

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED

MAR 26 2004

Missouri Public  
Service Commission

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 (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

SEP 21 2004

Missouri Public  
Service Commission

SURREBUTTAL TESTIMONY

OF

WILLIAM BIERE

Jefferson City, Missouri

March 26, 2004

MITG Exhibit No. 302  
Case No(s) TC-2002-57  
Date 9-8-04 Rptr JL

**AFFIDAVIT OF WILLIAM BIERE**

STATE OF MISSOURI     )  
                                  ) ss.  
COUNTY OF MACON     )

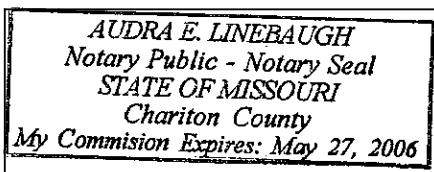
William Biere, of lawful age, on my oath states, that I have participated in the preparation of the foregoing testimony in question and answer form, consisting of 41 pages, to be presented in this case; that the answers in the foregoing testimony were given by me; that I have knowledge of the matters set forth in such answers; and that such matters are true to the best of my knowledge and belief.

William Biere  
William Biere

Subscribed and sworn to before me this 22<sup>nd</sup> day of March, 2004.

Audra E. Linebaugh  
Notary Public

My Commission Expires:  
May 27, 2006



1 **Q. Please state your name and capacity.**

2 A. My name is William Biere. I am General Manager of Chariton Valley Telephone  
3 Corporation (Chariton Valley).

4 **Q. Are you the same William Biere that has previously filed testimony in this**  
5 **case?**

6 A. Yes. I filed direct and surrebuttal testimony in the initial phase of this case, as  
7 well as direct testimony in this phase of the case regarding the proportions of traffic that  
8 is interMTA or intraMTA in jurisdiction.

9 **Q. On whose behalf are you testifying?**

10 A. I am testifying on behalf of Chariton Valley and the other complainant members  
11 of the Missouri Independent Telephone Group. I will be the MITG witness filing  
12 surrebuttal testimony responsive to the rebuttal testimony of Staff and the Respondents.  
13 Gary Godfrey will file surrebuttal testimony presenting an updated Sprint PCS traffic  
14 analysis for Northeast Missouri Rural Telephone Company.

15 **MITG Traffic Analyses**

16 **Q. Did any of the Respondents disagree with the MITG summary of the three**  
17 **methods for determining interMTA and intraMTA traffic that the FCC recognized?**

18 A. No.

19 **Q. Did any of the Respondents provide any study based upon the FCC method**  
20 **utilizing the location of the cell site when the call was placed?**

21 A. No.

22 **Q. Did any of the Respondents provide any study based upon the FCC method**  
23 **utilizing the interconnection point?**

1 A. No.

2 **Q. Did any of the Respondents provide any study based upon calls or traffic**  
3 **from the 1998-2001 period of traffic now in dispute?**

4 A. No, but Sprint PCS provided a study from one week in September of 2003.

5 **Q. With respect to the analyses Mid-Missouri, Northeast, and Chariton Valley,**  
6 **did any Respondent indicate that the traffic volumes analyzed were inadequate?**

7 A. No.

8 **Q. Have any Respondents submitted studies based upon smaller traffic**  
9 **volumes?**

10 A. Yes. Sprint PCS submitted a proposed factor for Northeast and Chariton Valley  
11 based upon an analysis of traffic from one week—September 7 to September 13, 2003.  
12 The studies of Mid-Missouri, Northeast, and Chariton Valley were based upon multiple  
13 months of traffic.

14 **Q. Respondents criticized the studies of the Mid-Missouri, Northeast, and**  
15 **Chariton Valley studies because of the potential for errors caused by roaming calls.**  
16 **Did you explain this in the direct testimony?**

17 A. Yes. We explained that the caller's NPA/NXX was the only information coming  
18 into our possession with which we could attempt to identify the caller's location. That  
19 call detail in our possession turns out to be the only call information now available. The  
20 wireless carriers are not able to produce their call detail for the traffic in dispute.

21 We justified the use of the home MTA as a surrogate for the tower originating the  
22 call based upon the assumption that most wireless calls will be initiated from the caller's  
23 home MTA. No wireless carrier contradicted that assumption. No wireless carrier

1 provided any information as to what proportion of wireless calls are initiated outside the  
2 caller's home MTA.

3 We also indicated that there were two potential types of errors caused by calls  
4 occurring when the caller roams outside their home MTAs. A roaming caller with an  
5 MTA different than the called party's MTA would be mistakenly identified as an  
6 interMTA call if the caller had roamed into the called party's MTA. Such an error in our  
7 study would incorrectly increase the interMTA traffic factor. If the caller had roamed  
8 into another MTA that was different than that of the called party's MTA, it would still be  
9 an interMTA call, and not an error.

10 Second, a roamer with an MTA that was the same as the called party's MTA  
11 could be mistakenly identified as an intraMTA call when the caller placed the call from  
12 outside his or her home MTA. Such an error in our study would incorrectly decrease the  
13 interMTA traffic factor.

