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July 12, 2002

Secretary of PSC
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P. O. Box 360
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FILED⁴

JUL 12 2002

Re: Consolidated Case No. TC-2002-57

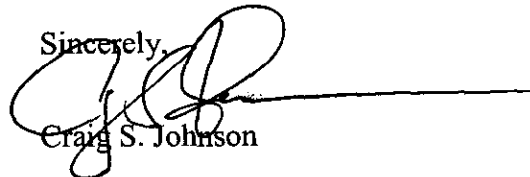
Dear Secretary:

Missouri Public
Service Commission

Enclosed for filing please find an original and eight (8) copies each of Petitioner MITG's Position Statement With Respect to the List of Issues, and the MITG's Proposed Findings of Fact and Conclusions of Law. In accordance with the Scheduling Order, copies of both have been provided to all attorneys of record, and electronic copies are also being provided to the assigned Regulatory Law Judge.

Thank you for seeing this filed.

Sincerely,



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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED⁴

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.)

Position Statement on the List of Issues
by the Petitioners,
Missouri Independent Telephone Group

Comes now the Petitioners, the Missouri Independent Telephone Group (MITG) companies, and submit the following Statement of Position with respect to the Issues set forth in the Issue List.

INTRODUCTION

A threshold issue that controls the need to address other issues is whether the traffic in dispute is inter-MTA or intra-MTA traffic. It is undisputed that inter-MTA traffic is the subject of access compensation. The disputes in this case center upon the Respondents' assumption that the traffic in question is intra-MTA traffic (delivered in the absence of any interconnection agreements with the MITG).

This Commission should apply the presumption that traffic Respondents fail to prove is intra-MTA traffic will be determined to be inter-MTA traffic subject to access compensation. In this way, effective tariffs will indisputably apply. SWBT will pay the MITG, and SWBT will be indemnified from the Wireless Carriers, as SWBT is entitled under either its tariff or its interconnection agreements.

Such a holding is justified. The traffic was delivered in the absence of an interconnection agreement with MITG companies. The traffic has been placed on a “common trunk” between SWBT and the MITG companies. It is intermingled with traffic of other carriers. Only the Respondents have the capability to provide call detail with sufficient information to determine the jurisdiction of the traffic.

Respondents have failed to provide this information. SWBT’s CTUSR report fails to specify whether any traffic is inter-MTA or intra-MTA. Respondents have failed to retain or produce such information, although requested in discovery.

Respondents should be responsible for their inability to provide call detail proving that any traffic at issue was intra-MTA traffic. The MITG companies should not be at risk for failure to produce call detail Respondents alone control.

Such a decision will provide the necessary incentive for obtaining agreements that to date have not occurred. Such a decision will provide the necessary incentive to improve record exchange. Such a decision will avoid the need to address the Commission’s prior orders in the SWBT Wireless Interconnection Service Tariff case (TT-97-524), the “Alma” access tariff case (TT- 99-428), and the “Mark Twain” Wireless Termination Service Tariff case (TT-2001-139). The MITG believes these prior decisions of the Commission are not reconcilable.

If instead the Commission determines that any of the traffic is intra-MTA traffic, the other issues need to be addressed. The ensuing position statement is intended only for any traffic the Commission determines is intra-MTA traffic.

In addressing these issues for intra-MTA traffic, the Commission will have to keep in mind two relationships—the wireless carrier/SWBT relationship, and the SWBT/MITG relationship—as they existed at different periods of time.

With respect to the wireless carrier/SWBT relationship, some of the traffic was delivered pursuant to SWBT's Wireless Interconnection Service Tariff, and some was delivered pursuant to different wireless carrier/SWBT Interconnection Agreements. Respondents have failed to provide the MITG with reports differentiating this traffic. With respect to the tariff traffic, SWBT's Wireless Interconnection Service Tariff, effective February 5, 1998, this Commission directed that no wireless traffic should terminate to the MITG companies in the absence of an agreement between the wireless carrier and the MITG company. The Commission also ordered primary liability of the wireless carriers, secondary liability of SWBT, and provided indemnity rights to SWBT.

With respect to interconnection agreement traffic, the agreements between SWBT and wireless carriers contain similar provisions prohibiting the wireless carriers from delivering traffic destined for the MITG companies in the absence of an agreement between the wireless carriers and MITG companies. These SWBT interconnection agreements also contain a provision indemnifying SWBT for payments made to the MITG companies. There is no secondary liability provision.

Neither SWBT nor the wireless carriers have complied with, or enforced, these provisions of tariff or approved agreements. All of the traffic at issue was delivered to the MITG companies in the absence of an approved agreement. None of the MITG companies have agreements with any of the Respondent Wireless Carriers. The termination of the traffic at issue was thus contrary to the terms of SWBT's tariff, and was contrary to SWBT's interconnection agreements.

A final consideration is whether the MITG company had a Wireless Termination Tariff in effect at the time the traffic was delivered. In February of 2001, Alma, Choctaw, and MoKan had Wireless Termination Tariff become effective, thereafter replacing the applicability of their access tariffs to the traffic at issue. These tariffs only apply to intra-MTA traffic. For the previous three year period between February 5, 1998 and February 2001, the only tariff of the MITG companies that could be applied to the traffic was their access tariff. Chariton Valley, Mid-Missouri, Modern, and Northeast did not file a Wireless Termination Tariff.

LIST OF ISSUES

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?

MITG Position

The Wireless Termination Tariffs only apply to intra-MTA traffic. If the traffic is presumed inter-MTA traffic, access compensation would apply to this traffic.

If any traffic is determined intra-MTA traffic, it has been established amounts are due under the Wireless Termination Tariffs. At the time of filing the complaints, almost none of the Respondent Wireless Carriers were paying invoices rendered by Alma, Choctaw, and MoKan pursuant to the Wireless Termination Tariff. Since filing of these complaints, many of the Respondents have paid. As the testimony of Oral Glasco and Don Stowell establishes, there are still unpaid invoices with respect to traffic terminated pursuant to this tariff.

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?

