

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

**FILED**

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. )

**PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW OF  
ALLTEL COMMUNICATIONS, INC.**

In compliance with the January 22, 2002 Order Adopting Procedural Schedule as most recently amended by the March 21, 2002 Order Amending Procedural Schedule in this case, ALLTEL Communications, Inc. ("ALLTEL") hereby provides the following Proposed Findings of Fact and Conclusions of Law.

Whereas ALLTEL is a respondent in only two of the complaint cases consolidated in this proceeding, TC-2002-167, Chariton Valley Telephone Corporation ("Chariton Valley") and TC-2002-181, Choctaw Telephone Company ("Choctaw") (collectively "Complainants" for purposes herein), unless otherwise stated to the contrary, ALLTEL's Proposed Findings of Fact and Conclusions of Law will apply only as to ALLTEL and not as to the other respondents.

## **FINDINGS OF FACT**

1. Complainant Chariton Valley is a certificated local exchange company providing local exchange and exchange access telecommunications services in 18 exchanges in north central Missouri.
2. Complainant Choctaw is a certificated local exchange company providing local exchange and exchange access telecommunications services in one exchange in southwest Missouri. Choctaw has a wireless termination service tariff approved by the Commission with an effective date of February 17, 2001.
3. Respondent Southwestern Bell Telephone Company ("SWBT") is a local exchange carrier authorized to provide local exchange and exchange access telecommunications services in exchanges located throughout the State of Missouri. SWBT is also a local and intraLATA transport provider in many parts of the State of Missouri.
4. Respondent ALLTEL is a telecommunications carrier licensed by the Federal Communications Commission ("FCC") to provide commercial mobile radio service ("CMRS") to customers in a number of areas of the State of Missouri.
5. At all times relevant herein, Respondent ALLTEL entered into interconnection agreements with SWBT, under which SWBT provides transport services between ALLTEL's network and the Complainants' networks.
6. ALLTEL has offered to negotiate an interconnection agreement with each of the Complainants. Each of the Complainants rejected ALLTEL's offer to negotiate an interconnection agreement based, in part, on the assertion, made separately by each

Complainant, that the Complainant was not obligated to negotiate with ALLTEL until such time as ALLTEL established a direct interconnection with the Complainant.

7. As is explained more fully in the Conclusions of Law below, calls that originate and terminate within the same major trading area ("MTA") and involve a wireless carrier have been deemed by the FCC to be local calls for purposes of intercarrier compensation. Missouri is divided into two MTAs that split the state on a roughly north-south line in the middle of the state.

8. Each Complainant charges its local service customer a local service rate designed to reflect the cost of originating and terminating local calling. In the case of calls originated by customers of the Complainants that terminate to customers of ALLTEL located within the same MTA, the Complainants do not incur the cost of originating, switching or terminating the call without compensation. Rather, the Complainants treat the calls as long distance calls and collect from the long distance carriers involved originating carrier access rates designed to cover all of the costs of originating and switching the call. The customers of the Complainants pay long distance rates for all such intraMTA calls, whether they are terminated across the street, across the town, across the county, across the exchange or from one end of the MTA to the other.

9. As long as each Complainant avoids negotiating an interconnection agreement with ALLTEL and this Commission takes no further action, each Complainant can expect to continue to collect originating access on intraMTA (local) calls between its customers and customers of ALLTEL.

10. Since February 17, 2001, Complainant Choctaw has had a wireless termination service tariff in place, under which it has billed a charge to ALLTEL for terminating

intraMTA traffic to its customers. These charges are in addition to the originating carrier access that both Complainants charge long distance carriers for originating intraMTA calls from Complainants' customers to ALLTEL's customers.

11. ALLTEL has paid under protest all charges appropriately billed to it by Complainant Choctaw under Choctaw's wireless termination service tariff.

### **CONCLUSIONS OF LAW**

#### **ISSUE 1 – TRAFFIC SUBJECT TO A WIRELESS TERMINATION TARIFF**

1. The Complainant with a Wireless Termination Service Tariff -- Choctaw -- has established a basis for charging ALLTEL for terminating intraMTA calls after the effective date of its Wireless Service Termination Tariff. The evidence shows that ALLTEL has paid or is paying all invoices appropriately rendered under that tariff until such time as the order approving that tariff is reversed or vacated. Therefore, while ALLTEL does not dispute its liability under that tariff until it is reversed or vacated, Choctaw has not established that ALLTEL is in arrears on tariff payments.

#### **ISSUE 2 – TRAFFIC NOT SUBJECT TO A WIRELESS TERMINATION TARIFF**

2. In the absence of a wireless termination service tariff or an interconnection agreement, Complainants cannot charge access rates for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Complainants' respective networks.

This Commission has twice concluded that access charges are inappropriate for terminating intraMTA wireless traffic. See *In the Matter of Mid-Missouri Group's Filing*

to Revise its Access Service Tariff, P.S.C. Mo. No. 2, Case No. TT-99-428 *et al.*, Report and Order of January 27, 2000; *In the Matter of Mid-Missouri Group's Filing to Revise its Access Service Tariff, P.S.C. Mo. No. 2, Case No. TT-99-428 et al.*, Report and Order of April 9, 2002 (the "*Alma* decisions"). In addition, a number of authorities, including the Iowa Board of Public Utilities, the FCC and a federal district court have interpreted and applied federal law in exactly the same manner as the Commission's *Alma* decisions.