14 **Q. Which type of error do you believe to be more likely?**

15 A. I believe the second type of error is more likely. Based upon my experience in  
16 the wireless business, it is more likely for a caller roaming outside his home MTA to call  
17 back to his home MTA than it is for a caller roaming outside his MTA to place a call to  
18 the MTA he is currently in. It is more likely that our studies misidentified an interMTA  
19 call as an intraMTA call, which would make the factors produced in our studies lower  
20 than actual. I believe the interMTA factors the studies Northeast, Mid-Missouri, and  
21 Chariton Valley produced are conservative.

22 **Chariton Valley Revised Traffic Analyses**

1 **Q. The rebuttal testimony raised concerns that the traffic volumes in Chariton**  
2 **Valley's direct testimony schedules appeared excessive. Does a correction need to**  
3 **be made?**

4 A. Yes. Chariton Valley's switching systems record traffic at intervals of 1/10<sup>th</sup> of a  
5 second. In order to convert these intervals to seconds, the totals should have been  
6 divided by ten. Chariton Valley omitted this conversion, which resulted in Schedules  
7 2HC, 3HC, and 4HC to my direct testimony overstating the volumes by a factor of ten.

8 **Q. Will this correction change the proportions of interMTA and intraMTA**  
9 **traffic set forth in your direct testimony?**

10 A. No. Both interMTA calls and intraMTA calls were overstated by the same factor  
11 of ten.

12 **Q. Do any corrections need to be made to these schedules which do affect the**  
13 **factors?**

14 A. Yes, there are two corrections. The first is minor and does not significantly alter  
15 the factor. The second does alter the factor.

16 First, two duplicated call records were found in the traffic Chariton Valley  
17 analyzed for Cingular and three duplicates were found in the traffic Chariton Valley  
18 analyzed for Sprint PCS. Those duplicates were removed. Cingular's factor changed  
19 from 41.4840% to 41.4858%. Sprint PCS's factor remained 35% when rounded to two  
20 decimal places.

21 **Q. Describe the second correction?**

22 A. In its rebuttal testimony Sprint PCS questioned the inclusion of traffic with three  
23 Operating Company Number (OCN) codes. The Sprint PCS testimony did not specify

1 which three OCNs it questioned. In response to our data request, Sprint PCS identified  
2 these OCNs. Chariton Valley investigated the ownership of those codes as of 1998-2001  
3 and determined we could not establish that these three OCNs and the corresponding  
4 NPA-NXXs included in Chariton Valley's original Schedule 4HC were owned by Sprint  
5 PCS. Chariton Valley determined it would be appropriate to remove calls originating  
6 from the 573-489, 816-560 and 910-864 NPA-NXX codes from the Sprint PCS analysis.  
7 By removing this traffic from the analysis, the Sprint PCS interMTA factor with Chariton  
8 Valley changes from 35% to 44%.

9 **Q. Do you have revised analyses that reflect these changes?**

10 A. Yes, I attach revised traffic analyses in Revised Schedules 2HC (Cingular), 3HC  
11 (T-Mobile/Western Wireless) and 4HC (Sprint PCS) to this testimony.

12 **Q. Can you present a schedule summarizing the interMTA percentage or factor**  
13 **recommendations of the parties as of the date of filing this surrebuttal testimony?**

14 A. Yes, I have borrowed Mr. Scheperle's Schedule 6, updated it with factor  
15 recommendations from the rebuttal testimony of Sprint PCS and US Cellular, and with  
16 the revised factors of Chariton Valley and Northeast as set forth in my surrebuttal and in  
17 that of Mr. Godfrey. This is attached as Schedule 1 to this testimony.

18 **Q. Did any of the parties filing rebuttal testimony suggest another method for**  
19 **determining traffic proportions?**

20 A. Yes. Staff witness Scheperle, and US Cellular witness Naumann suggest methods  
21 based upon tower location.

22 **Q. Do you accept these methods?**

1 A. No. It has not been recognized by the FCC. The problem with this method is  
2 that it attempts to use facility location as a substitute for actual traffic routes. Even if  
3 facility location were an appropriate method, Staff and US Cellular improperly limit the  
4 facilities counted. Both Staff and USC study only some USC towers located inside  
5 Missouri. If all of the terminating traffic originated on these Missouri towers, this  
6 limitation would be appropriate. However that is not the case.

7 Wireless carriers have facilities in different states, and in different MTAs. They  
8 haul traffic from locations outside Missouri and deliver it to their facilities in Missouri  
9 where the traffic is handed off to SBC for termination. Wireless carriers haul traffic  
10 across state lines, and across MTA boundaries, before handing the traffic to SBC. A  
11 method which simply compares the proportion of a wireless carrier towers in one MTA to  
12 some other towers in Missouri is not sound.

13 **Q. Do Mr. Scheperle and Mr. Naumann use the same "tower count" method?**

14 A. No. Mr. Scheperle does consider the location of the ILEC facilities as well as the  
15 wireless carrier facilities. Mr. Naumann ignores the MTA location of ILEC facilities.

