

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

Northeast Missouri Rural Telephone Company )  
And Modern Telecommunications Company, )  
 )  
Petitioners, )  
 )  
v. )  
 )  
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. )

Case No. TC-2002-57, et al.  
consolidated.

**FILED**

JUL 12 2002

Missouri Public  
Service Commission

**POSITION STATEMENT OF ALLTEL COMMUNICATIONS, INC.**

In compliance with the January 22, 2002 Order Adopting Procedural Schedule in this case, ALLTEL Communications, Inc. ("ALLTEL") hereby states its position on the issues in this docket.

Whereas ALLTEL is a respondent in only two of the complaint cases consolidated in this proceeding, TC-2002-167, Chariton Valley Telephone Corporation ("Chariton Valley") and TC-2002-181, Choctaw Telephone Company ("Choctaw") (collectively "Complainants" for purposes herein), unless otherwise stated to the contrary, ALLTEL's responses below will apply only as to ALLTEL and not as to the other respondents.

## **ISSUE 1 – TRAFFIC SUBJECT TO A WIRELESS TERMINATION TARIFF**

**1. For each Wireless Carrier Respondent named in the respective complaints, have each of the Petitioners with Wireless Termination Service Tariffs established that there are any amounts due and owing for traffic that was delivered after the effective date of any of the Wireless Termination Service Tariffs?**

The Complainant with a Wireless Termination Service Tariff -- Choctaw -- has established a basis for charging ALLTEL for terminating intraMTA calls after the effective date of its Wireless Service Termination Tariff. ALLTEL has paid or is paying all invoices appropriately rendered under that tariff until such time as the order approving that tariff is reversed or vacated. Therefore, while ALLTEL does not dispute its liability under that tariff until it is reversed or vacated, Choctaw Telephone Company has not established that ALLTEL is in arrears on tariff payments.

## **ISSUE 2 – TRAFFIC NOT SUBJECT TO A WIRELESS TERMINATION TARIFF**

**2. In the absence of a wireless termination service tariff or an interconnection agreement, can Petitioners charge access rates for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks?**

No. In the absence of a wireless termination service tariff or an interconnection agreement, Complainants cannot charge access rates for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Complainants' respective networks.

This Commission has twice concluded that access charges are inappropriate for terminating intraMTA wireless traffic. *See In the Matter of Mid-Missouri Group's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2, Case No. TT-99-428 et al., Report and Order of January 27, 2000; In the Matter of Mid-Missouri Group's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2, Case No. TT-99-428 et al., Report and Order*

of April 9, 2002 (the "*Alma* decisions"). In addition, a number of authorities, including the Iowa Board of Public Utilities, the FCC and a federal district court have interpreted and applied federal law in exactly the same manner as the Commission's *Alma* decisions. See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC Docket 96-325; *In re: Exchange of Transit Traffic*, Iowa Utilities Board Docket No. SPU-00-7, *Order Affirming Proposed Decision and Order*, issued March 18, 2002; *Three Rivers Telephone Cooperative Inc. v. US West Communications, Inc.*, 125 F. Supp. 2d 417 (D. Mont. 2000); and *Mid-Rivers Telephone Cooperative Inc. v. Qwest Corp.*, CV 01-163-BLG-RFC, (D. Mont. Filed April 3, 2002). ALLTEL is not aware of any court or other regulatory body that has ruled in a manner inconsistent with the *Alma* decisions.

Complainants argue that their claim here is different because the wireless carriers have violated the Commission's Order in Case No. TT-97-524. However, ALLTEL does not acquire transport services from SWBT's wireless service tariff. Rather, it acquires its transport service from SWBT through a negotiated and approved Interconnection Agreement.

