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May 11, 2004

EUGENE E. ANDERECK (1923-2004)
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FILED²

MAY 11 2004

**Missouri Public
Service Commission**

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

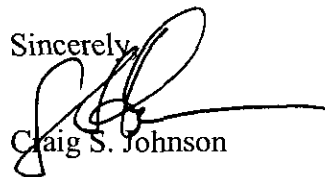
Re: Case No. TC-2002-57
Notice of Final Stipulation, Request for Additional Brief and Proposed Findings
and Conclusions

Dear Secretary:

Enclosed for filing please find the original and eight copies of the Notice of Final Stipulation, Request for Additional Time and Proposed Findings and Conclusions in the above referenced case.

Thank you for seeing this filed. If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Craig S. Johnson

CSJ:lw

Encl.

CC: Public Service Commission
Office of Public Counsel
All Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²

MAY 11 2004

Missouri Public
Service Commission

Northeast Missouri Rural Telephone Company)
And Modern Telecommunications Company,)
)
Petitioners,)
)
vs.)
)
Southwestern Bell Telephone Company,)
Southwestern Bell Wireless (Cingular),)
Voice Stream Wireless (Western Wireless))
Aerial Communications, Inc., CMT Partners,)
(Verizon Wireless), Sprint Spectrum, LP,)
United States Cellular Corp., and Ameritech)
Mobile Communications, Inc., et al.)
)
Respondents.)

Case No. TC-2002-57
Case No. TC-2002-113
Case No. TC-2002-114
Case No. TC-2002-167
Case No. TC-2002-181
Case No. TC-2002-182
Consolidated

NOTICE OF FINAL STIPULATION,
REQUEST FOR ADDITIONAL BRIEF AND PROPOSED
FINDINGS AND CONCLUSIONS

Come now Petitioners and notify the Commission and parties that there will be no further written stipulations presented with respect to this phase of this proceeding. Petitioners request an Order scheduling a supplemental brief and supplemental proposed findings of fact and conclusions of law. In support hereof, Petitioners state as follows:

1. These complaints for compensation were first filed in August, 2001. An initial hearing on all issues was conducted on August 5-9, 2002. The evidence submitted at the initial hearing covered wireless traffic terminating to Petitioners between February 5, 1998 and December 31, 2001. By Order of June 3, 2003, the record was reopened to receive additional evidence as to the proportions of the traffic submitted that was interMTA and intraMTA in jurisdiction.

2. A hearing on the reopened record was scheduled for April 20, 1994.

3. Due to settlements, stipulations, and unopposed factor proposals¹, as of the April 20 hearing the following six (6) interMTA factors remained unresolved:

1. Northeast/US Cellular
2. Northeast/T-Mobile
3. Northeast/Western Wireless
4. Chariton Valley/US Cellular
5. Chariton Valley/T-Mobile
6. Chariton Valley/Western Wireless

4. Shortly prior to hearing verbal agreements between these two petitioners and these three wireless carriers were reached as to these 6 factors. On the record at the April 20 hearing, in the presence of the Regulatory Law Judge, and counsel for all parties, agreements as to these six (6) factors were read into the record by counsel for the MITG companies, and confirmed by counsel for the respective wireless carrier. The parties subsequently attempted to reduce these 6 stipulations to writing for filing.

5. On or about May 4, 2004 two (2) written stipulations were filed commemorating the stipulations read into the record on April 20; one between Northeast and US Cellular, and one between Chariton Valley and US Cellular.

¹ Settlements and dismissals were filed for Verizon Wireless. The procedural schedule was suspended pending approval of Traffic Termination Agreements between Petitioners, Cingular, and Sprint PCS. Five (5) signed stipulations were filed and not objected to. Alma, MoKan, and Choctaw proposed zero interMTA factors for traffic from certain wireless carriers, which no party opposed.

6. With respect to the four (4) factors agreed to on the record between Northeast and Western Wireless, Northeast and T-Mobile, Chariton Valley and Western Wireless, and Chariton Valley and T-Mobile, in the three weeks since April 20 no such written stipulations were executed. Petitioners notify the Commission that, based upon communications with Western Wireless and T-Mobile since April 20, Petitioners do not expect Western Wireless and T-Mobile to execute any such stipulations.