16 **Q. Does the US Cellular witness Naumann "tower count" produce similar**  
17 **interMTA factors to Mr. Scheperle's?**

18 A. No. They are different. Here is a comparison of the factors developed by US  
19 Cellular and by Staff:

	<u>Naumann(USC)</u>	<u>Scheperle (Staff)</u>
20 Northeast	12%	26%
21 Chariton Valley	12%	33%



1    **Q.     Why are the factors produced by US Cellular so different from Staff's?**

2    A.     US Cellular fails to recognize that Northeast and Chariton Valley access lines lie  
3    in multiple MTAs. At pages 3-4 of his rebuttal Mr. Naumann states:

4            "As for the remaining companies, Chariton Valley and Northeast Missouri, we  
5            have 13 cell cites outside the MTA and 94 within the MTA, so the interMTA  
6            factor would be 12%."

7  
8    In data responses, US Cellular confirmed that the words "the MTA" in this statement  
9    referred to the St. Louis MTA, the same MTA that contains US Cellular's Columbia,  
10   Missouri mobile switching center.

11          Even if this tower count methodology were sound, by only looking at the St.  
12   Louis MTA US Cellular's analyses is flawed. Mr. Naumann's method incorrectly  
13   assumes that all traffic terminating to Northeast and Chariton Valley terminated in the St.  
14   Louis MTA. This is not true, as Mr. Godfrey and myself have repeatedly testified.  
15   Chariton Valley has customers in the Kansas City MTA as well as the St. Louis MTA,  
16   and that Northeast has customers in both the Kansas City MTA and the Des Moines  
17   MTA, in addition to the St. Louis MTA.

18   **Q.     US Cellular's method appears to assume that all of the traffic in question**  
19   **originates on the 107 Missouri towers. Do you have information that brings this**  
20   **assumption into question?**

21   A.     Yes. US Cellular data responses establish that US Cellular is routing traffic from  
22   towers outside the St. Louis MTA to the US Cellular Columbia MSC, and from there on  
23   to Moberly, and from there some traffic goes to Kirksville. Some traffic from Moberly

1 to Kirksville is placed on SBC trunks, some on Global Crossing trunks. However US  
2 Cellular has masked the originating location for this traffic by assigning a single Moberly  
3 number which is not the caller's number.

4 **Q. Did Mr. Naumann attempt to explain or justify why US Cellular traffic**  
5 **terminating to Northeast and Chariton Valley terminates with a single Moberly**  
6 **number that fails to provide the calling party's number?**

7 A. No.

8 **Q. Did SBC explain or justify why US Cellular traffic terminating to Northeast**  
9 **and Chariton Valley terminates with this single Moberly number?**

10 A. No.

11 **Q. Do you really believe that 100% of US Cellular traffic terminating to**  
12 **Northeast and Chariton Valley is interMTA in jurisdiction?**

13 A. No. But US Cellular that has created the conditions whereby we cannot identify  
14 originating numbers, and we cannot distinguish traffic carried by IXC Global Crossings  
15 from that carried by SBC. It is US Cellular that has prevented the proportioning of  
16 interMTA and intraMTA traffic, as well as IXC (Global Crossing) carried traffic from  
17 SBC carried traffic. That is why we propose utilizing a 100% factor until US Cellular  
18 provides call detail establishing otherwise. US Cellular has not refuted the justification  
19 for presuming that 100% of the US Cellular traffic is interMTA unless US Cellular  
20 provides call detail establishing otherwise.

21 **Q. Do Northeast and Chariton Valley accept the 12% interMTA factor**  
22 **proposed by US Cellular based upon its tower count methodology?**

23 A. No.

1 **Q. Will Northeast accept the 26% interMTA factor for US Cellular traffic**  
2 **presented by Staff witness Scheperle?**

3 A. If the Commission does not adopt Northeast's presumptive 100% interMTA  
4 factor proposal, Northeast will accept the 26% factor because it is the better of the other  
5 two proposals.

6 **Q. Will Chariton Valley accept the 33% interMTA factor for US Cellular traffic**  
7 **presented by Staff witness Scheperle?**

8 A. If the Commission does not adopt Chariton Valley's presumptive 100% interMTA  
9 factor proposal, Chariton Valley will accept the 33% factor because it is the better of the  
10 other two proposals.

11 **Q. Sprint PCS witnesses Linares and Canfield criticize the traffic analyses of**  
12 **Northeast and Chariton Valley because they include Sprint PCS calls originated**  
13 **from customers in distant parts of the country, suggesting that is not how Sprint**  
14 **PCS "designed its network", suggesting these calls would have been handed off to**  
15 **an IXC, suggesting these calls would not have been delivered over the "local**  
16 **interconnection trunk", and suggesting these calls could have arrived at the**  
17 **terminating tandem "by an IXC only". What is your response?**

18 A. The fact that Northeast and Chariton Valley recorded these calls as terminating on  
19 the SBC trunks rules out the possibility this traffic was delivered by an IXC to the  
20 terminating tandem. Northeast and Chariton Valley have their own access tandems. Our  
21 access tandems were the terminating access tandems. Traffic delivered to Northeast and  
22 Chariton Valley over the SBC trunks is not IXC traffic to Northeast and Chariton Valley.  
23 For these calls to be considered IXC traffic, they would have to be delivered to our access

1 tandems on the trunks of IXC's such as AT&T. The traffic in question was delivered on  
2 SBC trunks. All of the traffic studied in our analyses arrived on SBC trunks.

