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July 11, 2002

VIA UPS OVERNIGHT DELIVERY

Secretary of the Commission
Missouri Public Service Commission
Data Center – 1st Floor
200 Madison Street
Jefferson City, Missouri 65102

FILED²

JUL 12 2002

**Missouri Public
Service Commission**

RE: TC-2002-57

Dear Judge Roberts:

Enclosed please find an original and nine (9) copies of Verizon Wireless' Proposed Findings of Fact and Conclusion of Law to be issued by the Missouri Public Service Commission in the above-referenced proceeding. Please file this document in your usual manner and return the extra enclosed copy with the date of filing stamped thereon directly to the undersigned in the enclosed, self-addressed stamped envelope at your earliest convenience.

If you have any questions with respect to this filing, please contact me. Thank you for your attention to and assistance with this matter.

Yours very truly,

Thomas E. Pulliam

Thomas E. Pulliam

TEP\wh
Enclosures

cc: Charon Harris, Esq.
John L. Clampitt
Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²

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.)

**VERIZON WIRELESS' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

COME NOW Ameritech Mobile Communications, Inc., Ameritech Cellular, CMT Partners and Verizon Wireless (collectively "Verizon Wireless") and, pursuant to ORDERED paragraph 2 of the Order Adopting Procedural Schedule issued by the Missouri Public Service Commission ("Commission") dated January 22, 2002, as modified in its Order Amending Procedural Schedule and Directing Filing dated February 21, 2002, herewith files the following proposed Findings of Fact and Conclusions of Law.

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 Commission has considered the positions and arguments of all of the parties 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.

As set forth in the Procedural History, *supra*, this consolidated proceeding involves complaints filed by seven rural independent local exchange companies (“Petitioners”)¹ concerning disputes between the Petitioners and various commercial mobile radio service providers² and local exchange carriers (“LECs”) Southwestern Bell Telephone Company (“SWBT”) and Sprint Missouri, Inc. (collectively “Transiting Carriers”) involving payment to Petitioners for the termination of traffic originated by the Wireless Carriers and transited by the Transiting Carriers to the Petitioners’ respective networks. The Petitioners are seeking a ruling by the Commission that Petitioners be compensated for all Wireless Carrier-originated traffic transited by a Transiting Carrier to the networks of the Petitioners at the Petitioners’ respective intrastate access rates, except for Wireless Carrier-originated traffic transited by a Transiting Carrier to the networks of those Petitioners which have a Commission-approved Wireless Termination Service Tariff in place. For this traffic, the Petitioners are asking the Commission to order the Wireless Carriers to pay Petitioners for said traffic terminated after the effective date of said tariff at the rate set forth in said tariff. Petitioners seek to hold the Wireless Carriers primarily liable for this traffic and, in the absence of payment from the Wireless Carriers, seek a ruling that the Transiting Carriers shall block said traffic and, moreover, are financially liable to the Petitioners for said traffic to the extent the Wireless Carriers do not pay Petitioners for the termination of said traffic.

¹ Petitioners are Northeast Missouri Rural Telephone Company, Modern Telecommunications Company, Chariton Valley Company, Mo-Kan Dial, Inc., Choctaw Telephone Company and Alma Telephone Company.

² The Respondent commercial mobile radio service providers are ALLTEL Communications, Inc., Southwestern Bell Wireless LLC d/b/a Cingular Wireless, Sprint Spectrum L.P. d/b/a Sprint PCS, Ameritech Mobile Communications, Inc., Ameritech Cellular, CMT Partners, and Verizon Wireless (collectively “Verizon Wireless”), Western Wireless Corporation, and VoiceStream Wireless Corporation (collectively “Wireless Carriers”).

