

# **EXHIBIT 3**



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April 19, 2011

**VIA ELECTRONIC MAIL AND U.S. MAIL**

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445 12th Street, SW  
Washington, DC 20554

**Re: Halo Wireless, Inc. v. Citizens Telephone Company of Higginsville, Inc., et al.  
Request for Inclusion of Complaint, Once Filed, on FCC Accelerated Docket**

Dear Mr. Starr and Ms. McEnery:

Citizens Telephone Company of Higginsville, Inc. (“Citizens”), Green Hills Telephone Corporation (“Green Hills”), Mid-Missouri Telephone Company (“Mid-Missouri”), Northeast Missouri Rural Telephone Company (“Northeast”), Chariton Valley Telephone Corporation (“Chariton Valley”), and Mark Twain Rural Telephone Company (“Mark Twain”) (collectively, the “Missouri RLECs”), by their counsel and pursuant to the request of the staff of the Market Disputes Resolution Division (the “Division”) of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> hereby respond to the March 28, 2011 letter from Halo Wireless, Inc. (“Halo”) to the Division requesting inclusion of a complaint, once filed, on the Accelerated Docket (the “Complaint”). Halo alleges, *inter alia*, that the Missouri RLECs and their third-party tandem provider, AT&T Missouri (“AT&T”), have violated Section 201(b) of the Communications Act of 1934, as amended (the “Act”), and various FCC rules by implementing blocking of traffic on the Missouri intrastate Feature Group C (“FGC”) network.

As explained herein, the Missouri RLECs have reasonably and properly caused the implementation of blocking of Halo traffic on the FGC Local Exchange Carrier-to-Local Exchange Carrier (“LEC-to-LEC”) network pursuant to the Missouri Enhanced Records Exchange Rules (“ERE Rules”) of the Missouri Public Service Commission (“MoPSC”) for Halo’s failure to fully compensate the Missouri RLECs and to deliver originating caller identification, as well as for transmitting interLATA wireline traffic over the LEC-to-LEC network.<sup>2</sup> The Missouri RLECs’ initial investigations indicate that Halo has engaged in a scheme to aggregate interexchange wireline-to-wireline and other third-party traffic and to route it as if it were Halo-originated Commercial Mobile Radio Services (“CMRS”) traffic. Halo has

<sup>1</sup> See Letter from Rosemary H. McEnery to W. R. England, III and Craig S. Johnson (dated April 6, 2011).

<sup>2</sup> See 4 CSR 240-29.010, *et seq.*

promulgated this scheme in order to avoid the payment of lawful compensation and interconnection obligations applicable to the exchange of wireline traffic. The Missouri RLECs' actions to address Halo's scheme and failure to comply with the requirements for use of the LEC-to-LEC network are consistent with Section 201(b) of the Act and FCC precedent. The Missouri RLECs also generally deny Halo's other allegations that they have violated other provisions of the Act and the FCC's rules.

As discussed in greater detail below, this dispute is not appropriate for consideration on the Accelerated Docket. Halo only obtained FCC authority to operate its alleged wireless facilities and to originate and carry traffic on April 15, 2011. In addition, and as discussed in greater detail below, this dispute is highly complex, involving many issues and questions of fact and law. Resolution will require extensive discovery and investigation that is not available under the constraints of the Accelerated Docket. Moreover, this dispute is not unique to the named Missouri RLECs, as Halo is sending traffic to all small telephone companies across Missouri. In addition, Halo seeks preemption of the rules of the MoPSC. Basic principles of federalism dictate that the MoPSC must be given an opportunity to meaningfully participate in any FCC challenge to its rules. The Accelerated Docket is not an appropriate process for this collateral challenge to the MoPSC's rules. Finally, Halo should have availed itself of proceedings before the MoPSC and has therefore failed to exhaust remedies readily available to it. For these and other reasons discussed below, this matter is inappropriate for consideration on the Accelerated Docket. The FCC should not allow its processes to be used to further Halo's access avoidance scheme. This matter would best be considered by the MoPSC itself, and there are available procedures for doing so. The Missouri RLECs, however, are willing to engage in reasonable FCC staff-supervised settlement discussions to attempt to resolve the dispute.

## **I. Statement of Facts**

In approximately mid-December, 2010, Citizens received wireless billing records from its tandem provider, AT&T, indicating that an unusually large amount of wireless traffic had been transited to Citizens for termination in the prior month of November, 2010. On closer review, this significant increase in wireless traffic was due to traffic from a new wireless carrier, Halo. In Halo's initial month of sending traffic to Citizens, Citizens terminated almost 36,000 minutes of use ("MOUs") of Halo traffic over the FGC, or common, trunk group from AT&T's tandem. This amount of traffic was eight times the amount of traffic delivered to Citizens over the FGC trunks from *all* wireless carriers combined from the month before. Citizens checked the Halo website and found that it was a small wireless carrier with limited offerings serving the communities of Tyler, Brenham, and Pleasanton, Texas.

Given the substantial amount of traffic that this small wireless carrier appeared to be originating, Citizens undertook further investigation regarding the actual calls being originated and/or delivered by Halo. While the AT&T tandem wireless billing records<sup>3</sup> do not contain the actual telephone number of the end user actually originating the call (i.e., the calling party number or "CPN"), for each call, they do contain sufficient call detail (i.e., date, time, duration, called number, etc.) that Citizens – through much manual clerical work – was able to match the individual call detail it received in the AT&T tandem records with call detail information from

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<sup>3</sup> AT&T as the tandem provider is required by the ERE Rules to provide each subtending telephone company with records which specifically identify traffic transited from wireless carriers. *See* 4 CSR 240-29.040(4).

Citizens' own terminating switch records. That initial review revealed that the traffic Halo was sending to Citizens for termination was a mix of wireline (e.g., LEC-originated), third-party wireless<sup>4</sup>, and originating 800 traffic.

Shortly after Citizens began terminating traffic from Halo, Green Hills also began terminating traffic from Halo. Green Hills sent an invoice to Halo billing a rate contained in several MoPSC approved Traffic Termination Agreements that Green Hills has with other wireless carriers. Shortly thereafter, Green Hills received a letter from Halo's General Counsel, Mr. John Marks, disputing and refusing to pay the bill.<sup>5</sup> Green Hills also began a preliminary investigation of the nature of the traffic Halo was sending to Green Hills. Green Hills' investigation revealed the same results as Citizens – that the traffic Halo was delivering to Green Hills for termination was a mix of wireline, third-party wireless, and 800 traffic.

Thereafter, Citizens and Green Hills caused correspondence to be sent to Halo requesting that it begin negotiations toward an interconnection agreement (to include compensation for intraMTA wireless traffic) and advising Halo that to the extent it was delivering interLATA, wireline traffic over its interconnection with AT&T for termination by Citizens or Green Hills, that Halo should cease and desist from doing so as that was a violation of the MoPSC's ERE Rules.<sup>6</sup>

While waiting for a response from Halo, Citizens and Green Hills saw a dramatic increase in the amount of traffic Halo was delivering from its first month to its second month. In the case of Citizens, the Halo traffic nearly doubled from 36,000 MOUs to 65,000 MOUs. Green Hills saw an even more dramatic increase from 48,000 MOUs to 142,000 MOUs.

As a result of their investigations into the nature of Halo's traffic, the significant increase in Halo traffic from month-to-month, and Halo's failure to respond or otherwise acknowledge their December 30, 2010 correspondence, Citizens and Green Hills caused a letter to be sent to AT&T requesting that it block Halo's traffic in accordance with the provisions of the MoPSC ERE Rules.<sup>7</sup> On January 19, 2011, Citizens and Green Hills also sent a notice of their intent to block in accordance with the MoPSC ERE Rules by certified mail to Halo.<sup>8</sup> The ERE Rules required that Citizens and Green Hills copy the MoPSC with the blocking notifications, and Citizens and Green Hills did so.

At this point, under the ERE Rules, Halo could have determined to use alternative means of the delivering the traffic that was to be subject to the blocking, or filed a formal complaint with the MoPSC seeking expedited resolution.<sup>9</sup> Halo was fully informed of its right to commence such a proceeding.<sup>10</sup> Had Halo availed itself of such procedure, AT&T would not

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<sup>4</sup> "Third-party wireless" refers to traffic originated by a wireless carrier other than Halo (e.g., Verizon Wireless, Sprint, T-Mobile, etc.).

<sup>5</sup> A copy of Mr. Marks letter is attached as part of Exhibit 2 to the Complaint.

<sup>6</sup> A copy of this correspondence is attached as Exhibit 2 to the Complaint.

<sup>7</sup> A copy of this correspondence is attached as Exhibit 3 to the Complaint.

<sup>8</sup> A copy of this correspondence is attached as Exhibit 4 to the Complaint.

<sup>9</sup> See 4 CSR 240-29.130(9) & (10) (Originating carrier and/or traffic aggregator "should immediately seek action by the commission through the filing of a formal complaint...[and] shall include a request for expedited resolution.").

<sup>10</sup> See, e.g., 3/14/2011 Email from AT&T to Halo Wireless, Complaint Exhibit 28 (Indicating that "Halo could effect an immediate halt to the blocking by the filing of a complaint with the MoPSC.").

have implemented blocking pending the MoPSC decision.<sup>11</sup> Halo, however, did not seek such recourse.

Around the same January 2011 timeframe, the other Missouri RLECs also began receiving wireless call detail records from AT&T which indicated that Halo was delivering “wireless” traffic for termination by the Missouri RLECs. Like Citizens and Green Hills, these RLECs were terminating unusually large amounts of traffic from what appeared to be a small, “start-up” Texas wireless carrier with no apparent presence in Missouri. All of these RLECs began comparing their AT&T call records with their switch records, and the results were the same as Citizens and Green Hills. The Halo traffic was a mix of wireline, third-party wireless, and 800 traffic.

These companies engaged in various discussions with Halo,<sup>12</sup> but ultimately sought to implement blocking of Halo’s traffic on the LEC-to-LEC network – as Citizens and Green Hills had done – for Halo’s failure to fully compensate them or to deliver originating caller identification.<sup>13</sup> To date, Halo has not availed itself of MoPSC procedures to avoid the blocking, and blocking either has been or will be implemented for the remaining Missouri RLECs pursuant to Missouri law.

In addition to seeking to implement the procedures under the ERE Rules, Citizens also continued to investigate the nature of the Halo terminating traffic and found that, based upon the CPN of the calling party, the majority of calls from Halo appeared to be intrastate, interexchange wireline calls (i.e. LEC-to-LEC calls). In one case, Citizens identified four (4) calls delivered by Halo that in fact were originated by Citizens regulatory counsel in Jefferson City, Missouri and terminated to Citizens’ office in Higginsville, Missouri. Citizens’ regulatory counsel has a wireline telephone which is presubscribed to CenturyLink for all long distance calling. Jefferson City is located in the Jefferson City/Columbia, Missouri LATA, and Higginsville is located in the Kansas City, Missouri LATA so these calls were intrastate, interLATA interexchange calls that were being passed-off by Halo as “wireless calls.” Jefferson City is located in the St. Louis Major Trading Area (“MTA”). Higginsville is located in the Kansas City MTA. Therefore, these calls also were interMTA in jurisdiction.

