keep, which has an effective rate of \$0.00/minute. Incidentally, the terminating *interstate* access rates for these three carriers are \$0.018700/minute; \$0.017157/minute; and \$0.011361/minute, respectively.

It is not the volumes of traffic, but the difference in applicable rates that is driving this case. For example, taking as a given the minutes of use alleged by Complainants, here are the comparative outcomes for Cingular using each company's *intrastate* access rate; each company's *interstate* access; and a standard \$0.01/minute reciprocal compensation:

By Complainant	Cingular Minutes Alleged	Value of minutes at <i>intrastate</i> access rate	Value of minutes at <i>interstate</i> access rate	Value of minutes at \$0.01 reciprocal compensation rate
Northeast	2,382,655	\$355,890	\$44,555	\$23,827
Mid-Missouri	652,358	\$97,441	\$12,199	\$6,524
Chariton Valley	671,670	<u>\$100,325</u>	<u>\$12,560</u>	<u>\$6,717</u>
<i>Total Values</i>		\$553,656	\$69,315	\$37,067

122 The same dynamic applies equally to the total minutes alleged by Complainants across all
123 wireless carriers:

By Complainant	Total Minutes Alleged	Value of minutes at <i>intrastate</i> access rate	Value of minutes at <i>interstate</i> access rate	Value of minutes at \$0.01 reciprocal compensation rate
Northeast	5,930,576	\$885,832	\$110,902	\$59,306
Mid-Missouri	697,012	\$104,111	\$13,034	\$6,970
Chariton Valley	3,735,937	<u>\$558,026</u>	<u>\$69,862</u>	<u>\$37,359</u>
<i>Total Values</i>		<i>\$1,547,967</i>	<i>\$193,798</i>	<i>\$103,635</i>

124
125 These numbers quickly demonstrate why Complainants have no interest in negotiating
126 reciprocal compensation. They would much rather have this Commission apply intrastate access,
127 instead of standard reciprocal compensation rates or even their interstate access rate, even though
128 the interstate access is a rate for which they terminate wireline long distance calls from all over
129 the country.

130 This dynamic is true regardless of how many minutes are at stake because it is driven not
131 by the amount of traffic terminated, but by the multiple of the potential recovery for every
132 minute terminated. For example (because its intrastate access rate is almost \$0.15/minute),
133 Northeast would get almost 15 times as much money through the application of its intrastate
134 access charges than it would through a standard reciprocal compensation rate. That factor is
135 nearly 12.5 times for Mid-Missouri and nearly 8 times for Chariton Valley.

136 Incidentally, the same dynamic applies to the three Complainants that decided not to file
137 testimony regarding traffic studies, but filed only a notice instead. Those three companies, Alma
138 Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. have intrastate
139 intraLATA access rates of \$0.0657/minute, \$0.0813/minute, \$0.0849/minute, respectively and
140 interstate access rates of \$0.0218/minute, \$0.0173/minute, and \$0.0213/minute, respectively,

resulting in the following "value" computations for traffic they purportedly received from the wireless carriers prior to filing their wireless service termination tariffs.

By Complainant	Total Minutes Alleged	Value of minutes at <i>intrastate</i> access rate	Value of minutes at <i>interstate</i> access rate	Value of minutes at \$0.01 reciprocal compensation rate
Alma	94,000	\$14,041	\$1,758	\$940
Choctaw	29,000	\$4,332	\$542	\$290
MoKan	590,000	<u>\$88,127</u>	<u>\$11,033</u>	<u>\$5,900</u>
<i>Total Values</i>		<i>\$106,499</i>	<i>\$13,333</i>	<i>\$7,130</i>

It is telling that, even at a potential value of more than \$88,000, MoKan Dial believes that it is economically infeasible for it to generate a traffic study.

When the Commission reviews the value of this case based on minutes apparently terminated by Cingular over the course of approximately three years at the standard \$0.01/minute reciprocal compensation rate -- and particularly if the Commission bears in mind that those totals do not even reflect a value for traffic originated by Complainants and terminated to Cingular and the other wireless carriers -- it is obvious why bill and keep has been used and it is obvious why Complainants have avoided even the cost of negotiating reciprocal compensation in favor of seeking intrastate access. At appropriate rates, no carrier is likely to benefit much in excess of its own cost of billing and collection. No carrier could justify internally the cost of conducting a traffic study. More importantly, any encouragement the Commission gives to the Complainants that they will get anything like their exchange access rates will simply harden their recalcitrance in negotiating appropriate reciprocal compensation arrangements.

