

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

FILED

JUL 12 2002

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.)

**SPRINT MISSOURI, INC. AND SPRINT SPECTRUM L.P. D/B/A SPRINT PCS
PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

COME NOW Sprint Missouri, Inc. ("SprintMO") and Sprint Spectrum L.P. d/b/a/ Sprint PCS ("Sprint PCS") (collectively "Sprint"), and hereby provides the following Proposed Finding of Facts and Conclusions of Law:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. The Commission found that it has jurisdiction over the issues addressed in this matter pursuant to Sections 386.020(51), (52) and (53), 386.250.2 and 386.390.1 R.S.MO. (Order Regarding Subject Matter Jurisdiction, February 14, 2002).

2. Each petitioner is a local exchange carrier as that term is defined by 47 U.S.C. 153(26) and Section 386.020(30) and an incumbent local exchange carrier as that term is defined at 47 U.S.C. 251(h).

3. With the exception of Southwestern Bell Telephone Company (SWBT) and SprintMO, each respondent is a CMRS provider as defined by the Federal Communications Commission.

4. Respondent SWBT and SprintMO are incumbent local exchange carriers as that term is defined at 47 U.S.C. §251(h) and both are certified to offer local exchange telecommunications services in Missouri.

5. Respondent Sprint Spectrum L.P. does business in Missouri under the name Sprint PCS.

6. This matter relates to wireless to landline calls and wireless carriers -- carriers that the Commission do not regulate. [Section 386.020(53)(c)]. Consequently, FCC regulations generally apply in this case.

7. Section 251(b)(5) of the Federal Act and FCC Rule 51.703 require local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of "telecommunications traffic."

8. FCC Rule 51.701(b) defines "telecommunications traffic" between a local exchange carrier and a CMRS provider to be traffic that 'at the beginning of the call, originates and terminates within the same Major Trading Area as defined in §24.202 of this chapter.' Therefore, intraMTA is telecommunications traffic that is subject to reciprocal compensation.

9. The Missouri Public Service Commission has acknowledged and followed the FCC rulings that intraMTA traffic is local traffic. Case No TT-99-428. The Iowa Commission also reached a similar conclusion in *In Re: Exchange of Transit Traffic, Order Affirming Proposed Decision and Order*, Docket No. SPU-00-7 et al., before the State of Iowa, Department of Commerce Utilities Board.

10. Sections 47 U.S.C 251(a)(1) and 47 C.F.R 51.100 establish that LECs have a duty to interconnect either directly or indirectly with any telecommunications carrier. The FCC concluded in the First Report and Order "that telecommunications carriers should be permitted to provide interconnection pursuant to 251(a) either directly or indirectly, based upon their most efficient technical and economic choices."

11. SprintMO has 80 exchanges in Missouri; however, SprintMO does not have a direct connection with every wireless carrier in every exchange. To establish a direct network connection with just the seven wireless carriers, parties to this complaint, would require 560 interconnections. To take this one step further, there are approximately 700 ILEC exchanges in Missouri which would require more than 4,900 direct interconnections for the seven wireless carriers in this complaint if direct interconnection with every exchange were the only viable option. It would be grossly inefficient and cost-prohibitive to require such a network configuration and contrary to the Telecommunications Act of 1996.

12. The FCC has ruled that intraMTA traffic will be subject to reciprocal compensation and 47 C.F.R. 51.701 has no exception to the reciprocal compensation based on whether or not a connection is indirect or direct. Therefore, reciprocal compensation is required for all intraMTA traffic whether the parties are directly or indirectly connected.

13. The reciprocal compensation rates appropriate for transport and termination of local telecommunications traffic are set out in 47 C.F.R. §51.705:

14. § 51.705 Incumbent LECs' rates for transport and termination.

(a) An Incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of:

- (1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§51.505 and 51.511;
- (2) Default proxies, as provided in §51.707¹; or
- (3) A bill-and-keep arrangement, as provided in §51.713.

15. 47 C.F.R. § 51.505(a) defines the pricing standard as TELRIC plus common costs. In general. The forward-looking economic cost of an element equals the sum of:

- (1) the total element long-run incremental cost of the element ...; and
- (2) a reasonable allocation of forward-looking common costs ...

47 C.F.R. § 51.505(b) defines TELRIC.

Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element ...

(1) Efficient network configuration. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration ...

(2) Forward-looking cost of capital. The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.

(4) Depreciation rates. The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

17. All parties agree that the originating party is responsible for paying any compensation due for the transiting and termination of an intraMTA call.

18. The Sprint PCS traffic subject to this Complaint is intraMTA traffic. When a Sprint PCS call originates from a cell site within a given MTA and is terminated within the same MTA, the call is routed from the Mobile Switching Center (MSC) to the appropriate LEC switch for delivery to the end-user or to a third party LEC.

1. The Eighth Circuit vacated the proxy rates in Iowa Utilities Board v. FCC, 219 F.3d 744, 757 (8th Cir.2000), but left the remainder of this rule intact.

19. When the LEC transits the CMRS intraMTA call it is fulfilling its obligation under the Federal Act and the FCC's rules to offer interconnection either directly or indirectly.

20. When a Sprint PCS call originates from a cell site in one MTA for delivery in another MTA, the call is routed from the MSC to a long distance providers' switch site. The long distance provider pays Petitioners' access charges and these calls are not subject to this complaint. Therefore, the Sprint PCS traffic in dispute is exclusively intraMTA traffic.

21. In February of 2001, the Commission approved Wireless Termination Service Tariffs for Petitioners, Alma, Choctaw and MoKan Dial.

22. Sprint PCS provided its current billing address in its Answers to the Complaint.

23. To the extent that Alma, Choctaw and MoKan Dial have billed Sprint PCS for charges under their respective Wireless Termination Service tariffs, Sprint PCS has paid all charges. Therefore, there are no amounts due and owing by Sprint PCS under a Wireless Termination Service tariff.

24. Chariton Valley, Modern and Northeast do not now have, nor have they ever had, an effective Wireless Termination Service tariff.

25. In the absence of an effective Wireless Termination Service tariff, Petitioners do not have a tariff applicable to CMRS' intraMTA traffic terminated in their service area. (Case No TT-99-428).

26. Any effort to establish a rate for traffic delivered prior to the date of the Commission's Final Order in this docket will constitute retroactive ratemaking.

27. There are no Wireless Respondents that are delivering traffic to SWBT pursuant to SWBT's Wireless Interconnection Tariff. All of Sprint PCS traffic is delivered pursuant to its interconnection agreement with SWBT.

28. After Sprint PCS secured an interconnection agreement with SWBT under which traffic could be delivered to Petitioners for termination, Sprint PCS notified Petitioners and requested a bill-and-keep reciprocal compensation arrangement. Petitioners responded that unless Sprint desired to establish a direct connection with Petitioners, there would be no basis upon which to establish reciprocal compensation. Sprint PCS has sought to secure a reciprocal compensation agreement several times thereafter. Neither Sprint PCS nor the Petitioners have sought to arbitrate the differences that arose concerning a reciprocal compensation agreement.

29. Sprint PCS has successfully negotiated interconnection agreements containing reciprocal compensation rates with other LECs in Missouri, both on a direct and indirect basis. These include:

Alltel	Indirect	\$0.01
CenturyTel	Indirect	\$0.0089
GTE/Verizon	Direct	\$0.001
Sprint Local	Direct	\$0.004891
SWBT	Direct	\$0.004
TDS-Orchard Farm	Indirect	\$0.019655
TDS-New London	Indirect	\$0.01954
TDS-Stoutland	Indirect	\$0.01476

30. Petitioners have offered the following non-reciprocal rates for a termination agreement:

Alma:	\$0.1801
Chariton Valley	\$0.1364
Choctaw	\$0.1266
Modern	\$0.1304
Northeast	\$0.1304
MoKan Dial	\$0.1177

The rates offered by Petitioners are on the average eight (8) times higher than the rates Sprint PCS voluntarily negotiated with other small carriers in Missouri.

31. Based on Petitioners' refusal to negotiate for reciprocal compensation rates consistent with the Federal Act and the FCC rules, Petitioners are barred from any recovery in this case.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class/electronic/facsimile mail, the 12th day of July, 2002.


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