

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED⁴
OCT 04 2002

Missouri Public
Service Commission

BPS Telephone Company, et al.,

Petitioners,

v.

VoiceStream Wireless Corporation, et al.,

Defendants.

Case No. TC-2002-1077

MOTION TO STRIKE PREFILED DIRECT TESTIMONY

COME NOW Respondents Western Wireless Corporation and T-Mobile USA, Inc.¹ (the Respondents), and move pursuant to 4 C.S.R. 240-2.130(3), for rulings from the Regulatory Law Judge concerning the admissibility of certain evidence, that is, portions of the Complainants' prefiled direct testimony. In this motion, Respondents detail the testimony to which they object. In support of this motion, Respondents state the following:

1. Under 4 C.S.R. 240-2.130(1), the Commission is bound to follow the rules of evidence set forth in Section 536.070, R.S.Mo. The Commission must base its decision on competent and substantial evidence, and to be competent, evidence testimony must be admissible. See State ex rel. De Weese v. Morris, 221 S.W. 2nd 206, 209 (Mo. 1949). In its recent order in The Matter of Southwestern Bell Telephone Company's Tariff Filing to Initiate Residential Customer Winback Promotion, Case Nos. TT-2002-472 and TT-2002-473, the Commission struck certain prefiled testimony as

¹ By a separate pleading, Respondent T-Mobile USA, Inc., is notifying the Commission of the name change of VoiceStream Wireless Corporation to T-Mobile USA, Inc.

inadmissible hearsay. Order of September 17, 2002. As this motion details, Respondents object to several portions of the prefiled direct testimony on the basis of hearsay.

2. Respondents' objections to the prefiled direct testimony are as follows:

<u>NAME OF WITNESS</u>	<u>CITATION</u>	<u>OBJECTION</u>
David N. Beier (on behalf of Fidelity Telephone Company)	Page 6, Lines 10 - 11	Hearsay. The VoiceStream employee who allegedly made the out-of-court statement is not identified, and the testimony is offered to prove the truth of that employee's alleged statement.
Brian L. Cornelius (on behalf of Citizens Telephone Company)	Page 9, Lines 17-22	Hearsay. In the two sentences beginning in the middle of Line 17 and ending near the end of Line 22, statements allegedly made by VoiceStream employees are offered in testimony to prove the truth of those statements.
Brian L. Cornelius (on behalf of Citizens Telephone Company)	Schedule No. 2, first paragraph	Hearsay. The letter includes a statement by an out-of-court declarant, Kathie Munson, offered to prove the truth of the statement.
Brian L. Cornelius (on behalf of Citizens Telephone Company)	Schedule No. 3	Hearsay. See objection immediately above.

Bill Rohde
(on behalf of Mark Train
Rural Telephone Company)

Page 8, Lines 2 - 4

Hearsay. This testimony involves a statement by an out- of-court declarant concerning a conversation with VoiceStream employee, offered to prove the truth of the statement.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Page 5, Lines 13 - 15

Hearsay. This sentence includes testimony concerning an alleged conversation with a Western Wireless employee, offered to prove the truth of that person's out-of-court statement.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Page 6, Lines 6 - 7

Hearsay. See objection immediately above.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Schedule 2

Hearsay. See objection immediately above.

Randall H. Boyd
(on behalf of Kingdom
Telephone Company)

Schedule No. 3, first
paragraph

Hearsay. See objection immediately above.

WHEREFORE, Respondents request that the testimony outlined above be stricken from the prefiled direct testimony of the relevant witnesses.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL



Lewis E. Melahn MO Bar No. 25396

Mark P. Johnson MO Bar No. 30740

4520 Main Street, Suite 1100

Kansas City, Missouri 64111

Tel: (816) 460-2400

Fax: (816) 531-7545

ATTORNEYS FOR T-MOBILE USA, INC. and
WESTERN WIRELESS CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was delivered to the parties listed below via electronic mail and U.S. mail, first-class, postage prepaid, on this 4th day of October, 2002, to:

General Counsel
MISSOURI PUBLIC SERVICE COMMISSION
P. O. Box 360
Jefferson City, MO 65102

Michael F. Dandino
OFFICE OF THE PUBLIC COUNSEL
P. O. Box 7800
Jefferson City, MO 65102

W. R. England, III
Brian T. McCartney
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456

Leo J. Bub, Senior Counsel
SOUTHWESTERN BELL TELEPHONE COMPANY
One Bell Center, Room 3520
St. Louis, MO 63101



Attorney for T-Mobile USA, Inc.
and Western Wireless Corporation