Background

Q. Can you remind the Commission of the background of this case?

A. Although it was not requested by the Commission on this re-opening, Mr. Biere offers his interpretation regarding prior Commission actions and goals. While he continues to ignore the

steps this Commission has taken to rectify the situation he complains of, he invites the Commission to openly interfere with a relationship that is best handled through the procedures of the Telecommunications Act of 1996, by the negotiation of an interconnection agreement. He also is advocating that the Commission move from the imposition of simple "incentives" to what amount to punitive damages. Moreover, consistent with the Complainants' prior arguments, he is attempting to use this Complaint proceeding as a means of re-writing carrier interconnection to convert Southwestern Bell Telephone Company's and Sprint's transiting services into LEC services and reduce wireless carriers from co-carrier status to access status as I discussed in my earlier Rebuttal Testimony in this docket. *See* Ex. 15 at 7.

Q. How did we get here?

A. Since about the time that Cingular (through its predecessor, Southwestern Bell Wireless) entered into an agreement with SWBT in 1997 to transit Cingular's traffic to other carriers in Missouri, Cingular has offered to enter into negotiations with each one of the Complainants involved in this docket and virtually every independent LEC in this State. While I understand there were earlier offers, a ready and early example is a letter from Jeanne Fischer of Southwestern Bell Wireless to Mr. Craig Johnson, the counsel representing the Complainants, offering to negotiate an agreement with each of their clients on terms similar to those negotiated with TDS Telcom, Inc. and approved by this Commission in Docket No. TO-00-407. (A copy of this letter was admitted in this record in this proceeding as Exhibit 49) TDS Telcom, Inc. operates three independent LECs in Missouri (Orchard Farms Telephone, New London Telephone and Stoutland Telephone) and therefore is similarly situated to the independent LECs involved in this docket.

183 **Q. Do you know the status of Cingular's offer to negotiate with those carriers?**

184 A. As an early example of Complainants' responses, Mr. Johnson's response was admitted
185 into the record in this proceeding as Exhibit 50. Based on Mr. Johnson's response, as well as
186 positions taken elsewhere by the independent LECs involved in this docket, it appears that
187 Cingular's offers to negotiate have been rejected, or at least ignored to this point. Also, it is my
188 understanding of their formal position (1) that the independent LECs involved in this docket will
189 not negotiate interconnection agreements with any carrier that does not directly connect its own
190 facilities to the LEC's facilities; (2) that they wish to and do apply access charges to the traffic
191 exchanged instead of rates based on forward-looking costs; and (3) that they will not pay
192 terminating compensation to CMRS carriers for traffic originating on the LECs' networks
193 without regard to whether the FCC defines that traffic as local.

194 **Q. Does that remain the position of the Complainants.**

195 A. To the best of my knowledge, that remains their stated position.

196 **Q. Has Cingular updated its offer to negotiate?**

197 A. Cingular has always been available to negotiate and, in fact, is engaged in discussions
198 with dozens of LECs in Missouri, including Complainants, intended to result in agreements to
199 resolve the current issues between Cingular and those LECs. Moreover, on behalf of Cingular, I
200 made a commitment on the record in this docket to respond to any request for interconnection
201 agreements from any Missouri LEC, thus bringing any such discussions under the authority of
202 Section 252 of the Telecommunications Act of 1996 and allowing a LEC to seek arbitration if it
203 is unsatisfied with the result of negotiations. Transcript of August 8, 2002 hearing at Volume 7,
204 p. 1209. To date, while Cingular has been in the discussions referred to, Cingular has received
205 no formal requests to negotiate.

206 **Q. Has the Commission taken other steps to rectify the situation about which Mr. Biere**
207 **complains.**

208 A. Absolutely. In the so-called *Mark Twain* case (TT-2001-139), the Commission provided
209 a remedy -- in the form of wireless service termination ("WST") tariffs -- for independent LECs
210 that believed that they should be able to obtain terminating compensation without regard to the
211 existence of a reciprocal compensation agreement. Despite Mr. Biere's attempt to characterize
212 the WST tariffs as being "like access," they were not exchange access tariffs and the
213 Commission subsequently affirmed its correct holding in the *Alma* case (TT-99-428) that access
214 was inappropriate and remains inappropriate. Curiously, despite his admission that WST tariffs
215 provide much of the sort of compensation his company is seeking by way of exchange access,
216 Mr. Biere's company, Chariton Valley has never filed a WST tariff. Nor has Northeast.
217 Mid-Missouri did so only last summer. In fact, after summarizing the Commission's decision in
218 the *Mark Twain* case, Mr. Biere still claims (at 7) that his company has been left with no
219 effective recourse other than this Complaint proceeding.

220 **Q. How is Mr. Biere inviting the Commission to interfere with the federal procedure?**

221 A. Mr. Biere is advocating that the Commission abandon its *Mark Twain* decision, which
222 strikes a balance by allowing a going-forward WST tariffs in lieu of reciprocal compensation
223 agreements. Mr. Biere is further advocating that the Commission instead apply full access
224 retroactively for all minutes delivered in the absence of explicit interconnection agreements.