When CenturyLink was asked how these calls were being delivered and terminated as Halo “wireless” traffic, CenturyLink determined, after investigation, that it used “least cost routing” to terminate some of its long distance traffic. For the four (4) calls in question, CenturyLink had handed those calls off to an entity called Transcom, and it appears Transcom, in turn, handed those calls off to Halo for ultimate termination to Citizens. Although Halo was made aware of these four (4) calls,<sup>14</sup> Halo has offered no explanation for how these wireline-originated, intrastate interexchange calls ended up being terminating over Halo’s interconnection with AT&T as “wireless intraMTA calls.”

An example of the type of analysis Citizens performed is attached to this letter as Attachment No. 1. This analysis consists of 246 calls delivered by Halo on February 4, 2011. The attached spreadsheet correlates the call detail as recorded by AT&T at the tandem with the

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<sup>11</sup> See 4 CSR 240-29.130(10).

<sup>12</sup> See, e.g., 2/25/2011, 3/2/2011 Emails between Halo Wireless and C. Johnson, Complaint Exhibit 23.

<sup>13</sup> See, e.g., Complaint Exhibits 31 & 33.

<sup>14</sup> See 2/18/11 letter from W.R. England, III, Complaint Exhibit 16.

call detail for the same call as recorded by Citizens' switch. As can be seen from the CPN captured by the Citizens switch, the majority of the Halo's traffic is intrastate interexchange traffic originating from NPA-NXXs that are assigned to wireline carriers. More significantly, not one of these 246 calls is from a caller with a number that is assigned to Halo. What little wireless traffic that appears to be included in Halo's traffic comes from NPA-NXXs that are assigned to other wireless carriers such as Verizon, Sprint, Leap, etc.<sup>15</sup>

Of even greater concern, on or about February 14, 2011 (after Missouri regulatory counsel had challenged Halo regarding the nature of the traffic), Citizens and the other Missouri RLECs stopped receiving the originating caller identification (i.e., CPN) with each of the calls delivered to them by Halo. Instead, all of the Halo traffic (i.e., thousands of calls) now contains the same NPA-NXX (e.g., 816-912-1901) in the "from number" field of the switch record. This NPA-NXX is assigned to Halo. It is significant to note that only Halo's traffic no longer contains the CPN of the calling party, as Citizens and the other Missouri RLECs continue to receive the CPN on all the other wireless calls transited to them over the AT&T tandem by other wireless carriers, such as Verizon, Sprint, AT&T, etc. The Missouri RLECs have done nothing to alter the way in which their switch captures and records call details, including CPN, and the Missouri RLECs anticipate that AT&T also will confirm that it has not modified its signaling or billing parameters for Halo traffic. It is clear that somewhere upstream (i.e., in the Halo network, or the carriers that use Halo to carry their traffic) the CPN of the actual calling party is being replaced with an NPA-NXX that only identifies the carrier to be billed (i.e., Halo). The failure by Halo to deliver the CPN of the originating caller is a separate violation of the Missouri ERE Rules and an additional reason why the Missouri RLECs have sought blocking of the Halo traffic.<sup>16</sup>

Despite Citizens' (and the other Missouri RLECs') analysis of Halo calls, Halo has steadfastly maintained that *all* of its traffic is intraMTA CMRS traffic subject to reciprocal compensation rather than access charges. As indicated in Halo's Complaint, prior correspondence, and dealings with counsel for the Missouri RLECs, Halo maintains that all of its traffic is intraMTA CMRS traffic because, due to the nature of Halo's network, all calls that originate in the Kansas City MTA terminate in the Kansas City MTA and all calls that originate in the St. Louis MTA terminate in the St. Louis MTA. The Missouri RLECs will demonstrate that this is not true and that the vast majority, if not all of Halo's traffic is not intraMTA CMRS traffic and is subject to compensation and other requirements for utilization of the LEC-to-LEC network.

## **II. Halo Lacked Authorized to Operate Base or Mobile Stations in Kansas or Missouri Until April 15, 2011.**

Halo alleges that it has been providing CMRS service from a base station located in Junction City, Kansas in the Kansas City MTA, and from a base station located in Wentzville, Missouri in the St. Louis MTA. Halo, however, was not authorized to operate base or mobile stations in Kansas or Missouri until April 15, 2011. If Halo operated such facilities prior to April

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<sup>15</sup> According to Halo's website, Halo does not port-in telephone numbers and accordingly the originating wireless numbers in question were not ported to Halo and do not suggest that the calling party could be a Halo wireless customer. See, <http://halowireless.com/vservice/index.jsp>.

<sup>16</sup> 4 CSR 240-29.040(16). It also may be a violation of the Truth in Caller ID Act of 2009, Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e).

15, 2011, it did so in violation of the Act and the FCC's Rules and any traffic transmitted over the Kansas or Missouri base stations was not authorized.

Halo claims to be providing wireless services pursuant to a nationwide, non-exclusive license in the 3650 MHz band. Although Halo may hold a license in this band, a licensee in the 3650 MHz "is not authorized to operate a fixed or base station until that station is registered with the FCC."<sup>17</sup> Specifically, prior to operating a fixed or base station, the licensee must register it in the Universal Licensing System (ULS)<sup>18</sup> and "[o]perations cannot begin until the application for registration is in an 'Accepted' status and the nationwide license is updated on ULS."<sup>19</sup> Mobile and portable stations are not registered "but may only operate if they can positively receive and decode an enabling signal transmitted by a registered base station."<sup>20</sup>

Halo submitted applications to register its Junction City, Kansas and Wentzville, Missouri base stations on August 12, 2010, and October 12, 2010, respectively, File Nos. 0004352472 and 0004416632. These registrations, however, remained pending and were not "Accepted" until sometime on April 15, 2011. Accordingly, prior to that time, Halo had no authority to operate either base station or any mobile stations allegedly served by the Junction City and Wentzville base stations.<sup>21</sup>

Either Halo was not operating its base stations in Kansas and Missouri as it claims, or it was doing so without FCC authorization. It was not authorized to operate mobile units or to originate or carry traffic. Should Halo pursue a complaint on the Accelerated Docket, then as part of the automatic discovery Halo must produce detailed information regarding when it began operations at the Junction City and Wentzville base stations, and whether it has been continuously operating.<sup>22</sup> The Missouri LECs request that Halo put an immediate litigation hold on all information relating to the commencement and provision of service at all of Halo's base stations. In any formal complaint proceeding, the Missouri RLECs will seek detailed discovery on this matter.

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<sup>17</sup> Wireless Telecommunications Bureau Announces Start Date for Licensing and Registration Process for the 3650-3700 MHz Band, Public Notice, DA 07-4605 p. 2 (rel. Nov. 14, 2007) ("*Licensing PN*").

<sup>18</sup> 47 C.F.R. § 90.1307 ("a licensee cannot operate a fixed or base station before registering it . . .").

<sup>19</sup> *Licensing PN* at p. 3. and accompanying note 3 ("registration is not complete until it is in an 'Accepted' status and the nationwide license is updated on ULS."). Halo itself acknowledges that the requirement to register each base station is a restriction on the actual provision of service. *See* Complaint note 14.

<sup>20</sup> *Licensing PN* at p. 4, *citing* 47 C.F.R. § 90.1333. This restriction is an express condition on the face of the license.

<sup>21</sup> The Missouri RLECs are assessing whether to inform the appropriate FCC Field Office, the Wireless Telecommunications Bureau ("WTB"), and/or Enforcement Bureau ("EB") of Halo's unauthorized operations. Any such disclosure would be pursuant to the publically available licensing records of the FCC, which the Missouri RLECs do not regard as confidential information pursuant to the Division's April 6, 2011 Letter.

<sup>22</sup> *See* 47 C.F.R. § 1.729(i)(1). This information should include equipment purchase contracts, delivery receipts, bills of sale, and work orders, contracts for tower work, applicable Antenna Structure Registrations (ASRs), FAA filings and notifications, tower leases, and any other information relating to the commencement of operations, and continuing operations at the Kansas and Missouri base stations.

### III. Halo's Traffic is Predominately Intrastate Wireline InterLATA Traffic Subject to LEC-to-LEC Compensation and Records Requirements.

Halo argues that it is licensed as a common carrier, and that it provides CMRS, subject to the interconnection and intercarrier compensation provisions applicable to CMRS.<sup>23</sup> As discussed above, however, the initial investigations of the Missouri RLECs indicate that a substantial amount of Halo traffic is intrastate interexchange traffic originating from NPA-NXXs that are assigned to wireline carriers. That is, this traffic is intrastate LEC-to-LEC traffic that is fully subject to applicable access tariffs and the rules and regulations of the MoPSC.<sup>24</sup> The Halo traffic volumes are grossly out of line with all other third-party wireless traffic transited over the FGC network (including the nationwide mobile wireless carriers). Carriers in many other states including Texas, Georgia, North Carolina, and South Carolina are receiving significant levels of traffic from Halo and questioning whether Halo traffic is CMRS traffic.<sup>25</sup> None of the traffic appears to be CMRS traffic originated by Halo wireless customers.<sup>26</sup>

The Missouri LECs have seen no evidence that Halo actually has *any* retail end user wireless customers (although admittedly it is now difficult to tell because Halo is no longer delivering meaningful originating caller information). It is not clear that Halo customers can receive calls, and therefore not clear if Halo in fact provides two-way interconnected service. The Missouri RLECs question whether Halo is a bona fide CMRS carrier, and will require detailed discovery regarding the nature of Halo's alleged CMRS services, the number and type of customers that Halo serves, as well as the true nature of traffic delivered by Halo. If Halo files a complaint in the Accelerated Docket, Halo must produce this information as part of its automatic document production.

Rather than providing bona fide CMRS, it appears that Halo is principally engaged in a scheme to aggregate interexchange traffic and pass it as "CMRS" in a deliberate attempt to avoid lawful access charges. Because Halo failed to fully compensate the Missouri RLECs for this traffic and/or to deliver the required originating caller information, and has violated the ERE Rules by placing interLATA wireline traffic on the LEC-to-LEC network without MoPSC approval, the Missouri RLEC have invoked their lawful rights under the MoPSC ERE Rules.

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<sup>23</sup> See, e.g., Complaint at p. 5.

<sup>24</sup> Fixed wireless or landline originated traffic is not "transformed" into CMRS merely by having a wireless link somewhere in the middle of the call path. See *in re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004) (AT&T's "phone-to-phone" Internet protocol (IP) telephony services were not exempt from the access charges applicable to circuit-switched interexchange calls merely because the calls were converted to IP after call origination and routed over the Internet prior to call termination.).

<sup>25</sup> See Comments of Big Bend Telephone Company, *et al.* (Rural LEC Section XV Group) in Docket WC Docket No. 10-90 *et al.* at pp. 17-22 (filed April 1, 2011) ("Roughly one-third of all wireless minutes of use terminating to Texas Commenters' networks originate from Halo. However, it is important to note that for some individual Texas Commenters, Halo is originating more minutes of use than all other wireless providers combined including the large national wireless providers.").

<sup>26</sup> The Missouri RLECs request that Halo place a litigation hold on traffic records/reports and contracts and correspondence with Halo's "numbering partners" and produce this information pursuant to automatic document production in connection with any Accelerated Docket complaint.