7. The four (4) factors for which no written stipulation has been adduced were agreed to between petitioners, Western Wireless, and T-Mobile, and submitted on April 20, as reflected by Volume 10 of the transcript in this proceeding, a copy of which is attached hereto. Such agreement fulfills the filing requirement of 4 CSR 240-2.115, as all parties were present, heard the agreements, and in reliance thereon the scheduled evidentiary hearing was canceled by agreement of all parties. Petitioners request that the Commission accept the following agreed factors as per the stipulation announced and read into the record on April 20, 2004:

- a. Chariton Valley and Western Wireless: 65% InterMTA traffic
- b. Chariton Valley and T-Mobile: 36% InterMTA traffic
- c. Northeast Missouri and Western Wireless: 77% InterMTA traffic
- d. Northeast Missouri and T-Mobile: 34% InterMTA traffic

8. After the earlier hearing in August of 2002, the parties submitted post hearing briefs and proposed findings of fact and conclusions of law to the Commission. Petitioners request that the Commission order supplemental supplemental briefs and supplemental proposed findings of fact and conclusions of law be filed by June 25, 2004. It would be useful to the Commission if the stipulations and agreements as to the proportions of interMTA traffic are

incorporated into proposed findings and conclusions. It would be useful for supplemental briefs to be filed incorporating developments in the law or reported cases since the earlier briefing.

WHEREFORE, on the basis of the foregoing, Petitioner MITG Companies request that the evidence be closed, and that the Commission direct all parties wishing to do so file revised proposed findings and conclusions, and revised briefs, on or before June 25, 2004.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE,
PEACE & JOHNSON, L.L.C.**

By 

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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 11 day of May, 2004, to all attorneys of record in this proceeding.


Craig S. Johnson Mo Bar No. 28179

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

**NORTHEAST MISSOURI RURAL TELEPHONE COMPANY
AND MODERN TELECOMMUNICATIONS COMPANY vs.
SOUTHWESTERN BELL TELEPHONE COMPANY, et al.**

Case No. TC-2002-57

COPY

HEARING - VOLUME 10

APRIL 20, 2004

MIDWEST LITIGATION SERVICES

"From Discovery to Trial"

● Jefferson City, Mo.

● Rolla, Mo.

● Columbia, Mo.

Headquarters
711 North 11th Street
St. Louis Mo. 63101

● Springfield, Mo.

● Kansas City, Mo.

● Edwardsville, Ill.

Nationwide Scheduling

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
April 20, 2004
Jefferson City, Missouri
Volume 10

Northeast Missouri Rural)
Telephone Company and Modern)
Telecommunications Company,)
Petitioners,)
v.) Case No. TC-2002-57
Southwestern Bell Telephone)
Company, et al.,)
Respondent.)

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

REPORTED BY:
KELLEN K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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APPEARANCES:

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MoKan Dial, Inc.
Choctaw Telephone Company.
Chariton Valley Telephone Corp.
Northeast Missouri Rural Telephone.

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13 FOR: Staff of the Missouri Public
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Good morning. My name is
3 Kevin Thompson. I'm the Regulatory Law Judge assigned to
4 preside over this matter, which is Northeast Missouri
5 Rural Telephone Company and Modern Telecommunications
6 Company and others versus Southwestern Bell Telephone
7 Company and others, Case No. TC-2002-57. This is the
8 second evidentiary hearing we've had in this case and
9 hopefully this will be the last.

10 Why don't we begin with oral entries of
11 appearance. Mr. Johnson?

12 MR. CRAIG JOHNSON: Thank you, your Honor.
13 Craig Johnson, and Bryan Lade will be with me today,
14 Andereck, Evans, Milne, Peace & Johnson, 700 East Capitol,
15 Post Office Box 1438, Jefferson City, Missouri 65102,
16 representing the Complainants or Petitioners.

17 JUDGE THOMPSON: Thank you. Why don't we
18 just then start -- we'll start at the front and go back,
19 start at the back and go front, as long as we catch
20 everyone.