225 While Mr. Biere claims (at 8) that he sees no difference in applying access and WST
226 tariffs, there are clearly two very big differences. **First**, exchange access has been specifically
227 prohibited by the FCC and by this Commission. 47 U.S.C. § 251(b)(5); *In the Matter of*
228 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*;

229 *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service*
230 *Providers*, FCC No. 96-325, 11 FCC Rcd 15499; 1996 FCC LEXIS 4312 (rel. Aug. 1, 1996) at
231 ¶ 1034; see also *Iowa Utilities Board v. FCC*, 120 F.3d 753, 799 n.20 (8th Cir. 1997)
232 (discussing access charges in the context of non-local calls applied to IXC's); *Access*
233 *Charge Reform Order*, CC Docket No. 96-262, *First Report and Order*, 12 FCC Rcd
234 15982 (1997) (access charges discussed in relation to non-local traffic), *aff'd sub nom.*
235 *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *In the Matter of*
236 *Implementation of the Local Competition Provisions in the Telecommunications Act of*
237 *1996*, CC Docket No. 96-98, and *Inter-Carrier Compensation for ISP-Bound Traffic*, CC
238 Docket No. 99-68 (Feb. 25, 1999) (access charges discussed in context of non-local
239 traffic);¹ *In the Matter of the Mid-Missouri Group's Filing to Revise its Access Services Tariff*,
240 P.S.C. Mo. No. 2, Case No. TT-99-428 *et al.* Report and Order (January 27, 2000), *rev'd and*
241 *remanded on procedural grounds sub nom. AT&T v. Missouri Public Service Comm'n*, 62
242 S.W.3d 545, 548 (Mo. App. WD 2001), Amended Report and Order (April 9, 2002). **Second**,
243 while the WST tariffs are applicable on only a going-forward basis, Complainants seek to have
244 their access tariffs applied retroactively. Whatever can be said for WST tariffs, applying
245 exchange access would contradict FCC's decisions in this area, and applying the tariffs
246 retroactively would be contrary to Missouri law prohibiting retroactive ratemaking.

¹ In reviewing the FCC's jurisdiction to establish pricing rules under the 1996 Act, the Eighth Circuit confirmed that the FCC has plenary jurisdiction over rates and other matters specific to Wireless carriers. See *Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997), *aff'd in part, rev'd in part*, 525 U.S. 366 (1999) (reversing conclusion that the FCC did not have jurisdiction to establish pricing rules even for landline carriers).

247 **Q. How is Mr. Biere inviting the Commission to impose punitive remedies?**

248 A. Again, a big difference between the WST tariffs and the imposition of exchange access is
249 Complainants' goal of having exchange access imposed retroactively. In essence, Mr. Biere is
250 suggesting that, since (in his view) the wireless carriers have failed to force negotiations for
251 reciprocal compensation, they should be charged access on a retroactive basis. Given the
252 difference between Complainants' access rates and standard reciprocal compensation rates
253 discussed above, that amounts to a penalty of somewhere between 15 times and 8 times actual
254 compensation rates depending on Complainants' intrastate access. While the Missouri LECs
255 may argue that there is justification to "up the ante" on wireless carriers going forward, there is
256 no basis for assessing a retroactive and punitive penalty, especially for Complainants that have
257 not even bothered to take advantage of the Commission-sanctioned WST tariffs.

258 **Traffic Reports Submitted by Complainants**

259 **Q. Have you reviewed the traffic reports submitted by the three Complainants?**

260 A. Yes. There are two major shortcomings of these traffic reports.

261 First, the three Complainants that produced these reports have not provided the
262 underlying data that the reports purport to summarize. In fact, in their answers to interrogatories,
263 they stated that:

- 264 a. the call detail for the traffic on the SWBT trunks for the period of time
265 covered by the studies includes a vast amount of traffic stored on switch
266 recording devices, and the nature of polling the switch to segregate and
267 duplicate this data is extremely time consuming and burdensome, and
268 could risk degradation or destruction of the data itself.

269
270 Therefore, there is no way to "check" the results and determine whether other relevant data may
271 have been omitted or whether the data used may have been misreported or misinterpreted. There

is not even a way to check how the percentages fluctuated over the reporting period since the traffic reports do not identify the dates or times of the calls.

These concerns are not speculative. There is clearly some substantial error in traffic reports as evidenced by the average hold times per call. For example, the average hold time for calls included in Chariton Valley's traffic report was more than 72 (yes, seventy-two) minutes per call. Northeast reported average hold times of more than 6.4 per call and Mid-Missouri reported average hold times of more than 3.8 minutes per call. By comparison, the average hold time in the industry is between 2 and 3 minutes per call. Complainants offer no explanation for those extraordinary hold times. In short, there is no way of knowing or checking if the underlying data chosen by Complainants is a reasonable sampling or reliable. What we do know strongly suggests that it is neither.

