

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

Northeast Missouri Rural Telephone Company	)	
and Modern Telecommunications company,	)	
	)	
Petitioners	)	
	)	
v.	)	
	)	
Southwestern Bell Telephone Company,	)	Case No. TC-2002-57
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	)	

**SBC MISSOURI'S RESPONSE TO COMPLAINANTS'  
MAY 11, 2004 NOTICE, AND OBJECTION  
TO PURPORTED NON-UNANIMOUS STIPULATION**

Complainants' May 11, 2004 Notice of Final Stipulation, Request for Additional Brief and Proposed Findings and Conclusion ("Notices") fails to meet the requirements of 4 CSR 240-2.115(1)(4) for establishing a stipulation and agreement. In the event that the Missouri Public Service Commission ("Commission") recognizes Complainants' Notice as the filing of a non-unanimous stipulation, SBC Missouri,<sup>1</sup> pursuant to 4 CSR 240-2.115(2)(b), respectfully objects to the purported non-unanimous stipulation offered in that Notice by Complainants Northeast Missouri Rural Telephone and Chariton Valley Telephone Corporation, and requests a hearing.

1. On April 20, 2004, the Regulatory Law Judge suspended the hearing that was about to commence based on representations of Complainants and the wireless carriers

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri" or "SBC."

remaining in this case (U.S. Cellular, T-Mobile and Western Wireless) that they had reach non-unanimous stipulations on interMTA factors. Complainants (1) proposed that they would reduce the non-unanimous stipulations to writing and file them with the Commission and (2) that other parties would have 10 days, pursuant to Commission rules, to object to the stipulations and to request a hearing. The Regulatory Law Judge accepted this procedural plan.<sup>2</sup>

2. On May 11, 2004, Complainants filed a Notice of Final Stipulation, Request for Additional Brief and Proposed Findings and Conclusions. In that Notice, Complainants represent that the parties subsequently attempted to reduce the stipulations to writing for filing;<sup>3</sup> that two written stipulations were filed on May 4, 2004 commemorating the stipulations between Northeast and U.S. Cellular, and between Chariton Valley and U.S. Cellular;<sup>4</sup> and that based on communications with Western Wireless and T-Mobile, Complainants do not expect Western Wireless and T-Mobile to execute any such stipulations.<sup>5</sup>

3. SBC Missouri was not included in the negotiations between Complainants and T-Mobile and Western Wireless. Although SBC Missouri circulated a rough draft stipulation on April 21, 2004 as a starting point for negotiations between the parties, and it received a draft from Complainants on April 22, 2004, SBC Missouri was not included in any discussions between Complainants and the wireless carriers.

4. Complainants now ask the Commission to accept the oral statements of T-Mobile and Western Wireless at the April 20, 2004 hearing as a stipulation and agreement that “fulfills the filing requirement of 4 CSR 240-2.115.”<sup>6</sup> As the Regulatory Law Judge correctly surmised,

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<sup>2</sup> Tr. pp. 1342-1343.

<sup>3</sup> Complainants’ Notice, para. 4.

<sup>4</sup> Complainants’ Notice, para. 5.

<sup>5</sup> Complainants’ Notice, para. 6.

<sup>6</sup> Complainants’ Notice, para. 7.

stipulations and agreements need to be reduced to writing and filed with the Commission.<sup>7</sup> 4

CSR 240-2.115(1)(A) states:

(1) Stipulation and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. A stipulation and agreement shall be filed as a pleading. (Emphasis added).

5. In the event the Commission accepts Complainants' "Notice" as a non-unanimous stipulation, SBC Missouri respectfully objects to the purported non-unanimous stipulations on the following interMTA factors:

Chariton Valley and Western Wireless	65% InterMTA Traffic
Chariton Valley and T-Mobile	36% InterMTA Traffic
Northeast Missouri and Western Wireless	77% InterMTA Traffic
Northeast Missouri and T-Mobile	34% InterMTA Traffic

6. SBC Missouri does not believe these interMTA factors are sufficiently substantiated and questions the accuracy of the factors.

7. In a transparent effort to forestall scrutiny of their proposed non-unanimous "stipulations," Complainants "request that the evidence be closed."<sup>8</sup> This attempt to deprive other parties of their right to a hearing is flatly proscribed by 4 CSR 240-2.115(2)(D):

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing. (Emphasis added).

8. Complainants' May 11, 2004 Notice also requests the Commission to "order supplemental . . . briefs and supplemental proposed findings of fact and conclusions of law be filed by June 25, 2004."<sup>9</sup> This unilateral request ignores the Regulatory Law Judge's April 20, 2004 directive from the bench that the parties work together on a "proposed procedural

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<sup>7</sup> Tr. p. 1342.

<sup>8</sup> Complainants' Notice, p. 4.

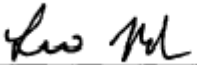
<sup>9</sup> Complainants' Notice, para. 8.

schedule.”<sup>10</sup> Complainants have failed to make any effort to bring the parties together to discuss a proposed procedural schedule, choosing instead to make it another litigated issue for the Commission to decide. Complainants’ request should be denied.

WHEREFORE, SBC Missouri respectfully requests the Commission to issue an Order scheduling a telephonic prehearing conference and directing the parties to come prepared to discuss a procedural schedule for the resolution of the remaining issues in this case.

Respectfully submitted,

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<sup>10</sup> Tr. p. 1344.

**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on May 20, 2004.



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