**3. For each Wireless Carrier Respondent named in the respective complaints, does the record support a finding that the traffic in dispute is intraMTA wireless traffic?**

Yes. As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their tariffs. Neither of the Complainants alleged in their amended complaints that the traffic being terminated to them through SWBT is other than intraMTA traffic. Moreover, the Complainant with a Wireless

Termination Service Tariff -- Choctaw -- has billed ALLTEL at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

**4. What compensation, if any, is due Petitioners without wireless termination service tariffs or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks after the date of an order by the Commission in this case?**

This case, as a complaint case, is not an appropriate vehicle for the Commission to establish a rate for the Complainants without wireless termination service tariffs or an interconnection agreement for intraMTA traffic described in issue No. 4. Complainants are currently being compensated under a *de facto* bill and keep insofar as they are retaining compensation they would otherwise be obligated to pay ALLTEL for terminating intraMTA traffic to ALLTEL, and they are collecting originating access on intraMTA wireless calls where they would otherwise be obligated to pay for transport and termination. The Complainants are not entitled to other compensation until they negotiate appropriate interconnection agreements with ALLTEL.

**5. What compensation, if any, is due Petitioners without wireless termination service tariffs or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks prior to the date of an order by the Commission in this case?**

This case, as a complaint case, is not an appropriate vehicle for the Commission to establish a rate for the Complainants without wireless termination service tariffs or an interconnection agreement for intraMTA traffic described in issue No. 5. Complainants are currently being compensated under a *de facto* bill and keep insofar as they are retaining compensation they would otherwise be obligated to pay ALLTEL for terminating intraMTA traffic to ALLTEL, and they are collecting originating access on

intraMTA wireless calls where they would otherwise be obligated to pay for transport and termination. The Complainants are not entitled to other compensation until they negotiate appropriate interconnection agreements with ALLTEL.

**6. For each Wireless Carrier Respondent named in the respective complaints, does the record support a finding that the traffic in dispute is interMTA traffic?**

No. As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their tariffs. Neither of the Complainants alleged in their amended complaints that the traffic being terminated to them through SWBT is other than intraMTA traffic. Moreover, the Complainant with a Wireless Termination Service Tariff -- Choctaw -- has billed ALLTEL at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

**7. To the extent that the record supports a finding that any of the traffic in dispute is interMTA traffic for each Wireless Respondent, what amount is due under Petitioners' applicable Intrastate Access Tariffs?**

Intrastate interMTA traffic is subject to the Complainants' intrastate access tariff rates.

**8. Is it appropriate to impose secondary liability on transiting carriers for the traffic in dispute?**

It is not appropriate for the Complainants to attempt to impose secondary liability on SWBT for traffic terminated to their customer and originated by ALLTEL because the Complainants are being compensated through a *de facto* bill and keep arrangement as described in response to Issue Nos. 4 and 5 above and because the Complainants have refused to engage in good faith negotiations to establish interconnection agreements directly with ALLTEL.

**9. Does the record support a finding that Petitioners are barred from collecting compensation for traffic in dispute under the principles of estoppel, waiver, or any other affirmative defense pled by any of the Wireless Carrier Respondents?**

Yes. Because the Complainants have refused to negotiate in good faith for an appropriate interconnection agreement, they should be estopped from making any claim based on the absence of an interconnection agreement. Moreover, because Complainants are already receiving compensation through the *de facto* bill and keep arrangement, they should be estopped from seeking additional compensation.

**10. Are Petitioners obligated to negotiate interconnection agreements with wireless carriers on an indirect basis that provide for reciprocal compensation for traffic exchanged between their respective networks through a transiting carrier?**

Yes. The interconnection obligations of TA96 do not distinguish between direct interconnection and indirect interconnection. TA96 defines the very first duty of all telecommunications carriers as the duty "to interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1) (emphasis added). Section 251(b)(5) obligates local exchange carriers to establish reciprocal compensation, and Section 251(c)(1) requires local exchange carriers to engage in good faith negotiations to establish those arrangements. Nothing in TA96 or the FCC's rules requires wireless carriers to directly interconnect as a prerequisite to negotiating an interconnection agreement.

**11. What, if any, relevance do any of the terms and conditions of Southwestern Bell Telephone Company's Wireless Interconnection Tariff (PSC Mo. No. 40) have in connection with the determination of any of the issues in this proceeding?**

The terms and conditions of SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40) have no relevance to ALLTEL because ALLTEL does not buy transport services from SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40).