MITG Position

Yes. It is not disputed that inter-MTA traffic is subject to MITG access tariffs. Respondents have failed to provide call detail indicating any of the traffic was intra-MTA traffic. If traffic for which call detail is not provided is presumed to be inter-MTA traffic, this issue becomes moot.

Petitioners are entitled to apply their access tariffs to intra-MTA traffic terminated in the absence of an agreement. The traffic in question was terminated

in the absence of an agreement. This violated the terms of both SWBT's Tariff and SWBT interconnection agreements. As SWBT and the Wireless Carriers have failed to enforce their own tariffs and agreements, the traffic has terminated when the only applicable compensation mechanism was the MITG access tariffs.

Under the Telecommunications Act, access was the default compensation mechanism applicable to wireless traffic to the MITG companies. Access continues to apply until replaced by an approved reciprocal compensation agreement. In order to obtain reciprocal compensation with the MITG companies, the Wireless Carriers had to obtain approved interconnection agreements, as This Commission recognized in the SWBT Tariff case, and in the Mark Twain Wireless Termination Tariff case.

There is no regulatory difference between applying the Wireless Termination Tariffs of Alma, Choctaw, and MoKan, and applying the access tariffs of all MITG companies. Using the same logic the Commission used in approving Wireless Termination Tariffs in the Mark Twain case, this logic dictates the access tariffs can apply: Both of these tariffs are "in the nature of access tariffs". Such state tariffs do not have to apply reciprocal compensation rates as reciprocal compensation is a mandatory feature of interconnection agreements, not of tariffs. The provisions of the Act regarding reciprocal compensation do not apply to state tariffs. If the wireless carriers dislike application of state tariffs, they can compel reciprocal compensation.

For intra-MTA traffic SWBT transits to the MITG companies, access applies in the absence of a reciprocal compensation agreement. SWBT is the sole ILEC in

its own exchanges. The MITG companies are the sole ILECs in their exchanges. SWBT's role in carrying traffic destined for the MITG companies' exchanges is that of an IXC. SWBT has no right in either its IXC or ILEC capacities to negotiate the terms and conditions of reciprocal compensation for traffic terminating to the MITG company exchanges. The MITG companies are unaffected by the terms of agreements between SWBT and Wireless Carriers.

Under the Act, access does apply to traffic carried by an IXC. It is illogical for access to apply when AT&T and MCI are the carriers delivering the traffic, but for reciprocal compensation to apply when SWBT delivers the traffic. As ILECs, the MITG companies are not required to utilize an indirect interconnection for reciprocal compensation. The Act recognizes that direct physical interconnection of the wireless carriers to the MITG company facilities are the only basis upon which reciprocal compensation can be compelled. Stated another way, no ILEC is required to accept transit traffic.

Forcing the "transit" structure upon the MITG companies will eliminate their legitimate preference for negotiating reciprocal compensation constructed upon direct interconnection. SWBT, Verizon, and Sprint have had the opportunity to negotiate, and have negotiated, direct connections. Direct interconnection is superior in terms of measuring, recording, jurisdictionalizing, and billing for traffic. Direct connection is superior because it eliminates unidentified traffic that is prevalent with transiting carriers. Direct interconnection is superior in that each carrier is in charge of preventing the completion of traffic after compensation is not paid, instead of being forced to rely upon a potentially unreliable transiting carrier.

The MITG companies are entitled to negotiate and/or arbitrate their preference for direct interconnection.

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?

MITG Position

The Respondents have failed to provide satisfactory, industry standard, call detail information establishing that any of the traffic in dispute is intra-MTA. This failure has nothing to do with any act or omission of the MITG. Respondents' should bear the responsibility for lack of call detail.

As set forth in the MITG testimony, all of the MITG companies' exchanges, except Choctaw's Halltown exchange, are in the Kansas City LATA. Wireless carriers deliver their traffic to SWBT in the Kansas City LATA according to the NXXs that can be reached in the LATA by using SWBT. However, as the testimony of Gary Godfrey, William Biere, and David Jones sets forth, many of exchanges of the MITG for which terminating traffic has been reported by SWBT are not in the Kansas City MTA. Traffic originating in the Kansas City MTA and terminating to these exchanges is inter-MTA traffic. As testified by Don Stowell, Choctaw is also receiving inter-MTA traffic from Joplin.

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?

MITG Position

Access compensation is due. See answer to issue 2 above. If Respondents are dissatisfied with the application of tariffs—either wireless termination or access tariffs-- they can request, negotiate, and/or arbitrate agreements, as the Commission determined in the Mark Twain Terminating Wireless Tariff case.

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?

MITG Position

Access compensation is due. See answer to issue 2 above. If Respondents are dissatisfied with the application of tariffs—either wireless termination or access tariffs-- they can request, negotiate, and/or arbitrate agreements, as the Commission determined in the Mark Twain Terminating Wireless Tariff case.

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?

MITG Position

Yes. See the Introduction to this position statement. See the position regarding issue 3.

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?

MITG Position

The testimonies of the MITG witnesses contain undisputed uncompensated traffic quantities computed at the access tariff rates for traffic delivered prior to a Wireless Termination Tariff.

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

MITG Position

If access compensation is applied because the traffic is determined to be inter-MTA traffic, it is not necessary to address secondary liability. Under access, SWBT pays access, and is entitled indemnity from the wireless carriers.

If any traffic is determined to be intra-MTA traffic, as Petitioners have attempted to collect from the wireless carriers, it is appropriate to impose secondary liability upon SWBT. For such traffic terminated by SWBT pursuant to its Wireless Interconnection Tariff, the Commission has already ordered SWBT's secondary liability. SWBT's interconnection agreements contain the prohibition against the delivery of traffic in the absence of an agreement, and SWBT indemnity rights. These were the items that the Commission relied upon in imposing secondary liability under SWBT's tariff. There is no reason justifying different treatment for interconnection agreement traffic.

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?