3 **Q. Do the traffic studies of Northeast and Chariton Valley actually show Sprint**  
4 **PCS traffic from distant NPA/NXXs terminating on the SBC trunks to your access**  
5 **tandems?**

6 A. Yes they show quite a bit of this traffic. Chariton Valley and Northeast captured  
7 Sprint PCS calls from customers whose home NPA/NXXs were located in Washington  
8 D.C., Florida, Texas, Georgia, Louisiana, Mississippi, North Carolina, Wisconsin, New  
9 York, and Minnesota.

10 **Q. If these calls had been carried by an IXC and then handed off to SBC, would**  
11 **access be the appropriate compensation anyway?**

12 A. Yes. I believe all parties agree that access applies to any wireless call carried by a  
13 "pure" IXC.

#### 14 **Traffic Volumes**

15 **Q. Cingular witness Brown questions the traffic analyses of Mid-Missouri,**  
16 **Northeast, and Chariton Valley because the volumes of minutes studied don't match**  
17 **the volumes reported in the CTUSRs. What is your response?**

18 A. We receive no call detail from the CTUSRs. We cannot study only the calls  
19 summarized in the CTUSRs. We can only study the traffic information captured by our  
20 switch. That is the only available traffic information from which an accurate factor can  
21 be prepared. The CTUSR volumes are the volumes we have to bill. The factors that  
22 result from this case will be applied to the CTUSR volumes, not our recorded actual  
23 volumes.

1 We know the traffic we studied terminated during the period studied. Those  
2 volumes are accurate. I disagree with Mr. Brown's unstated assumption that CTUSR  
3 volumes are accurate. Our information indicates to the contrary. Experience indicates  
4 the volumes are not always accurately reported. The CTUSR volumes vary month to  
5 month, indicating some traffic is not reported during that reporting month, but instead is  
6 included in a subsequent reporting month. In the past SBC has failed to report traffic on  
7 the CTUSRs. For instance, SBC failed to report Alltel Wireless traffic between May and  
8 October, 2001, the traffic period Northeast and Chariton Valley analyzed.

9 **Interstate v intrastate MOU.**

10 **Q. Cingular witness Brown criticizes our studies for not breaking the interMTA**  
11 **traffic down into the interstate and intrastate access jurisdictions. What is your**  
12 **response?**

13 A. The Commission did not ask for this. We were directed in this phase of the case  
14 to determine the proportions of interMTA and intraMTA traffic. We have complied and  
15 provided interMTA and intraMTA traffic factors. We were not directed to separate the  
16 interMTA traffic into the state and interstate jurisdictions. Our call information does  
17 allow us to determine interstate and intrastate calls based upon NPA/NXX information,  
18 so if our analyses are accepted we can then separate the interMTA traffic into interstate  
19 and intrastate access.

20 **Sprint's Traffic Studies**

21 **Q. In its rebuttal, Sprint PCS provided traffic studies supporting interMTA**  
22 **factors for Northeast of 11.3% and for Chariton Valley of 11.9%. What**  
23 **observations do you have regarding the Sprint PCS studies?**

1 A. Sprint PCS and Mid-Missouri have agreed to an interMTA factor of 43.7%.  
2 Sprint PCS proposes factors for Northeast and Chariton Valley of 11%. I would not  
3 expect Mid-Missouri's factor to be four times higher than factors for Northeast and  
4 Chariton Valley. Mid-Missouri lies in two MTAs. Chariton Valley lies in the same two  
5 MTAs. Northeast lies in three MTAs—the same two MTAs as Mid-Missouri and  
6 Chariton Valley-- and in addition the Des Moines MTA. All three companies lie in the  
7 same LATA in which SBC's Kansas City McGee switch serves as the LATA tandem.

8 **Q. Do you accept that Sprint PCS' study is suitable for use for the traffic period**  
9 **in question?**

10 A. No. Sprint PCS's prefiled testimony for the 2002 hearing stated that all Sprint  
11 PCS traffic terminated to the MITG companies on SBC trunks was exclusively intraMTA  
12 traffic. At the hearing Sprint PCS changed its testimony from the word "exclusively" to  
13 the word "primarily". Now Sprint PCS has agreed with Mid-Missouri that 43.7% --  
14 almost half-- of the traffic to Mid-Missouri is interMTA. Chariton Valley and Northeast  
15 do not have much faith in Sprint PCS.

16 The studies performed by Mid-Missouri, Northeast, and Chariton Valley were  
17 performed on call information taken from SBC's trunks--the actual termination location  
18 of the traffic in dispute. Sprint PCS performed its studies at its towers and its mobile  
19 switching centers it selected. These facilities are located upstream of the SBC trunks  
20 where the traffic in question is delivered.

21 Sprint PCS states its studies are based upon records extracted from different  
22 locations on Sprint's network that "serve Missouri". Sprint PCS does not identify or  
23 define the MSCs or towers "serving Missouri" from which it decided to select records.