The Wireless Carriers and the Transiting Carriers allege that the Petitioners should be compensated at their intrastate access rates only for interMTA traffic terminated to Petitioners' networks. For intraMTA traffic terminated prior to the date of the Commission's order in this proceeding, or the effective date of a Wireless Service Termination Tariff, the Wireless Carriers and the Transiting Carriers claim that Petitioners should be compensated by one of two methods: either pursuant to a negotiated rate based upon the forward-looking economic costs of Petitioners in providing the termination service or under the "bill and keep" methodology, as more specifically set forth in 47 C.F.R. § 51.705(a). Transiting Carriers allege that they have no choice but to accept the transiting traffic in this case and deliver it for termination to the network facilities of the Petitioners and should not be held liable for performing their federally-mandated obligations.

Applicability of Access Rates

This Commission has unequivocally ruled that access rates cannot be imposed upon wireless traffic that originates and terminates within the same Major Trading Area ("MTA") (*i.e.* – intraMTA traffic). *See In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, P.S.C. Mo. No.2*, Amended Report and Order, p. 16 (April 9, 2002). To the extent any of the traffic in question, whether terminated before the effective date of this Report and Order or after, is intraMTA in nature, Petitioners are prohibited from charging their access rates or any rates based upon their access rates, thus rendering unacceptable and illegal the resolution proposed by Petitioners and the rates proposed by Staff witness Scheperle. The Commission finds, however, that Petitioners are entitled to charge their access rates for traffic originated by a Wireless Carrier in one MTA and terminated in another MTA (*i.e.* – interMTA traffic). However, in light of the fact that some of this traffic was terminated over 4 years ago, we will

limit Petitioners' recovery as provided by the statute of limitations under the federal law. *See* 47 U.S.C. § 415.

Appropriate Compensation

The Commission finds no dispute as to the calculation by Petitioners of the minutes of use ("MOU") terminated to their networks by the Transiting Carriers and thus holds that said MOUs (to the extent not barred by the statute of limitations for claims brought under 47 U.S.C. § 415) may be used in calculating the appropriate compensation due Petitioners. Petitioners are prohibited from imposing their access rates, or access-based rates, upon any of the intraMTA traffic terminated to their facilities, leaving open the question what is the appropriate rate of compensation for such traffic.

The Commission finds Petitioners' arguments that the arrangements described in their complaints fall outside the scope of the reciprocal compensation requirements of the federal Telecommunications Act of 1996 as wholly unpersuasive and without merit. The federal Telecommunications Act of 1996 applies to the traffic and relationships in question. This being the case, the Commission finds that there are two pricing methodologies available pursuant to which Petitioners may be compensated for intraMTA traffic originated by Wireless Carriers and terminated by Transiting Carriers to the network facilities of Petitioners: (1) rates based upon the forward-looking, economic costs of Petitioners to provide such services, without any recoupment for non-traffic sensitive elements, or (2) a negotiated settlement.

None of the Petitioners have a Commission-approved rate on file that constitutes its forward-looking, economic costs. As such, any rate established by this Commission in this proceeding for traffic terminated prior to the effective date of this Report and Order would constitute retroactive ratemaking, the legality of which would not withstand review by an

appellate court. Therefore, if Petitioners desire compensation for Wireless Carrier-originated, intraMTA traffic terminated prior to the effective date of this Report and Order, then Petitioners must negotiate in good faith with the Wireless Carriers to arrive at an agreement.³ Absent such an agreement, the Commission finds that Petitioners are authorized to recover no compensation from the Wireless Carriers.

Nature of Traffic

The record is not clear as to how much, if any, of the traffic in question is interMTA versus intraMTA. Sprint PCS witness Pruitt has testified that none of Sprint PCS' traffic in question is interMTA, while Staff witness Scheperle contends that the Commission should assume all of the traffic is interMTA, absent traffic studies establishing to the contrary. The Commission finds that there is a lack of competent evidence concerning how much of the traffic in question is interMTA and how much is intraMTA. The Commission finds the recommendations of Staff witness Scheperle contained in his Rebuttal Testimony about conducting traffic studies, as modified by the recommendations made by Verizon Wireless witness Clampitt in his Surrebuttal Testimony, can provide an appropriate framework to determine how much of the traffic in question is interMTA and how much of the traffic in question is intraMTA.