MITG Position

No. The Commission has rejected this claim in the Alma Tariff proceeding, and in the Mark Twain Wireless Termination tariff proceeding. The MITG companies have acted in good faith in attempting to comply with the terms of Commission Orders. It is the responsibility of Respondents SWBT and the Wireless Carriers in delivering traffic without an approved agreement, in failing to enforce their own tariffs and agreements, and in failing to provide traffic jurisdiction information, that has resulted in this Complaint proceeding.

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?

MITG Position

This issue is irrelevant as the record demonstrates there is no such agreement. The issue of this case is what compensation applies to traffic delivered in the absence of any such agreement. The MITG companies have negotiated for direct interconnection agreements in good faith. See position regarding issue 2 above. The wireless carriers chose to continue to send traffic without an approved agreement rather than complete negotiations or arbitration.

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?

MITG Position

SWBT's CTUSRs do not distinguish between traffic given to SWBT pursuant to its PSC Mo No 40 tariff and traffic given to SWBT pursuant to

interconnection agreement. The terms and conditions of SWBT's PSC Mo No. 40 apply to all traffic given to SWBT pursuant to this tariff. Because there are no reciprocal compensation agreements to which the MITG companies are party, the wireless carriers are primarily liable to pay pursuant to MITG tariffs. MITG access tariffs applied until the Wireless Termination Tariffs were effective. SWBT is secondarily liable for this traffic, and is entitled indemnity from the Wireless Carriers.

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?

MITG Position

This issue is moot if the traffic is presumed to be inter-MTA traffic.

For intra-MTA traffic delivered pursuant to SWBT's Wireless Interconnection Service Tariff, as there was no reciprocal compensation agreement approved, the wireless carrier is primarily liable for access compensation, and SWBT is secondarily liable for access compensation. After an MITG company Wireless Termination Tariff was effective, that tariff applies.

For intra-MTA traffic delivered pursuant to an interconnection agreement to which the MITG companies were not party, SWBT is liable for access compensation, and is entitled to indemnity from wireless carriers whose interconnection agreements provide such indemnity rights.

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

MITG Position

For intra-MTA traffic delivered pursuant to the Wireless Termination Tariff of Alma, Choctaw, and MoKan, SWBT is obligated to perform such blocking service as the Commission Ordered in the Mark Twain Tariff proceeding.

The contrary provisions in SWBT's interconnection agreements stating that SWBT will not block the traffic delivered to the MITG companies even in the absence of an agreement are of no effect for the MITG companies, as they were not parties to such agreements. They do not supersede Commission Order.

For such traffic delivered with lack of compensation when no MITG company Wireless Termination Tariff is in effect, either SWBT must perform blocking services to block the non-paying carriers' traffic, or the MITG companies are entitled to disconnect the trunks of SWBT over which such uncompensated traffic is delivered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 12 day of July, 2002, to the following attorneys of record in this proceeding.



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

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.)

FILED⁴

JUL 12 2002

Missouri Public
Service Commission

REPORT AND ORDER

Issue Date:

Effective Date:

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REGULATORY LAW JUDGE: Kevin A. Thompson, Deputy Chief.

REPORT AND ORDER

Procedural History

1. On August 1, 2001, Petitioners Northeast Missouri Rural Telephone Company (Northeast) and its affiliate, Modern Telecommunications Company (Modern), filed their joint complaints against Respondent Southwestern Bell Telephone Company (SWBT), docketed as TC-2002-57.
2. On August 21, 2001 Petitioner Alma Telephone Company (Alma) filed its complaint against Respondent SWBT, docketed as TC-2002-113.
3. On August 21, 2001, Petitioner Mid-Missouri Telephone Company (Mid-Missouri) filed its complaint against Respondents SWBT, Southwestern Bell Mobile Systems, Sprint Spectrum LP, CMT Partners d/b/a Cellular One, and Ameritech Mobile Communications, Inc, docketed as TC-2002-114.
4. On September 29, 2001 in TC-2002-57, Petitioners Northeast and Modern filed a 1st Amended Complaint adding claims against Respondents Southwestern Bell Wireless d/b/a Cingular (Cingular), Voicestream Wireless (Voicestream), Western Wireless (Western), Aerial Communications, Inc. (Aerial), CMT Partners (CMT), Verizon Wireless, Sprint Spectrum LP, United States Cellular, and Ameritech Mobile Communications.
5. On October 2, 2001, Petitioner Chariton Valley Telephone Corporation (Chariton Valley) filed its complaints against Respondents SWBT, Southwestern Bell Mobile Systems, Alltel Wireless, Voicestream, Sprint Spectrum LP, Ameritech Mobile

Communications Inc., CMT Partners, United States Cellular Corporation, Aerial Communications Inc., Nextel of Texas, Sprint PCS, Cybertel Missouri Inc., and Northern Illinois Cellular, docketed as TC-2002-167.

6. On October 10, 2001, in TC-2002-113, Petitioner Alma filed a 1st Amended Complaint adding claims against Respondents Southwestern Bell Mobile Systems, Sprint Spectrum, LP, United States Cellular Corporation, and Western Wireless.

7. On October 11, 2001, Petitioner Choctaw Telephone Company (Choctaw) filed its complaint against Respondents Southwestern Bell Telephone Company, Sprint PCS, Southwestern Bell Mobile System, Alltel Mobile Communications Inc., AT&T Wireless, Nextel Communications, and United States Cellular Corp. docketed as TC-2002-181.

8. On October 11, 2001, Petitioner MoKan Dial Inc. (MoKan) filed its complaint against Respondents Sprint Missouri Inc., Southwestern Bell Telephone Company, Sprint PCS, Southwestern Bell Mobile System, Voicestream Wireless Inc., AT&T Wireless, United States Cellular Corp., Nextel of Texas, Verizon Wireless, and Ameritech Mobile Communications, docketed as TC-2002-182.

9. Kingdom Telephone Company also filed complaints against some of the Respondents, docketed as case number TC-2002-214, and consolidated into this proceeding.

10. On October 18, 2001, Alma Telephone Company filed a Motion for Leave to File 2nd Amended Complaint and it's 2nd Amended Complaint adding claims against Respondents Voice Stream, Aerial Communications, Inc., CMT Partners d/b/a Cellular One, Illinois Cellular Communications, and Ameritech Portable.

