

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

BPS Telephone Company,)
Cass County Telephone Company,)
Citizens Telephone Company of Higginsville,)
Missouri,)
Craw-Kan Telephone Cooperative, Inc.,)
Fidelity Communication Services I, Inc.,)
Fidelity Telephone Company,)
Grand River Mutual Telephone Corporation,)
Green Hills Telephone Corporation,)
Holway Telephone Company,)
Iamo Telephone Company,)
Kingdom Telephone Company,)
K.L.M. Telephone Company,)
Lathrop Telephone Company, and)
Mark Twain Rural Telephone Company,)

Complainants,)

vs.)

Case No. TC-2002-1077

VoiceStream Wireless Corporation,)
Western Wireless Corporation, and)
Southwestern Bell Telephone Company,)

Respondents.)

**COMPLAINANTS' MOTION TO DISMISS SOUTHWESTERN BELL
TELEPHONE COMPANY AND REQUEST TO ISSUE ORDER**

COME NOW BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Craw-Kan Telephone Cooperative, Inc., Fidelity Communication Services I, Inc., Fidelity Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, K.L.M. Telephone Company, Lathrop Telephone Company, and Mark Twain Rural Telephone Company, (the "Complainants"), by and through counsel, and, pursuant to 4 CSR 240-2.116(1), hereby move to dismiss their Complaint against Respondent Southwestern Bell Telephone Company ("SWBT"), without prejudice, and with

each party to bear its own costs, and request that the Commission issue its decision as to the remaining issues and parties. In support of this Motion, Complainants state to the Missouri Public Service Commission (the "Commission") as follows:

1. SWBT was named as a Respondent herein, in that Respondent T-Mobile (f/k/a VoiceStream Wireless Corporation) ("T-Mobile") and Respondent Western Wireless Corporation ("Western Wireless") are sending traffic to Complainants' exchanges, via Respondent SWBT, without appropriate compensation.
2. SWBT commingles this wireless-originated traffic with other wireline interexchange traffic destined for termination to Complainants' end-user customers, and Complainants are thus unable to distinguish this wireless-originated traffic from other interexchange traffic.
3. As part of their Complaint, the Complainants sought to hold SWBT secondarily liable for the wireless-originated traffic terminated to Complainants' exchanges by Respondents T-Mobile and Western Wireless.
4. The Complaint filed herein relates to uncompensated traffic back to February 19, 2001, and Complainants are eager for a resolution of this case. The evidentiary hearing was on November 7, 2003, and, at the closing of the hearing, Commissioner Gaw suggested oral argument in lieu of briefs in order to "shorten down the time even more." All parties agreed, and closing arguments by counsel were made on December 8, 2003, in the hope of receiving a timely decision from this Commission.
5. This case was discussed at the Commission's agenda meeting on February 10, 2004. Judge Thompson had prepared a memo for the Commission, and the Judge and the

Commissioners discussed all of the issues and possibilities as to how the issues should be decided. Commissioner Gaw stated that the wireless carriers clearly owe compensation. The issue of SWBT's secondary liability appeared to be a contentious issue, but Commissioner Gaw stated that he would like to resolve the case.

6. At the agenda meeting on June 7, 2004, Judge Thompson said he was drafting the report and order for this case, and the matter was again discussed on June 10, 2004, when Judge Thompson said the case was ready for a decision. Commissioner Clayton noted that it is frustrating that the wireless carriers admit the amounts are due under the tariffs but still fail to pay, and Judge Thompson said he would prepare the report and order.
7. There has been no report and order issued by this Commission, there has been no payment by Respondents T-Mobile and Western Wireless for nearly four years, and the past due traffic now totals over \$1.6 million. Consequently, Complainants disconnected T-Mobile on December 15, 2004, and T-Mobile now utilizes another carrier(s), other than SWBT, to deliver this traffic.
8. Now, without paying the amounts past due, T-Mobile is seeking to avoid responsibility by attempting to adopt Complainants' Traffic Termination Agreements with other wireless carriers (*See* T-Mobile letter of December 10, 2004, purporting to "adopt" Sprint PSC and Verizon Wireless agreements). The major impediment to such an adoption is T-Mobile's failure to pay past due amounts which was a specified condition in Complainants' Traffic Termination Agreements with Sprint PSC and Verizon Wireless.
9. The Complainants are seeking to dismiss their Complaint as to SWBT in an effort to simplify the issues in dispute, remove from this proceeding the issues of secondary

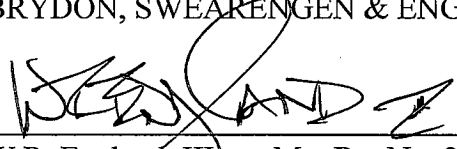
liability and inter-MTA and intra-MTA factors, and further expedite the resolution of this matter and the receipt of payment from Respondents T-Mobile and Western Wireless.

WHEREFORE, the Complainants respectfully request that they be granted leave to dismiss their Complaint filed herein against Southwestern Bell Telephone Company. The Complainants further request that the Commission make its determination on the issues presented as to Respondents T-Mobile and Western Wireless and issue its report and order herein.

Respectfully Submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed, hand-delivered, or sent by electronic transmission, this 13th day of January, 2005, to:

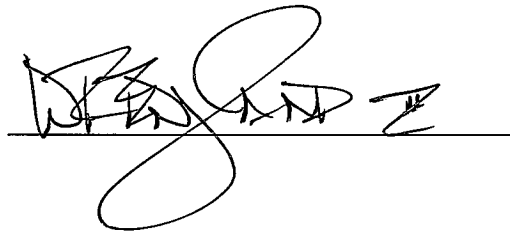
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A handwritten signature in black ink, appearing to read "Michael Dandino", is written over a horizontal line.