

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

SEP 24 2002

Missouri Public
Service Commission

BPS Telephone Company, et al.,

Petitioners,

v.

VoiceStream Wireless Corporation, et al.,

Respondents.

Case No. TC-2002-1077

**RESPONDENTS' MOTION TO CANCEL HEARING AND FOR COMMISSION TO
DECIDE COMPLAINT ON THE PLEADINGS**

Come now the Respondents, VoiceStreamWireless Corporation ("VoiceStream") and Western Wireless Corporation ("Western Wireless"), and move the Commission pursuant to 4 C.S.R. 240-2.110(1) and (3), for cancellation of the hearing scheduled in this proceeding and for decision based on the pleadings. In support of this Motion, Respondents state the following:

1. This matter involves a complaint by several small telephone companies ("the Complainants") that the Respondents, two wireless carriers and a local exchange company, have failed to pay certain charges to the Complainants for completing traffic originating on the wireless carriers and terminating on the Complainants' networks. Complainants seek the recovery of those charges for the periods since the Commission approved their wireless termination tariffs in 2001.

2. As demonstrated in their Answer, the VoiceStream and Western Wireless maintain that the Commission may not lawfully approve tariffs file by the Complainants imposing non-negotiated or arbitrated rates for the completion of local telecommunications

traffic which is the subject of this case. They believe that the dispute turns on a question of law: *under governing federal law and regulations, does the Commission have the power to approve tariffs for the transport and termination of local traffic?* This matter is now on appeal before the Missouri Court of Appeals, Western District, in State ex rel. Southwestern Bell Wireless LLC, et al. v. Public Service Commission, No. WD 60928. In addition, the same legal issue is to be decided by the Commission in Northeast Missouri Rural Telephone Company, et al. v. Southwestern Bell Telephone Company, et al., Case No. TC-2002-57 (consolidated), which was tried August 5-8, 2002. Under 4 C.S.R. 240-2.110(3), the Commission may take actions in cases before it to avoid unnecessary costs. Moving forward with the hearing in this case, where the controlling issue is a question of law pending before the Court of Appeals, would likely result in the unnecessary expenditure of the Commission's limited time and resources.

3. Based on their review of that direct testimony, VoiceStream and Western Wireless believe the controlling issue may be decided on the pleadings. They do not have the records to dispute the traffic data contained in the Complainants' direct testimony. In short, going forward with the filing of additional testimony and conducting a hearing would not raise any disputed issues which the Commission could not decide on the existing record.

4. By this Motion, VoiceStream and Western Wireless request that the Commission cancel the hearing now scheduled for October 17 and 18, 2002, set a briefing schedule for the parties to present their legal arguments, and issue an order deciding this dispute based on those briefs and the record generated to date.

5. VoiceStream and Western Wireless do not believe that allowance of this Motion would prejudice the other respondent, Southwestern Bell Telephone Company, as its liability, if any, for the charges sought by the Complainants is derivative of the wireless carriers' obligation

to pay those charges. In other words, if the Commission does not have the power to impose those charges on VoiceStream and Western Wireless, neither does it have the power to require Southwestern Bell to pay the charges.

6. VoiceStream and Western Wireless do not bring this Motion to delay a final decision in this case. They seek to minimize the prospect of a decision which is inconsistent with the prospective decision in the appeal pending before the Western District Court of Appeals.

Wherefore, Respondents VoiceStream and Western Wireless respectfully move the Commission to cancel the hearing, issue a briefing schedule to allow the parties to develop their legal arguments as to the Commission's power to impose any charges for the termination of wireless to landline traffic, and decide this case on those briefs and the record.

Respectfully submitted,

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ATTORNEYS FOR VOICESTREAM WIRELESS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first-class United States mail, postage prepaid, on the following parties on this 23rd day of September, 2002:

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