11. On October 18, 2001 the Commission entered an Order Denying SWBT's Motion to Dismiss in TC-2002-57.

12. On October 22, 2001 Petitioners Northeast, Modern, Alma, Mid-Missouri, Chariton Valley, Choctaw, and MoKan simultaneously filed motions to consolidate TC-2002-57, TC-2002-113, TC-2002-114, TC-2002-167, TC-2002-181, and TC-2002-182.

13. On October 31, 2001, the Commission granted Alma Telephone Company's request for leave to file its 2nd Amended Complaint.

14. On January 14, 2002 the Commission entered an Order Consolidating TC-2002-57, TC-2002-113, TC-2002-114, TC-2002-167, TC-2002-181, TC-2002-182, TC-2002-214, with TC-2002-57 being the lead case.

15. On January 18, 2002, Petitioner MoKan Dial, Inc. filed its 1st Amended Complaint adding claims against Respondents Western Wireless and Aerial Communications, Inc.

16. On January 18, 2002, Petitioner Mid-Missouri Telephone Company filed its 1st Amended Complaint adding claims against Respondent Verizon Wireless.

17. On January 18, 2002, Petitioner Chariton Valley Telephone Corporation filed its 1st Amended Complaint adding claims against Respondents Verizon Wireless and Western Wireless.

18. On January 18, 2002, Petitioner Alma Telephone Company filed its 3rd Amended Complaint adding claims against Respondent Verizon Wireless.

19. On January 22, 2002 the Commission entered an Order Adopting Procedural Schedule.

20. On February 14, 2002 the Commission entered an Order Regarding Jurisdiction denying Respondents' Motions to Dismiss based upon the Commission's alleged lack of subject matter jurisdiction.

21. On February 21, 2002 the Commission entered an Order Amending Procedural Schedule.

22. On April 16, 2002 a Notice of Dismissal of the claims of Kingdom Telephone Company against Alltel Missouri, Inc., Ameritech Mobile Communications Inc., AT&T Wireless Services Inc., Cellco Partnership & Cybertel Cellular Telephone Company d/b/a Verizon Wireless, Southwestern Bell Telephone Company, Southwestern Bell Wireless, d/b/a Cingular, Sprint Spectrum, LP, and United States Cellular Corporation was filed by Kingdom Telephone Company.

23. May 14, 2002 an Order Dismissing the claims of Kingdom Telephone Company against Western Wireless was entered.

24. On April 10, 2002 Petitioners filed direct testimony.

25. On June 11, 2002 Respondents, with exception of US Cellular, filed rebuttal testimony.

26. On June 26, 2002, the Commission dismissed Kingdom Telephone Company as a party from this case.

27. On June 28, 2002 a List of Issues, Order of Opening Statements, Witnesses, and Cross Examination was filed by the parties.

28. On July 2, 2002 Surrebuttal Testimony was filed.

29. On July 12, 2002 the parties filed position statements on the issues, and also filed proposed Findings of Fact and Conclusions of Law.

30. On August 5 through 9, 2002 an evidentiary hearing was had.

31. Pursuant to stipulations and dismissals the following Petitioners dismissed their claims against the following Respondents:

- a. MoKan's claims against Nextel;
- b. Choctaw's claims against Nextel; and
- c. Choctaw's claims against AT&T Wireless.

The Issues:

The parties submitted the following list of issues:

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?

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?

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?

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?

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?

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?

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?

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

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?

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?

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?

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?

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

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

1. This is the fourth proceeding in which the Commission has addressed a dispute between small rural ILECs, SWBT, and CMRS providers (Wireless Carriers) concerning compensation responsibilities for traffic originated by Wireless Carriers, delivered by the Wireless Carriers to SWBT for delivery to the small rural ILECs, and terminated on the small rural ILECs' systems. For brevity's sake, the traffic in dispute will be referred to as "such traffic".

2. Such traffic is passed between the wireless carriers and SWBT either pursuant to SWBT's Wireless Interconnection Tariff, or pursuant to negotiated interconnection agreements between the wireless carriers and SWBT that this Commission has approved. The small rural ILECs have not been party to these

agreements, their negotiation, or their approval. Both SWBT's tariff and the interconnection agreements address traffic destined for the small rural ILECs.

3. At the time of enactment of the Telecommunications Act of 1996, SWBT paid small ILECs terminating access on such traffic pursuant to its tariff. Interconnection Agreements for reciprocal compensation were introduced by the 1996 Act.

4. In TT-97-524, SWBT filed a modification to its Wireless Interconnection Service, PSC Mo No. 40. By these modifications SWBT chose to provide a "transiting" function where its service would end at the interconnection point SWBT had with other ILECs. The Commission approved this tariff with modifications that SWBT and the Wireless Carriers were not to send such traffic to the small rural ILECs until there was an agreement between the wireless carriers and the small rural ILECs for such traffic.

5. In its decision in TT-97-524, the Commission found that the applicability of access compensation to intra-MTA traffic delivered over an indirect interconnection via the collaboration of three carriers was an open question. The Commission contemplated that no such traffic would be delivered to Petitioners in the absence of an interconnection agreement. The Commission did not decide what compensation would apply to traffic delivered in the absence of such an agreement.

6. Interconnection Agreements between SWBT and the wireless carriers approved by this Commission also had contractual provisions addressing traffic to the small rural ILECs. These agreements also provided the wireless carriers and SWBT were not to send traffic to the small rural ILECs unless there was an agreement between the wireless carriers and the small rural ILECs for such traffic. These agreements also had provisions by which the wireless carriers are to indemnify SWBT for charges of the small

rural ILECs for termination of the traffic in the absence of an agreement between the wireless carriers and the small rural ILECs.