#### IV. Halo's Wireless Services Are Not Exclusively, or Even Predominantly, CMRS.

Assuming for the sake of argument, that Halo provides some retail wireless service to end user customers in Kansas and Missouri, this does not mean that the services it provides are CMRS. A particular service is CMRS only to the extent that it falls within the definition of CMRS under the Act and the FCC rules. The 3650 MHz service is licensed under Part 90 of the rules and is not *per se* CMRS.<sup>27</sup> A service that is not CMRS is not subject to the unique intercarrier compensation provisions applicable to CMRS and is fully subject to applicable state regulation and LEC-to-LEC compensation, including access charges.

##### a. Definition of CMRS

Section 332 of the Act defines commercial mobile service as “any mobile service (as defined in section 3) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.”<sup>28</sup> Section 3(27) of the Act defines a “mobile service,” in pertinent part, as “radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves.”<sup>29</sup> Section 3(28) of the Communications Act in turn defines a “mobile station” as “a radio-communication station capable of being moved and which ordinarily does move.”<sup>30</sup>

##### b. Even Halo's Low Volume Service Is Not Exclusively CMRS.

Halo allegedly provides “low volume” service for voice and data service to end users, apparently using data dongles, and “high volume” service to an “enhanced service provider” using an undisclosed device.<sup>31</sup> By Halo's own admission, a customer may connect to Halo's base stations using a stationary desktop computer.<sup>32</sup> Assuming for the sake of argument (without conceding) that a netbook, tablet, or similar device may be a “mobile station,” a stationary desktop computer clearly is not. It is not capable of being moved during operation and ordinarily does not move. Accordingly, “voice” calls originated on such devices are not CMRS and are not subject to the specific interconnection and intercarrier compensation rules applicable to CMRS.<sup>33</sup>

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<sup>27</sup> See 47 C.F.R. § 90.1309 (“Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service.”).

<sup>28</sup> 47 U.S.C. § 332(d)(1); *see also* 47 C.F.R. § 20.3 (defining CMRS).

<sup>29</sup> 47 U.S.C. § 153(27).

<sup>30</sup> 47 U.S.C. § 153(28).

<sup>31</sup> *See, e.g.*, Complaint at pp. 19, 21.

<sup>32</sup> Halo states, “The low volume ‘voice’ package employed by Halo at present involves use of a voice ‘client’ operating on a netbook, portable computer, tablet or personal computer that is communicating with the Halo base station using a USB wireless ‘dongle.’” Complaint at p. 19.

<sup>33</sup> According to Halo's Website, Halo's customers can complete calls either over Halo's wireless network (where available) or over a customer's home or business broadband connection using the customer's wireless dongles and the voice client software. Calls completed in the latter method would not be CMRS.

**c. Halo's High Volume Service Is Not CMRS.**

**i. The High Volume Customer Likely Does Not Utilize a Mobile Station.**

The Missouri RLECs also question whether Halo's alleged "high volume" service is CMRS. Halo allegedly serves as a "numbering partner" to a high-volume enhanced services provider ("ESP") that "has wirelessly connected the customer's mobile station to a Halo base station in the MTA."<sup>34</sup> Halo does not identify what type of device the numbering partner allegedly uses to connect to Halo's base stations. The Missouri RLECs doubt that the purported customer device is a "mobile station" within the meaning of the Act and FCC's rules. Is the ESP's "device" capable of being moved, and does it "ordinarily move"? The purported device would have to be capable of transmitting huge quantities of data (i.e., fiber or microwave capacity) via a small, battery-powered device.

Mobile devices in the 3650 MHz band are limited in terms of power and capability. All devices also must be type-certified by the FCC. The Missouri LECs question whether any high capacity mobile devices have been certified for the 3650 MHz band. Halo must provide detailed information regarding all equipment used by its ESP partner to deliver traffic. If Halo files a complaint pursuant to the Accelerated Docket, as part of its automatic document production, Halo must identify its ESP customer, and its relationship to such customer, and produce all equipment, including any mobile or non-mobile devices used by such customer, along with information regarding the capabilities and actual use of such equipment. To the extent that Halo's ESP customer does not deliver traffic over a "mobile station" as defined in the Act, such traffic is not CMRS.

**ii. The High Volume VoIP Traffic is Not CMRS and is Subject to Compensation Obligations.**

**1. "Mobile-in-the-Middle" is Not CMRS**

Even assuming for the sake of argument, that Halo's high-volume ESP "customer" transmits at least some traffic over a mobile device (a claim the Missouri RLECs do not concede), this does not render the traffic CMRS. Calls originated on fixed wireless or wireline VoIP devices are not "transformed" into CMRS merely by being routed over a wireless link somewhere in the middle of the call path. "Mobile-in-the-middle" does not a CMRS call make.<sup>35</sup> VoIP calls initiated by an end user on wireline broadband facilities are wireline in nature.

Although an interconnected VoIP provider may be a "customer" of a telecommunications carrier for some purposes, the FCC has never held that a VoIP provider is the calling party for purposes of determining whether a call is originated as a "wireless call" or for purposes of determining the location of the calling party at the beginning of a call. By Halo's logic, *any* VoIP call – even a call originated on the far side of the globe, would be an "intraMTA" local call if somewhere in the call path, the call is transmitted over a wireless link in the same MTA in

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<sup>34</sup> Complaint at p. 20.

<sup>35</sup> See *in re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004) (IP-in-the-middle does not exempt calls from access).

which the called party is located. This is not consistent with the long line of FCC and state commission cases that hold that the jurisdiction and nature of a call is determined by the locations of the calling and called party.<sup>36</sup> And finally, even if Halo could be deemed to provide CMRS to its ESP customer, the location of the calling party and not the location of the ESP's "mobile device" would determine the jurisdiction of the call.

## **2. The MoPSC and FCC Have Held that VOIP Traffic is Subject to Compensation Obligations**

The MoPSC has held that VoIP traffic is subject to compensation, including access charges. Section 392.550.2 of the Revised Statutes of the State of Missouri provides as follows:

Interconnected voice over internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunication services are subject to such charges.

Recently in an arbitration proceeding between AT&T, on the one hand, and Global Crossing Telemanagement Inc. and Global Crossing Local Services Inc., ("Global Crossing"), on the other hand, the MoPSC was required, among other things, to decide how AT&T and Global Crossing shall bill one another for traffic exchanged over the public switched telephone network (PSTN) that uses internet protocol (IP) at some point in such traffic. The MoPSC resolved the dispute by adopting neither party's proposed language and directed that the following language be inserted into their interconnection agreement:

Consistent with Missouri law, interconnected voice over Internet protocol traffic that is not within one local exchange is subject to access charges as is any other switched traffic, regardless of format.<sup>37</sup>

Accordingly, Missouri law is clear that VoIP traffic, to the extent it originates and terminates in different local exchanges, is subject to access charges just like telecommunications traffic. Therefore, Halo's "High Volume" VoIP traffic is fully subject to applicable access charges. This is consistent with the FCC's determination that a VoIP provider's ability to interconnect with a LEC through a telecommunications carrier numbering partner is conditioned upon the numbering partner entering into a Section 251 arrangement to compensate the LEC.<sup>38</sup> Halo has not done this, and the Missouri RLECs are under no obligation to terminate the VoIP traffic of Halo's ESP customer.

As discussed above, Halo appears to have no *bona fide* CMRS traffic. To the extent that any of the traffic is CMRS, a substantial percentage of such CMRS traffic is interMTA traffic subject to access charges.<sup>39</sup> Therefore, the Missouri RLECs properly billed Halo for terminating

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<sup>36</sup> For example, a call that originates and terminates in the same state does not become an interstate call merely because it may be carried by facilities that cross a state line.

<sup>37</sup> MoPSC File No. IO-2011-0057, Decision issued December 15, 2010, p. 18-19.

<sup>38</sup> *In re Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513 at ¶ 14 (2007) ("*Time Warner*").

<sup>39</sup> Halo's argument that all of its traffic is intraMTA is based on the notion that its "base station" through which a Halo call is routed is located in the same MTA as the Missouri RLEC exchange in which the call terminates. Even

Halo's traffic, and such traffic was fully subject to applicable MoPSC requirements. To the extent that Halo may provide some intraMTA CMRS, Halo should have negotiated with the Missouri RLECs, specifically with Citizens and Green Hills pursuant to their requests under Section 20.11(e) of the FCC's Rules, to resolve the issue and adopt appropriate interconnection arrangements. In addition, Halo should have requested interconnection and negotiated appropriate interconnection arrangements for the termination of its VoIP traffic. As discussed below, however, Halo chose instead to maneuver to avoid negotiations and the payment of any terminating compensation.

**V. Halo Has Erected a Straw Man Barrier to Negotiating Indirect Interconnection and Compensation Arrangements with the Missouri RLECs.**

Halo has erected an elaborate straw man barrier to negotiating indirect interconnection and compensation arrangements with the Missouri RLECs pursuant to Sections 251(a) and 251(b) of the Act and FCC Rule 20.11(e). Essentially, Halo argues that it cannot obtain interconnection and the establishment of appropriate compensation arrangements as a requesting carrier because the Missouri RLECs may assert the Section 251(f) rural exemption to the obligations of Section 251(c).<sup>40</sup> Halo argues that some rural telephone companies have asserted, and "at least two states" have agreed, that if a rural LEC is exempted from the obligations of Section 251(c), then there is no duty to negotiate in good faith, there is nothing for the state to arbitrate, and there are no remaining standards that the state commission must apply in arbitrating any dispute.<sup>41</sup> Halo speculates that as a requesting carrier it would have no way to force the Missouri RLECs to negotiate in good faith toward reasonable terms for interconnection under the procedures of Section 252, and therefore "state-level arbitration is not an option if and to the extent Halo is the requesting carrier."<sup>42</sup> Halo also argues that it is not required to negotiate a Section 251(a) indirect interconnection arrangement in the context of a Section 252 proceeding.<sup>43</sup>

In Halo's view, if the Missouri RLECs do not want to accept "default" bill and keep for all traffic, then under the *T-Mobile Order*<sup>44</sup> and implementing rules, the Missouri RLECs must

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by Halo's own logic and description of its network, however, all calls from Halo to customers of Mark Twain would be interMTA calls subject to access charges. Mark Twain's service area is located entirely within the St. Louis MTA. Because of the way the MTA boundaries are drawn in Missouri, and the differences between MTA and LATA boundaries, however, Mark Twain's exchanges subtend the AT&T tandem in Kansas City, in the Kansas City, MTA, but Mark Twain's customers are located in the St. Louis MTA. By Halo's own explanation of its network, calls bound for Mark Twain would be handled by Halo's base station in Junction City, KS for transit through AT&T's Kansas City LATA tandem. These calls to Mark Twain end users, however, cross the MTA boundary and would terminate in the St. Louis MTA. Therefore, by Halo's own logic, *all* calls to Mark Twain would be interMTA calls subject to access charges, and Halo's refusal to pay bills from Mark Twain based upon access rates cannot be justified based on Halo's contention all of this traffic is intraMTA. This anomaly is not limited to Mark Twain. A number of the exchanges served by Mid-Missouri, Northeast, and Chariton Valley subtend AT&T's Kansas City tandem, but are located in the St. Louis MTA.

<sup>40</sup> See, e.g., Complaint pp. 12-14.

<sup>41</sup> See *id.*

<sup>42</sup> *Id.* at p. 15.

<sup>43</sup> See, e.g., 2/14/11 Letter from Halo Wireless, Complaint Exhibit 11.

