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July 12, 2002

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

**JUL 12 2002**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Missouri Public  
Service Commission**

Re: In the Matter of Northeast Missouri Rural  
Telephone Company's and Modern Telecommunications  
Company 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., et al.  
Case No. TC-2002-57, et al. - **CONSOLIDATED**

Dear Mr. Roberts:

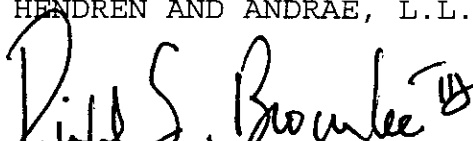
Please find enclosed for filing on behalf of United  
States Cellular Corporation the original plus eight (8)  
copies of the following documents:

- (1) Position Statement of U.S. Cellular Corporation;
- (2) Proposed Findings of Fact and Conclusions of Law  
of U.S. Cellular Corporation.

Should you have any questions concerning the enclosed  
filing, please give me a call. Thank you.

Very truly yours,

HENDREN AND ANDRAE, L.L.C.

  
Richard S. Brownlee, III

RSB:sa  
Cc: Jim Naumann

**FILED<sup>3</sup>**  
JUL 12 2002

V.

The Complainants with Wireless Termination Service Tariffs -- Alma Telephone Company, Choctaw Telephone Company and MoKan Dial, Inc. -- have each established a basis for charging U.S. Cellular for terminating intraMTA calls after the effective dates of their Wireless Service Termination Tariffs. U.S. Cellular 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 U.S. Cellular 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 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 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?**

### **U.S. Cellular 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).

U.S. Cellular 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, U.S. Cellular does not acquire transport services from SWBT's wireless service tariff. Rather, it acquires its transport service from SWBT through an October 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?**

U.S. Cellular 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 U.S. Cellular 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?**

U.S. Cellular 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 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. 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?**

U.S. Cellular 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 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, until that occurs, U.S. Cellular assumes bill and keep.

**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?**

U.S. Cellular 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 U.S. Cellular 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?**

U.S. Cellular Position

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

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

U.S. Cellular 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 U.S. Cellular 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 U.S. Cellular.

**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?**

U.S. Cellular 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?**

U.S. Cellular 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?**

U.S. Cellular Position

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).

**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?**

U.S. Cellular 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 U.S. Cellular for terminating intraMTA traffic to U.S. Cellular. Furthermore, 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?**



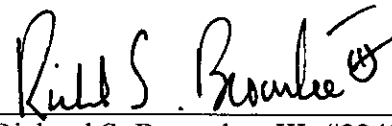
U.S. Cellular Position

No. SWBT is prohibited by its interconnection agreement with U.S. Cellular from blocking traffic that U.S. Cellular originates.

Dated this 12th day of July 2002

Respectfully submitted,

HENDREN AND ANDRAE, L.L.C.

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**Attorneys for Respondent United States  
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## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was mailed, first class mail, postage pre-paid, the 12<sup>th</sup> day of July, 2002 to:

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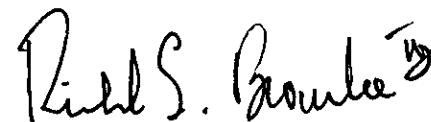
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