7. Despite these provision of SWBT's tariff and interconnection agreements, neither SWBT nor the wireless carriers enforced these provisions. In the absence of such agreements, Petitioners had no compensation vehicle with which to bill for such traffic other than their state access tariffs. Petitioners billed the wireless carriers, who failed to honor the bills. Petitioners requested SWBT honor its secondary liability obligation established in TT-97-524. SWBT refused. Petitioners requested SWBT to stop sending such traffic. SWBT refused. Petitioners attempted to intervene in interconnection agreement arbitration and approval proceedings to oppose SWBT's agreement with AT&T from addressing traffic to them, which was not allowed.

8. In TT-98-428, Petitioners filed a clarification to their access tariff intending to affirm that, until there was an agreement approved for this traffic, their access tariff applied. This Commission rejected such tariff on the ground that access compensation did not apply to intra-MTA traffic. The Commission ruling contemplated that reciprocal compensation via approved agreements between Petitioners and wireless carriers would be effectuated. The Commission Order failed to state what compensation would apply if, as has subsequently occurred, the traffic terminated in the absence of an approved agreement.

On review, the Cole County Circuit Court held that it was not unlawful for small ILECs to apply access tariffs to intra-MTA wireless traffic terminated to them in the absence of an interconnection agreement: The November 1, 2000 Judgment of the Cole County Circuit Court in Case No. 00CV323379 made the following conclusions of law:

27. The Commission's January 27, 2000 Report and Order is unlawful and unreasonable in the following respects:
28. This Court's prior ruling and the Commission's prior decisions establish an obligation upon wireless carriers and CLECs to establish interconnection agreements containing reciprocal compensation arrangements with Relators prior to sending traffic terminating to Relators.
29. This obligation is consistent with the Telecommunications Act of 1996, which requires carriers desiring interconnection under a reciprocal compensation arrangement instead of access charges to obtain an approved agreement. 47 USC 251(b)(5).
30. The Telecommunications Act of 1996 does not preclude Relators from collecting switched access compensation until an interconnection agreement containing reciprocal compensation replaces switched access. Switched access rates may lawfully be applied prior to approval of an interconnection agreement.
33. The Commission's actions in approving interconnection agreements between SWBT and CMRS providers, and between SWBT and CLECs, which agreements encompassed traffic destined to terminate in Relators' exchanges, did not effect the applicability of Relators' access tariffs to such traffic. If the approval of interconnection agreements to which Relators were not parties were to have such an effect, the result would be the termination of traffic to Relators for which Relators receive no compensation, and for which Relators have no mechanism to preclude the termination of such traffic. This would, and indeed has, resulted in prejudice to Relators in that Relators have suffered the use of their facilities without compensation, and has resulted in discrimination in that Relators are effectively precluded from obtaining direct interconnection agreements allowing for the identification of the responsible carrier, jurisdiction of the traffic, appropriate compensation rates, and the ability to preclude the delivery of such traffic until a business relationship was established, as SWBT has been able to obtain, in violation of 47 USC 252(e)(2)(A)(i).
34. This Court further concludes that Relators cannot be compelled to enter into interconnection agreements constructed over an "indirect" interconnection. Under an indirect interconnection there is no direct physical connection between Relators and the CLECs or CMRS providers transiting terminating traffic to Relators over SWBT's intermediate facilities, and as such there is not "transport" as required under the law for reciprocal compensation. 47 USC 251(c)(2); *Comptel v FCC*, 117 F.ed 1068 (1th CCA 1997); 47 USC 251(c)(1); 47 CFR 51.701(c); 47 CFR 51.701(b); *In the Matter of Implementation of Local Competition*

Provision in the Telecommunications Act of 1996, CC Docket No. 96-325, First Report and Order, rel. Aug. 1, 1996, paragraphs 1033-1044. The Commission's conclusion of law number 2 is an erroneous interpretation of law.

This decision was appealed, remanded, and is not yet final.

9. Many small ILECs, including Petitioners Alma, Choctaw, and MoKan Dial, filed Wireless Termination Tariffs which the Commission approved in TT-2001-139, effective in February of 2001. In its decision in that docket the Order determined that the Wireless Termination Tariff utilized the same elements as did small ILEC access tariffs, the tariff was in the nature of access service, that the tariff need not apply reciprocal compensation to wireless traffic, and it was lawful for such access-like tariffs to apply. The Commission reasoned that if wireless carriers did not like the applicability of such tariffs, they could effect reciprocal compensation agreements pursuant to the 1996 Telecommunications Act. The Commission did not explain why, under its prior decision in TT-98-428, this analysis did not equally apply to Petitioners' access tariffs as well as to the small ILEC Wireless Termination Tariffs.

10. As a consequence of this history, a primary unresolved issue is what compensation does apply to intra-MTA traffic sent to Petitioners in the absence of an approved interconnection agreement.

11. All of the parties herein, except the Commission's Staff and the Office of the Public Counsel, are telecommunications carriers.

12. The Staff of the Commission is represented by the Commission's General Counsel, an employee of the Commission authorized by statute to "represent and appear for the Commission in all actions and proceedings.

13. Commercial Mobile Radio Service ("CMRS" or "wireless")

telecommunications traffic has been and continues to be delivered to Petitioners for call completion (or "termination"). This wireless traffic is being delivered to the exchanges of the Petitioners in the absence of any reciprocal compensation or interconnection agreements between the small companies and the wireless carriers to establish the rates, terms, and conditions of service. Neither side in this matter has been willing to make the compromises necessary for reaching an agreement. Neither Southwestern Bell Telephone Company (SWBT) nor the wireless carriers have been compensating the small companies for the wireless traffic that is "transited" to the small companies' exchanges via SWBT's facilities. Recently, compensation from some wireless carriers has been forthcoming to those small companies with approved wireless termination tariffs pursuant to those tariffs, but such compensation has not been complete.

14. Although there are direct connections between SWBT and the wireless carriers, there are no direct connections between the wireless carriers and the small companies. Thus, the wireless traffic is being delivered to the small companies over an indirect connection. The wireless traffic is being delivered by SWBT over the same access connections as interexchange carrier ("IXC") traffic, and it is being commingled with traditional interexchange traffic from IXCs. There is no change in the connections or facilities that are used to complete the wireless calls. Rather, the connections and facilities that are used to complete interexchange (i.e. toll) calls and the wireless traffic are identical.

