

Exhibit No _____

Issue: Wireless Complaint
Witness: Billy H. Pruitt, Sprint PCS
Type Of Exhibit: Surrebuttal Testimony
Sponsoring Party: Sprint PCS
Case No.: TC-2002-57 et al.
Date Testimony Prepared: July 2, 2002

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

Northeast Missouri Rural Telephone Company)
And Modern Telecommunications Company,)

Petitioners,)

v.)

Case No. TC-2002-57, et al.

Southwestern Bell Telephone Company,)
Southwestern Bell Wireless (Cingular),)
VoiceStream Wireless (Western Wireless),)
Aerial Communications, Inc., CMT Partners)
(Verizon Wireless), Sprint Spectrum L.P.,)
United States Cellular Corp., and Ameritech)
Mobile Communications, Inc.,)

Respondents.)

SURREBUTTAL TESTIMONY

OF

BILLY H. PRUITT

Jefferson City, Missouri
July 2, 2002

SURREBUTTAL TESTIMONY OF BILLY H. PRUITT

1 **Q. Please state your name and business address.**

2 A. My name is Billy H. Pruitt. My business address is 11880 College Blvd., Overland Park,
3 KS, 66210.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am a Principal Engineer II in the Carrier Interconnection Management group at Sprint
6 Spectrum L.P., d/b/a Sprint PCS.

7 **Q. Have you previously appeared as a witness in this regulatory proceeding?**

8 A. Yes. My Rebuttal Testimony was filed in this proceeding on June 11, 2002.

9 **Q. What is the purpose of your present surrebuttal testimony?**

10 A. The purpose of my testimony is to respond to rebuttal testimony filed in this proceeding.

11 **Q. In his testimony at P. 14, L. 17-20, Staff Witness Scheperle recommends that "all**
12 **MITG companies establish a Wireless Termination tariff based on a single per-**
13 **minute charge, consisting of a composite of the current intrastate, intraLATA access**
14 **rate for switching and transport, plus a two-cent per minute adder to contribute to**
15 **the cost of the local loop facilities". What is your response?**

16 A. This recommendation is inconsistent with the current law on reciprocal compensation
17 issues. Based upon my experience with Sprint PCS in negotiating interconnection
18 agreements, I do not believe the law permits an ILEC to unilaterally establish via a tariff
19 or otherwise, the terms and conditions under which traffic between an ILEC and a CMRS
20 provider may be exchanged. Instead, it is the responsibility of the ILECs to reach an
21 agreement that addresses the compensation of, and the technical arrangements for, the

1 exchange of local traffic as defined in 47.C.F.R. § 51.701(b). In addition, Title 47 U.S.C.
2 § 251(b)(5) provides that each local exchange carrier has the duty to establish reciprocal
3 compensation arrangements for the transport and termination of telecommunications.
4 The fact that the exchange may occur on an indirect basis is irrelevant. The FCC rules
5 require that a telecommunications carrier interconnect directly or indirectly with the
6 facilities and equipment of other telecommunications carriers. See 47 C.F.R. §
7 51.100(a)(1).¹ There is no provision that allows one party to unilaterally establish the
8 terms and conditions for the exchange of telecommunications traffic.

9 While I recognize that the Commission has approved Wireless Service Termination
10 Service tariffs and Sprint PCS is paying all amounts due under those tariffs, there is no
11 reason to enact new tariffs until the Courts determines their validity. This is particularly
12 true since the Petitioners have not requested such relief.

13 **Q. Does the First Report and Order require the MITG companies to enter into a**
14 **reciprocal compensation arrangement with CMRS providers?**

15 **A.** Yes. Paragraph 1008 of the FCC's First Report and Order states that wireless carriers
16 provide "telecommunications" and; therefore, LECs must enter into reciprocal
17 compensation arrangements with wireless carriers and establish the same pricing
18 standard. The FCC stated:

19 All CMRS providers offer telecommunications. Accordingly, LECs are
20 obligated, pursuant to section 251(b)(5) (and the corresponding pricing
21 standards of section 252(d)(2)), to enter into reciprocal compensation
22 arrangements with all CMRS providers, including paging providers, for
23 the transport and termination of traffic on each others' networks, pursuant

¹ The Missouri Commission has also recognized the federal obligation to interconnect directly or indirectly. See, *Re MCImetro Access Transmission Services Inc.*, Case No TO-2002-222, Arbitration Order dated February 28, 2002, Conclusions of Law ("Thus, every carrier, of whatever type, is required to interconnect, directly or indirectly, with other carriers.")

