

**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.)

**POSITION STATEMENT OF SOUTHWESTERN
BELL WIRELESS LLC D/B/A CINGULAR WIRELESS**

In compliance with the January 22, 2002 Order Adopting Procedural Schedule in this case, Southwestern Bell Wireless LLC d/b/a Cingular Wireless ("Cingular") hereby states its position on the issues in this docket.

Unless it otherwise states to the contrary, Cingular's responses below will be only as to Cingular and not as to the other respondents.

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?

Cingular Wireless Position

The Complainants with Wireless Termination Service Tariffs -- Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. -- have each established

a basis for charging Cingular for terminating intraMTA calls after the effective dates of their Wireless Service Termination Tariffs. Cingular has paid or is paying all invoices appropriately rendered under those tariffs until such time as the order approving those tariffs is reversed or vacated. Therefore, while Cingular does not dispute its liability under those tariffs until they are reversed or vacated, Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. have not established that Cingular 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, 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?

Cingular Wireless Position

No. 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. See *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; *In re: Exchange of Transit Traffic*, Iowa Utilities Board Docket No. SPU-00-7, *Order Affirming Proposed Decision and Order*, issued March 18, 2002; *Three Rivers Telephone Cooperative Inc. v. US West Communications, Inc.*, 125 F. Supp. 2d 417 (D. Mont. 2000); and *Mid-Rivers Telephone Cooperative Inc. v. Qwest Corp.*, CV 01-163-BLG-RFC, (D. Mont. Filed April 3, 2002). Cingular is not aware of 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, Cingular does not acquire transport services from SWBT's wireless service tariff. Rather, it acquires its transport service from SWBT through an October 13, 1997 Interconnection Agreement.

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?

Cingular Wireless Position

Yes. 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 Cingular at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

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?

Cingular Wireless Position

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 described in issue No. 4. 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 Cingular for terminating intraMTA traffic to Cingular, 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 Cingular.

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?

Cingular Wireless Position

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 described in issue No. 5. 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 Cingular for terminating intraMTA traffic to Cingular, 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 Cingular.

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?

Cingular Wireless Position

No. 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 Cingular at Wireless Termination Service Tariff rates for all traffic terminated through SWBT.

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?

Cingular Wireless Position

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

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

Cingular Wireless Position

It is not appropriate for the Complainants to attempt to impose secondary liability on SWBT for traffic terminated to their customer and originated by Cingular because the Complainants are being compensated through a *de facto* bill and keep arrangement as described in response to Issue Nos. 4 and 5 above, and because the Complainants have refused to engage in good faith negotiations to establish interconnection agreements directly with Cingular.

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?

Cingular Wireless Position

Yes. Because the Complainants have refused to negotiate in good faith for an appropriate interconnection agreement, they should be 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 should be estopped from seeking additional compensation.

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?

Cingular Wireless Position

Yes. 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.

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?

Cingular Wireless Position

The terms and conditions of SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40) have no relevance to Cingular because Cingular does not buy transport services from SWBT's Wireless Interconnection Tariff (PSC Mo. No. 40).

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?

Cingular Wireless Position

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 Cingular for terminating intraMTA traffic to Cingular, 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 determines that Complainants have not been compensated or have not been adequately compensated

through the *de facto* bill and keep arrangement, Complainants should be estopped from seeking compensation by their refusal to engage in good faith negotiations for appropriate interconnection agreements.

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

Cingular Wireless Position

No. SWBT is prohibited by its interconnection agreement with Cingular from blocking traffic that Cingular originates.

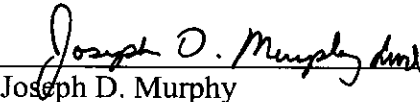
Dated this 12th day of July 2002

Respectfully submitted,



Larry W. Dority
Missouri Bar No. 25617
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101
(573) 636-6758
(573) 636-0383 (fax)
lwdority@sprintmail.com

and



Joseph D. Murphy
Meyer Capel, PC
306 West Church Street
Champaign, IL 61820
(217) 352-0030
(217) 352-9294 (fax)
jmurphy@meyercafel.com

**Attorneys for Southwestern Bell Wireless
LLC d/b/a Cingular Wireless**

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:

Dana K. Joyce, General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City MO 65102

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

Paul G. Lane
Leo Bub
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis MO 63101

Craig S. Johnson
Lisa Chase and Joseph M. Page
Andereck Evans Milne Peace & Johnson LLC
P.O. Box 1438
Jefferson City MO 65102

Robert Vitanza
Regional General Counsel-Central
Cingular Wireless
17330 Preston Road, Suite 100A
Dallas TX 75252

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

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

Monica Barone
6160 Sprint Parkway, 4th Floor
MS: KSOPHI0414
Overland Park KS 66251

Lisa Creighton Hendricks
Sprint - Legal and Exterman Affairs
6450 Sprint Parkway
MS: KSOPHN0212-2A253
Overland Park KS 66251

Joseph D. Murphy
Meyer Capel PC
306 West Church Street
Champaign IL 61820

Andrew T. Spence
101 South Tyron Street
Suite 4000
Charlotte NC 28280-4000

Paul S. DeFord
Lathrop & Gage LC
2345 Grand Blvd., Suite 2800
Kansas City MO 64108

John A. Kise, Jr.
Illinois Cellular & Communications Inc.
1721 Quail Court
Woodstock IL 60098

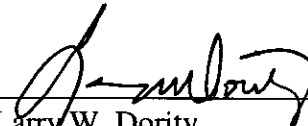
Paul H. Gardner
Goeller, Gardner and Feather
131 High Street
Jefferson City, MO 65101

Nextel Communications
Legal Department
1768 Old Meadow Road
McLean VA 22102

James F. Mauze`
Thomas E. Pulliam
Ottsen, Mauze` Leggat & Blez LC
112 S. Hanley Road
St. Louis, MO 63105-3418

Richard S. Brownlee III
Hendren and Andrae LLC
P.O. Box 1069
Jefferson City MO 65102

Larry Krajci
ALLTEL Communications Inc.
One Allied Drive
Little Rock AR 72202



Larry W. Dority