15. IntraMTA and InterMTA Traffic. Missouri is divided into two Major Trading Areas (MTAs): one that covers roughly the eastern part of the state, and one that

covers roughly the western part of the state. Access compensation applies to inter-MTA traffic. When access compensation is applied, SWBT pays the terminating access for such traffic to all Petitioners except MoKan Dial. For MoKan Dial, Sprint Mo. Inc., which operates the tandem serving MoKan Dial, pays terminating access for such traffic.

16. Because the traffic has been placed on a "common trunk" between SWBT and the MITG companies (and via Sprint Mo Inc. for traffic to MoKan Dial), it is intermingled with traffic of other carriers. Due to the summary nature of the reported traffic, the MITG companies cannot identify the jurisdiction of the wireless traffic for which compensation is owed. SWBT and the various wireless carriers exchange wireless traffic pursuant to the terms of SWBT's wireless interconnection tariff or via an interconnection agreement between SWBT and the wireless carriers. The small companies cannot distinguish whether the traffic delivered by SWBT is being delivered via SWBT's wireless interconnection tariff or via a wireless interconnection agreement.

17. Only SWBT and the wireless carriers are in a position to record sufficient information to provide the MITG companies with the jurisdiction of the traffic. They have failed to do so. SWBT's CTUSR report fails to specify whether any traffic is inter-MTA or intra-MTA. Respondents have failed to retain or produce such information, although requested in discovery. They have failed to prove that any of the traffic at issue is intra-MTA traffic.

18. SWBT's wireless termination tariff. Southwestern Bell Telephone Company has tariffed a wireless termination service for a number of years. SWBT's Wireless Interconnection Tariff contains a set of procedures, rates, and terms that are

used in the absence of an approved interconnection agreement between SWBT and a wireless carrier. SWBT's wireless termination tariff states:

"Wireless carriers shall not send calls to SWBT that terminate in an Other Telecommunication Carrier's network unless the wireless carrier has entered into an agreement with such Other Telecommunications Carriers to directly compensate that carrier for the termination of such traffic."

19. SWBT's Wireless Interconnection Tariff allows SWBT to charge a rate for the termination of wireless traffic in the absence of an interconnection agreement. The rate in SWBT's wireless interconnection tariff for termination of intraMTA wireless traffic is the same as SWBT's access rate. SWBT's tariffed wireless termination rates are neither forward-looking, nor are they reciprocal. SWBT's tariffed rates for the termination of wireless calls (roughly \$0.043) were based upon SWBT's access charges.

20. Until the elimination of the Primary Toll Carrier (PTC) Plan in October of 1999, SWBT paid terminating access compensation to wireless carriers for 1+ toll traffic originating in small company exchanges and transiting SWBT facilities.

21. SWBT charges access rates to IXC's for terminating intraMTA wireless calls.

22. AT&T Wireless has paid access compensation on some intraMTA traffic delivered to the small companies. When AT&T wireless delivers intraMTA traffic over the facilities of AT&T long distance, access compensation is paid to the LECs by AT&T long distance. Access is also paid on some of Sprint PCS' intraMTA traffic.

23. Since 1996, the Commission has approved various interconnection agreements between SWBT and wireless carriers. These agreements set forth the terms and conditions by which wireless carriers interconnect with SWBT and exchange traffic.

These agreements provided the wireless carriers were not to send traffic to SWBT destined for Petitioners in the absence of an agreement between the wireless carriers and Petitioners. Following the approval of these interconnection agreements between SWBT and the wireless carriers, traffic that is originated by wireless carriers has been and continues to be terminated to the small companies' exchanges even though there is no approved interconnection agreement in place between these carriers and the small companies. Under these agreements, the wireless traffic is being delivered to the small companies regardless of whether or not the originating carrier is compensating the small companies.

24. For intra-MTA traffic delivered pursuant to the Wireless Termination Tariff of Alma, Choctaw, and MoKan, SWBT is obligated to perform such blocking service as the Commission Ordered in the Mark Twain Tariff proceeding. The contrary provisions in SWBT's interconnection agreements stating SWBT will not block are of no effect for the MITG companies, as they were not parties to such agreements. They do not supersede Commission Order.

For such traffic delivered with lack of compensation when no MITG company Wireless Termination Tariff is in effect, either SWBT must perform blocking services to block the non-paying carriers' traffic, or the MITG companies are entitled to disconnect the trunks of SWBT over which such traffic is delivered.

25. All of the traffic in dispute is hereby found to be inter-MTA traffic. The Respondents are responsible for their failure to retain, produce, and provide evidence containing call detail information showing the jurisdiction of the call. Respondents will not be heard to claim that any of the traffic is intra-MTA traffic when they have (1) failed

to abide the Commission's decision in TT-97-524 requiring an approved agreement before sending the traffic in question to Petitioners; (2) failed to abide the terms of approved interconnection agreements stating that agreements would be reached before this traffic was sent to Petitioners; and (3) failed to provide industry standard call detail proving that any of the traffic in dispute in this case is intra-MTA traffic.

26. The Commission hereby determines that Petitioners are entitled to be compensated pursuant to their intrastate switched access tariffs, at those tariff rates, for all quantities of traffic in dispute. For subsequent traffic not included in the quantities of traffic testified to at hearing, the Commission hereby determines that Petitioners are entitled to be compensated pursuant to their intrastate switched access tariffs, at those tariff rates, until an interconnection agreement is approved.

27. Under Petitioners' access tariffs, SWBT is responsible for paying access compensation on this traffic to all Petitioners except MoKan Dial, to whom Sprint Mo. Inc. is responsible for paying access compensation.