1 to the rules governing reciprocal compensation set forth in Section XI.B.,
2 below.
3

4 As demonstrated in Schedules E through I-20 to my Rebuttal testimony, Sprint PCS has
5 repeatedly sought to have the petitioners in this case live up to their federal obligation to
6 enter into reciprocal compensation agreements. Petitioners have rejected Sprint PCS'
7 efforts, claiming, despite legal mandates to the contrary, that Sprint PCS must be directly
8 connected before Petitioners have an obligation to offer reciprocal compensation.
9 Sprint strongly suspects that Petitioners are avoiding their obligation to enter into
10 reciprocal compensation arrangements because Petitioners would rather keep pushing
11 this Commission to allow access or something that is equivalent to access. Moreover, if
12 Petitioners entered into a reciprocal compensation agreement with cost-based rates in
13 compliance with the Act with one carrier, Petitioners would be obligated to make the
14 same arrangement available to all wireless carriers.

15
16 **Q. Witness Scheperle also proposes that the Commission allow the Petitioners to
17 charge rates based on access charges. Do you have any concerns with this proposal?**

18 **A.** Yes. The proposed rate includes switched access rates for the termination of this wireless
19 traffic. However, it is unlawful to impose access charges on CMRS intraMTA traffic.
20 The FCC made it clear that under the 1996 amendments to the Act, a LEC is not allowed
21 to impose access charges upon CMRS provider traffic. I have cited to the FCC's rules in
22 my direct testimony at pages 4, line 21 page 6, line 13. Further, as I mentioned in my
23 Rebuttal testimony, other commissions, including Missouri, have ruled that access
24 charges may not be imposed on CMRS intraMTA traffic. Most recently, this

1 Commission confirmed that decision in its Order on Rehearing issued on June 27, 2002
2 in Case No. TT-99-428. Finally, an Administrative Law Judge in Oklahoma has also
3 recently ruled that access does not apply to intraMTA traffic.²

4 **Q. What pricing standards are the MITG companies required to use by federal law in**
5 **negotiating a reciprocal compensation rate?**

6 **A.** 47 C.F.R. § 51.505(a) defines the pricing standard as TELRIC plus common costs.

7 *In general.* The forward-looking economic cost of an element equals the sum of:

- 8 (1) the total element long-run incremental cost of the element ...; and
9 (2) a reasonable allocation of forward-looking common costs

10
11 47 C.F.R. § 51.505(b) defines TELRIC.

12
13 *Total element long-run incremental cost.* The total element long-run incremental cost of
14 an element is the forward-looking cost over the long run of the total quantity of the
15 facilities and functions that are directly attributable to, or reasonably identifiable as
16 incremental to, such element, ...

17
18 (1) *Efficient network configuration.* The total element long-run incremental cost
19 of an element should be measured based on the use of the most efficient
20 telecommunications technology currently available and the lowest cost network
21 configuration, ...

22 (2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be
23 used in calculating the total element long-run incremental cost of an element.

24 (3) *Depreciation rates.* The depreciation rates used in calculating forward-
25 looking economic costs of elements shall be economic depreciation rates.

26
27 **Q. Please describe Sprint's position on an appropriately developed TELRIC cost of**
28 **service study.**

29 **A.** Paragraphs 674 through 703 of the FCC Order properly define the characteristics of
30 appropriately developed TELRIC study. The major characteristics as forth in the FCC
31 Order are,

² *In the Matter of Application of Southwestern Bell Wireless et al. for Arbitration under the Telecommunications Act of 1996, Cause Nos. 2002-149; PUD 2002-150, PUD 2002-151 and PUD 2002-153, in front of the Corporation Commission of the State of Oklahoma.*