<sup>44</sup> *In re Developing a Unified Inter-carrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*").

“request” direct interconnection with Halo.<sup>45</sup> According to Halo, once the RLECs “request” interconnection, they are subject to all of the obligations of Section 251(c) and must directly interconnect at a technically feasible point on Halo’s network using packet-switched 4G technology rather than the circuit-switched technology currently used in the Missouri RLEC’s networks.<sup>46</sup>

Halo’s arguments are without merit, and the Missouri LECs will not attempt to address every disputed or incorrect point in Halo’s Complaint regarding interconnection.<sup>47</sup> What is significant to note, is that Halo is engaging in elaborate contortions and maneuvering to avoid the establishment of interconnection and compensation arrangements between the parties in order to continue to avoid paying *any* compensation for *any* traffic.

The Missouri RLECs have not asserted the Section 251(f) exemption from the obligations of 251(c) and have reached agreements – primarily through negotiation, but where necessary through arbitration – with every other CMRS carrier in Missouri.<sup>48</sup> The MoPSC has asserted jurisdiction over, and has arbitrated Section 251(a)/251(b) indirect interconnection agreements between LECs and CMRS carriers, and has established company-specific Total Element Long Run Incremental Costs (TELRIC)-based pricing.<sup>49</sup> Accordingly, the MoPSC is the appropriate forum for resolving the interconnection and compensation arrangements between Halo and the Missouri RLECs, and, if necessary, Halo can obtain resolution of any disputed issues through the Section 252 process.

Halo’s tortured reading of the *T-Mobile Order* and implementing rules is incorrect. Contrary to Halo’s argument, the Missouri RLECs are not required to “request interconnection” pursuant to Section 251(c) in order to trigger a wireless carrier’s obligations under the *T-Mobile Order* and FCC Rule 20.11(e). Nor are they required to “request” Halo to submit to commission arbitration. In the *T-Mobile Order* and Rule 20.11(e), the FCC addressed the concern of small incumbent LECs that they would be unable to obtain a compensation arrangement “by providing them with a new right to initiate a section 252 process through which they can obtain a reciprocal compensation arrangement with any CMRS provider.”<sup>50</sup> As Halo noted in its Complaint, the FCC knew that most small LECs and CMRS carriers are interconnected indirectly. Accordingly, it would have been inefficient and nonsensical for the FCC to require the small LEC to request direct interconnection with the CMRS carrier in order to effectuate a reciprocal compensation arrangement pursuant to Section 251(b).

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<sup>45</sup> See Complaint at pp. 16-17.

<sup>46</sup> See *id.* at p. 17.

<sup>47</sup> Resolution of these complex factual and legal issues is appropriate before the MoPSC in an arbitration or complaint proceeding and wholly inappropriate for resolution on the Accelerated Docket. Citizens and Green Hills anticipate filing petitions for arbitration with the MoPSC of these disputed interconnection matters once the arbitration window opens pursuant to Citizens and Green Hills’ Rule 20.11(e) requests to Halo.

<sup>48</sup> At no time have the Missouri RLECs asserted the rural exemption as an impediment to such negotiations or arbitration. The Missouri RLECs generally deny Halo’s allegation that they have failed to negotiate in good faith.

<sup>49</sup> See, e.g., *in re Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc.*, Arbitration Order, Case No. TO-2006-0147 *et al.* (MoPSC 2006) (consolidated arbitration proceeding including Citizens, Green Hills and Mark Twain), *subsequent history omitted*; *in re Petition of Alma Telephone Company for Arbitration of Unresolved Issues Pertaining to a Section 251(b)(5) Agreement with T-Mobile USA, Inc.*, Arbitration Report, Case No. IO-2005-0468 (MoPSC 2005) (consolidated arbitration including Chariton Valley, Mid-Missouri, and Northeast), *subsequent history omitted*.

<sup>50</sup> *T-Mobile Order* RFA ¶ 20.

Green Hills and Citizens also dispute Halo's claims that they have not properly invoked Section 20.11(e) or negotiated in good faith. In fact, it is Halo that is not acting in good faith. Halo misstates the Missouri RLECs' position when it states that the Missouri RLECs expect Halo "to simply sign their proffered terms containing non-cost-based prices using legacy interconnection methods rather than modern IP based technology. . ."<sup>51</sup> First, this statement is at odds with the 12/30/10 letter from W.R. England, III,<sup>52</sup> which states as follows:

Citizens and Green Hills currently have a number of Traffic Termination or Interconnection Agreements with wireless carriers for the indirect interconnection and exchange of intraMTA wireless traffic and they would propose using one of those arrangements as a starting point for purposes of these negotiations.

(emphasis added). Clearly this is not a "take-it-or-leave-it" proposition.

Second, Halo neglects to inform the FCC that, in a March 4, 2011, telephone conversation with Citizens' and Green Hills' counsel, Halo was advised that, as a result of a MoPSC arbitration case between a number of Missouri RLECs, on the one hand, and T-Mobile and Cingular, on the other hand, the MoPSC has established cost-based rates, based on TELRIC, for these companies. Counsel for Citizens and Green Hills followed up that telephone conversation with an email to Halo's General Counsel containing a summary of the terms of those arbitrated agreements, including their company-specific, TELRIC-based rates, interMTA factors and other traffic factors. In addition, counsel for Citizens and Green Hills supplied copies of actual agreements which resulted from that arbitration. A copy of this email correspondence to Halo is attached to this letter as Attachment No. 2. In short, the Missouri RLECs have not claimed exempt status under Section 251(f) for purposes of negotiating an agreement with wireless carriers or with Halo, nor have the Missouri RLECs proffered an existing agreement as a "take-it-or-leave-it" agreement for purposes of interconnection.

The Missouri RLECs remain willing to work with Halo to negotiate arrangements and to engage in the Section 252 process, including MoPSC arbitration if necessary. It is Halo that has maneuvered to erect barriers to the establishment of an interconnection and compensation arrangements and that has refused to fully compensate the Missouri RLECs as required. It is Halo's actions that forced the Missouri RLECs to avail themselves of the remedies available under the MoPSC ERE Rules.

#### **VI. Halo Is Failing to Deliver Required Originating Caller Information.**

The Missouri ERE Rules require an originating carrier or traffic aggregator to deliver originating caller identification.<sup>53</sup> The ERE Rules define originating caller identification as "the ten (10)-digit telephone number of the caller who originates the telecommunication that is placed

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<sup>51</sup> Complaint at p. 9.

<sup>52</sup> Exhibit 2 to the Complaint.

<sup>53</sup> See 4 CSR 240-29.040(1) & (5).

on the LEC-to-LEC network. This feature is also known as . . . calling party number (CPN) . . .”<sup>54</sup> The ERE Rules also provide, “The originating telephone number shall be the telephone number of the end user responsible for originating the telephone call.”<sup>55</sup>

The Missouri RLECs believe that Halo is failing to deliver the caller identification information required by the ERE Rules and industry standards and that Halo’s practices also may violate the Truth in Caller Identification Act.<sup>56</sup> Halo vociferously denies that it is failing to pass required call information.<sup>57</sup> This issue is extremely complex. It will require technical discovery and expert analysis to determine whether Halo is in fact complying with the law and applicable industry standards. Currently, Halo is in exclusive possession of most of the information necessary to resolve this matter.

What the Missouri RLECs *do know*, however, is that prior to mid-February of 2011, they were receiving information that allowed them to identify the telephone number of the actual calling party. This originating caller identification information indicated that “Halo” calls actually were originating from callers with numbers assigned to various wireline and third-party wireless carriers. After the Missouri RLECs questioned Halo about this traffic, the Missouri RLECs stopped receiving the originating caller identification of the calling party. Instead, originating caller identification information reflects the same Halo number. This change strongly suggests that Halo and/or its ESP partner altered the information that they send to the Missouri RLECs in order to further the access avoidance scheme. To the extent that Halo’s “service package” could allow its ESP partner “options and capabilities” that may include failing to deliver or altering the originating caller identification of the end user that actually initiates a telephone call, then the terms and conditions of Halo’s service to its ESP customer, as well as Halo’s relationship to its ESP customer are relevant to Halo’s compliance with applicable law and resolution of this issue.<sup>58</sup>

What the Missouri RLECs also know, is that this highly technical issue is not appropriate for consideration on the Accelerated Docket.

## **VII. Blocking Halo’s Traffic from the LEC-to-LEC Network Pursuant to the MoPSC ERE Rules Is Not an Unjust or Unreasonable Practice in Violation of Section 201(b) of the Act.**

Halo alleges that the Missouri RLECs violated section 201(b) of the Act by engaging in call blocking without FCC permission.<sup>59</sup> Halo also argues that this matter may not be resolved by the MoPSC and must be resolved by the Commission because the traffic at issue is jurisdictionally interstate. The Missouri RLECs disagree.

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<sup>54</sup> 4 CSR 240-29.020(28).

<sup>55</sup> 4 CSR 240-29.040(6).

<sup>56</sup> Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e). The Truth in Caller ID Act prohibits anyone in the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

<sup>57</sup> See Complaint at pp. 17-20.

<sup>58</sup> Should Halo file an Accelerated Docket complaint, in addition to the signaling information that Halo says it will automatically produce, see Complaint at p. 20, Halo also must produce contracts with its ESP and information regarding the relationship of Halo and its ESP partner as this information is relevant to resolution of the issues in this dispute. See 47 C.F.R. § 1.729(i)(1).

<sup>59</sup> See Complaint at p. 23.

The Missouri RLEC's implementation of remedies pursuant to the MoPSC ERE Rules is not an unjust and unreasonable practice prohibited by Section 201(b) of the Act and is consistent with FCC precedent. Although the FCC has held that unreasonable call blocking, especially when employed as a self help measure, is not permitted, the FCC has allowed call blocking in limited circumstances.<sup>60</sup> Specifically, the FCC has allowed call blocking in order to prevent a scheme to game access charge payments.<sup>61</sup> As explained above, the Missouri RLECs believe that Halo is engaged in a scheme to deliver wireline and VoIP interexchange traffic as if it were intraMTA CMRS traffic in order to avoid lawful access charges. Frustration of this access avoidance scheme pursuant to lawful MoPSC rules falls squarely within the limited circumstances exception to the FCC's general call blocking prohibition.<sup>62</sup>

The Missouri RLECs actions in this dispute also is consistent with the Act and FCC rules, because the Missouri RLECs did not engage in self help,<sup>63</sup> but rather invoked state law procedures, the MoPSC's ERE Rules. These rules, which were adopted after a lengthy and carefully considered proceeding, set out clear rules for carriers utilizing the FGC LEC-to-LEC network in Missouri. The rules protect the integrity of the Missouri FGC LEC-to-LEC network. Notably, they limit the type of traffic that may be routed on that network, and establish record exchange, compensation, and signaling requirements regarding traffic on the network.