28. Under the terms of the SWBT PSC Mo No. 40 tariff, and the terms of interconnection agreements between SWBT and the Respondent wireless carriers, SWBT will be entitled to indemnity from the wireless carriers for payments of access compensation SWBT makes to Petitioners.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Jurisdiction:

The Missouri Public Service Commission has jurisdiction over the services, activities, and rates of each of the telephone corporations involved herein pursuant to Section 386.250 and Chapter 392, RSMo. The Commission has no jurisdiction over the rates of telephone cooperatives, except with respect to exchange access. Sections 386.250(2) and 392.220, subsections 2 and 5. However, because this case involves the application of Petitioners access tariffs and wireless termination tariffs, which this Commission previously found to be in the nature of exchange access and subject to Commission jurisdiction,¹ the Commission concludes it has jurisdiction over the tariff rates of the telephone cooperatives that are parties to this proceeding.²

The Commission entered an Order earlier in this proceeding, dated February 14, 2002, denying motions to dismiss for lack of subject matter jurisdiction filed by Respondents Sprint Spectrum, L.P., Ameritech Mobile Communications, Inc., and CMT Partners. That Order stated, in part:

“respondents [CMRS carriers] are not public utilities and are not subject to regulation by this Commission.

A complaint may be brought before this Commission by ‘any corporation or person,’ including regulated utilities, against ‘any corporation, person, or public utility’ The language is very broad and is clearly intended to extend to entities not subject to Commission regulation. As long as at least one party, whether a petitioner or a respondent, is a public utility, the Commission has jurisdiction under the law. Thus, for example, the Commission has jurisdiction over disputes between public utilities and their customers and often hears such cases. According to the complaints filed in these cases, the respondents are all customers of the petitioners in that they originate or transport traffic intended for termination on the petitioners’ networks, to petitioners’ subscribers. The Commission has jurisdiction over the dealings of a public utility with its customers.”³

¹ In the Matter of Mark Twain Rural Telephone Company’s Proposed Tariff to Introduce Its Wireless Termination Service, Report and Order in Case No. TT-2001-139 p. 27 (February 8, 2001).

² Northeast Missouri Rural Telephone Company, the only Petitioner that is a telephone cooperative, does not have a wireless termination tariff; it asserts that its tariffed access rates are the only lawful tariffed rates that it can apply to the traffic at issue in this proceeding.

³ Order, p. 4. Section 386.020(53)(c).

In that Order, this Commission determined that it has “jurisdiction to determine whether any charges are owed to Petitioners with respect to the traffic in questions and, if so, how the charges are to be calculated. These are questions that necessarily require that the Commission classify Respondents as customers of Petitioners and determine which tariffed rate applies to the transactions in question.”⁴

Federal Law – The Telecommunications Act of 1996

The respondents assert that under the Telecommunications Act of 1996,⁵ it is unlawful to apply tariffed access rates to intra-MTA wireless traffic, and that such rates do not comply with the statute’s obligations of reciprocal compensation.

Inter-MTA v. Intra-MTA

The F.C.C. stated in its *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, August 8, 1996 (First Report and Order), at paragraph 1036, “we will define the local

service area for calls to or from a CMRS network [wireless carrier] for the purposes of applying reciprocal compensation obligations under section 251(b)(5). ... Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.”

Thus, the FCC defined the MTA as the wireless carriers’ local service area only for the purposes of applying reciprocal compensation obligations under section 251(b)(5).

⁴ Order, p. 5.

⁵ 47 U.S.C. §§ 151 et. seq.

This Commission has approved interconnection agreements between respondents SWBT and wireless carriers. Reciprocal compensation has been negotiated under those agreements and applies between the parties to those agreements. That is not an issue in dispute in this proceeding. However, those interconnection agreements also address traffic to third parties. The Petitioners are such third parties, and were not party to these interconnection agreements. With respect to traffic to third parties, the interconnection agreements have provisions for wireless carriers to negotiate agreements with third parties before sending traffic to those parties via the interconnection agreement with SWBT. This Commission approved these interconnection agreements with the expectation that such negotiated agreements would be in place prior to the delivery of such traffic.

Similarly, This Commission approved a transiting arrangement for SWBT in TT-97-524, when SWBT filed a modification to its Wireless Interconnection Service, PSC Mo No. 40, referred to as SWBT's wireless termination tariff. By these modifications SWBT chose to provide a "transiting" function where its service would end at the interconnection point SWBT had with other ILECs. The Commission approved this tariff with modifications that SWBT and the Wireless Carriers were not to send traffic to the small rural ILECs until there was an agreement between the wireless carriers and the small rural ILECs for such traffic.

Negotiated agreements between the wireless carriers and Petitioners have not taken place as contemplated under the Commission approved interconnection agreements between SWBT and wireless carriers, or pursuant to this Commission's Order approving SWBT's wireless termination tariff in TT-97-524. Neither Southwestern Bell Telephone

Company (SWBT) nor the wireless carriers have been compensating the small companies for the wireless traffic that is “transited” to the small companies’ exchanges via SWBT’s facilities. Recently, compensation from some wireless carriers has been forthcoming to those small companies with approved wireless termination tariffs pursuant to those tariffs, but such compensation has not been complete.

Missouri is divided into two Major Trading Areas (MTAs): one that covers roughly the eastern part of the state, and one that covers roughly the western part of the state. Access compensation applies to inter-MTA traffic. When access compensation is applied, SWBT pays the terminating access for such traffic to all Petitioners except MoKan Dial. For MoKan Dial, Sprint Mo. Inc., which operates the tandem serving MoKan Dial, pays terminating access for such traffic.

Because the traffic has been placed on a “common trunk” between SWBT and the MITG companies (and via Sprint Mo Inc. for traffic to MoKan Dial), it is intermingled with traffic of other carriers. Due to the summary nature of the reported traffic, the MITG companies cannot identify the jurisdiction of the wireless traffic for which compensation is owed. SWBT and the various wireless carriers exchange wireless traffic pursuant to the terms of SWBT’s wireless interconnection tariff or via an interconnection agreement between SWBT and the wireless carriers. The small companies cannot distinguish whether the traffic delivered by SWBT is being delivered via SWBT’s wireless interconnection tariff or via a wireless interconnection agreement.

Only SWBT and the wireless carriers are in a position to record sufficient information to provide the MITG companies with the jurisdiction of the traffic. They have failed to do so. SWBT’s CTUSR report fails to specify whether any traffic is inter-

MTA or intra-MTA. Respondents have failed to retain or produce such information.