- 1 1. We conclude that, under a TELRIC methodology, incumbent LEC's prices for
2 interconnection and unbundled network elements shall recover the forward-
3 looking costs directly attributable to the specified element (paragraph 682).
4
- 5 2. ... as well as a reasonable allocation of forward-looking common costs. (Paragraph
6 682).
7
- 8 3. Per-unit costs shall be derived from total costs using reasonably accurate "fill
9 factors" (estimates of the proportion of a facility that will be "filled" with network
10 usage); that is, the per unit costs associated with a particular element must be
11 derived by dividing the total cost associated with the element by a reasonable
12 projection of the actual total usage of the element. (Paragraph 682).
13
- 14 4. Directly attributable forward-looking costs also include the incremental costs of
15 shared facilities and operations. Those costs shall be attributed to specific
16 elements to the greatest extent possible. ... certain shared costs that have
17 conventionally been treated as common costs (or overheads) shall be attributed to
18 the individual elements to the greatest extent possible. (Paragraph 682).
19
- 20 5. ... the forward-looking pricing methodology for interconnection and unbundled
21 network elements should be based on costs that assume that wire centers will be
22 placed at the incumbent LEC's current wire center locations, but that the
23 reconstructed local network will employ the most efficient technology for
24 reasonably foreseeable capacity requirements. (Paragraph 685).
25
- 26 6. Only forward-looking, incremental costs shall be included in a TELRIC study.
27 (Paragraph 690).
28
- 29 7. Retailing costs, such as marketing or customer billing costs associated with retail
30 services, are not attributable to the production of network elements that are
31 offered to interconnecting carriers and must not be included in the forward-
32 looking direct cost of an element. (Paragraph 691).
33

34 **Q. If there is no interconnection agreement, and there is no other agreement or other**
35 **tariff applicable, what rates should apply for traffic terminated by the MITG**
36 **companies?**

37 A. 47 C.F.R. § 51.705 defines the only rates that are appropriate for transport and
38 termination in a reciprocal compensation regime. This rule requires that each incumbent
39 LEC must produce one of the following types of rates:

1 § 51.705 Incumbent LECs' rates for transport and termination.

2 (a) An Incumbent LEC's rates for transport and termination of local
3 telecommunications traffic shall be established, at the election of the state
4 commission, on the basis of:

5 (1) The forward-looking economic costs of such offerings, using a cost
6 study pursuant to §§ 51.505 and 51.511;

7 (2) Default proxies, as provided in § 51.707³; or

8 (3) A bill-and-keep arrangement, as provided in § 51.713.
9

10 Each of the MITG companies is also free to negotiate a mutually acceptable rate with
11 each wireless company. Absent a state-ordered rate based on a TELRIC cost study, or a
12 negotiated rate, the only option under the FCC rules is to have a bill-and-keep
13 arrangement.

14 **Q. Based on this analysis, is Witness Scheperle's recommendation lawful?**

15 A. No. The law does not permit an ILEC or a state commission to impose a tariff in the first
16 instance. Moreover, tariffs may not be used to apply rates that are the equivalent of
17 access on traffic that is subject to reciprocal compensation rates under the law.

18 **Q. Does Witness Scheperle's proposal consider the proper rate elements in calculating
19 the rate?**

20 A. No. Witness Scheperle recommends at P. 14, L. 14-22, that the MITG companies
21 "establish a wireless Termination Tariff based on a single per-minute charge, consisting
22 of a composite of the current intrastate, intraLATA access rate for switching and
23 transport, plus a two-cent per minute adder to contribute to the cost of the local loop
24 facilities." Therefore, his proposal inappropriately includes non-traffic sensitive costs.
25 Paragraph 1057 of the FCC's First Report and Order states that non-traffic sensitive costs,
26 such as loops and line ports, should not be included in transport and termination rates:

³ The Eighth Circuit vacated the proxy rates in Iowa Utilities Board v. FCC, 219 F.3d 744, 757 (8th Cir. 2000), but left the remainder of this rule intact.