1 Sprint PCS has the ability to transport traffic from facilities that do not "serve Missouri",  
2 and route this traffic to its facilities that do "serve Missouri". As noted before, the  
3 evidence indicates that Sprint PCS traffic originating on facilities that do not serve  
4 Missouri is terminating to Chariton Valley and Northeast on the SBC trunks. Sprint PCS  
5 has not included that traffic in its study. Sprint PCS should not have limited its study  
6 only to traffic originating on facilities that serve Missouri. It appears Sprint PCS has  
7 excluded from its study the traffic that is most likely to be interMTA traffic.

8 **Reopening of Record**

9 **Q. Page 3 of Cingular witness Brown's rebuttal testimony suggests the**  
10 **Commission's interest in the interMTA/intraMTA traffic proportions is not a**  
11 **sufficient cause for the Commission to reopen the record. What is your response?**

12 A. This suggestion has no place at this time. The Order reopening the record was  
13 dated June 3, 2003. If a wireless carrier had a basis to contest the Commission's Order  
14 reopening the record, it should have been filed then, not now.

15 The Wireless Carriers and SBC sent the traffic in the absence of agreement with  
16 the MITG companies, in violation of Commission Orders and interconnection  
17 agreements. Customarily such agreements contain traffic factors. As there were no  
18 agreements, there were no approved factors. The Commission ordered the record  
19 reopened in order to deal with this situation, as the Commission believed it needed this  
20 information in order to decide this case after the initial hearing conducted in the summer  
21 of 2002.

22 **Burden of Proof/Lack of Call Records**

1 **Q. What is your response to wireless witnesses' suggestion that the**  
2 **Complainants should be required to prove traffic jurisdiction by call records**  
3 **containing call detail establishing wireless caller tower location?**

4 A. I disagree. This suggestion is an attempt to penalize the MITG companies for the  
5 actions of the wireless carriers. The wireless carriers are the only entities with the  
6 capability of creating call records containing originating cell tower locations. They did  
7 not capture or preserve this call detail. The wireless carriers cannot in good faith suggest  
8 we should be required to produce call detail that they have made it impossible to produce.

9 **Q. Have the wireless carriers admitted that they have not retained the 1998-**  
10 **2001 call detail necessary to conduct an analysis based upon the records of the**  
11 **wireless carriers?**

12 A. Yes. The wireless carriers' have stated this in their testimony. Also, we have  
13 asked the wireless carriers several times in discovery and prior testimony in this  
14 proceeding, whether they possess the necessary information. The following summarizes  
15 the information and evidence in this regard:

16 Cingular

17 At the prior hearing, on August 2, 2002, Tr. 1036, Mr. Brown testified that in his  
18 opinion no carrier would have any records that could identify the traffic in dispute in this  
19 case as interMTA versus intraMTA traffic.

20 In its response to MITG data requests prior to the August, 2002 hearing, Cingular  
21 stated it did not record sufficient information to distinguish between interMTA and  
22 intraMTA traffic.



1 In its response to a MITG data request made in December 2003, Cingular  
2 indicated that since 1996 it has recorded the originating cell tower identification. This  
3 information resides in Cingular switches for less than 48 hours, then is downloaded to its  
4 billing system, then transferred to an electronic data warehouse where it is not readily  
5 retrievable. Cingular failed to produce any records.

6 US Cellular

7 US Cellular witness Naumann, at page 2 of his present rebuttal testimony, stated  
8 that US Cellular does not measure whether traffic originates inside or outside of the MTA  
9 in which calls terminate.

10 In its December 2003, answers to MITG data requests, US Cellular stated its end  
11 user billing system does make records identifying the location of the caller by originating  
12 tower identification, but that these records are only maintained for 13 months and then  
13 discarded.

14 Sprint PCS

15 At the prior hearing, on August 8, 2002, TR. 1063 - 1064, William Pruitt testified.  
16 Sprint PCS does not have call records distinguishing between interMTA and intraMTA  
17 traffic.

18 In its November 2003, response to MITG data request, Sprint PCS stated it  
19 possessed no call detail for the 1998-2001 traffic in dispute.

20 In Sprint PCS witness Canfield's rebuttal testimony for this phase of the case, at  
21 page 4 he states that as the originating wireless carrier Sprint PCS does not maintain such  
22 call detail records, therefore Sprint PCS has no records for the traffic in dispute.

23 T-Mobile/Western Wireless/Aerial

1 At the prior hearing, on August 6, 2002, TR. 768, Greg Tedesco testified that it  
2 was not possible for VoiceStream (T-Mobile) to differentiate interMTA and intraMTA  
3 traffic.

4 In its response to Staff data requests, T-Mobile stated its switch does not record in  
5 the call detail record the originating cell site or originating cell site sector for traffic sent  
6 to Complainants' end users.

7 In its response to MITG data requests in December 2003, Western Wireless stated  
8 it has never created or maintained records showing the originating tower identification or  
9 originating caller location.

10 In its response to MITG data requests in December 2003, Aerial stated it has  
11 never created or maintained records showing the originating tower identification or  
12 originating caller location.

13 T-Mobile witness Goldstein, at page 3 of his rebuttal testimony, answers a  
14 question which assumes there is no originating call data identifying the point of  
15 origination of a wireless call.