21 MR. MEYER: David Meyer with the Office of
22 the General Counsel, representing the Staff of the Public
23 Service Commission. Our address is P.O. Box 360,
24 Jefferson City, Missouri 65102.

25 JUDGE THOMPSON: Thank you.

1 MR. MARK JOHNSON: Your Honor, Mark P.
2 Johnson of the law firm Sonnenschein, Nath & Rosenthal,
3 4520 Main Street, Suite 1100, Kansas City, Missouri 64111,
4 appearing on behalf of T-Mobile USA, Incorporated, Western
5 Wireless and Aerial Communications.

6 JUDGE THOMPSON: Thank you.

7 MR. BUB: Thank you. Leo Bub for SBC
8 Missouri.

9 JUDGE THOMPSON: Thank you.

10 MR. GARDNER: Paul H. Gardner of the firm
11 of Goller, Gardner & Feather, 131 East High Street,
12 Jefferson City, Missouri for U.S. Cellular, and I'll be
13 accompanied today by Krista Tanner and Bret Dublinske, who
14 also represent U.S. Cellular. They're members of the bar
15 in Iowa. I think we have on file a motion for admission
16 for purposes of this proceeding. It hasn't been ruled on,
17 but I'd ask that they be admitted for purposes of this
18 hearing.

19 JUDGE THOMPSON: Okay. We got an order
20 recently from the Missouri Supreme Court directing us to
21 collect \$100, or rather reminding us to direct the
22 applicant to pay their \$100 to the Clerk of the Supreme
23 Court. It doesn't, of course, come to the Commission.
24 And I ask, therefore, have these individuals paid?

25 MR. GARDNER: I haven't seen that order.

1 To my knowledge, no, but we can arrange that.

2 JUDGE THOMPSON: Okay. Well, I'm sure you
3 can find the clerk's office on your way out of town, so
4 I'll go ahead and grant the motion to appear pro hoc vice.
5 Anyone else?

6 MS. HENDRICKS: Yes, your Honor. Lisa
7 Creighton Hendricks appearing on behalf of Sprint
8 Missouri, Inc. My address is 6450 Sprint Parkway,
9 Overland Park, Kansas 66251.

10 JUDGE THOMPSON: Thank you. Very well.
11 The Commissioners are shortly going to be in the agenda
12 session, which begins at 9:30, and I don't believe that
13 they're planning to come down prior to that.
14 Consequently, we will set opening statements off to the
15 arrival of the Commissioners.

16 At this time, are there any preliminary
17 matters to take up, Mr. Johnson?

18 MR. CRAIG JOHNSON: Yes, your Honor. I
19 believe we've reached some stipulations as to the
20 remaining contested factors that exist in this case.

21 JUDGE THOMPSON: Great.

22 MR. CRAIG JOHNSON: And I wanted to
23 announce those on the record, give the wireless carriers
24 involved an opportunity to make sure I've got the right
25 numbers and go from there.

1 JUDGE THOMPSON: Okay. Go ahead. You can
2 sit down and talk into your microphone so anyone who's
3 listening from offsite can pick it up.

4 MR. CRAIG JOHNSON: We had previously
5 reached two comprehensive settlements with Cingular and
6 Sprint PCS. I think the procedural schedule has been
7 suspended with respect to the claims against those two
8 wireless carriers.

9 We also have, I think, about five
10 affirmative stipulations signed by a member of the MITG
11 and the pertinent wireless carrier that have been
12 previously filed, and nobody's opposed those. Also, I
13 think three of the MITG companies proposed zero factors.
14 Those are not affirmative stipulations. They were an
15 affirmative proposal, and no one has objected to a zero
16 percent inter-MTA factor.

17 That left six factors remaining that were
18 contested, and yesterday, by various communications and
19 telephone conversations, we had an agreement -- we reached
20 agreements for those six factors and they are an
21 inter-MTA factor between Northeast and U.S. Cellular of
22 22.5 percent, between Northeast and T-Mobile 34 percent,
23 between Northeast and Western Wireless 77 percent, between
24 Chariton Valley and U.S. Cellular 26 percent, between
25 Chariton Valley and T-Mobile 36 percent, and between

1 Chariton Valley and Western Wireless 65 percent.

2 What I would -- those last six that I
3 mentioned to you are just stipulations as to the factors
4 that apply to the traffic that's at issue, which was
5 submitted in the prior hearing almost two years ago in
6 this case. I've got commitments from everybody to
7 continue the discussions, the negotiations hopefully to
8 arrive at more comprehensive settlements with respect to
9 these carriers as well.