SWBT Wireless Interconnection Tariff (PSC Mo. No 40)

Substantial and competent evidence in the record establishes beyond question that none of the traffic at issue in this proceeding is transited by SWBT pursuant to its Wireless

³ The substantial and competent evidence in the record clearly establishes the continued, willful failure of the Petitioners to enter into good faith negotiations with the Wireless Carriers to establish indirect interconnection agreements containing reciprocal compensation arrangements for intraMTA traffic. Petitioners' one-time position that they be compensated at their access rates as a precondition to commencement of negotiations is indefensible and smacks of bad faith. Petitioners have presented no competent evidence as to why their costs to terminate the traffic in question are unique in being dramatically higher than other rural independent local exchange companies located in Missouri and throughout the country.

Interconnection Tariff (PSC Mo. No. 40). Moreover, testimony in prior proceedings establishes that terms and conditions of said Wireless Interconnection Tariff have never been addressed by the Wireless Carriers in an administrative forum once said Carriers established interconnection agreements with SWBT. As such, any reference to the existence of this tariff, or its terms and conditions, is irrelevant and immaterial to any issue before the Commission in this proceeding.

Liability of the Transiting Carriers

Petitioners seek to impose financial responsibility upon the Transiting Carriers in the event that Petitioners are unable to obtain compensation from the Wireless Carriers for the Wireless Carrier-originated traffic transited by a Transiting Carrier. The Commission finds that the imposition of such liability unnecessarily penalizes the Transiting Carrier for performing their federally mandated obligations under the federal Telecommunications Act of 1996. The Commission finds that the Transiting Carriers have no liability to compensate Petitioners for the traffic transited and that the Petitioners must look solely to the Wireless Carriers to be compensated in accordance with the guidelines and adjudications previously set forth herein.

Blocking

Petitioners seek the right to block traffic originated by the Wireless Carriers to the extent Petitioners are not paid for such traffic. The Commission finds blocking to be a harsh and extreme measure which harms Missouri consumers and places them in the middle of disputes between telecommunications companies. Because blocking is not good public policy, the Commission will not consider favorably requests to block traffic.

CONCLUSIONS OF LAW

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

1. Petitioners are authorized to charge their intrastate access rates on all interMTA traffic originated by Wireless Carriers and transited by the Transiting Carriers to the network facilities of Petitioners, subject to the applicable statutes of limitations on claims brought under 47 U.S.C. § 415.

2. Petitioners cannot charge access rates, or access-based rates, for Wireless Carrier-originated, intraMTA traffic transited by a Transiting Carrier to the network facilities of Petitioners. The only acceptable compensation rates for Petitioners or other rural ILECS that do not have interconnection agreements with reciprocal compensation arrangements or Commission-approved wireless termination service tariffs are based on forward-looking, economic costs without any contribution to non-traffic sensitive elements or negotiated settlements.

3. Wireless Carriers shall perform a traffic study to determine how much of the traffic being terminated to Petitioners is intraMTA versus interMTA. Such studies shall be based upon traffic originated by the Wireless Carriers for a period of thirty days beginning sixty (60) days after the effective date of this Report and Order, with the result of said studies to be filed with the Commission in this docket not later than forty-five (45) days after the end of the testing period. To the extent any Wireless Carrier requires information from Petitioners to conduct all or a portion of such study, such information request shall be supplied by Petitioners within five (5) days after submission of such request. Petitioners' failure to cooperate with Wireless Carriers, which results in the inability to perform such study or which leads to inconclusive results of such study, shall result in a determination that ninety-five percent (95%) of the traffic being terminated to said Petitioner's exchanges is intraMTA traffic.

4. Neither Southwestern Bell Telephone Company, Sprint Missouri, Inc., nor any other LEC acting as a transiting carrier for wireless-originated traffic, shall have any financial liability or obligation to compensate Petitioner for any wireless-originated traffic.

5. All pending motions in this docket which have not been previously ruled upon by the Commission are hereby denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was mailed, first class mail, postage pre-paid, the 12th day of July, 2002, to:

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