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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE

May 20, 2003
Jefferson City, Missouri
Volume II

BPS Telephone Company, Cass County)
Telephone Company, Citizens Telephone)
Company of Higginsville, Missouri,)
Craw-Kan Telephone Cooperative, Inc.,)
Fidelity Communication Services I, Inc.)
Fidelity Telephone Compnay, Grand River) Case No.
Mutual Telephone Corporation, Green) TC-2002-1077
Hills Telephone Corporation, Holway)
Telephone Company, IAMO Telephone)
Company, Kingdom Telephone Company,)
K.L.M. Telephone Co., Lathrop Telephone)
Company, and Mark Twain Rural Telephone)
Company,)
)
Complainants,)
)
vs.)
)
Voicestream Wireless Corporation,)
Western Wireless Corp., and)
Southwestern Bell Telephone Company,)
)
Respondents.)

KEVIN A. THOMPSON, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE

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A P P E A R A N C E S

BRUCE A. BATES, Associate General Counsel
P.O. Box 360
Jefferson City, Missouri 65101
(573) 751-7434
FOR: Staff of the Missouri Public Service
Commission

LEO J. BUB

Southwestern Bell Telephone
One Bell Center, Room 3518
St. Louis, Missouri 63101
FOR: Southwestern Bell Telephone Company

MARK P. JOHNSON

4520 Main Street, #1100
Kansas City, Missouri 64113
(816) 460-2424
FOR: Voicestream Wireless (T-Mobile USA,
Inc.) and Western Wireless

W.R. ENGLAND and BRIAN T. MCCARTNEY

BRYDON, SWEARENGEN, ENGLAND
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri
(573) 636-7166
FOR: All Complainants

1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 HEARING OFFICER THOMPSON: We are here
4 in the matter of BPS Telephone Company and others
5 versus Voice Stream Wireless Corporation, Western
6 Wireless Corporation and Southwestern Bell Telephone
7 Company. This is Commission Case TC-2002-1077. I'm
8 the Regulatory Law Judge assigned to preside over
9 this matter by the Commission and will take oral
10 entries of appearance at this time beginning with the
11 complainants.

12 MR. ENGLAND: Thank you, your Honor.
13 Let the record reflect the appearance of Brian
14 McCartney and W.R. England for the Complainants. Our
15 mailing address is P.O. Box 456, Jefferson City,
16 Missouri, 65102.

17 HEARING OFFICER THOMPSON: Thank you,
18 sir.

19 MR. JOHNSON: Your Honor, on behalf of
20 Respondents Voice Stream Wireless, Mark P. Johnson of
21 Rosenthal, (LAW GROUpp), 4520 Main Street, Suite
22 1100, Kansas City, Missouri. I should also tell you
23 that Voice Stream Wireless has changed its name to
24 T-Mobile USA, Incorporated. I will submit something
25 to reflect that, but no change of the corporate

1 entity has been made.

2 HEARING OFFICER THOMPSON: Thank you
3 for reminding me. Do we have someone else for the
4 Respondent?

5 MR. BUB: Yes. Leo Bub for
6 Southwestern Bell Telephone Company, doing business
7 as SBC Missouri. Our address is One Bell Center, St.
8 Louis, Missouri, 63101.

9 HEARING OFFICER THOMPSON: Staff.

10 MR. BATES: Good morning, your Honor,
11 my name is Bruce H. Bates of the Missouri Public
12 Service Commission and our address is Post Office Box
13 360, Jefferson City, Missouri, 65102.

14 HEARING OFFICER THOMPSON: Thank you.
15 Does anyone know whether the Public Counsel is
16 planning to be present? Let the record reflect that
17 Public Counsel is not here.

18 As you all know, this case was
19 committed to the Commission on the prefiled testimony
20 and the briefs of the parties. I believe there was
21 also a stipulation of facts. The Commission has
22 reviewed all of the filed material and has come to
23 the inescapable conclusion that one piece of factual
24 evidence is missing from this record, which is the
25 identity of the traffic in question in terms of

1 interMTA or intraMTA nature.

2 Under the file tariff doctrine, the
3 Commission can only apply the tariff to the traffic
4 at issue. If the traffic is interMTA traffic,
5 complainants have pleaded that it is subject to
6 exchange access, and so to the extent it is intraMTA
7 traffic, the Commission has no option but to apply
8 that tariff to the traffic assuming that you are
9 legally correct in suggesting that that is the
10 appropriate tariff.

11 Again, to the extent that the traffic
12 is intraMTA traffic under, the Commission will have
13 no alternative but to apply the wireless termination
14 tariff rate to that traffic, and I don't think that
15 rate is identical to the exchange access rate.
16 Consequently, the Commission has to know what
17 proportion of the traffic is interMTA and what is
18 intraMTA.