The ERE Rules also establish a procedure that requires the tandem provider to block traffic from the LEC-to-LEC network if a carrier does not follow the rules. Notably, the tandem provider is required to block traffic if the originating carrier and/or traffic aggregator in question has failed to fully compensate the terminating carrier or failed to deliver originating caller identification.<sup>64</sup>

The rules also establish due process procedures for a carrier that is to be blocked to challenge the requested blocking in a MoPSC proceeding. Specifically, the carrier whose traffic is to be blocked may file a complaint with MoPSC and the tandem provider must cease preparations to implement blocking until the MoPSC resolves the matter.<sup>65</sup>

As discussed above, Halo has refused to pay lawful charges, and to otherwise enter into arrangements for compensation. The MoPSC ERE Rules allow blocking for Halo's failure to fully compensate the Missouri RLECs, and this action is consistent with the Act and FCC law. The FCC also has made clear that its general blocking prohibition does not apply to blocking for nonpayment of bills or violations of applicable terms and conditions of valid access tariffs, (a

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<sup>60</sup> See *in re Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling, 22 FCC Rcd 11629 (WCB 2007) (“*Declaratory Ruling*”).

<sup>61</sup> See *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5726 (2001).

<sup>62</sup> In addition and as noted above, Halo was not authorized to operate wireless facilities in Kansas or Missouri until April 15, 2011.

<sup>63</sup> See *Declaratory Ruling, supra*, ¶ 5 (“By issuing this Declaratory Ruling, we seek to alleviate any possible confusion by clarifying that carriers cannot engage in self help by blocking traffic to LECs allegedly engaged in the conduct described herein.”).

<sup>64</sup> See 4 CSR 240-29.130(2) & (3).

<sup>65</sup> See 4 CSR 240-29.130(9) & (10) (Originating carrier and/or traffic aggregator may “immediately seek action by the commission through the filing of a formal complaint...[and] shall include a request for expedited resolution.”).



point implicitly conceded by Halo in its Complaint).<sup>66</sup> The ERE Rules have the force of law, and accordingly, failure to comply with ERE requirements is an even more serious offense than failing to comply with the conditions of a tariff.<sup>67</sup>

Equally as important, the MoPSC rules require carriers utilizing the LEC-to-LEC network in Missouri to deliver originating caller identification information. As discussed above, Halo is not delivering this required information and the MoPSCs rules clearly provide for blocking in order to protect the network and the carriers that make up the network.

Moreover, the blocking instituted in this case is limited. Consistent with the MoPSC rules, the blocking only prevents Halo traffic from being transited through the AT&T tandem on FGC trunks on the LEC-to-LEC network. The blocking implements reasonable trunking limitations contained in the ERE Rules which generally prohibit carriers from sending interexchange traffic on FGC trunks unless otherwise approved by the MoPSC.<sup>68</sup> Halo violated the terms of use of the FGC trunks, but has other means to deliver its traffic to the Missouri RLECs. Notably, Halo can properly route its interexchange traffic on the interexchange network and/or take numerous other steps to prevent or alleviate the blocking.

Finally, Halo had a due process opportunity to participate before the MoPSC to demonstrate that its traffic should not be blocked. It declined to do so. Although Halo claims that it is not subject to the ERE rules, Halo has chosen not to raise that issue before the MoPSC or in any way avail itself of the state law procedures that could have avoided the implementation of the call blocking remedy.<sup>69</sup> Instead, Halo is attempting to use the FCC's Accelerated Docket procedures to engage in an improper collateral attack on MoPSC administrative remedies and avoid or at least further delay paying lawful intercarrier compensation. Halo failed to avail itself of any of the appropriate procedures at the MoPSC, and the FCC should not entertain Halo's collateral attack on the MoPSC's rules.

It is apparent to the Missouri RLECs that Halo is aggregating access traffic but refusing to pay the prescribed compensation for such traffic. Halo also is refusing to negotiate

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<sup>66</sup> See, e.g., in the *Matter of Local Exchange Carrier Blocking of Feature Group B Traffic Transiting Access Tandems*, 61 Rad. Reg. 2d (P & F) 437 (CCB 1986) at n. 11 (emphasis supplied), in which the FCC clarified: Some confusion apparently was engendered by our statement in the Iowa Order to the effect that the existence of a dispute over the appropriate compensation level does not provide ECs [exchange carriers] with grounds for denying interconnection for interstate telecommunication services. [citations omitted]. *Several parties contend that this is a blanket prohibition that does not allow ECs to block calls for the nonpayment of bills or for other violations of valid access tariffs. Nothing in the language of the Iowa Order should be read to bar denial of service in accord with proper tariff provisions for such acts as nonpayment of bills or other violations of access tariff terms and conditions.*

<sup>67</sup> Halo's argument that the Missouri RLECs violated various Part 63 rules likewise fails as these provisions are generally not applicable to the denial of service for lack of payment or violation of applicable terms and conditions. Moreover, these rules are applicable when a carrier seeks to "discontinue, reduce or impair interstate or foreign telephone or telegraph service to a community, or a part of a community" and that is not the case here. See 47 C.F.R. § 63.61.

<sup>68</sup> See 4 CSR 240-29.010(1).

<sup>69</sup> Halo asserts that the MoPSC ERE Rules do not apply. The Missouri RLECs disagree and can provide full legal analysis to the Division if requested. The determination of whether or not the MoPSC rules apply or not, however, is a matter that should have been raised with and decided by the MoPSC pursuant to its lawfully adopted procedures and process. It is not a matter appropriate for resolution on the Accelerated Docket.

compensation arrangements unless the Missouri RLECs structure the “request” and negotiation in the manner demanded by Halo. Further, Halo has failed to deliver the required call identification information and is violating the terms of use of the FGC network. Accordingly, the Missouri RLECs availed themselves of the lawfully adopted remedy available under the ERE Rules. The MoPSC has adopted rules for use of the LEC-to-LEC telephone network in Missouri. Halo has not followed those rules, and the Missouri RLEC’s invocation of the ERE Rules to prevent Halo’s abuse of the Missouri network is just and reasonable under the circumstances and consistent with the Act and FCC rules.

### **VIII. The Missouri RLECs Have Not Violated Section 201(b) by Blocking VoIP Traffic.**

Halo’s argument that the blocking of VoIP traffic received from Halo’s ESP partner is a separate violation of Section 201(b) of the Act also fails. The Commission has made absolutely clear that wireline originated interexchange traffic remains subject to lawful access charges despite the fact that the traffic may at some point be routed over IP facilities<sup>70</sup> and has expressly refused to forbear from applying access charges to voice embedded Internet communications.<sup>71</sup> Indeed, with respect to interconnected VoIP services, the Commission has yet to rule whether such services are information service or telecommunications services. If they are the former, the Missouri RLECs are under no duty to provide interconnection or exchange access services under Section 251 of the Act.<sup>72</sup> While the FCC has held that certain information providers can obtain interconnection by partnering with a wholesale telecommunications services provider that is covered by Section 251 of the Act, the Commission has also made it abundantly clear that such interconnection arrangements are conditioned on the wholesale provider’s assumption of responsibility for compensating the incumbent local exchange carrier for the termination of traffic under a Section 251 arrangement between the two parties.<sup>73</sup> In the present case, Halo has repeatedly refused to assume this compensation responsibility thereby relieving the Missouri RLECs of any obligation under the Act to terminate the VoIP traffic generated by Halo’s ESP partner.

### **IX. This Dispute Is Not Appropriate for Resolution on the Accelerated Docket**

This dispute is not appropriate for consideration and resolution on the Accelerated Docket for numerous reasons. First, prior to April 15, 2011, Halo was not authorized to operate the wireless facilities through which the traffic at issue allegedly was being delivered. The FCC should not entertain an accelerated complaint regarding traffic which Halo lacked authority to generate.

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<sup>70</sup> *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004).

<sup>71</sup> *In the Matter of Feature Group IP Petition for Forbearance From Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules*, 24 FCC Rcd 1571 (2009), *recon. den.* 25 FCC Rcd 8867 (2010).

<sup>72</sup> *In re Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513 (2007) (“*Time Warner*”) ¶ 14.

<sup>73</sup> *See id.* at ¶ 17. As noted above, Missouri law is clear that VoIP traffic, to the extent it originates and terminates in different local exchanges, is subject to access charges just like telecommunications traffic. *See note 37 supra*, and accompanying text.

Second, the numerous and complex issues of this dispute are not suited for a decision under the constraints of the Accelerated Docket.<sup>74</sup> The dispute involves numerous complex issues that are either highly factual or legally complex or both. These include, without limitation, determining: the extent to which Halo is aggregating and attempting to disguise wireline, LEC-originated traffic as CMRS traffic in order to avoid paying access; the nature of Halo's traffic, and whether there is any bona fide CMRS traffic (and if so whether it is InterMTA); the equipment used in Halo's operations and its capabilities; Halo's relationship with its alleged ESP numbering partner; whether the ERE Rules apply; whether Halo's access avoidance scheme justifies application of the Missouri ERE Rules; whether federal law preempts the Missouri ERE Rules; the respective interconnection obligations of the parties and resolution of their differing interpretations of the *T-Mobile Order*; whether Halo is complying with applicable signaling and billings orders, rules, and requirements and delivering caller identification information.

Third, these issues will require extensive and complex discovery and fact finding. This will include such matters as the SS7 signaling messages, call detail records, billing records, information regarding the type of equipment used by Halo's customers, and extensive discovery for resolution of the issues noted above and as otherwise noted herein. The discovery of this information will not be possible under the constraints of the Accelerated Docket,<sup>75</sup> and would best be handled (and typically is handled) in a state commission proceeding.

Forth, the dispute is inappropriate for resolution on the Accelerated Docket because Halo failed to exhaust its remedies before the MoPSC. Halo could file a complaint with the MoPSC and request expedited consideration of these disputed matters. The MoPSC in the first instance would be the appropriate fact-finding body to consider and resolve this dispute.

Fifth, the dispute is wholly inappropriate for resolution on the Accelerated Docket because Halo requests preemption of validly adopted rules of the MoPSC.<sup>76</sup> The MoPSC should be a party to any proceeding seeking to preempt or otherwise negate the effect of the MoPSC's rules, and the Accelerated Docket is not an appropriate process for a collateral attack on the MoPSC rules.

Sixth, this dispute is the leading edge of similar disputes with telephone companies all across Missouri. The Missouri RLECs adamantly believe that the MoPSC is the proper forum for resolving these matters pursuant to due process and procedures provide under the MoPSC's rules. This matter could be resolved globally through a MoPSC proceeding and/or commission arbitration, whereas FCC consideration of the issues will of necessity be piecemeal and will only lead to further MoPSC proceeding.

Seventh, expedited resolution of this dispute on Accelerated Docket will not advance competition in the telecommunications market because Halo is not a bona fide wireless competitor. Instead Halo is merely aggregating and disguising interexchange traffic to avoid paying access.

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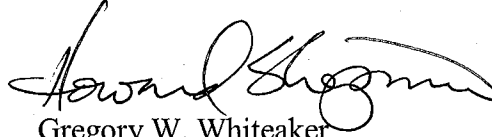
<sup>74</sup> See 47 C.F.R. § 1.730(e)(3).

<sup>75</sup> See 47 C.F.R. § 1.730(e)(3) (Whether dispute suitable for Accelerated Docket resolution may entail, inter alia, "the likely complexity of the necessary discovery....").

<sup>76</sup> See 47 C.F.R. § 1.730(e)(6).

For these and the reasons discussed throughout, resolution of this dispute is not appropriate for the Accelerated Docket. The Missouri RLECs are, however, willing to engage in staff-supervised settlement discussions to attempt to resolve the dispute.