10 In order to keep that process moving, what
11 I would like to suggest is that we set up a little
12 procedural schedule where we can modify the post-hearing
13 briefing and maybe modify the proposed findings and
14 judgments that were tendered to the Commission a couple of
15 years ago after the initial hearing so that we've got some
16 processes going along to keep the parties working together
17 to effectuate a, hopefully a comprehensive resolution of
18 all the issues retrospectively and both prospectively.

19 JUDGE THOMPSON: Okay. Do you need some
20 time this morning?

21 MR..CRAIG JOHNSON: To do what, your Honor?

22 JUDGE THOMPSON: To meet and work on your
23 settlement.

24 MR. CRAIG JOHNSON: Your Honor, the
25 decision-makers and the issues with respect to both a

1 resolution of the past compensation issues, as well as an
2 agreement, an interconnection agreement or traffic
3 termination agreement going forward, in my opinion, are
4 too big to get done today.

5 JUDGE THOMPSON: Okay.

6 MR. CRAIG JOHNSON: If somebody else wants
7 to speak to that, they're welcome to.

8 JUDGE THOMPSON: All right. Anyone else
9 have anything to say at this point?

10 Mr. Johnson?

11 MR. MARK JOHNSON: Your Honor, on behalf of
12 Western Wireless and T-Mobile and Aerial Communications, I
13 agree with what Mr. Johnson, Craig Johnson has just said
14 with respect to the factors for the companies which I
15 represent.

16 JUDGE THOMPSON: Very well. Anyone else?

17 MR. DUBLINSKE: I apologize, your Honor.
18 Bret Dublinske on behalf of U.S. Cellular. I would also
19 confirm that the factors stated by Craig Johnson are, in
20 fact, correct for U.S. Cellular.

21 JUDGE THOMPSON: Thank you, sir. Okay.

22 Mr. Bub?

23 MR. BUB: Thank you, your Honor. As
24 Mr. Johnson indicated, these factors were negotiated
25 yesterday pretty late in the day, and, in fact, we only

1 found out about them around dinner time last night, so we
2 haven't had a chance to really thoroughly go over them or
3 check internally within our company. So we don't have a
4 position yet on those factors.

5 If history's any guidance, we may have some
6 problems with them. It might be worthwhile to maybe have
7 a short caucus session to see if there's any type of
8 wording that could be placed in a nonunanimous
9 stipulation, because I think that's what this is at this
10 point, a nonunanimous stipulation between the Plaintiffs
11 and some of the Defendants here. If we could get some
12 language perhaps agreed to among some of the parties, we
13 could perhaps make it unanimous as a way to go.

14 If not, under the Commission's rule, a
15 nonunanimous stipulation is presented to the Commission,
16 and then other parties have 10 days to object or hold
17 their piece. So I think it might be worthwhile at least
18 to have a short caucus session this morning.

19 JUDGE THOMPSON: Okay. I appreciate that.

20 MS. HENDRICKS: I would just agree with
21 SBC. I think we need to caucus. It appears that what we
22 were prepared to go to hearing for is not what we're
23 addressing at this point in the case, because this was
24 open for the limited purpose of getting the inter-MTA
25 factors.

1 JUDGE THOMPSON: Right. So correct me if
2 I'm wrong, you have -- you have at least nonunanimous
3 stips as to all the contested factors; is that right?

4 MR. CRAIG JOHNSON: Yes.

5 JUDGE THOMPSON: Okay. So we don't need to
6 go to hearing today, unless there's something else to go
7 to hearing on?

8 MR. CRAIG JOHNSON: I agree with that, your
9 Honor.

10 JUDGE THOMPSON: Okay.

11 MR. CRAIG JOHNSON: Maybe we can -- maybe
12 we can explain some of this in more detail after the
13 caucus, if that would suit you.