19 Therefore, the Commission has reopened
20 the record in this case and we have brought you
21 together this morning in order to discuss how exactly
22 we're going to go about getting that factual
23 information into the record, and I am ready to hear
24 suggestions from the parties, and I think it would
25 probably be appropriate to start with the

1 indicated that they did not, so I'm not sure that
2 there is any evidence, at least based on discovery
3 and information that we have available to us
4 historically, that would tell you or us the
5 jurisdictional nature of that traffic.

6 HEARING OFFICER THOMPSON: Thank you,
7 Mr. England.

8 MR. JOHNSON: Well, on behalf of
9 T-Mobile and Western Wireless, I agree with Mr.
10 England that my clients don't have that information.
11 They do not retain that information as a matter of
12 course. What -- in discussions with my clients, what
13 we have come up with and what we would be ready to
14 propose is to provide under with appropriate
15 confidentiality, the locations of all of my clients
16 cell sites throughout the state, and we believe that
17 with -- and overlaying those cell sites on maps that
18 show the, pardon me, the Complainants' service areas
19 and the MTA boundaries, that we can come up with what
20 we think would be an appropriate estimate of -- an
21 appropriate and reliable estimate of the
22 jurisdictional nature of the traffic.

23 HEARING OFFICER THOMPSON: That sounds
24 like a very reasonable suggestion. Mr. Bub.

25 MR. BUB: Your Honor, we're a transit

1 carrier and the information where a particular call
2 originated is not provided to us, so we do not have
3 that information either, and it's been our
4 experience, at least with wireless carriers that we
5 have interconnection agreement with, that we sit down
6 with the wireless carrier and work out a factor along
7 the lines of what Mr. Johnson was suggesting so that
8 does have some precedent within the industry.

9 HEARING OFFICER THOMPSON: Okay. Mr.
10 Bates.

11 MR. BATES: Your Honor, Staff does
12 support the concept of the Commission requiring the
13 parties to perform a traffic study that would allow
14 an interMTA factor to be developed. We believe that
15 the preferable solution would be for the parties to
16 negotiate an interconnection agreement in this case.
17 We believe that a traffic study is appropriate here.
18 It's staff's understanding that T-Mobile and Western
19 Wireless are the only carriers that could produce
20 jurisdictional information about the wireless
21 originated traffic, and from Staff's perspective, the
22 wireless carriers should provide the necessary here.

23 HEARING OFFICER THOMPSON: Okay. Where
24 does that leave us if they don't have the information
25 as Mr. Johnson has just informed us?

1 MR. BATES: Well, that's a very good
2 question, your Honor.

3 HEARING OFFICER THOMPSON: The reason
4 -- another reason, I should say, why this is of
5 importance is not only because, of course, it points
6 us to the tariff and rate that needs to be applied to
7 the traffic, but it also, perhaps, is determinative
8 of who should pay to the extent that the traffic in
9 question is interMTA traffic, then it may very well
10 be long distance traffic, in which case the carrier
11 delivering it may be functioning as an IXC regardless
12 of what its agreement may be or its tariffs may say,
13 in which case responsibility for payment might very
14 well fall upon Southwestern Bell. I don't say that
15 that's the way the Commission's going, but I suggest
16 to you that it may be in the calculus of how do we
17 resolve this case, and so in that sense, it becomes
18 all the more important to determine the
19 jurisdictional nature of the traffic.

20 MR. BUB: Your Honor, may I respond to
21 that?

22 HEARING OFFICER THOMPSON: You
23 certainly may.

24 MR. BUB: If there was an interexchange
25 carrier bringing traffic through our network to a

1 small independent telephone company like Alma that
2 had a single exchange, in that situation, both Alma
3 and Southwestern Bell's access carrier for each of us
4 to bill access to the interexchange carrier --

5 HEARING OFFICER THOMPSON: Okay.

6 MR. BUB: -- and that's what the
7 industry standard is, so even with respect to long
8 distance traffic, the carrier in the middle,
9 Southwestern Bell, we're an access provider along
10 with the terminating company, and we do not pay
11 access to determining carrier.

12 HEARING OFFICER THOMPSON: You see why
13 I got you altogether like this here today? You
14 wouldn't want me to go off half cocked.

15 MR. ENGLAND: And may I further
16 respond? Alma, who, by the way, is not part of this
17 group, but other companies such as Citizens, Kingdom,
18 Fidelity, Mark Twain, who are Complainants are
19 tandem companies, and if its interexchange traffic --
20 interexchange carriers bring that traffic to their
21 tandem, so I think there's a little bit of a
22 difference in that scenario as well.