16 Western Wireless witness Williams, at page 3 of his rebuttal testimony, answers a  
17 question which assumes there is no originating call data identifying the point of  
18 origination of a wireless call.

19 **Q. Was SBC able to provide any call detail for this traffic?**

20 A. No. We also asked SBC for traffic information pertinent to the call jurisdiction.  
21 SBC stated it had no such information.

22 **Prior Negotiations**

1   **Q.     A common theme in the Wireless Carriers' rebuttal testimonies appears to**  
2   **be that this case should not go forward because the MITG companies are guilty of**  
3   **improper negotiations. What is your response?**

4   A.     I disagree. This is the same position these same wireless carriers previously  
5   stated and which the Commission has rejected. In its February 8, 2001 Report and Order  
6   in TT-2001-139 the Commission specifically decided that neither the small ILECs nor the  
7   wireless carriers were guilty of bad faith in their negotiations:

8           "Each side in this matter contends that the other side has not been willing to enter  
9           into good-faith negotiations leading to interconnection agreements. Having  
10          considered the evidence and testimony offered on this point, the Commission  
11          concludes that neither side has been willing to make the compromises necessary  
12          for reaching an agreement."

13  
14   **Q.     In the exchange of letters that took place between the MITG companies and**  
15   **the Wireless Carriers in the years preceding this hearing, what were the positions**  
16   **that prevented an agreement?**

17   A.     The MITG companies wanted to negotiate the type of interconnection, billing  
18   records, the rate to be prospectively applied to terminating traffic, and payment for  
19   uncompensated traffic that had previously terminated. The wireless carriers did not want  
20   to negotiate the type of interconnection, billing records, or payment for past traffic. They  
21   also wanted the MITG companies to be responsible to pay for "return" traffic they were  
22   already being compensated for. There were never really any substantive negotiations,  
23   only a staking out of positions by letter. Neither side took the matter to arbitration.

1    **Q.     Cingular witness Brown testified that the MITG companies refuse to**  
2    **negotiate agreements with wireless carriers that do not connect directly. Is this**  
3    **accurate?**

4    A.     Not quite. Mr. Brown's testimony would have been more accurate if he had  
5    mentioned that the MITG companies have been negotiating based upon an indirect  
6    interconnection, even though they believe they are not legally compelled to do so.

7           In the past exchange of letters we requested direct connections. The wireless  
8    carriers in their letters requested indirect connections, which they already had and over  
9    which the traffic was already terminating. Alma, Choctaw, MoKan, and Mid-Missouri  
10   have Wireless Termination Service Tariffs, which are structured upon indirect  
11   interconnection. Since October of 2003 the MITG companies have agreed to negotiate  
12   traffic termination agreements structured also upon indirect interconnections, but the  
13   negotiations have not yet resulted in agreements.

14   **Lack of Agreements**

15   **Q.     The Commission tried to provide incentive for the wireless carriers to**  
16   **complete the federal agreement process. Has the Commission found its efforts were**  
17   **successful?**

18   A.     No, the Commission has found its efforts were unsuccessful. In its February 8,  
19   2001 Order in TT-2001-139 approving Wireless Termination Tariffs, the Commission  
20   stated:

21           "Because the wireless-originated traffic continues to be terminated to subscribers  
22           of the small LECs at no extra cost to the CMRS carriers, there is not incentive for  
23           those carriers to enter into agreements with the small LECs. Since the

1 implementation of SWBT's revised tariff in February 1998, not a single such  
2 termination compensation agreement has been made between a CMRS carrier and  
3 a small LEC."  
4

5 **Q. Has the Commission decided whether state tariffs can be applied in the**  
6 **absence of an approved agreement?**

7 A. Yes. In its Order approving the wireless termination service tariffs, the  
8 Commission found that reciprocal compensation is required only of interconnection  
9 agreements, not state tariffs, and that the application of state tariffs would be the  
10 incentive for wireless carriers to complete the agreement process:

11 "Thus, it is apparent from the Act that reciprocal compensation arrangements are  
12 a mandatory feature of agreements between the CMRS carriers and the small  
13 LECs. However, the record shows that at present there are no such agreements  
14 between the parties to this case. The Act does not state that reciprocal  
15 compensation is a necessary component of the tariffs of LECs or ILECs.  
16 Therefore, the Commission concludes that Section 251(b)(5) of the Act simply  
17 does not apply to the proposed tariffs herein at issue. For the same reason, the  
18 Commission concludes that the proposed tariffs are not unlawful under Section  
19 251(b)(5) of the Act. The Act obligates the Filing companies to negotiate  
20 interconnection agreements, which must include reciprocal compensation  
21 arrangements for local traffic; where agreement cannot be reached through  
22 negotiation, the Filing Companies are subject to mandatory arbitration under the  
23 Act. Presumably, if there are aspects of these tariffs which the CMRS carriers do  
24 not like, they will take advantage of these provisions of the Act."  
25  
26  
27

1 **Q. Did the Courts agree with the Commission's analysis?**

2 A. Yes. The wireless carriers appealed the Commission's Order in the Mark Twain  
3 Wireless Termination Service case. The Circuit Court affirmed, agreeing with the  
4 Commission. The Missouri Court of Appeals in its April 29, 2003 Opinion, 112 S.W.3<sup>rd</sup>  
5 20, 25-26, affirmed the Commission's interpretation placing the burden of obtaining  
6 reciprocal compensation via an approved interconnection agreement upon the wireless  
7 carriers:

8 "In Points I and II of this appeal, the wireless companies contend the Act provides  
9 the exclusive procedure by which the rural carriers can seek compensation for  
10 terminating telephone traffic....The Act requires "local exchange carriers"—such  
11 as the rural carriers—to negotiate in good faith and establish compensation  
12 arrangements for the termination of traffic, but it does not impose the same  
13 obligation on wireless carriers....The Act does not provide a procedure by which  
14 the wireless carriers can be compelled to initiate or negotiate compensation  
15 arrangement with local exchange carriers.... The wireless companies have failed  
16 to follow prior Commission orders to establish agreements with the rural carriers  
17 before sending wireless calls to their exchanges....The Commission cannot allow  
18 the wireless calls to continue terminating for free because this is potentially  
19 confiscatory...The tariffs reasonably fill a void in the law where the wireless  
20 companies routinely circumvent payment to the rural carriers by calculated  
21 inaction."  
22

23 **Q. Is it appropriate to place the risk of lack of agreements with the MITG**  
24 **companies?**

25 A. No. As the Commission and Courts indicate, this risk is to be visited upon the  
26 wireless carriers. The MITG companies cannot compel agreements. Wireless carriers

1 are not required to negotiate based upon our request, as we are required to negotiate if  
2 they request. If we cannot obtain agreements, and the wireless carriers can continue to  
3 terminate traffic without paying compensation, the wireless carriers will have no  
4 incentive to start or complete the federal agreement process.

5 The burden to obtain reciprocal compensation has been placed upon the wireless  
6 carriers by the 1996 Act. If they did not like continued application of state tariffs, which  
7 was the compensation then in place for Complainants, it was their responsibility to  
8 request interconnection and complete the process, as the Commission and the Court of  
9 Appeals have decided.

10 **Q. Do you agree with Cingular witness Brown's suggestion that the MITG**  
11 **complainants are asking the Commission to interfere with the Act's Section 251**  
12 **process?**

13 **A.** No, this is incorrect. We do not have the right or the power to interfere with that  
14 process. The Commission and the Courts of Missouri have held that wireless carriers are  
15 in control of that process, not the MITG companies.

16 The wireless carriers once again try to avoid the application of state tariffs by  
17 claiming the interconnection agreement procedure is exclusive, and then failing to  
18 complete that very procedure. This is the same strategy the wireless carriers have  
19 utilized since 1998. This is continued resort to the same type of "calculated inaction" that  
20 the Commission and Courts rejected.

21 **MTA's as Local**

22 **Q. In their rebuttal testimony the wireless carriers and SBC repeat their**  
23 **contention that the MTA was established as the wireless local service area for**

1 **compensation purposes, even if there is no reciprocal compensation agreement. Do**  
2 **you agree that was the FCC's intention when it established the MTAs?**

3 A. No. The MITG maintains the MTA is local for purposes of applying reciprocal  
4 compensation, but until there is an approved agreement reciprocal compensation does not  
5 apply. Paragraph 1036 of the FCC August 8, 1996 Interconnection Order stated:

6  
7 "On the other hand, in light of this Commission's exclusive authority to define the  
8 authorized license areas of wireless carriers, we will define the local service area  
9 for calls to or from a CMRS network *for the purpose of applying reciprocal*  
10 *compensation obligations under section 251(b)(5).*" (emphasis added)  
11

12 In order to obtain reciprocal compensation, it is necessary for the wireless carriers to  
13 complete the federal interconnection agreement process. This is what the Commission  
14 decided in its Mark Twain Order, and what the Court of Appeals decided in affirming  
15 that Order.

16 **Q. If the MTA was local without an approved agreement, why did the wireless**  
17 **carriers obtain agreements with SBC?**

18 A. That is my point. If the wireless carrier position were accurate, they would not  
19 have needed agreements with SBC in order to have reciprocal compensation with SBC.  
20 Their action in completing agreements with SBC to obtain reciprocal compensation for  
21 intraMTA calls to SBC is inconsistent with their claim that they are entitled to reciprocal  
22 compensation for intraMTA calls to the MITG companies without approved agreements.  
23  
24



1    **State Tariffs, Retroactivity**

2    **Q.     Wireless Carrier rebuttal finds fault with the MITG companies' failure to**  
3    **avail themselves of the "Wireless Termination Service Tariff remedy". Do you**  
4    **agree with this criticism?**

5    A.     No. Missouri tariffs cannot be applied retroactively. Contrary to this suggestion,  
6    the Wireless Termination Service Tariffs (WTT) are not an available remedy for the  
7    traffic in dispute in this case.

8           Alma, MoKan and Choctaw filed their WTTs around August of 2000, after over  
9    two years of uncompensated wireless traffic. The wireless carriers opposed those tariffs.  
10   The tariffs were not approved and effective until February of 2001. Mid-Missouri did not  
11   file its WTT until after the litigation was over. Northeast and Chariton Valley have  
12   chosen not to file WTTs until this case is decided.