Sincerely,



Gregory W. Whiteaker

Howard S. Shapiro

*Counsel for the Missouri RLECs*

Attachments (1 & 2)

cc: Matthew A. Henry, counsel for Halo (via Email and U.S. Mail)  
W. Scott McCollough, counsel for Halo (via Email and U.S. Mail)  
Leo J. Bub, AT&T (via Email only)  
Anisa A. Latif, AT&T (via Email only)  
William L. Roughton, AT&T (via Email only)  
W. R. England, III, counsel for Citizens, Green Hills & Mark Twain (via Email)  
Craig S. Johnson, counsel for Chariton Valley, Mid-Missouri & Northeast (via Email)







8169121999	6605843401	B10204	9	20	30	796	1.33	8166334951	6605843401	B10204	9	17	55	0	806	1.34	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	ODESSA
8169121999	6605846192	B10204	9	22	32	215	0.36	9135419704	6605846192	B10204	9	19	57	0	224	0.37	SOUTHWESTERN BELL	KANSASCITY
8169121999	6605845942	B10204	9	22	45	12236	20.39	6608419502	6605845942	B10204	9	20	10	0	12246	20.41	CENTURYTEL MISSOURI LLC(SOUTHWEST)DBA CENTURYLINK	PRAIRIHOME
8169121999	6605846222	B10204	9	23	16	7350	12.25	8166253895	6605846222	B10204	9	20	41	0	7361	12.27	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	OAK GROVE
8169121999	6605847512	B10204	9	23	21	3049	5.08	8166276488	6605847512	B10204	9	20	46	0	3059	5.9	TCG KANSAS CITY, INC - MO	KANSASCITY
8169121999	6605842192	B10204	9	23	48	3530	5.88	6602592849	6605842192	B10204	9	21	12	0	3540	5.9	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	LEXINGTON
8169121999	6605847804	B10204	9	23	52	401	0.67	3154366239	6605847804	B10204	9	21	16	0	411	0.69	NEW CINGULAR WIRELESS PCS LLC - DC	SYRACUSE
8169121999	6605842110	B10204	9	23	59	2034	3.39	5736357166	6605842110	B10204	9	21	23	0	2038	3.4	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	JEFFERSONCY
8169121999	6605847404	B10204	9	24	13	25	0.04	3239633943	6605847404	B10204	9	21	37	0	34	0.06	SPRINT SPECTRUM LP	LSAN DA 14
8169121999	6605847731	B10204	9	24	41	938	1.56	6607471542	6605847731	B10204	9	22	6	0	948	1.58	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	WARRENSBURG
8169121999	6605842754	B10204	9	24	51	371	0.62	8162572869	6605842754	B10204	9	22	16	0	380	0.63	SOUTHWESTERN BELL	KANSASCITY
8169121999	6605848149	B10204	9	24	54	862	1.44	6604638081	6605848149	B10204	9	22	19	0	872	1.45	SPECTRA COMMUNICATIONS GROUP LLC DBA CENTURYLINK	CONCORDIA
8169121999	6605842110	B10204	9	25	8	254	0.42	0	6605842110	B10204	9	22	33	0	263	0.44	INVALID CPN	
8169121999	6605847989	B10204	9	26	26	1636	2.73	8162572869	6605847989	B10204	9	23	50	0	1646	2.74	SOUTHWESTERN BELL	KANSAS CITY
8169121999	6605845000	B10204	9	27	5	2995	4.99	6606635523	6605845000	B10204	9	24	30	0	3005	5.01	WINDSTREAM MISSOURI INC	GALLATIN
8169121999	6605847787	B10204	9	29	4	636	1.06	8162402729	6605847787	B10204	9	26	28	0	646	1.08	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	WELLINGTON
8169121999	6605847713	B10204	9	29	9	3164	5.27	6606563245	6605847713	B10204	9	26	34	0	3174	5.29	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	CENTERVIEW
8169121999	6605843399	B10204	9	29	20	1301	2.17	8163091411	6605843399	B10204	9	26	45	0	1311	2.19	SPRINT SPECTRUM LP	KANSAS CITY
8169121999	6605843703	B10204	9	29	58	30	0.05	3157013190	6605843703	B10204	9	27	23	0	40	0.07	CHOICE ONE COMMUNICATIONS INC - NY	SYRACUSE
8169121999	6605846790	B10204	9	29	58	17135	28.56	9139088908	6605846790	B10204	9	27	22	0	17140	28.57	SPRINT SPECTRUM LP	KANSAS CITY
8169121999	6605842754	B10204	9	30	18	837	1.4	8162572869	6605842754	B10204	9	27	43	0	846	1.41	SOUTHWESTERN BELL	KANSAS CITY
8169121999	6605842823	B10204	9	30	55	55	0.09	8888200961	6605842823	B10204	9	28	20	0	63	0.1	TOLL FREE	
8169121999	6605842131	B10204	9	31	19	544	0.91	8162135883	6605842131	B10204	9	28	44	0	554	0.92	SPRINT SPECTRUM LP	KANSAS CITY
8169121999	6605847751	B10204	9	31	41	911	1.52	8162208727	6605847751	B10204	9	29	6	0	916	1.53	SOUTHWESTERN BELL	BLUE SPG
8169121999	6605843131	B10204	9	33	33	1427	2.38	8166065083	6605843131	B10204	9	30	57	0	1436	2.39	LEAP WIRELESS INTL INC DBA CRICKET COMM INC	KANSAS CITY
8169121999	6605847055	B10204	9	33	34	882	1.47	8322576174	6605847055	B10204	9	30	59	0	891	1.49	SPRINT SPECTRUM LP	SPRING
8169121999	6605843673	B10204	9	34	16	327	0.55	6604637522	6605843673	B10204	9	31	41	0	337	0.56	SPECTRA COMMUNICATIONS GROUP LLC DBA CENTURYLINK	CONCORDIA
8169121999	6605847751	B10204	9	34	42	1052	1.75	8162208727	6605847751	B10204	9	32	7	0	1061	1.77	SOUTHWESTERN BELL	BLUE SPG
8169121999	6605847434	B10204	9	34	52	1795	2.99	8165647387	6605847434	B10204	9	32	17	0	1805	3.01	NEXTEL COMMUNICATIONS INC	KANSAS CITY
8169121999	6605842151	B10204	9	35	24	468	0.78	6604637522	6605842151	B10204	9	32	49	0	478	0.8	SPECTRA COMMUNICATIONS GROUP LLC DBA CENTURYLINK	CONCORDIA
8169121999	6605842525	B10204	9	35	57	356	0.59	3142270116	6605842525	B10204	9	33	22	0	366	0.61	DAVIDSON TELECOM LLC - MO	LADUE
8169121999	6605843581	B10204	9	36	40	66	0.11	8162963192	6605843581	B10204	9	34	4	0	76	0.13	SPECTRA COMMUNICATIONS GROUP LLC DBA CENTURYLINK	LAWSON
8169121999	6605846224	B10204	9	36	41	670	1.12	8162511200	6605846224	B10204	9	34	6	0	680	1.13	SOUTHWESTERN BELL	LEES SUMMIT
8169121999	6605848101	B10204	9	37	6	412	0.69	3154366239	6605848101	B10204	9	34	31	0	422	0.7	NEW CINGULAR WIRELESS PCS LLC - DC	SYRACUSE
8169121999	6605842700	B10204	9	37	14	3102	5.17	6602592591	6605842700	B10204	9	34	39	0	3112	5.19	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	LEXINGTON
8169121999	6605843676	B10204	9	37	18	161	0.27	4174854224	6605843676	B10204	9	34	43	0	170	0.28	CENTURYTEL MISSOURI LLC(SOUTHWEST)DBA CENTURYLINK	OZARK
8169121999	6605848688	B10204	9	37	30	1082	1.8	6604295632	6605848688	B10204	9	34	55	0	1092	1.82	EMBARQ MISSOURI INC-MO DBA CENTURYLINK	WARRENSBURG
8169121999	6605845603	B10204	9	37	58	467	0.78	5738860811	6605845603	B10204	9	35	22	0	477	0.8	CENTURYTEL MISSOURI LLC(CNTL)DBA CENTURYLINK	COLUMBIA
8169121999	6605848757	B10204	9	38	3	4250	7.08	8165647228	6605848757	B10204	9	35	28	0	4260	7.1	NEXTEL COMMUNICATIONS INC	KANSAS CITY



-----Original Message-----

From: Trip England

Sent: Friday, March 11, 2011 1:35 PM

To: 'jmarks@halowireless.com'

Subject: Summary of RLEC Agreements with Cingular and T-Mobile

Attached per our telephone discussion is a summary of indirect interconnection Traffic Termination Agreements between our Missouri rural local exchange carrier (RLEC) clients and Cingular and/or T-Mobile. This summary was compiled some time ago, and we have not reviewed it recently. Of course, the executed agreements will control if there is any difference between this summary and the actual agreements.

Also enclosed are copies of the Agreements between Citizens Telephone Company and Cingular and T-Mobile. With the exception of the rates, traffic factors and the provision for transit traffic to Alma Telephone Company, the terms and conditions of these agreements are very similar, if not identical, to those with the other RLECs listed on the summary.

Trip

**Summary of Indirect Interconnection Traffic Termination Agreements  
between Missouri Small Rural LECs and Cingular/T-Mobile**

LEC	CMRS Provider	Docket #	IntraMTA Rate	Traffic Factor	InterMTA Factor
BPS	Cingular	TK-2006-0513	0.0093	76/24% (MTL/LTM)	32%
BPS	T-Mobile	TK-2006-0503	0.0093	84/16% (MTL/LTM)	52%
Citizens	Cingular	TK-2006-0520	0.0073 Transit Rate 0.01	89/11% (MTL/LTM)	0%
Citizens	T-Mobile	TK-2006-0505	0.0073	84/16% (MTL/LTM)	0%
Craw Kan	Cingular	TK-2007-0464	0.0257	79/21% (MTL/LTM)	7%
Craw Kan	T-Mobile	TK-2006-0506	0.0257	84/16% (MTL/LTM)	7%
Ellington	Cingular	TK-2006-0521	0.0277	82/18% (MTL/LTM)	0%
Ellington	T-Mobile	TK-2006-0507	0.0277	84/16% (MTL/LTM)	0%
Farber	Cingular	TK-2006-0522	0.018	86/14% (MTL/LTM)	0%
Farber	T-Mobile	TK-2006-0545	0.018	84/16% (MTL/LTM)	0%
Fidelity	Cingular	TO-2004-0445	0.035	90/10% (MTL/LTM)	None
Fidelity I (CLEC)	Cingular	TO-2004-0446	0.035	90/10% (MTL/LTM)	None
Fidelity II (CLEC)	Cingular	TO-2004-0447	0.035	90/10% (MTL/LTM)	None
Goodman	Cingular	TK-2007-0014	0.0168	78/22% (MTL/LTM)	0%
Goodman	T-Mobile	TO-2007-0224	0.0168	84/16% (MTL/LTM)	0%
Granby	Cingular	TK-2007-0011	0.0054	84/16% (MTL/LTM)	0%
Granby	T-Mobile	TK-2006-0508	0.0054	84/16% (MTL/LTM)	0%
Grand River	Cingular	TK-2006-0523	0.0209	84/16% (MTL/LTM)	0%
Grand River	T-Mobile	TK-2006-0509	0.0209	84/16% (MTL/LTM)	0%
Green Hills	Cingular	TK-2006-0514	0.0269	87/13% (MTL/LTM)	0%
Green Hills	T-Mobile	TK-2006-0510	0.0269	84/16% (MTL/LTM)	0%
Green Hills (CLEC)	T-Mobile		Confidential	Confidential	Confidential
Holway	Cingular	TK-2006-0525	0.0383	90/10% (MTL/LTM)	0%
Holway	T-Mobile	TK-2006-0511	0.0383	84/16% (MTL/LTM)	0%
Iamo	Cingular	TK-2006-0526	0.041	88/12% (MTL/LTM)	0%
Iamo	T-Mobile	TK-2006-0512	0.041	84/16% (MTL/LTM)	0%
Kingdom	Cingular	TK-2006-0515	0.023	73/27% (MTL/LTM)	0%
Kingdom	T-Mobile	TK-2006-0534	0.023	84/16% (MTL/LTM)	0%
KLM	Cingular	TK-2006-0527	0.0212	87/13% (MTL/LTM)	0%
KLM	T-Mobile	TK-2006-0535	0.0212	84/16% (MTL/LTM)	0%
Lathrop	Cingular	TK-2006-0528	0.0069	72/28% (MTL/LTM)	0%