**12. Who is responsible to pay compensation due, if any, to the Petitioners for intraMTA traffic terminated prior to the effective date of a Petitioner's Wireless Termination Tariff?**

Complainants have already recovered the compensation, if any, that is due for intraMTA traffic terminated prior to the effective date of a Complainant's Wireless Termination Service Tariff. Each Complainant has been compensated under a *de facto* bill and keep insofar as it has retained compensation it would otherwise be obligated to pay ALLTEL for terminating intraMTA traffic to ALLTEL, and each Complainant is collecting originating access on intraMTA wireless calls where it would otherwise be obligated to pay for transport and termination. Even if the Commission determines that Complainants have not been compensated or have not been adequately compensated through the *de facto* bill and keep arrangement, Complainants should be estopped from seeking compensation by their refusal to engage in good faith negotiations for appropriate interconnection agreements.

**13. Should SWBT block uncompensated wireless traffic for which it serves as a transiting carrier?**

No. Even assuming the existence of uncompensated traffic, SWBT should not block traffic for which it serves as a transiting carrier.

Respectfully submitted,



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Larry W. Dority

Missouri Bar No. 25617

Fischer & Dority, P.C.

101 Madison, Suite 400

Jefferson City, MO 65101

(573) 636-6758

(573) 636-0383 (fax)

lwdority@sprintmail.com

**Attorneys for ALLTEL Communications,  
Inc.**

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, First Class mail, postage prepaid, this 12th day of July 2002, to:

Dana K. Joyce, General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City MO 65102

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City MO 65102

Paul G. Lane  
Leo Bub  
Southwestern Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis MO 63101

Craig S. Johnson  
Lisa Chase and Joseph M. Page  
Andereck Evans Milne Peace & Johnson LLC  
P.O. Box 1438  
Jefferson City MO 65102

Robert Vitanza  
Regional General Counsel-Central  
Cingular Wireless  
17330 Preston Road, Suite 100A  
Dallas TX 75252

Brian T. O'Connor  
American Portable Telecom Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue WA 98006-1350

Mark P. Johnson  
Sonnenschein Nath & Rosenthal  
4520 main Street, Suite 1100  
Kansas City MO 64111

Monica Barone  
6160 Sprint Parkway, 4<sup>th</sup> Floor  
MS: KSOPHI0414  
Overland Park KS 66251

Lisa Creighton Hendricks  
Sprint - Legal and Exterman Affairs  
6450 Sprint Parkway  
MS: KSOPHN0212-2A253  
Overland Park KS 66251

Joseph D. Murphy  
Meyer Capel PC  
306 West Church Street  
Champaign IL 61820

Andrew T. Spence  
101 South Tyron Street  
Suite 4000  
Charlotte NC 28280-4000

Paul S. DeFord  
Lathrop & Gage LC  
2345 Grand Blvd., Suite 2800  
Kansas City MO 64108

John A. Kise, Jr.  
Illinois Cellular & Communications Inc.  
1721 Quail Court  
Woodstock IL 60098

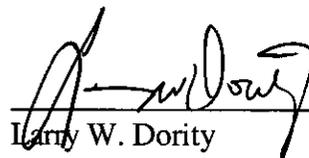
Paul H. Gardner  
Goeller, Gardner and Feather  
131 High Street  
Jefferson City, MO 65101

Nextel Communications  
Legal Department  
1768 Old Meadow Road  
McLean VA 22102

James F. Mauze`  
Thomas E. Pulliam  
Ottsen, Mauze` Leggat & Blez LC  
112 S. Hanley Road  
St. Louis, MO 63105-3418

Richard S. Brownlee III  
Hendren and Andrae LLC  
P.O. Box 1069  
Jefferson City MO 65102

Larry Krajci  
ALLTEL Communications Inc.  
One Allied Drive  
Little Rock AR 72202



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Larry W. Dority