Most recently, the United States District Court for the District of Montana stated (at pp. 7-8 of its slip opinion):

The Court notes for the benefit of the parties that this case presents very similar issues to those presented in *3-Rivers Telephone Coop., Inc. v. U.S. West Communications, Inc.*, 125 F.Supp.2d 417 (D. Mont. 2000), which was previously decided by this Court. In that case the Court relied on the FCC ruling entitled *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC Docket 96-325. The FCC Ruling provided the following at ¶ 1036:

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*. (emphasis added by District Court).

In the instant case there is an attempt by the plaintiff to force a CMRS provider to pay an access charge for calls terminating at the plaintiff's facilities. This attempt is being made under the argument that the indirect method of transit used by the CMRS providers makes them subject to an access charge. Such an attempt is in direct contravention of the ruling promulgated by the FCC in the above-mentioned case. A party may receive an access charge for a long distance telephone call. However, when the call is considered local traffic, the appropriate compensation is reciprocal compensation pursuant to the rules set out by the FCC in 47 C.F.R. 20.11.

The Court is not inclined to reverse its decision in the *3-Rivers* case or to “clarify” its opinion to allow the plaintiff in this case to levy access charges for local traffic which originates and terminates within the same Major Trading Area. Such a clarification would result in the abrogation of the FCC ruling relied upon in *3-Rivers*.

*Mid-Rivers Telephone Cooperative Inc. v. Qwest Corp.*, CV 01-163-BLG-RFC, (D. Mont filed April 3, 2002).

Consistent with the quoted language from the federal court, this Commission's application of federal law is correct and need not be revisited. Similarly, the Iowa Board's decision in *In re: Exchange of Transit Traffic*, Iowa Utilities Board Docket No. SPU-00-7, *Order Affirming Proposed Decision and Order*, issued March 18, 2002, is directly on point and interprets federal law exactly as the Commission has in its *Alma* decisions. The record reflects that there does not appear to be any court or other regulatory body that has ruled in a manner inconsistent with the *Alma* decisions.

Complainants argue that their claim here is different because the wireless carriers have violated the Commission's Order in Case No. TT-97-524. However, ALLTEL does not acquire transport services from SWBT's wireless service tariff. Rather, it acquires its transport service from SWBT through a negotiated and approved Interconnection Agreement.

3. As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their tariffs. Neither of the Complainants alleged in their amended complaints that the traffic being terminated to them through SWBT is other than intraMTA traffic. Moreover, Complainant Choctaw has billed ALLTEL at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

4. This case, as a complaint case, is not an appropriate vehicle for the Commission to establish a rate for any Complainant without a wireless termination service tariff or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks. Complainants are currently being compensated under a *de facto* bill and keep insofar as they are retaining compensation they would otherwise be obligated to pay ALLTEL for terminating intraMTA traffic to ALLTEL, and they are collecting originating access on intraMTA wireless calls where they would otherwise be obligated to pay for transport and termination. The Complainants are not entitled to other compensation until they negotiate appropriate interconnection agreements with ALLTEL.

5. As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their tariffs. Neither of the Complainants alleged in their amended complaints that the traffic being terminated to them through SWBT is other than intraMTA traffic. Moreover, the Complainant with a Wireless Termination Service Tariff – Choctaw -- has billed ALLTEL at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

6. Intrastate interMTA traffic is subject to the Complainants' intrastate access tariff rates.

7. It is not appropriate for the Complainants to attempt to impose secondary liability on SWBT for traffic terminated to their customer and originated by ALLTEL because the Complainants are being compensated through a *de facto* bill and keep arrangement as described in Paragraph No. 4 above and because the Complainants have refused to

engage in good faith negotiations to establish interconnection agreements directly with ALLTEL.

8. Because the Complainants have refused to negotiate in good faith for an appropriate interconnection agreement, they are estopped from making any claim based on the absence of an interconnection agreement. Moreover, because Complainants are already receiving compensation through the *de facto* bill and keep arrangement, they are estopped from seeking additional compensation.

9. There is no basis for Complainants' conditioning negotiations for an interconnection agreement on ALLTEL establishing a direct connection. The interconnection obligations of TA96 do not distinguish between direct interconnection and indirect interconnection. TA96 defines the very first duty of all telecommunications carriers as the duty "to interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1) (emphasis added). Section 251(b)(5) obligates local exchange carriers to establish reciprocal compensation, and Section 251(c)(1) requires local exchange carriers to engage in good faith negotiations to establish those arrangements. Nothing in TA96 or the FCC's rules requires wireless carriers to directly interconnect as a prerequisite to negotiating an interconnection agreement.

10. Contrary to the allegations of the Complainants, the terms and conditions of SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40) have no relevance to ALLTEL because ALLTEL does not buy transport services from SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40).



11. Complainants have already recovered the compensation, if any, that is due for intraMTA traffic terminated prior to the effective date of a Complainant's Wireless Termination Service Tariff. Each Complainant has been compensated under a *de facto* bill and keep insofar as it has retained compensation it would otherwise be obligated to pay ALLTEL for terminating intraMTA traffic to ALLTEL, and each Complainant is collecting originating access on intraMTA wireless calls where it would otherwise be obligated to pay for transport and termination. Even if the Commission were to determine that Complainants have not been compensated or have not been adequately compensated through the *de facto* bill and keep arrangement, Complainants are estopped from seeking compensation by their refusal to engage in good faith negotiations for appropriate interconnection agreements.

13. As to the final question of whether SWBT should block uncompensated wireless traffic for which it serves as a transiting carrier (and assuming the existence of uncompensated traffic), the Commission concludes that SWBT should not block traffic for which it serves as a transiting carrier.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, First Class mail, postage prepaid, this 12th day of July 2002, to:

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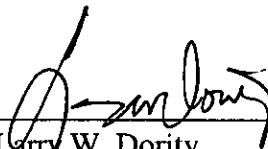
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