Lathrop	T-Mobile	TK-2006-0536	0.0069	84/16% (MTL/LTM)	0%
Le-Ru	Cingular	TK-2006-0529	0.0166	78/22% (MTL/LTM)	0%
Le-Ru	T-Mobile	TK-2006-0537	0.0166	84/16% (MTL/LTM)	0%
Mark Twain Rural	Cingular	TK-2007-0463	0.0289	90/10% (MTL/LTM)	32%
Mark Twain Rural	T-Mobile	TK-2006-0538	0.0289	84/16% (MTL/LTM)	70%
Mark Twain (CLEC)	T-Mobile		Confidential	Confidential	Confidential
McDonald County	Cingular	TK-2006-0517	0.0083	80/20% (MTL/LTM)	0%
McDonald County	T-Mobile	TK-2007-0009	0.0083	84/16% (MTL/LTM)	0%
Miller	Cingular	TK-2006-0518	0.0072	80/20% (MTL/LTM)	0%
Miller	T-Mobile	TK-2006-0546	0.0072	84/16% (MTL/LTM)	0%
New Florence	Cingular	TK-2006-0519	0.0079	82/18% (MTL/LTM)	2%
New Florence	T-Mobile	TK-2006-0539	0.0079	84/16% (MTL/LTM)	2%
New London	Cingular	TK-2006-0154	0.01954	None	0%
New London	T-Mobile	TO-2006-0324	0.0175	65/35% (MTL/LTM)	2%
Orchard Farm	Cingular	TK-2006-0154	0.019655	None	0%
Orchard Farm	T-Mobile	TO-2006-0324	0.0175	65/35% (MTL/LTM)	0%
Oregon Farmers	Cingular	TK-2007-0012	0.0108	85/15% (MTL/LTM)	0%
Oregon Farmers	T-Mobile	TK-2006-0540	0.0108	84/16% (MTL/LTM)	0%
Ozark	Cingular	TK-2006-0532	0.0179	85/15% (MTL/LTM)	0%
Ozark	T-Mobile	TO-2007-0223	0.0179	84/16% (MTL/LTM)	0%
Peace Valley	Cingular	TK-2006-0530	0.0166	91/9% (MTL/LTM)	0%
Peace Valley	T-Mobile	TK-2006-0542	0.0166	84/16% (MTL/LTM)	0%
Rock Port	Cingular	TK-2006-0531	0.0273	78/22% (MTL/LTM)	0%
Rock Port	T-Mobile	TK-2006-0543	0.0273	84/16% (MTL/LTM)	0%
Seneca	Cingular	TK-2006-0533	0.0073	80/20% (MTL/LTM)	0%
Seneca	T-Mobile	TO-2007-0225	0.0073	84/16% (MTL/LTM)	0%
Steelville	Cingular	TK-2007-0013	0.0095	77/23% (MTL/LTM)	0%
Steelville	T-Mobile	TK-2006-0544	0.0095	84/16% (MTL/LTM)	0%
Stoutland	Cingular	TK-2006-0154	0.01476	None	0%
Stoutland	T-Mobile	TO-2006-0324	0.0175	65/35% (MTL/LTM)	2%

## TRAFFIC TERMINATION AGREEMENT

This Agreement for the termination of traffic between Citizens Telephone Company of Higginsville, Missouri, an Incumbent Local Exchange Carrier ("ILEC") certificated to provide local exchange services in the State of Missouri, and Cingular Wireless LLC, also on behalf of its subsidiaries or affiliates (as listed on Appendix 3), ("Cingular Wireless") licensed by the FCC to provide commercial radio service, effective upon April 29, 2005. ("Effective Date"). This Agreement has been executed pursuant to Section 251(b)(5) of the Telecommunications Act of 1996. (ILEC and Cingular Wireless are also sometimes referred to herein as "Party" or, collectively, "Parties.")

ILEC is a local exchange carrier operating in Missouri. Cingular Wireless is a commercial mobile radio service carrier operating in Missouri. Each party originates traffic on its networks for termination on the other Party's network.

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

### SECTION 1 - SCOPE OF AGREEMENT

1.1 This Agreement shall cover traffic originated by one of the Parties and terminated to the other Party without the direct interconnection of the Parties' networks. This Agreement shall cover both Local and Non-local Traffic as those terms are defined in Section 2 of this Agreement. This Agreement shall not apply to traffic or calls completed by either Party in compliance with any obligation to port numbers of the former customers of one Party when that customer takes service from the other Party.

1.2 This Agreement shall also cover traffic originated by, and under the responsibility of, Cingular Wireless, which transits the network of ILEC and is terminated to Alma Telephone Company, Alma, Missouri ("Transit Traffic").

## SECTION 2 - DEFINITIONS

Certain terms used in this Agreement shall have the meanings as defined below. Other terms used but not defined herein will have the meanings ascribed to them in the Act or in the Rules and Regulations of the FCC or the Missouri Public Service Commission. The Parties acknowledge that other terms appear in this Agreement that are not defined or ascribed as stated above. The Parties agree that any such terms shall be construed in accordance with their customary usage in the telecommunications industry as of the Effective Date of this Agreement.

- 2.1 "Act" - the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and as further amended from time to time and as interpreted in the duly authorized rules and regulations and Orders of the Federal Communication Commission or a state regulatory commission.
- 2.2 "CMRS" - Commercial Mobile Radio Service, as defined in the Act.
- 2.3 "Commission" - Missouri Public Service Commission.
- 2.4 "CTUSR" - Cellular Transiting Usage Summary Report, provided by Southwestern Bell Telephone Company, tracks the minutes of Transiting Traffic for calls originating from CMRS providers and terminating to LECs.
- 2.5 "FCC" - Federal Communications Commission.

2.6 "LEC" - Local Exchange Carrier, includes any provider of local exchange telecommunications service that holds a certificate of public convenience and necessity or certificate of service authority from the Missouri Public Service Commission.

2.7 "Local Traffic" - Local traffic under this Agreement is traffic between an ILEC and Cingular Wireless that, at the beginning of the call, originates and terminates within the same Major Trading Area (MTA). For ILEC, the origination or termination point of a call shall be the end office switch that serves, respectively, the calling or called party at the beginning of the call. For Cingular Wireless, the origination or termination point of a call shall be the cell site/base station that serves, respectively, the calling or called party at the beginning of the call.

2.8 "MTA" - Major Trading Area as defined in 47 C.F.R. 24 of the FCC Rules and Regulations.

2.9 "Non-local Traffic" - Non-local Traffic under this Agreement is traffic between ILEC and Cingular Wireless that is not Local Traffic. Non-local Traffic may be either interstate or intrastate traffic, depending on the locations where the call originates and terminates.

2.10 "Transit Traffic" - Local or Non-local traffic originated by Cingular Wireless and terminated to Alma Telephone Company through the transport and switching facilities of Citizens Telephone Company.

### SECTION 3 - TRAFFIC EXCHANGE

3.1 Each Party shall be responsible for provisioning its traffic, if any, exchanged under this Agreement. Each Party shall be responsible for establishing appropriate

contractual relationships with the third-party LEC(s), if any, that Party selects for transiting traffic to the other Party. Each Party shall be responsible for providing the trunks from its network to the point of interconnection with the third-party LEC(s) network and for paying the third-party LEC(s) network provider for the costs of transiting calls that the Party originates.

#### SECTION 4 - COMPENSATION

4.1 Compensation for traffic originated by a Party and terminated to the other Party's network shall be based upon the specific type and jurisdiction of the call as follows:

4.1.1 Local Traffic - Local Traffic calls as defined in Section 2 of this Agreement shall be compensated based on the rates established in Appendix 1.

4.1.2 Non-local Intrastate Traffic - Non-local Traffic (as defined in Section 2 of this Agreement) originated by Cingular Wireless and terminating to ILEC within the same State will be compensated based upon the rate for termination of non-local intrastate traffic identified in Appendix 2. Compensation for Non-local Intrastate Traffic originated by ILEC and terminating to Cingular Wireless shall be based on the rate for termination of non-local intrastate traffic identified in Appendix 2.

4.1.3 Non-local Interstate Traffic - Non-local Traffic (as defined in Section 2 of this Agreement) originated by Cingular Wireless and terminating to ILEC within different States will be compensated based upon the rate for termination of non-local interstate traffic identified in Appendix 2. Compensation for Non-local Interstate Traffic originated by ILEC and terminating to Cingular Wireless shall be based on the rate for termination of non-local interstate traffic identified in Appendix 2.

4.1.4 Transit Traffic - Compensation for Local Traffic which transits the network of ILEC shall be based on the Transit Traffic rate established in Appendix 1. Compensation for Non-local Traffic which transits the network ILEC shall be based on the appropriate (i.e., intrastate or interstate) access tariffs of ILEC.

4.2 Factors – For the purposes of this Agreement, the Parties agree to use the percentages referenced in Appendix 2 as a fair estimate of the proportions of the total amount of traffic originated by Cingular Wireless and ILEC that is assignable to each of the three different jurisdictions identified in Section 4.1 above. This percentage shall remain in effect until amended as provided in Section 5.2 below.

4.3 Each Party will pay to the other Party the local interconnection rates as set forth in Appendix 1 for terminating its Local Traffic (as defined in the Definitions Section of this Agreement) on the other's network. Where ILEC has the capability to record terminating traffic from Cingular, charges for terminating traffic will be based upon accumulated conversation minutes, whole and partial, measured from receipt of answer supervision to receipt of disconnect supervision and rounded up to the next whole minute at the close of the billing period. Where ILEC does not have the capability to record terminating traffic from Cingular, ILEC may bill for terminating traffic based on records received from an intermediate LEC (such as CTUSRs or ATIS/OBF EMI Category 11-01-XX records). Until such time as Cingular obtains measurement capability, Cingular will charge ILEC a percentage of the ILEC's bill for the previous month for all mobile-originated usage. The method of computation and the appropriate traffic ratio to be applied are shown on Appendix 1 attached hereto. At its option, ILEC may implement a net billing arrangement so that ILEC will be the only Party rendering the bill. In such case, ILEC



will deduct from the amount billed to Cingular the amount that Cingular would have billed to ILEC (for the applicable billing period), using the method of computation and the appropriate traffic ratio as shown in Appendix 1 attached hereto. If only the net amount owed by one of the Parties is billed, each Party shall nevertheless collect, report and remit taxes on the basis of the gross billings that resulted in such net amount.

