

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

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Missouri Public
Service Commission

Northeast Missouri Rural Telephone Company)
And Modern Telecommunications Company,)
)
Petitioners,)
)
v.)
)
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.)

Case No. TC-2002-57, et al
Consolidated.

**SPRINT MISSOURI, INC. AND SPRINT SPECTRUM L.P. d/b/a
SPRINT
POSITION STATEMENT**

COMES NOW Sprint Missouri, Inc. and Sprint Spectrum L.P. d/b/a/ Sprint PCS
(collectively "Sprint"), and hereby provides the following Position Statement:

ISSUE 1 – TRAFFIC SUBJECT TO A WIRELESS TERMINATION TARIFF

1. For each Wireless Carrier Respondent named in the respective complaints, have each of the Petitioners with Wireless Termination Service Tariffs established that there are any amounts due and owing for traffic that was delivered after the effective date of any of the Wireless Termination Service Tariffs?

SPRINT'S RESPONSE: With respect to Sprint PCS, Petitioners have not established that any amounts are due and owing for the traffic delivered after the effective date of any of the Wireless Termination Service Tariffs. Sprint has paid all amounts billed for services rendered under the Wireless Termination Service Tariff. Further, Sprint PCS has affirmatively stated that it will

continue to pay all amounts billed for services rendered under the Wireless Termination Service tariffs. While Petitioners contend that there are general amounts that are due under the wireless termination tariff for extended time periods, Petitioners have not put in any evidence that the amounts were billed as required by the Wireless Termination Service tariffs. Therefore, Petitioners have failed to prove that Sprint PCS has not paid any amounts due under the wireless termination tariff as required to support their complaint.

ISSUE 2 – TRAFFIC NOT SUBJECT TO A WIRELESS TERMINATION TARIFF

2. In the absence of a wireless termination service tariff or an interconnection agreement, can Petitioners charge access rates for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks?

SPRINT'S RESPONSE: No, it is unlawful to impose access charges on CMRS intraMTA traffic. The FCC has stated in several orders that traffic between a CMRS and an incumbent LEC that originates and terminates within the same MTA is subject to transport and termination rates under 251(b)(5) rather than intrastate access charges. This Commission acknowledged and followed the FCC in Case No TT-99-428 wherein it ruled that intrastate access cannot apply to intraMTA traffic.

3. For each Wireless Carrier Respondent named in the respective complaints, does the record support a finding that the traffic in dispute is intraMTA wireless traffic?

SPRINT'S RESPONSE: With respect to Sprint PCS, the traffic in dispute is intraMTA traffic. When a Sprint PCS call originates from a cell site within a given MTA and is terminated within the same MTA, the call is routed from the Mobile Switching Center (MSC) to the

appropriate LEC switch for delivery to the end-user or to a third party LEC. It is this intraMTA traffic that is subject to dispute in this case. On the other hand, when a Sprint PCS call originates from a cell site in one MTA for delivery in another MTA, the call is routed from the MSC to a long distance providers' switch site. The long distance provider pays Petitioners access charges and these calls are not subject to this complaint.

4. What compensation, if any, is due Petitioners without wireless termination service tariffs or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks after the date of an order by the Commission in this case?

SPRINT'S RESPONSE: With respect to Sprint PCS, all the traffic is intraMTA. Therefore, this traffic is subject to reciprocal compensation pursuant to 47 U.S.C 251(b)(5) and 47 C.F.R. 51.705 and the only rates that can be applied are TELRIC based rates, bill and keep or negotiated rates. Absent an interconnection agreement with a state established TELRIC rate or a negotiated rate, the only option under the Federal Act and the FCC rules is to have a bill and keep arrangement.

5. What compensation, if any, is due Petitioners without wireless termination service tariffs or an interconnection agreement for intraMTA traffic originated by wireless carriers and transited by a transiting carrier for termination to the Petitioners' respective networks prior to the date of an order by the Commission in this case?

SPRINT'S RESPONSE: In this case, the Commission cannot award compensation for traffic delivered before the effective date of an order as that would represent retroactive rate making. The Commission ruled that access tariffs do not apply to intraMTA traffic, and there

are no other tariffs that applied. Any attempt at this point in time to establish a rate would be in violation of Missouri law.

6. For each Wireless Carrier Respondent named in the respective complaints, does the record support a finding that the traffic in dispute is interMTA traffic?

SPRINT RESPONSE: With respect to the traffic originated by Sprint PCS, the traffic is not interMTA traffic. The record reflects that when a Sprint PCS call originates from a cell site in one MTA for delivery in another MTA, the call is routed from the MSC to a long distance providers switch site. The long distance provider pays Petitioners access and these calls are not subject to this complaint.

7. To the extent that the record supports a finding that any of the traffic in dispute is interMTA traffic for each Wireless Respondent, what amount is due under Petitioners' applicable Intrastate Access Tariffs?

SPRINT'S RESPONSE: As the Sprint PCS traffic in dispute is intraMTA, no payments are due under Petitioners' Intrastate Access tariffs.

8. Is it appropriate to impose secondary liability on transiting carriers for the traffic in dispute?

SPRINT'S RESPONSE: No. The LECs named in this complaint, SWBT and Sprint Missouri Inc., are obligated pursuant to Federal law (47 U.S.C. 251(a)(2)) to interconnect with other telecommunications carriers and to offer the use of their networks. In fulfilling this obligation, there is no benefit going to the transiting LEC as it only charges for the transiting function and receives no compensation for termination. Therefore, it would be inappropriate and unfair to find the transiting LECs secondarily liable for the traffic in dispute.

9. Does the record support a finding that Petitioners are barred from collecting compensation for traffic in dispute under the principles of estoppel, waiver, or any other affirmative defense pled by any of the Wireless Carrier Respondents?

SPRINT'S RESPONSE: Yes. The record reflects that Petitioners have repeatedly refused to negotiate for rates consistent with the Federal Act, FCC rules and this Commission's prior ruling. As Petitioners have refused to negotiate for the very compensation they now seek, Petitioners should be barred from any recovery.

10. Are Petitioners obligated to negotiate interconnection agreements with wireless carriers on an indirect basis that provide for reciprocal compensation for traffic exchanged between their respective networks through a transiting carrier?

SPRINT'S RESPONSE: Yes. The Federal Act and the FCC rules places an obligation on Petitioners to negotiate interconnection agreements for both direct and indirect interconnections. Further, the Federal Act and FCC rules requires that the parties must pay each other reciprocal compensation for all intraMTA traffic whether the parties are directly or indirectly connected. These obligations arise under §§ 47 U.S.C 251 and 332 and the FCC rules implementing these provisions.

11. What, if any, relevance do any of the terms and conditions of Southwestern Bell Telephone Company's Wireless Interconnection Tariff (PSC Mo. No. 40) have in connection with the determination of any of the issues in this proceeding?

SPRINT'S RESPONSE: As there are no wireless carriers who are delivering traffic pursuant to Southwestern Bell Telephone Company's Wireless Interconnection Tariff, it has no direct relevance. However, given that in connection with approving the tariff, the Commission

clearly contemplated that the MITG companies would enter into interconnection agreements on an indirect basis, it is relevant to the Commission determination of Issue 10.

12. Who is responsible to pay compensation due, if any, to the Petitioners for intraMTA traffic terminated prior to the effective date of a Petitioner's Wireless Termination Tariff?

SPRINT'S RESPONSE: All parties in this case agree that for intraMTA traffic, the originating carrier is responsible for any compensation due. In this case, bill and keep reciprocal compensation is the appropriate compensation.

13. Should SWBT block uncompensated wireless traffic for which it serves as a transiting carrier?

SPRINT'S RESPONSE: No. The transiting carriers have an obligation under the federal Act to allow other telecommunications carriers to interconnect and use their networks. Further, blocking traffic is not good public policy and will limit consumers' choice for alternatives to toll calls.

Respectfully submitted,
Sprint Missouri, Inc.
Sprint Spectrum L.P.
SPRINT


Lisa Creighton Hendricks - MO Bar #42194
6450 Sprint Pkwy
MS: KSOPHN0212-2A253
Overland Park, KS 66251
Voice: 913-315-9363 • Fax: 913-523-9769
Lisa.c.creightonhendricks@mail.sprint.com

Monica Barone by Louis Bergmeyer

Monica Barone

FL Bar # 0980269 NC Bar #27518

6160 Sprint Parkway, 4th Floor

MS: KSOPHI0414

Overland Park, Kansas 66251

Voice: (913) 315-9134 • Fax: (913) 315-0785

mbaron02@sprintspectrum.com

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class/electronic/facsimile mail, the 12th day of July, 2002.

Lisa Creighton Hendricks by [Signature]
Lisa Creighton Hendricks

Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

MO TC2002-57

Craig S. Johnson
Andereck, Evans, Milne, Peace & Johnson, LLC
The Col. Darwin Marmaduke House
700 East Capitol, Box 1438
Jefferson City, MO65102

General Counsel
MO Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Legal Department - Nextel Communications
1768 Old Meadow Road
McLean, VA22102

Larry W. Dority, Esq.
Fischer & Dority, P.C.
101 Madison, Ste. 400
Jefferson City, MO65101

Legal Department - AT&T Wireless
3405 Forrest Hill Blvd.
West Palm Beach, FL33406

James F. Mauzé/Thomas E. Pulliam
Ottson, Mauzé, Leggat & Belz, LC
112 South Hanley Rd.
St. Louis, MO 63105-3418

Mark P. Johnson
Sonnenschein Nath & Rosenthal
4520 Main Street, Ste. 1100
Kansas City, MO 64111

Joseph D. Murphy
Meyer Capel, PC
306 West Church Street
Champaign, IL61820

Andrew T. Spence
101 South Tryon St., Ste. 4000
Charlotte, NC28280-4000

Brian T. McCartney
Brydon, Swearngen & England P.C.
312 East Capitol Ave.
P.O. Box 456
Jefferson City, MO 65102-0456

Illinois Cellular & Communications, Inc.
Attn:John A. Kise, Jr.
1721 Quail Court
Woodstock, IL60098

Richard S. Brownlee, III
221 Bolivar Street, Suite 300
Box 1069
Jefferson City, MO 65102

Paul H. Gardner
131 E. High
Jefferson City, MO65102

American Portable Telecom, Inc.
Attn:Brian T. O'Connor
12920 SE 38th Street
Bellevue, WA 98006-1350

Paul G. Lane/Leo J. Bub
General Counsel-Missouri-SWBT
One Bell Center, Room 3520
St. Louis, MO 63101-1976

Legal Department - AT&T Wireless
3405 Forrest Hill Blvd.
West Palm Beach, FL33406