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March 25, 2004

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

FILED²

MAR 25 2004

Missouri Public
Service Commission

Re: Case No. TC-2002-57

Dear Secretary:

Enclosed please find an original and eight (8) copies of *MITG's Objection to Data Request of US Cellular Corp.*

Thank you for seeing that this is filed properly.

Sincerely,



Bryan D. Lade

Enc.

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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²

MAR 25 2004

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.)

MITG'S OBJECTION TO DATA REQUEST OF US CELLULAR COPR.

COMES NOW the Missouri Independent Telephone Group (collectively "Petitioners") and OBJECTS to the following Informal Data Request submitted, pursuant to Commission rule 4 CSR 240-2.090, to them by Unites States Cellular Corporation ("US Cellular") on March 15, 2004:

1. Please provide all data requests and answers to data requests sent by and received by Petitioners MITG.

OBJECTION: Petitioners object to this request because it is an improper informal data request under 4 CSR 240-2.090, in that it is overly broad and imprecise,

such that it may cause the Petitioners to produce information that is not relevant to the issues in this case.

Petitioners cite a Commission order in Case No. WR-2000-281, which dealt with such blanket data requests. In that case the commission discussed this situation as follows:

Discovery is generally available in cases before the Commission on the same basis as in civil case in circuit court. 4 CSR 240-2.090(1). The scope of discovery is the same as in civil cases generally under Rule 56.01(b)(1), Mo. R. Civ. Proc. And the limits and sanctions apply. Rule 4 CSR 240-2.090(1) *and see* St. ex. rel. Arkansas Power & Light Co. v. Missouri Public Service Commission, 736 S.W.2d 457, 460 (Mo.App. W.D. 1987). . . . [P]arties before the Commission may also employ DRs. A DR is 'an informal written request for documents or information, which may be transmitted directly between agents or employees of the commission, public counsel or other parties to a proceeding' 4 CSR 240-2.090(2).

[It] is correct that the Staff of the Commission and the Public Counsel enjoy broader discovery powers than other litigants. Section 386.450, RSMo, authorizes the Commission and the Public Counsel to examine "books, accounts, papers or records" in the hands of "any corporation, person or public utility," "kept . . . in any office or place within or without this state[.]" The Commission has interpreted this statute to authorize Public Counsel to serve DRs on regulated entities, and the Commission to compel responses to those

DRs, even in the absence of a pending proceeding. See *In the Matter of Public Counsel's Audit and Investigation of the Raytown Water Company Regarding the Reasonableness of its Current Rates and its Compliance with Past Commission Orders*, Case No. WO-94-192 (*Order Compelling Answers to Data Requests*, January 5, 1994). Likewise, this authority is not conditioned on considerations of relevance under Rule 56.01(b)(1), Mo. R. Civ. Pro., made applicable to Commission proceedings by Section 536.073.2, RSMo, and Commission Rule 4 CSR 240-2.090(1).¹

The Commission went on to discuss the differences in the discovery rights under § 386.450 and rule 4 CSR 240-2.090.² Specifically, it noted that § 386.450 discovery “may be pursued outside of the context of pending case and the relevance standard of Rule 56.01(b)(1), Mo. R. Civ. Pro., does not apply. That is, within or outside a given contested case Staff and Public counsel have the power to propound DRs that request irrelevant information. Another party requesting the same information would violate Rule 56.01(b)(1), and the Commission could properly deny their request under a motion to compel.

In this case US Cellular's request is overly broad, in two respects. First, it is not clear whether US Cellular means all DRs and responses in the entire history of the case, or those exchanged in this limited “factor” determination phase. Second, US Cellular's request is tantamount to requesting all information in response to Staff's DRs

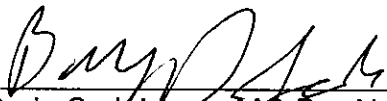
¹ *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Increases for Water and Sewer Service Provided to Customers in the Missouri Service Area of the Company*. Case No. WR-2000-281, *Order Concerning Motions to Compel*, February 2, 2000.

² *Id.*

received by the Petitioners. Some or all of the Staff's DRs may pertain to matters within the scope of § 386.450, but not properly within the scope of 4 CSR 240-2.090.

It is not Petitioners intent to deny US Cellular any information which is properly within Rule 56.01(b)(1) and therefore within the scope of 4 CSR 240-2.090. However, reproducing and/or sifting through the reams of Data Requests and Responses of this case to determine what is properly "relevant" and therefore can be produced to US Cellular would be unduly burdensome at this stage of the case.

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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 hand delivered or mailed, via U.S. Mail, postage prepaid, this 25th day of March, 2004, to all parties of record in this proceeding.


Attorney for Petitioners