13           So, for each MITG company there is a period of at least three years prior to the  
14   WTT in which the WTT could not have been a "remedy".

15   **Q.     Mr. Brown and other Respondents accuse the MITG of attempting to apply**  
16   **their access tariffs retroactively. Is that what the MITG companies are asking?**

17   A.     No. For the period in dispute, in which no wireless termination service tariffs  
18   were in effect, all of the MITG companies' access tariffs were in effect. The MITG is  
19   not trying to apply access tariffs to traffic that terminated prior to the access tariffs'  
20   effective dates. Access tariffs were in place long before February 5, 1998, and have  
21   continued in effect to the present. We seek to have the access tariffs, in effect when the  
22   traffic terminated, applied to that traffic.

1    **Q.     If the MITG access tariffs are not applied, and Wireless Termination Tariffs**  
2    **cannot be retroactively applied, are interconnection agreements an available**  
3    **solution to the problem of past uncompensated traffic?**

4    A.     I am not aware of any instances where the Commission has arbitrated  
5    compensation for traffic terminated prior to the effective date of an agreement. Given  
6    the time constraints involved in these arbitrations, typically the Commission is seeking to  
7    reduce, not expand, the issues arbitrated. I am not confident that the issues associated  
8    with past uncompensated traffic can be resolved in the federal agreement process.

9    **Q.     If the Commission fails to apply access to the uncompensated traffic**  
10   **terminated prior to a WTT, do you believe that will be likely to stimulate**  
11   **agreements?**

12   A.     No. It would not stimulate the wireless carriers to complete agreements. Such a  
13   ruling would provide the wireless carrier with the benefits of their own "calculated  
14   inaction", which would not stimulate agreements.

15   **SBC's Request to Terminate Secondary Liability**

16   **Q.     In its rebuttal, SBC has suggested to the Commission that it be relieved of its**  
17   **secondary liability. Do you agree with this suggestion?**

18   A.     No. SBC should not be relieved of any liability until this dispute is finally  
19   resolved. The majority of traffic in dispute was terminated when access tariffs were the  
20   only available compensation. This traffic was terminated in violation of the Commission  
21   Order establishing secondary liability, as it terminated in the absence of agreement with  
22   the MITG companies. SBC is the access customer under the MITG access tariff. The

1 wireless carriers have not become access customers under the MITG access tariff. The  
2 MITG believes SBC should be liable for this traffic.

3 **Q. What is there for SBC to be liable to the MITG companies for other than**  
4 **access compensation for the traffic terminated prior to WTT, and in the absence of**  
5 **approved agreements?**

6 A. Nothing that I am aware of.

7 **Q. Has SBC incorporated indemnity rights in its interconnection agreements to**  
8 **protect it from liability?**

9 A. Yes. In its interconnection agreements SBC has required language that provides  
10 SBC will be indemnified by the wireless carriers from any charges rendered by a small  
11 ILEC for traffic terminated in the absence of a consummated interconnection agreement.  
12 SBC has not need to be indemnified unless SBC pays the MITG companies.

13 **Q. Will making SBC liable for access compensation financially harm SBC?**

14 A. No, SBC has indemnity rights against the wireless carriers and can recover its  
15 payments from them.

16 **Q. Do you see any event that should allow SBC to be released from liability?**

17 A. Yes. In keeping with the prior Commission Order, the event that should relieve  
18 SBC of its liability for wireless traffic is the approval of an federal agreement that does  
19 not make SBC liable for this traffic.

20 **Q. Does this conclude your surrebuttal?**

21 A. Yes.

**Missouri Public Service Commission**  
**Case No. TC-2002-57**

**InterMTA Percent Recommendations**

	Chariton Valley			Mid- Missouri			Northeast Missouri		
<b>Wireless Providers</b>	Complainant	Staff	Wireless	Complainant	Staff	Wireless	Complainant	Staff	Wireless
Cingular	41%	36%	N/A (4)	61%	63%	N/A (4)	60%	32%	N/A (4)
Sprint PCS and affiliates	44%	41%	12%	N/A (1)	N/A (1)	44%	87%	38%	11%
US Cellular	100%	33%	12%	N/A (1)	N/A (1)	N/A (1)	100%	26%	12%
T- Mobile	73%	41%	N/A (3)	N/A (1)	N/A (1)	N/A (3)	100%	38%	N/A (3)
Western	73%	71%	N/A (3)	N/A (1)	N/A (1)	N/A (3)	N/A (2)	82%	N/A (3)

(1) Indicates there is no complaint between the Complainant and the wireless provider

(2) At one time, T-Mobile and Western were affiliates.

(3) T-Mobile and Western Wireless have no recommendations, as they have testified negotiations are the proper way to arrive at a factor.

(4) Cingular has neither presented a traffic analysis, nor suggested any factor by another method.

**REVISED SCHEDULE 2**

**HIGHLY CONFIDENTIAL**

(Schedule is attached under separate cover)

**REVISED SCHEDULE 3**

**HIGHLY CONFIDENTIAL**

(Schedule is attached under separate cover)

**REVISED SCHEDULE 4**

**HIGHLY CONFIDENTIAL**

(Schedule is attached under separate cover)