1 We find that, once a call has been delivered to the incumbent LEC
2 end office serving the called party, the "additional cost" to the LEC
3 of terminating a call that originates on a competing carrier's
4 network primarily consists of the traffic-sensitive component of
5 local switching. The network elements involved with the
6 termination of traffic include the end-office and local loop. The
7 costs of local loops and line ports associated with local switches do
8 not vary in proportion to the number of calls terminated over the
9 facilities. We conclude that such non-traffic-sensitive costs should
10 not be considered "additional costs" when a LEC terminates a call
11 that originated on the network of a competing carrier. For the
12 purpose of setting rates under section 252(d)(2), only that portion
13 of the forward-looking economic cost of end-office switching that
14 is recovered on a usage-sensitive basis constitutes an "additional
15 cost" to be recovered through termination charges.
16

17 Regardless of the methodology used by the MITG companies to derive a rate, the FCC
18 Order forbids them from including non-traffic sensitive cost elements in the rate.

19 **Q. In his testimony at P. 16, L. 1-17 Witness Scheperle discusses the ability to identify**
20 **interMTA versus intraMTA traffic and at P. 16, L. 19 and 20 states that "[i]n the**
21 **absence of information supplied to MITG companies, it should be assumed switched**
22 **access charges are appropriate on all wireless traffic." What is your response?**

23 A. As stated earlier in this surrebuttal testimony, switched access charges can never lawfully
24 apply to the traffic at issue in this proceeding. Moreover, as I explained in my Rebuttal
25 Testimony, because of the way Sprint PCS routes its traffic, the traffic terminated to the
26 MITG companies through the local transit providers will be exclusively intraMTA traffic.

27 **Q. Could you please restate how Sprint PCS routes its intraMTA traffic?**

28 A. Yes. When a call originates from a cell site within a given MTA and is terminated to a
29 LEC within that same MTA, the call obviously is subject to reciprocal compensation. In
30 this Scenario the call is routed from the Mobile Switching Center ("MSC") to the

1 appropriate LEC switch for delivery to the end user customer or to a third party LEC. See
2 Pruitt Schedule A.

3 **Q. How does Sprint PCS route traffic originated by its customers in one MTA to a**
4 **LEC customer in another MTA?**

5 When a call originates from a cell site in one MTA and terminates in another MTA to a
6 LEC customer, the call is routed from the MSC to a long distance providers' switch site,
7 and then is delivered to the terminating LEC in the other MTA either directly or through
8 an access tandem provider. These calls are billed as terminating switched access by the
9 terminating LEC to the IXC and are not calls subject to reciprocal compensation in the
10 other MTA. See Pruitt Schedule B. Therefore, there is a clear distinction in how Sprint
11 PCS routes and delivers intraMTA calls versus interMTA calls. The calls subject to this
12 complaint are intraMTA calls and thus are subject to reciprocal compensation.

13 **Q. Based on this analysis, what should the assumption be with regard to the**
14 **jurisdictional nature of this traffic?**

15 A. By definition, the Sprint PCS traffic at dispute in this case is intraMTA traffic subject to
16 reciprocal compensation. If Sprint PCS were to change the way it routes its traffic at
17 some point in the future an interMTA factor could be developed and included in the
18 appropriate interconnection agreement. This interMTA factor would be applied to the
19 minutes terminating to the MITG Companies to determine the number of interMTA
20 minutes that would be eligible for the application of switched access rates. The concept
21 of identifying interMTA minutes through the use of an interMTA factor applied to
22 minutes of use recorded as local is not a new concept. This concept is used in virtually all
23 of the interconnection agreements in which Sprint PCS is a party.

1 **Q. In his testimony at P. 17, L. 20-25 Witness Scheperle states that “wireless carriers**
2 **are not to send calls to SWBT that terminate on MITG network unless the wireless**
3 **carrier has entered into an agreement to directly compensate MITG for the**
4 **termination of wireless traffic.” What is your response?**

