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April 9, 2004

Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED
APR 09 2004

Missouri Public
Service Commission

Re: Case No. TC-2002-57

Dear Secretary:

Enclosed please find an original and eight (8) copies of *Position Statement of the Missouri Independent Telephone Group*.

Thank you for seeing that this is filed properly.

Sincerely,



Bryan D. Lade

Enc.

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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²

APR 09 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.)

**POSITION STATEMENT
OF THE MISSOURI INDEPENDENT TELEPHONE GROUP (MITG)**

Comes now the MITG Companies, and submit the following statement of position
with respect to the issues contained on the List of Issues, Order of Opening Statements,
Witnesses, and Cross Examination:

LIST OF ISSUES

I. Unopposed InterMTA Factors.

a. The interMTA factors listed below were negotiated and agreed to between
the respective parties and are not opposed by any party. Should the Commission adopt
these factors for the purpose of determining interMTA traffic in this Complaint case?

- | | |
|---|-----------------------|
| 1. Mid-Missouri Tel. Co. and Sprint PCS | Stipulated Factor 43% |
| 2. Alma Tel. Co and Sprint PCS | Stipulated Factor 10% |

- | | |
|--|------------------------|
| 3. MoKan Dial, Inc. and Sprint PCS | Stipulated Factor 0% |
| 4. Alma Tel. Co and Western Wireless | Stipulated Factor 2.5% |
| 5. MoKan Dial, Inc. and Western Wireless | Stipulated Factor 2.5% |

MITG Position:

Yes, the Commission should accept these factors. These factors have been affirmatively stipulated and agreed to between the listed MITG companies and the corresponding wireless carriers. No party has opposed these stipulations.

b. The interMTA factors listed below have been proposed by three Complainants and are not opposed by any party. Should the Commission adopt these factors for the purpose of determining interMTA traffic in this Complaint case?

- | | |
|-------------------------------------|-----------|
| 1. Alma Tel Co and Cingular | Factor 0% |
| 2. Alma Tel Co and US Cellular | Factor 0% |
| 3. Alma Tel Co and T-Mobile | Factor 0% |
| 4. Alma Tel Co and Western Wireless | Factor 0% |
| 5. Choctaw Tel Co and Cingular | Factor 0% |
| 6. Choctaw Tel Co and US Cellular | Factor 0% |
| 7. MoKan Dial Inc. and Cingular | Factor 0% |
| 8. MoKan Dial Inc. and US Cellular | Factor 0% |
| 9. MoKan Dial Inc. and T-Mobile | Factor 0% |

MITG Position:

Yes the Commission should accept these factors. The factors proposed are zero percent interMTA traffic between the listed MITG companies and the corresponding wireless carriers. The MITG companies proposed these factors due to the location of the particular MITG companies near the middle of their MTA, the relatively small traffic volumes involved, and the cost of performing call analyses. No party has opposed these zero factors.

II. Contested InterMTA Factors.

InterMTA factors have not been agreed to between the following Complainants and Respondent wireless carriers. The factors proposed by Complainants are opposed by Respondent wireless carriers and SBC Missouri. What factors should be adopted based upon the evidence for traffic between the following petitioners and wireless carrier respondents?

1. Mid-Missouri Tel. Co. and Cingular Wireless LLC
2. Chariton Valley Tel. Corp. and Cingular Wireless LLC
3. Northeast Missouri Rural Tel. Co. and Cingular Wireless LLC
4. Chariton Valley Tel Corp. and Sprint Spectrum LP d/b/a Sprint PCS
5. Northeast Missouri Rural Tel. Co. and Sprint Spectrum LP d/b/a Sprint PCS
6. Chariton Valley Tel Corp. and United States Cellular Corporation
7. Northeast Missouri Rural Tel. Co. and United States Cellular Corporation
8. Chariton Valley Tel. Corp. and T-Mobile USA, Inc.
9. Northeast Missouri Rural Tel. Co. and T-Mobile USA, Inc.

10. Chariton Valley Tel. Corp. and Western Wireless Corp.

11. Northeast Missouri Rural Tel. Co. and Western Wireless Corp.

MITG Position:

Yes, the Commission should adopt the factors placed into evidence by Chariton Valley, Mid-Missouri, and Northeast. Chariton Valley, Mid-Missouri, and Northeast have provided the only call analyses performed on the traffic period in dispute. No other party has attempted to provide any traffic analysis from the traffic period in dispute. The best and only evidence of interMTA and intraMTA traffic proportions from the traffic period in dispute has been provided by the MITG companies.

