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June 24, 2002

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

**Re: Consolidated Case No. TC-2002-57**

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of Petitioner's Response to Respondents Ameritech Mobile Communications, Inc., Ameritech Cellular, CMT Partners, and Verizon Wireless (Collectively "Verizon Wireless") Motion to Compel.

Thank you for seeing this filed.

Sincerely,

  
Lisa Cole Chase

LCC:tr  
Enc.

cc: MITG Managers  
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**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

Northeast Missouri Rural Telephone Company	)	
And Modern Telecommunications Company,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. TC-2002-57
	)	Case No. TC-2002-113
Southwestern Bell Telephone Company,	)	Case No. TC-2002-114
Southwestern Bell Wireless (Cingular),	)	Case No. TC-2002-167
Voice Stream Wireless (Western Wireless)	)	Case No. TC-2002-181
Aerial Communications, Inc., CMT Partners,	)	Case No. TC-2002-182
(Verizon Wireless), Sprint Spectrum, LP,	)	Consolidated
United States Cellular Corp., and Ameritech	)	
Mobile Communications, Inc., et al.	)	
	)	
Respondents.	)	

**PETITIONER'S RESPONSE TO RESPONDENTS AMERITECH MOBILE  
COMMUNICATIONS, INC., AMERITECH CELLULAR, CMT PARTNERS, AND  
VERIZON WIRELESS (COLLECTIVELY "VERIZON WIRELESS")  
MOTION TO COMPEL**

COMES NOW Petitioners, Mid-Missouri Telephone Company, Alma Telephone Company, Northeast Missouri Rural Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., and Chariton Valley Telephone Company, ("MITG Companies") and in response to Respondents Ameritech Mobile Communications, Inc., Ameritech Cellular, CMT Partners, And Verizon Wireless (Collectively "Verizon Wireless") Motion To Compel state as follows:

1. Respondents Motion to Compel suggests that there is uniformity in the data requests sent to Petitioners, but there is not. For instance, Respondents indicate that they are seeking the Commission to compel responses to Data Requests Nos. 21 through 25 which seek

financial information. Mid-Missouri did not object, but responded to Data Requests Nos. 21 through 25 on behalf of Mid-Missouri. Similarly, Alma and MoKan responded to Data Requests Nos. 24 and 25. In addition, some of the data requested does not pertain to financial information, but seeks minutes of use for all carriers, not just the wireless carrier traffic that is the subject of this complaint. The lack of uniformity and confusion as to which Data Requests Respondents are seeking to Compel may make it difficult for the Commission to issue a ruling, however, Petitioners will do their best to respond to the data requests they believe are of concern to the Respondents and raised in their Motion, which are as follows:

DR #21 propounded to Chariton Valley, Modern and Northeast; DR #33 to Mid-Missouri; DR #19 to MoKan and Alma:

For each of the years 1998, 1999, 2000, and 2001, what are Petitioner's total or gross revenues?

DR #22 propounded to Chariton Valley, Modern and Northeast; DR #34 to Mid-Missouri; DR #20 to MoKan and Alma:

Since February 1, 1998, what has been Petitioner's authorized rate of return, as approved by the Missouri Public Service Commission? If Petitioner's authorized rate of return has changed since February 1, 1998, then please state the effective date of the change, Petitioner's authorized rate of return prior to the change, and Petitioner's authorized rate of return after the change.

DR #23 propounded to Chariton Valley, Modern and Northeast; DR #35 to Mid-Missouri; DR #21 to MoKan and Alma:

Excluding attorneys fees, please identify all expenditures Petitioner has made for equipment, personnel, telecommunications facilities, and any other items, and all expenses

incurred by Petitioner, as a direct or indirect result of wireless traffic being terminated on Petitioner's network.

DR #24 propounded to Chariton Valley, Modern and Northeast; DR #36 to Mid-Missouri; DR #22 to MoKan and Alma:

For each item of expense or expenditure identified in Petitioner's response to Data Request #23, identify the amount of the expense or expenditure (in U.S. Dollars) and how the item of expense or expenditure is related to wireless traffic being terminated on Petitioner's network.

DR #25 propounded to Chariton Valley, Modern and Northeast; DR #38 to Mid-Missouri; DR #23 to MoKan and Alma:

How much revenue from the termination of wireless traffic was estimated in the construction of Petitioner's current rate design?

Request for Production of Documents #5 propounded to Petitioners:

Petitioner's audited financial statements (including, but not limited to, balance sheets, statements of income and expenses, statements of cash flow, and notes to statements) for fiscal year 1998, 1999, 2000 and 2001, and any unaudited financial statements for the year 2002. If audited financial statements were not prepared for one or more of the requested years, then please provide unaudited financial statements.

Furthermore, although Respondents do not directly address the basis for granting their request for minutes of use of traffic other than the wireless traffic at issue in this matter, access rate information, and all documents Petitioners intend to use at hearing, Respondents do request the Commission to compel Petitioners to respond to all of the data requests objected to, therefore

Petitioners feel further compelled to respond to data requests # 4, #8, #9, and #10, and request for production #9 and #10 as set forth below:

DR #4. Please list Petitioner's access rates in effect for the period February 1, 1998 to date, and the dates each rate was in effect.

DR# 8. What are the total minutes of use for all carriers using or otherwise utilizing Petitioner's network for the period February 1, 1998 through December 31, 2001?

DR #9. Excluding wireless carriers, please identify the total minutes of use for which Petitioner has not received compensation from carriers using or otherwise utilizing Petitioner's network for the period February 1, 1998 through December 31, 2001.

DR #10. Please identify the approximate amount (in U.S. dollars) of the uncompensated minutes of use identified in your response to Data Request # 9.

RFP # 9. Petitioner's Missouri access tariff in effect on February 1, 1998, and all amendments thereto to date.

RFP #10. All documents which Petitioner intends to use at the hearing.

2. Petitioners brought this action to seek a determination regarding whether Wireless Carrier Respondents and/or Southwestern Bell Telephone Company ("SWBT") and Sprint, Missouri, Inc. ("Sprint") owed Petitioners compensation for the traffic reputed by SWBT as being originated by the wireless carriers and terminated on the Petitioners' networks, and, if so, at what rate the Petitioners are to be lawfully compensated. Petitioners have provided to Respondents copies of the CTUSRs provided to Petitioners by SWBT, reflecting the minutes of use of all wireless carriers for the time period in dispute in this matter, requested invoices, correspondence regarding billing and collection and interconnection negotiations, and attached to direct testimony schedules reflecting uncompensated minutes of use of the wireless respondents

and the dollar value of those uncompensated minutes based on the lawful tariff in place at the time the minutes were terminated on Petitioners' networks.

3. Respondents seek financial information that far exceeds the scope of this matter, encompassing all sources of revenue of Petitioners. Such requests are not reasonably calculated to lead to the discovery of admissible evidence in that 1) the total amount of Petitioners annual gross revenues is not relevant to any issue in this proceeding; 2) Petitioners' authorized rate of return is based on a past earnings review of a given test year and are in effect on a prospective basis as a Commission-approved tariff rate that is deemed just and reasonable, and is not relevant to anything at issue in this proceeding; 3) the amount of revenue from the termination of wireless traffic estimated in the construction of Petitioners current rate design is not relevant to anything at issue in this proceeding; and 4) Petitioners expenditures made as a result of wireless traffic being terminated on Petitioner's network is not relevant to anything at issue, and any additional trunks required are ordered by SWBT or Sprint, not the wireless carriers, and is therefore not possible to identify how many are for wireless traffic.

4. Mr. Jones' testimony at pages 17 and 18 did not "open the door" with respect to the type of information Verizon Wireless seeks. David Jones did not state that "Complainants *will have to shift* collection of these revenues to its local customers." (emphasis added) David Jones stated the obvious – "The failure for the small LEC to receive revenues from other carriers *creates pressure* to recover more revenues through higher rates from local customers." (emphasis added). None of the witnesses for Petitioners stated that they will have to collect revenues from local customers at this time. David Jones stated that it would be wrong to require small companies to look to their local customers to pay. Obviously, we can't go back and collect from local ratepayers what we should have received from the carriers terminating or delivering

the traffic to our networks. In fact, the witnesses have testified to the business decisions and extensive steps they have taken to compel the wireless carriers or IXC's to compensate them for this traffic, none of which have included increasing the rates for their local customers. David Jones' testimony simply emphasizes the need for a final determination of the issues of this case: whether Wireless Carrier Respondents and/or Southwestern Bell Telephone Company ("SWBT") and Sprint, Missouri, Inc. ("Sprint") owe Petitioners compensation for the traffic originated by the wireless carriers and terminated on the Petitioners' networks, and, if so, at what rate the Petitioners are to be lawfully compensated.

5. Similarly, the testimonies of Don Stowell and Oral Glasco reflect a business decision made almost two years ago to file a wireless terminating tariff to compel wireless carriers to compensate MoKan and Alma for traffic terminated on their networks. Both Don Stowell and Oral Glasco testified that they have been more successful in receiving compensation since their wireless termination tariffs have gone into effect. (see Stowell Direct p. 8, l. 2-4; Glasco Direct p. 7, l. 12-14.) Neither Don Stowell or Oral Glasco claim that they are currently in financial distress.

6. With respect to Respondents request for access rate information, this information is equally available to Respondents as Petitioner's access rates are tariffed and the tariffs, which reflect the rates and dates in effect, are a matter of public record available to Respondents.

7. Petitioners have provided Respondents with CTUSRs and requested invoices. Petitioners have access to all pertinent rate and usage information with respect to the wireless traffic at issue in this matter. To the extent Petitioners seek the minutes of use of traffic other than the wireless traffic at issue in this case, and the amount of any non-payment for traffic other than wireless traffic, such request is not reasonably calculated to lead to the discovery of

admissible evidence. The total minutes of use *all* carriers have made to Petitioners' networks and the dollar amount of usage for which Petitioners have not received compensation from all non-wireless carriers is not relevant to anything at issue in this proceeding. This matter involves the applicability of Petitioners' tariffs to the traffic terminated onto their networks. The issues in this matter are regarding whether Wireless Carrier Respondents and/or Southwestern Bell Telephone Company ("SWBT") and Sprint, Missouri, Inc. ("Sprint") owe Petitioners compensation for the traffic reputed by SWBT as being originated by the wireless carriers and terminated on the Petitioners' networks, and, if so, at what rate the Petitioners are to be lawfully compensated.

8. With respect to Respondents request for production of all documents which Petitioners intend to use at the hearing, Petitioners hereby restate their objection to such request in that the information is attorney work product information and is privileged from discovery.

WHEREFORE, Petitioners respectfully request the Commission reject Verizon Wireless' Motion to Compel.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE,  
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**ATTORNEYS FOR PETITIONERS**



**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 24<sup>th</sup> day of June, 2002, to all attorneys of record in this proceeding.

  
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Lisa Cole Chase Mo Bar No. 51502