23 HEARING OFFICER THOMPSON: Well,
24 obviously we reopened the record for additional
25 evidence, and we get this additional evidence in some

1 form, and I don't know yet what that will be
2 necessarily. You may need to rebrief the case based
3 on the change in the record, and so all of you will
4 have a chance to tell me how undiluted and how this
5 really works and that's great, because believe me, I
6 need the help, and I know the Commissioners do, too,
7 but Mr. Johnson's suggestion of developing an
8 estimate based on the location of cell centers --

9 MR. JOHNSON: Cell sites, the towers in
10 which the antennas are.

11 HEARING OFFICER THOMPSON: Sounds to be
12 promising. Now, that's not a traffic study and it's
13 more cheap to do --

14 MR. JOHNSON: -- and faster.

15 HEARING OFFICER THOMPSON: And faster,
16 and we can do that, but I think it would take the
17 agreement of all the parties that you were going to
18 use this method, right? Of course, that wouldn't
19 change anybody's stance as to who owes or whether
20 anything is owed, but it would say here's how we can,
21 you know, the parties, at least, agree that the
22 jurisdictional nature of the traffic is as follows,
23 boom.

24 In fact, if you do it by agreement, you
25 don't even have to tell the Commission how you

1 reached it. You can just say percentage A,
2 percentage B, here you are. Obviously I would prefer
3 that outcome because it's easy for me.

4 Now, let's talk about a traffic study
5 which Mr. Bates eluded to and which the Commission
6 also thought about. As I understand, a traffic
7 study, this is actually measuring traffic over a
8 period of time and then taking those results and
9 projecting them back to the past period, assuming
10 that they're going to be representative of that past
11 period. Is that more or less how that works?

12 MR. ENGLAND: That would be my
13 understanding.

14 MR. JOHNSON: Yes.

15 HEARING OFFICER THOMPSON: Okay. Now,
16 I don't know what sort of expense and bother is
17 involved in doing that. Does --

18 MR. JOHNSON: Well, I've spoken with my
19 client about when they would have to do -- to go
20 about measuring the traffic, and what I've been told
21 is that it would require extensive rewriting of the
22 software that is in every just about every piece of
23 equipment they have, plus they would need to
24 substitute -- change some of the equipment they have,
25 so there are hardware and software issues, and on top

1 of that, there is a time issue as well.

2 HEARING OFFICER THOMPSON: I
3 understand. So basically what you're saying is that
4 would cost a lot of money.

5 MR. JOHNSON: And on top of that, in
6 all honesty, would you come up where numbers come up
7 in an allocation that we could all agree with?
8 Probably not.

9 HEARING OFFICER THOMPSON: Right, and
10 that's what I was thinking as well, so what I would
11 like to do is to recess the recorded portion of the
12 prehearing conversation at this time, and to allow
13 the parties to confer and discuss as to how, exactly,
14 they want to cut this gordian knot, and then you can
15 let me know either today or go back to your offices
16 and confer by phone and fax and mail.

17 I mean, how you do it is your business,
18 but I would just like you to let me know what you
19 come up with and what I would like to do before we
20 leave is come up with some type of schedule. We've
21 reached an impass we can't figure out how to do it or
22 we've reached an agreement, what do you think would
23 be a reasonable interval to allow? Mr. England.

24 MR. ENGLAND: I think that's certainly
25 acceptable. We're not adverse to seeing if we can't

1 resolve this by way of an agreed upon factor. In
2 fact, that's what some of these companies have done,
3 improved agreement with Verizon wireless.

4 HEARING OFFICER THOMPSON: And they're
5 not uncommon in the industry.

6 MR. ENGLAND: No, not at all.

7 HEARING OFFICER THOMPSON: Do you think
8 30 days would be an ample interval?

9 MR. ENGLAND: Oh, absolutely.

10 MR. JOHNSON: Sure, that's plenty of
11 time.

12 HEARING OFFICER THOMPSON: Do you feel
13 that's too much?

14 MR. JOHNSON: Honestly, I don't.

15 HEARING OFFICER THOMPSON: Okay.

16 MR. JOHNSON: Because, Number One, I
17 have two clients. They're remote, they're both a
18 couple thousand miles away from here. I would
19 probably have to deal with half a dozen people in
20 these discussions, so I think 30 days is appropriate.

21 HEARING OFFICER THOMPSON: Okay. Why
22 don't we start with 30 days, and if it turns out that
23 the discussions are proceeding nicely and that's not
24 quite enough time, someone, I hope, will let me know
25 and we can extend that, so I will issue an order

1 directing filing as a result of this meeting asking
2 the parties to advise the Commission 30 days from
3 today, roughly, what the progress is on those
4 discussions. Okay? This room is yours for the rest
5 of the day if you want to discuss anything here,
6 otherwise you can go about doing it however you want.
7 Thank you very much for appearing today. I apologize
8 again for being late. Thank you. We are recessed.

9 WHEREUPON, the on-the-record portion of
10 the prehearing conference was concluded.

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