The wireless carriers and SBC did not preserve or produce any call detail providing interMTA or intraMTA call jurisdiction for any of the calls in dispute. With respect to US Cellular traffic, US Cellular has configured its facilities and systems to report a false Moberly originating number, which precludes Chariton Valley and Northeast from performing traffic analyses like those performed on the traffic of other wireless carriers. *In addition some of the US Cellular traffic was carried by an IXC,* making this traffic access traffic regardless of whether it is interMTA or intraMTA. The Commission should adopt the request of Chariton Valley and Northeast to presume all terminating US Cellular traffic is interMTA in jurisdiction, unless and until US Cellular provides call detail establishing otherwise.

The Commission should adopt the following factors:

1. Mid-Missouri Tel. Co. and Cingular Wireless LLC:

61 percent interMTA traffic.

2. Chariton Valley Tel. Corp. and Cingular Wireless LLC:

- 41 percent** interMTA traffic.
3. Northeast Missouri Rural Tel. Co. and Cingular Wireless LLC:
- 60 percent** interMTA traffic.
4. Chariton Valley Tel Corp. and Sprint Spectrum LP d/b/a Sprint PCS:
- 44 percent** interMTA traffic.
5. Northeast Missouri Rural Tel. Co. and Sprint Spectrum LP d/b/a Sprint PCS:
- 87 percent** interMTA traffic.
6. Chariton Valley Tel Corp. and United States Cellular Corporation:
- 100 percent** interMTA traffic.
7. Northeast Missouri Rural Tel. Co. and United States Cellular Corporation:
- 100 percent** interMTA traffic.
8. Chariton Valley Tel. Corp. and T-Mobile USA, Inc.:
- 73 percent** interMTA traffic.
9. Northeast Missouri Rural Tel. Co. and T-Mobile USA, Inc.:
- 100 percent** interMTA traffic.
10. Chariton Valley Tel. Corp. and Western Wireless Corp.:
- 73 percent** interMTA traffic.
11. Northeast Missouri Rural Tel. Co. and Western Wireless Corp.:
- 100 percent** interMTA traffic.

The factors concerning Cingular will not need to be adopted in the event the Motion to Suspend Procedural schedule is granted, and the Traffic Termination Agreements executed by the MITG and Cingular are approved by the Commission.

III. Burden of Proof.

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

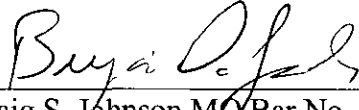
MITG Position:

The MITG companies have the burden of proof in a complaint case. The MITG companies have presented the only evidence of interMTA factors based upon the actual traffic in dispute. They have met their burden.

The wireless carriers and SBC failed to create, preserve, or produce the call information that the FCC's 1996 Interconnection Order recognized as available methods of determining wireless traffic jurisdiction. The call information recorded by the MITG companies' switches is the only call information in evidence with which to determine interMTA traffic proportions for the traffic in dispute.

SBC and the wireless carriers knew or should have known there could be compensation disputes for the traffic in question. Their failure to preserve and produce call information constitutes spoliation of evidence. Besides authorizing the Commission to infer that the traffic information of SBC and the wireless carriers would have been unfavorable to them, this spoliation also permits the Commission to reverse the burden of proof. See *Morris v J.C. Penny Life Ins. Co.* 895 SW2d 73, 77 (Mo App W.D. 1995); *Moore v. General Motors Corp.* 558 SW2d 720, 736 (Mo App E.D. 1977); *Craft v Vanderbilt Univ.*, 940 F. Supp. 1185 (M.D. Tenn. 1996). Such a reversal of the burden of proof would not be necessary if the Commission adopts the interMTA factors placed into evidence by Mid-Missouri, Chariton Valley, and Northeast as set forth under issue II above.

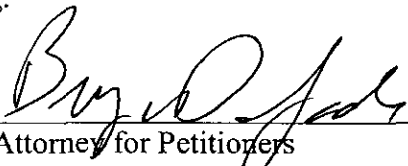
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was hand delivered or mailed, via U.S. Mail, postage prepaid, this 9th day of April, 2004, to all parties of record in this proceeding.


Attorney for Petitioners