14 JUDGE THOMPSON: Well, that sounds good.
15 Why don't we recess until -- I've got 10 after 9. Why
16 don't we recess until 10:30? Is that going to work?

17 MR. MARK JOHNSON: We don't need that long.

18 JUDGE THOMPSON: You don't need that long?
19 How long do you want, 9:30?

20 MR. CRAIG JOHNSON: 9:45?

21 JUDGE THOMPSON: 9:45?

22 MR. BUB: We can call you, your Honor.

23 JUDGE THOMPSON: We'll recess until 9:45.

24 (A RECESS WAS TAKEN.)

25 MR. CRAIG JOHNSON: The good news is,

1 Judge, that we -- first of all, we've agreed that these
2 factors I read off earlier -- and there's a question as to
3 whether us putting this into the record verbally today and
4 wireless carriers acknowledging that those are, in fact,
5 the agreements with respect to the traffic currently in
6 dispute in this case, whether that is a sufficient
7 nonunanimous stipulation or whether we have to prepare a
8 document and sign it that says the same thing.

9 JUDGE THOMPSON: Probably.

10 MR. CRAIG JOHNSON: Okay. We will do that.
11 And then the plan is, when we file it, Bell will have
12 their 10 days to object to it, and if in the meantime we
13 can come up with a stipulation or language to a
14 nonunanimous stipulation that satisfies everybody, we will
15 do that.

16 JUDGE THOMPSON: Great.

17 MR. CRAIG JOHNSON: But in order to get the
18 10 days, your Honor, I think the intent is to file a piece
19 of paper that has the agreed factors. Then the rest of us
20 will be working on something to see if we can resolve any
21 possible basis for Southwestern Bell's objection.

22 If that doesn't happen, they'll have to
23 file their objection 10 days after the stipulation is
24 filed.

25 JUDGE THOMPSON: Okay. Okay. That sounds

1 good. So that takes -- am I correct that there's nothing
2 left for hearing today?

3 MR. CRAIG JOHNSON: That's correct.

4 JUDGE THOMPSON: Looks like you're done,
5 unless there's anything else.

6 MS. HENDRICKS: One thing, your Honor, just
7 for purposes of correcting the record. When Craig said we
8 agreed, we agreed that they have agreed on a factor. SBC
9 has not yet agreed to the factor, and that's the purpose
10 of doing the filing and giving them an opportunity to
11 object. Just so the record is clear.

12 JUDGE THOMPSON: I do understand that, and
13 I appreciate you straightening that out on the record.

14 MR. BUB: Your Honor, we will be working
15 with them on that stipulation. So if we can get on it, we
16 will, and then it wouldn't be a nonunanimous stipulation;
17 it would be a unanimous stipulation. And if we could,
18 then we have 10 days to object.

19 JUDGE THOMPSON: Right. Absolutely.
20 Great. If there's nothing further, then we'll --

21 MR. CRAIG JOHNSON: This is something that
22 you probably have as much input into as we would, but we
23 were thinking that when we get to the point where we know
24 that this part of the hearing is resolved, either by
25 nonunanimous or unanimous stipulation, I had suggested

1 possibly having an Order from the Bench saying --
2 modifying the proposed findings and conclusions, because
3 this is a fairly complicated case in terms of factors,
4 contested parties, traffic volumes.

5 JUDGE THOMPSON: Yes, I'm aware of that.

6 MR. CRAIG JOHNSON: And then you might want
7 to have a supplemental order to rearrange the legal brief.
8 If you want to order a procedural schedule, a briefing
9 schedule at the appropriate time, it seems to me that
10 everybody here thinks that might be appropriate.

11 JUDGE THOMPSON: Okay. Why don't you guys
12 work on a proposed procedural schedule in addition to the
13 other items you're working on? You know your schedules
14 better than I do. I'm perfectly willing to go along with
15 whatever schedule you guys are willing to agree to and
16 just put whatever in it that you want. Okay? If that
17 makes sense, and we'll go from there.

18 MR. CRAIG JOHNSON: Thank you.

19 JUDGE THOMPSON: Anything else?

20 (No response.)

21 JUDGE THOMPSON: We're adjourned.

22 WHEREUPON, the hearing of this case was
23 adjourned.

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