They have failed to prove that any of the traffic at issue is intra-MTA traffic.

The Commission concludes that all of the traffic in dispute is hereby found to be inter-MTA traffic. The Respondents are responsible for their failure to retain, produce, and provide evidence containing call detail information showing the jurisdiction of the call. Respondents will not be heard to claim that any of the traffic is intra-MTA traffic when they have (1) failed to abide the Commission's decision in TT-97-524 requiring an approved agreement before sending the traffic in question to Petitioners; (2) failed to abide the terms of approved interconnection agreements stating that agreements would be reached before this traffic was sent to Petitioners; and (3) failed to provide industry standard call detail proving that any of the traffic in dispute in this case is intra-MTA traffic.

Reciprocal Compensation and Interconnection Agreements

The Telecommunications Act of 1996 establishing certain obligations for LECs, including the duty under 47 U.S.C. Sec. 251(b)(5) "to establish reciprocal compensation arrangements for the transport and termination of telecommunications", and, for ILECs, the duty under section 251(c)(1) "to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements." As this Commission concluded in its Report and Order in Case No. TT-2001-139, "[t]he duty to negotiate in good faith specifically extends to the duty to establish reciprocal compensation arrangements. Thus,

it is apparent from the Act that reciprocal compensation arrangements are a mandatory feature of agreements between the CMRS carriers and the small LECs.”⁶

As in Case No. TT-2001-139, this record reflects that there are no such agreements between the parties in this case. Under the Act, reciprocal compensation is not a necessary component of LEC tariffs, and, therefore, the Commission concludes that Section 251(b)(5) of the Act does not apply to the wireless termination tariffs or the access tariffs of Petitioners. Similarly, the pricing standards of section 252(d) do not apply to Petitioners’ tariff rates, because section 252(d)(2) sets forth charges for transport and termination of traffic for the purpose of complying with section 251(b)(5).

The Commission hereby determines that Petitioners are entitled to be compensated pursuant to their intrastate switched access tariffs, at those tariff rates, for all quantities of traffic in dispute. For subsequent traffic not included in the quantities of traffic testified to at hearing, the Commission hereby determines that Petitioners are entitled to be compensated pursuant to their intrastate switched access tariffs, at those tariff rates, until an interconnection agreement is approved. The FCC defined the MTA as the wireless carriers’ local service area only for the purposes of applying reciprocal compensation obligations under section 251(b)(5). As discussed above, reciprocal compensation obligations under section 251(b)(5) only arise when there is an approved agreement. There are no approved agreements between the small companies and respondents for the traffic in dispute.

Under Petitioners’ access tariffs, SWBT is responsible for paying access compensation on this traffic to all Petitioners except MoKan Dial, to whom Sprint Mo.

⁶ In the Matter of Mark Twain Rural Telephone Company’s Proposed Tariff to Introduce Its Wireless Termination Service, Report and Order in Case No. TT-2001-139 p. 29 (February 8, 2001).

Inc. is responsible for paying access compensation. Under the terms of the SWBT PSC Mo No. 40 tariff, and the terms of interconnection agreements between SWBT and the Respondent wireless carriers, SWBT will be entitled to indemnity from the wireless carriers for payments of access compensation SWBT makes to Petitioners.

Petitioners' access tariffs, and more recently, wireless termination tariffs have been in effect prior to the termination of the traffic at issue in this proceeding, therefore no retroactive ratemaking issue arises under this conclusion.

The Commission finds that, because neither side in this matter has been willing to make the compromises necessary for reaching an agreement, it would be inappropriate to bar the small companies from collecting compensation for the traffic in dispute under principles of estoppel, waiver, or any other affirmative defense pled by any of the wireless carrier respondents.

For intra-MTA traffic delivered pursuant to the Wireless Termination Tariff of Alma, Choctaw, and MoKan, SWBT is obligated to perform such blocking service as the Commission Ordered in the Mark Twain Tariff proceeding. The contrary provisions in SWBT's interconnection agreements stating SWBT will not block are of no effect for the MITG companies, as they were not parties to such agreements. They do not supersede Commission Order.

For such traffic delivered with lack of compensation when no MITG company Wireless Termination Tariff is in effect, either SWBT must perform blocking services to block the non-paying carriers' traffic, or the MITG companies are entitled to disconnect the trunks of SWBT over which such traffic is delivered.

As discussed above, the FCC permits wireless carriers to request, and requires LECs to negotiate interconnection agreements with wireless carriers before reciprocal compensation applies. This Commission, in its approval of SWBT's wireless termination tariff and in its approval of interconnection agreements contemplated that such agreements would be entered into before the wireless carriers would send, and SWBT would transit, traffic originated by wireless carrier customers to be terminated on the networks of third party carriers. This has not happened.

Had respondent carriers complied with this Commission's Order and with their own interconnection agreements, they would then be entitled to reciprocal compensation. If respondents desire reciprocal compensation rates, they can request negotiations, compel arbitration, and obtain reciprocal compensation through an approved agreement as contemplated by the FCC and this Commission.

IT IS THEREFORE ORDERED:

1. That any motions which have not been previously ruled upon, if any, are hereby overruled.
2. That any objections which have not been previously ruled upon, if any, are hereby denied.
3. This Complaint is resolved in favor of Petitioners Alma Telephone Company, Chariton Valley Telephone Corp., Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company and

against Respondents Southwestern Bell Telephone Company, Sprint Missouri Inc., Alltel Communications Inc, Southwestern Bell Wireless LLC, d/b/a Cingular Wireless, Ameritech Mobile Communications d/b/a Verizon Wireless, CMT Partners d/b/a Cellular One, US Cellular Corporation, Sprint Spectrum d/b/a Sprint PCS, Voicesream Wireless Corporation, Western Wireless Coporation, and Aerial Communications Inc., as set forth before in this Report and Order.

4. This Report and Order shall become effective on _____.
5. This case may be closed on _____.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge