

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

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NORTHEAST MISSOURI RURAL TELEPHONE :  
COMPANY and MODERN TELEPHONE :  
COMPANY, :

Petitioners, :

vs. :

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

**PROPOSED FINDINGS OF  
FACT AND CONCLUSION  
OF LAW OF UNITED STATES  
CELLULAR CORPORATION**  
(REVISED AND SUBSTITUTED)

**FILED<sup>3</sup>**

OCT 22 2004

Missouri Public  
Service Commission

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**PROPOSED FINDINGS OF FACT**

1. Complainant Northeast Missouri Rural Telephone Company ("Northeast") is a local exchange company providing telecommunications services in 11 exchanges in northeast Missouri.
2. Complainant Modern Telecommunications Company ("Modern") is a local exchange company providing telecommunications services in 3 exchanges in northeast Missouri.
3. Complainant Mid-Missouri Rural Telephone Company ("Mid-Mo") is a local exchange company providing telecommunications services in 12 exchanges in west central Missouri.
4. Complainant Chariton Valley Telephone Company ("Chariton Valley") is a local

exchange company providing telecommunications services in 18 exchanges in north central Missouri.

5. Complainant MoKan Dial, Inc. ("MoKan") is a local exchange company providing telecommunications services in one exchange in western Missouri. MoKan has a wireless termination service tariff approved by the Commission with an effective date of February 19, 2001.

6. Complainant Choctaw Telephone Company ("Choctaw") is a local exchange company providing 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.

7. Complainant Alma Telephone Company ("Alma") is a local exchange company providing telecommunications services in one exchange in west central Missouri. Alma has a wireless termination service tariff approved by the Commission with an effective date of February 17, 2001.

8. Respondent Southwestern Bell Telephone Company ("SWBT") is a local exchange carrier authorized to provide 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.

9. Respondent U. S. Cellular is a commercial mobile radio service provider licensed by the FCC to provide CMRS telephone services in a number of markets in the State of Missouri.

10. Respondent U. S. Cellular entered into an interconnection agreement with SWBT on October 1997. Under that interconnection agreement, SWBT provides transport services between

U. S. Cellular's network and each of the Complainants' networks. Under that interconnection agreement, SWBT is prohibited from blocking traffic originated by U. S. Cellular and terminated by to the Complainants.

11. U. S. Cellular has offered to negotiate an interconnection agreement with each of the Complainants. Each of the Complainants rejected U. S. Cellular'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 U. S. Cellular until such time as U. S. Cellular established a direct interconnection with the Complainant.

12. 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.

13. 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 U. S. Cellular 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 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 country, across the exchange, or from one end of the MTA to the other.

14. As long as each Complainant avoids negotiating an interconnection agreement with U. S. Cellular 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 U. S. Cellular.

15. Since February 2001, Complainants MoKan, Choctaw, and Alma had a wireless termination service tariff in place, under which each of these Complainants has billed a charge to U. S. Cellular for terminating intraMTA traffic to its customers. These charges are in addition to the originating intraMTA calls from Complainants' customers to U. S. Cellular's customers.

16. U. S. Cellular has paid charges billed to it by Complainants MoKan, Choctaw and Alma under their wireless termination service tariffs.

### **PROPOSED CONCLUSIONS OF LAW**

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

1. The Complainants with Wireless Termination Service Tariffs - Alma, Choctaw and MoKan - have established a basis for charging U. S. Cellular for terminating intraMTA calls for effective dates of their Wireless Service Termination Tariffs. U. S. Cellular has paid or is paying all invoices appropriately rendered under those tariffs, and there is no reason to believe U.S. Cellular will cease to do so until such time as the order approving those tariffs is reversed or vacated. Therefore, while U. S. Cellular disagrees with and objects to the use of the Wireless Service Termination Tariffs, it is abiding by them until they are reversed or vacated, Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. have not established that U. S. Cellular is in arrears on tariff payments.

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

2. In the absence of a wireless termination 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. The FCC has defined intraMTA traffic, whether to or from a wireless carrier, as jurisdictionally local traffic. See Local Competition First Report and Order ¶¶ 1036, 1043. As a logical consequence, access charges are not an appropriate method for compensation. This has also been the conclusion of at least two federal courts interpreting federal law on facts similar to the present case. See *Atlas Telephone Company v. Corporation Commission of Oklahoma*, 309 F. Supp.2d 1299 (W.D. Ok. 2004); *3 Rivers Tel. Coop. v. U.S. West Communications, Inc.*, CV 99-80-GF-CSO, Order, 2003 U.S. Dist. LEXIS 24871 (D. Mt., Aug. 22, 2003). This is also consistent with the decision of the Oklahoma Corporation Commission in the proceeding below in the Atlas case, as well as the decision of the Iowa Utilities Board on virtually identical facts in *In re Transit Traffic*, SPU-00-7, Order Affirming Proposed Decision and Order, March 18, 2002.

3. As the petitioners in this complaint case, Complainants have the burden of proof of showing that the traffic is subject to their tariffs. None of the Complainants alleged in their amended complaints that the traffic being terminated to them through SWBT is other than intraMTA traffic. Moreover, each of the Complainants with Wireless Termination Service Tariffs - Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. - have billed U. S. Cellular at Wireless Termination Service Tariff rates rather than access 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 the Complainants 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. 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 U. S. Cellular for terminating intraMTA traffic to U. S. Cellular, 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 U. S. Cellular.

5. Intrastate interMTA traffic is subject to the Complainants intrastate access traffic rates.

6. Because the Complainants have refused to negotiate in good faith for an appropriate interconnection agreement, they are precluded 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 precluded from seeking additional compensation. Finally, to the extent that some Complainants have declined to utilize the compensation mechanism this Commission has made available to them – Wireless Termination Tariffs – and have instead needlessly prolonged the dispute – those Complainants are also precluded from seeking compensation under their access tariffs.

7. There is no basis for Complainants' conditioning negotiations for an interconnection agreement on U. S. Cellular establishing a direct connection. The interconnection obligations of

TA96 do not distinguish between direct interconnection and indirect interconnection. TA96 defines the very duty of all telecommunications carriers as the duty "to interconnection *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) obligated 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.

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

9. Complainants have already recovered the compensation, if any, that is due for intraMTA traffic terminated prior to the effective date of a Complainants' 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 U. S. Cellular for terminating intraMTA traffic to U. S. Cellular, 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 the Complainants have not been compensated or have not been adequately compensated through the *de facto* bill and keep arrangement, Complainants are precluded from seeking compensation by their refusal to engage in good faith negotiations for appropriate interconnection agreements.

10. 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), SWBT is prohibited by its interconnection agreement with U. S. Cellular from blocking traffic that U. S. Cellular originated.

Dated this 22<sup>nd</sup> day of October, 2004.

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ATTORNEYS FOR U.S. CELLULAR



### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing SUPPLEMENTAL POST-HEARING BRIEF OF UNITED STATES CELLULAR CORPORATION and THE PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW OF UNITED STATES CELLULAR CORPORATION (REVISED AND SUBSTITUTED) HAS BEEN HAND-DELIVERED, MAILED, First Class mail, postage prepaid; or e-mailed this 22<sup>nd</sup> day of October, 2004.

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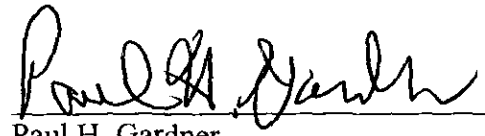
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