5 A. My understanding is that Mr. Scheperle is relying on the language from a Southwestern
6 Bell (SWBT) wireless interconnection service tariff. As I stated in my Rebuttal
7 Testimony, Sprint PCS has never ordered service from the SWBT wireless carrier
8 interconnection service tariff. All interconnection between SWBT and Sprint PCS has
9 been pursuant to an interconnection agreement negotiated under §251 and §252 of the
10 Act. In fact, SWBT Witness Hughes stated in his Rebuttal Testimony in this case at P.
11 16, L. 7-10, that “over 99% of all traffic that wireless carriers send to SWBT for transit or
12 termination is via Commission-approved interconnection agreements. None of the
13 wireless carriers in this proceeding interconnect with SWBT via SWBT’s Wireless
14 Interconnection tariff.” Accordingly, none of the traffic in dispute in this case is being
15 delivered to Petitioners via SWBT’s wireless interconnection service tariff. It is important
16 to note that even if the tariff language was relevant in this case, Petitioners have refused
17 to enter reciprocal compensation arrangements on the very basis the tariff contemplates,
18 e.g., via indirect interconnection. Petitioners continue to claim that direct connection is
19 necessary for reciprocal compensation despite the FCC’s rules and this Commission’s
20 decision to the contrary.

21 **Q. Staff Witness Scheperle at P. 17, L. 28-30 recommends “a change in the business**
22 **relationship allowing wireless traffic on MITG network(s) in the absence of an IA.”**
23 **What is your response?**

1 A. The appropriate business relationship authorized under the current law is a reciprocal
2 compensation arrangement negotiated in an interconnection agreement. As stated earlier
3 in this surrebuttal testimony, the only option available, absent an interconnection
4 agreement, is bill and keep. If the MITG companies desire to be compensated for
5 intraMTA traffic they should simply enter into good-faith negotiations with the involved
6 wireless carriers.

7 **Q. Witness Scheperle recommends at P. 20, L. 4-6, that “compensation is appropriate**
8 **for traffic originated by CMRS providers prior to the effective date of the wireless**
9 **termination tariffs.” Again, what is your response?**

10 A. Because it is inappropriate and unlawful for LECs to establish wireless termination
11 tariffs, compensation decisions may not be based on the question of whether or not a
12 LEC has filed a wireless termination tariff. As stated earlier in this surrebuttal
13 testimony, the only compensation options under current law are Commission-approved
14 TELRIC rates, negotiated rates, or bill and keep. In addition, any application of rates to
15 traffic delivered prior to negotiation of rates under an interconnection agreement would
16 be retroactive rate making, which I understand violates current Missouri law.

17 **Q. Will you please restate each of Witness Scheperle's recommendations and briefly**
18 **respond to each of his recommendations?**

19 A. Yes.

20 Staff Recommendation starting at P. 20, L. 10: That MITG companies should be
21 compensated for wireless termination traffic prior to establishment of a Wireless
22 Termination Tariff.

1 ***Sprint PCS Response:*** The only compensation options available under the law are
2 Commission approved TELRIC rates, negotiated rates or bill and keep. The MITG
3 Companies should be ordered by the Commission to enter into good-faith negotiations
4 with the wireless carriers to negotiate the rates, terms and conditions for the exchange of
5 traffic with the wireless carriers.

6 Staff Recommendation starting at P. 20, L. 12: That CMRS providers perform and
7 supply to MITG companies a traffic study for wireless traffic terminated on MITG
8 network(s) for interMTA and intraMTA wireless traffic developing a Percent (inter,
9 intra) MTA usage (PIU) within sixty days of the effective dates of the Report and Order
10 in this case.

11 ***Sprint PCS Response:*** Sprint PCS does not route any mobile-to-land interMTA traffic
12 to Southwestern Bell for termination to any of the MITG LECs. Therefore, Sprint PCS
13 now affirmatively asserts that the Percent InterMTA Usage is 0%.

14 Staff Recommendation starting at P. 20, L. 17: That CMRS providers pay access
15 charges for interMTA traffic terminated on MITG network(s) based on a PIU traffic
16 study.

17 ***Sprint PCS Response:*** Sprint PCS does not route any mobile-to-land interMTA traffic
18 to Southwestern Bell as a local transit provider for termination to any of the MITG
19 LECs. Therefore, this proposal does not apply to Sprint PCS. If Sprint PCS did route
20 interMTA traffic to Southwestern Bell as a local transit provider for termination to the
21 MITG LECs, access charges would be appropriate.