Another question about the accuracy of the reporting is raised by the divergence between these records and cellular transiting usage summary reports ("CTUSRs") submitted by the Complainants to substantiate the minutes of use on which they are making their claims. Specifically, I compared these months reported in the traffic reports to the corresponding CTUSRs (which I totaled by carrier). The totals are quite different. The table below shows the minutes reported by carrier for Cingular (then Southwestern Bell Mobile Systems) compared to the minutes reported in the CTUSRs for those same months.

Complainant	Time Period	Minutes per CTUSRs	Minutes per traffic report
Northeast	October 1, 2001 - December 31, 2001	75,197	55,958
Mid-Missouri	October 1, 2001 - December 31, 2001	264,212	72,353
Chariton Valley	November 1, 2001 - December 31, 2001	66,917	98,809

By comparison, the three smaller Complainants, Alma, Choctaw and MoKan assert that approximately 25% of their calls may be interMTA, but provide no traffic report at all to substantiate that percentage.

Second, the reports purport to reflect traffic originating on Cingular's NPA NXXs and terminating to Complainants NPA NXXs. However, as Complainants admit, originating NPA NXX is not the proper measure of whether wireless to wireline calls are intraMTA or interMTA. The originating cell tower is the proper measure, and it is not reflected in the records that Complainants are using. That can be very important where, for example, a customer travels across one or more exchange boundary lines to obtain a cell phone, and the cell phone number is therefore associated with a wireline serving area some distance from the wireless customers home. If the customer crosses an MTA line to get his phone, but he uses the phone primarily in his home area, which is in a different MTA, every call he makes within his immediate community of interest will appear on Complainants' report as an interMTA call. However, it will in fact be an intraMTA call. This hypothetical is not at all unlikely given that, for the Complainants' wireline customers, nearly every call to a wireless phone is already treated as long distance. Given the large home calling areas offered by most wireless carriers, it is likely to be of little relevance to wireless customers whether their phone is rated to an exchange that is miles or counties away. For customers who live near the MTA line (the local exchange areas of the three large Complainants are each bisected by an MTA line), there is no reason to expect that customers would be any more likely to obtain a phone with a number aligned with the customers' actual home MTA than they would be to get a phone with a number aligned to the other MTA.

Q. Are there any other problems with the traffic reports?

A. Yes, there is another substantial problem. Even if the traffic reports accurately differentiated between intraMTA and interMTA minutes, which they do not, they make no effort to differentiate between traffic that would fall into different access jurisdictions. Most importantly, they do not provide accurate information that would differentiate between intrastate and interstate calls. That is not a small problem given the substantial difference between Complainants' intrastate access charges and their interstate access charges. As I mentioned above, for example, Northeast's intrastate intraLATA access rate is almost \$0.15/minute while its interstate access rate is just under \$0.02/minute. Moreover, most of these carriers have different intrastate rates depending on whether the call is intrastate *intra*LATA or intrastate *inter*LATA. To my mind, this simply underscores the economic inefficiency of trying to measure actual applicable access rates instead of negotiating overall factors.

Q. How do you think the Commission ought to handle the absence of record evidence regarding what minutes are interMTA and what are intraMTA?

A. Each of the Complainants mentions the three ways the FCC has identified to determine the relative measures of intraMTA and interMTA data. Biere at 11-12; Knipp at 5; Godfrey at 5. While I may not agree with their specific wording of the FCC's descriptions, I am in general agreement regarding the three approaches. The so-called "First Method" that each of them describes is, in essence, a negotiated agreement based on calculated or extrapolated factors. Complainants argue that they cannot apply this method because the wireless carriers have not provided information. *E.g.*, Knipp at 8; Godfrey at 8. I think this overstates the problem and ignores the most appropriate solution.

334 The only request that Cingular has received from any of these Complainants is in the
335 context of this record on re-opening, seeking only completed traffic studies. To date, Cingular
336 has not completed any traffic studies. However, that is a different question than whether
337 Cingular and Complainants could pool sufficient network information (which may include the
338 traffic reports produced by Complainants) to negotiate an appropriate factor. Equally important,
339 if the Commission were to impose an obligation on the Complainants to come up with real and
340 useable data, Cingular strongly believes that, faced with the cost of obtaining that data and
341 Cingular's cost of obtaining similar data, the carriers could come to closure on a reasonable
342 estimate to use for a negotiated reciprocal compensation arrangement.

343 **Q. Does that complete your rebuttal testimony on re-opening?**

344 **A. Yes.**