1 Staff Recommendation starting at P. 20, L. 19: That CMRS providers pay the Wireless
2 Termination Tariff rate for intraMTA traffic (unless carried by an IXC in which access
3 charges apply) based on PIU traffic study for Alma, Choctaw and MoKan.

4 ***Sprint PCS Response:*** The proposed wireless termination rates are unlawful for all of
5 the reasons stated earlier in this surrebuttal testimony. Until the parties have negotiated
6 a rate or the Commission has approved a TELRIC based rate the only lawful option is
7 bill and keep. The staff recommendation should be rejected.

8 Staff Recommendation starting at P. 20, L. 22: That CMRS providers pay Mid-Missouri
9 (\$0.0548), Chariton (\$0.0371), Northeast (\$.0456) and Modern (\$0.0464) per minute of
10 use for intraMTA traffic not carried by an IXC based on a PIU traffic study and based
11 on a single per-minute charges (sic), consisting of a composite of the current intrastate
12 intraLATA access rate for switching and transport as contained in each companies
13 switched access tariffs as approved by the Commission and also based on the same
14 methodology as Commission-approved rates in Case No. TT-2001-139 absent the two-
15 cent per minute adder to contribute to the cost of the local loop facilities.

16 ***Sprint PCS Response:*** At P. 14, L. 17-22, Witness Scheperle recommended a rate to
17 include a composite of the current intrastate, intraLATA access rate for switching and
18 transport, plus a two-cent per minute adder for loop costs. At P. 21, L. 1-7, witness
19 Scheperle recommends a composite of the current intrastate, intraLATA access rate for
20 switching and transport, absent a two-cent per minute adder for loop costs. So it is
21 unclear whether or not Witness Scheperle is proposing to include loop costs. In any
22 case, it would be inappropriate and unlawful to include any loop costs in any rates for
23 traffic exchanged between the MITG LECs and CMRS providers. The Commission

1 should soundly reject the rates proposed by the MITG companies and Mr. Scheperle,
2 and order the MITG companies to either (1) perform appropriate TELRIC cost studies,
3 or (2) enter into good-faith negotiations with the wireless carriers to drive a negotiated
4 rate. If the parties are unable to reach consensus, the arbitration process provided under
5 the Act should be the remedy for resolution.

6 Staff Recommendation starting at P. 21, L. 8: That absent a PIU traffic study by CMRS
7 providers within sixty days, the MITG companies should assume wireless traffic is
8 interMTA and should receive compensation paid pursuant to existing access tariffs.

9 ***Sprint PCS Response:*** All of the Sprint PCS traffic being delivered to the MITG
10 companies through Southwestern Bell operating as a local transit provider is intraMTA
11 traffic. I believe that the majority of the traffic being delivered to the MITG LECs
12 through Southwestern Bell operating as a local transit provider is intraMTA traffic.
13 Therefore, it would be inappropriate to assume that all of the traffic was interMTA. For
14 any traffic that is interMTA, the parties should negotiate an interMTA factor that could
15 be applied to the minutes identified on the CTUSR report. All of these activities should
16 be done under the auspices of a negotiated interconnection agreement. The Commission
17 should reject this recommendation.

18 **Q. Does this conclude your surrebuttal testimony?**

19 **A.** Yes it does.

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United States Cellular Corp., and Ameritech)
Mobile Communications, Inc.,)

Respondents.)

AFFIDAVIT OF BILLY H. PRUITT

STATE OF KANSAS)

) ss:

COUNTY OF JOHNSON)

I, Billy H. Pruitt, being of lawful age and duly sworn, dispose and state on my oath the following:

1. I am presently Principal Engineer II. Carrier Interconnection Management for Sprint PCS.
2. I have participated in the preparation of the attached Surrebuttal Testimony in question and answer form to be presented in the above entitled case;
3. The answers in the attached Surrebuttal Testimony were given by me; and,
4. I have knowledge of the matters set forth in such answers and that such matters are true and correct to the best of my knowledge and belief.

Billy H. Pruitt
BILLY H. PRUITT

Subscribed and sworn to before me on this 2nd day of July, 2002.

M. Victoria Worrel
Notary Public