4.4 Once an intraMTA traffic ratio has been established by the Commission pursuant to Appendix 1, either Party may, no more than once per twelve-month period, perform a traffic study, using a minimum of 60 days of traffic information, to determine if the intraMTA traffic ratio has changed. If the study appropriately demonstrates that the intraMTA traffic ratio has changed, the Parties will employ the correct ratio on a going-forward basis for billing purposes. If agreement cannot be reached on the appropriateness of the new study, either Party may invoke the dispute resolution procedures herein.

4.5 ILEC agrees that it will accumulate monthly traffic volumes until a minimum billing threshold of five thousand (5000) minutes is reached prior to billing Cingular Wireless, provided that in no event will ILEC bill Cingular Wireless less frequently than quarterly for any volume of minutes, regardless of whether this threshold is reached.

#### SECTION 5 - RECORD EXCHANGES AND BILLING

5.1 The Party terminating traffic under this Agreement (i.e., the "Billing Party") shall issue bills based on the best information available including, but not limited to, records of terminating traffic created by the Party at its end office or tandem switch. Records should be provided at an individual call detail record, if possible, with sufficient information to identify the specific date and time of the call, the call duration, and the originating and

terminating numbers or locations. The Parties agree that CTUSRs provided by SBC previously reported volumes of traffic originated by Cingular Wireless and terminated to ILEC. Since July of 2004, these traffic volumes have been reported by SBC by the use of an ATIS/OBF EMI Category 11-01-XX record. In the future, this record format could change. Until more detailed records are reasonably available, the SBC currently provided ATIS/OBF EMI Category 11-01-XX record will be considered a sufficient billing record. The Parties will work cooperatively to provide or exchange billing records in industry standard formats containing available detail, if any, about call jurisdictions, for calls they originate that terminate on the other Party's network, and which are subject to this Agreement. Neither Party shall be obligated as a result of this Agreement to develop or create new billing formats or records to satisfy any duty or obligation hereunder, or to pay for the services of transiting ILECs or other entities for billing format or record creation to satisfy any duty or obligation hereunder.

5.2 As of the effective date of this Agreement, the Parties are unable to measure the amount of interMTA traffic exchanged between the Parties. For purposes of this Agreement, the Parties agree to use the percentage referenced in Appendix 2 as a fair estimate of the interMTA traffic exchanged between the Parties. This percentage shall remain in effect until amended as provided herein. If either Party provides to the other a valid traffic study, or a valid study of interMTA traffic by access jurisdiction, the Parties shall use such traffic study or reexamination to negotiate in good faith a mutually acceptable revised local traffic factor, or interMTA or access jurisdiction percentage.

For purposes of this Agreement, a "valid interMTA traffic study" may be based upon, but not necessarily limited to, calling and called party information (i.e., originating

and terminating NPA NXX, minutes of use, available detail, if any, identifying location of Cingular Wireless calling or called customer, or available detail, if any, identifying location of cell tower serving Cingular Wireless calling or called customers, etc.) which, for at least three consecutive billing periods, indicates an amount of interMTA traffic that is at least five percentage points greater or lesser than the interMTA percentage amount to which the Parties previously agreed. Either Party who has performed an interMTA traffic study for the purpose of proposing changes to this interMTA percentage will provide the other Party not less than thirty (30) days' notice of the results of such study, and the opportunity for the other Party to review such study. Either Party initiating an interMTA traffic study for the purpose of proposing changes to this Agreement will provide the other Party not less than thirty (30) days' notice of intent to conduct the study, and the opportunity for the other Party to participate in the establishment, conduct, and results of the study. Thereafter, the Parties agree to cooperate in good faith to amend this Agreement to reflect this revised interMTA percentage, and such revised percentage will be effective upon amendment of this Agreement, including any state commission approval, if required. Such studies or reexaminations shall be conducted no more frequently than once annually.

For purposes of this Agreement, a "valid study of interMTA traffic by access jurisdiction" may be based upon, but not necessarily limited to, calling and called party information (i.e., originating and terminating NPA NXX, minutes of use, available detail, if any, identifying location of Cingular Wireless calling or called customer, or available detail, if any, identifying location of cell tower serving Cingular Wireless calling or called customers, etc.) which, for at least three consecutive billing periods, indicates an

amount of interMTA traffic that is at least five percentage points greater or lesser than the interMTA percentage amount to which the Parties previously agreed. Either Party who has performed an interMTA traffic study for the purpose of proposing changes to this interMTA percentage will provide the other Party not less than thirty (30) days' notice of the results of such study, and the opportunity for the other Party to review such study. Either Party initiating an interMTA traffic study for the purpose of proposing changes to this Agreement will provide the other Party not less than thirty (30) days' notice of intent to conduct the study, and the opportunity for the other Party to participate in the establishment, conduct, and results of the study. Thereafter, the Parties agree to cooperate in good faith to amend this Agreement to reflect this revised interMTA percentage, and such revised percentage will be effective upon amendment of this Agreement, including any state commission approval, if required. Such studies or reexaminations shall be conducted no more frequently than once annually.

5.3 The originating Party shall pay the Billing Party for all charges properly listed on the bill. Such payments are to be received within thirty (30) days from the effective date of the billing statement. The originating Party shall pay a late charge on any undisputed charges that are not paid within the thirty (30) day period. The rate of the late charge shall be the lesser of 1% per month or the maximum amount allowed by law. Normally, neither Party shall bill the other Party for traffic that is more than 180 days old. However, in those cases where billing cannot be performed within that time frame because of record unavailability, inaccuracies, corrections, etc., billing can be rendered or corrected for periods beyond 180 days. In no case, however, will billing be made for traffic that is more than one year old.

## SECTION 6 - AUDIT PROVISIONS

6.1 As used herein, "Audit" shall mean a comprehensive review of services performed under this Agreement. Either Party (the "Requesting Party") may perform one (1) Audit per 12-month period commencing with the Effective Date.

6.2 Upon thirty (30) days written notice by the Requesting Party to the other "Audited Party", the Requesting Party shall have the right, through its authorized representative(s), to perform an Audit, during normal business hours, of any records, accounts and processes which contain information bearing upon the services provided, and performance standards agreed to, under this Agreement. Within the above-described 30-day period, the Parties shall reasonably agree upon the scope of the Audit, the documents and processes to be reviewed, and the time, place and manner in which the Audit shall be performed. The Audited Party agrees to provide Audit support, including reasonable access to and use of the Audited Party's facilities (e.g., conference rooms, telephones, copying machines.)

6.3 Each party shall bear the cost of its own expenses in connection with the conduct of the Audit. The reasonable cost of special data extraction required by the Requesting Party to conduct the Audit will be paid for by the Requesting Party. For purposes of this Section 6.3, "Special Data Extraction" shall mean the creation of an output record or information report (from existing data files) that is not created in the normal course of business by the Audited Party. If any program is developed to the Requesting Party's specifications and at the Requesting Party's expense, the Requesting Party shall specify

at the time of request whether the program is to be retained by the Audited Party for reuse during any subsequent Audit.

6.4 Adjustments, credits or payments shall be made, and any correction action shall commence, within thirty (30) days from the Requesting Party's receipt of the final audit report to compensate for any errors or omissions which are disclosed by such Audit and are agreed to by the Parties. One and one-half percent (1 ½%) or the highest interest rate allowable by law for commercial transactions, whichever is lower, shall be assessed and shall be computed on any adjustments, credits or payments if the audit establishes an overpayment or underpayment of greater than two percent (2%) of the actual amount due by compounding monthly from the time of the error or omission to the day of payment or credit.

6.5 Neither the right to Audit, nor the right to receive an adjustment, shall be affected by any statement to the contrary appearing on checks or otherwise, unless such statement expressly waiving such right appears in writing, is signed by the authorized representative of the Party having such right and is delivered to the other Party in a manner provided by this Agreement.

6.6 This Section 6 shall survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of this Agreement.

#### SECTION 7 - DISPUTE RESOLUTION

7.1 The Parties agree to resolve disputes arising out of this Agreement with a minimum amount of time and expense. Accordingly, the Parties agree to use the following dispute resolution procedure as a sole remedy with respect to any controversy

or claim arising out of or relating to this Agreement, except for an action seeking to compel compliance with the confidentiality provision of Section 8 or this dispute resolution process (venue and jurisdiction for which would be in St. Louis County or Kansas City, Missouri).

7.2 At the written request of a Party commencing the dispute resolution process described herein, each Party will appoint a representative to meet and negotiate in good faith for a period of sixty (60) days (unless it becomes clear that a voluntary resolution is unlikely) after the request to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by nonlawyer business representatives, but nothing prevents either Party from also involving an attorney in the process. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon mutual agreement of the representatives, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussion and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the Commission proceeding or arbitration described below or in any lawsuit without concurrence of both Parties.

7.3 If the negotiations do not resolve the dispute within sixty (60) days (sooner if it becomes clear that a voluntary resolution is unlikely) after the initial written request, the dispute may be brought in any lawful forum unless the Parties mutually agree to submit the dispute to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or such other rules to which

the Parties may agree. If the Parties mutually agree to submit the dispute to binding arbitration, the arbitration hearing shall be commenced within forty-five (45) days after the agreement for arbitration and shall be held in St. Louis County or Kansas City, Missouri, or any other location to which the Parties mutually agree. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearing. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. The decision of the arbitrator shall be final and binding upon the Parties, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Each party shall bear its own costs and attorneys' fees of the arbitration procedures set forth in this Section and shall equally split the fees and costs of the arbitration and the arbitrator.

7.4 In addition to the foregoing Dispute Resolution process, if any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the parties, the Party billed (the "Non-Paying Party") shall either, within thirty (30) days of its receipt of the invoice containing such disputed amount or within one hundred eighty (180) days of payment of a bill, give notice to the Billing Party of the amounts in dispute ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The balance of the Disputed Amount shall thereafter be paid, with late charges as provided in Section 5.3, if appropriate, upon final determination of such dispute. Late charges assessed on those amounts that were unpaid



but disputed after thirty (30) days from the receipt of the invoice, shall be credited to the non-paying Party for any disputed amounts which were ultimately found to be not due and payable.

7.5 No cause of action, regardless of form, arising out of the subject matter of this Agreement may be brought by either Party more than two (2) years after a Party learns or should reasonably have learned that the cause of action has accrued. The Parties waive the right to invoke any different limitation on the bringing of actions provided under state or federal law unless such waiver is otherwise barred by law.

#### SECTION 8 - CONFIDENTIAL INFORMATION

8.1. It may be necessary for either Party, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). Nothing in this agreement shall be deemed proprietary. All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, and such designation shall be confirmed in writing by the Discloser within forty-five (45) days thereafter.

8.2. Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

8.3. Exceptions. Recipient will not have an obligation to protect any portion of the Information which: (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; or (b) is lawfully obtained by Recipient from any source other than Discloser; or (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient, or (e) is disclosed pursuant to a valid order of court or regulatory body, provided the Recipient gives the Discloser prior written notice of such order.

8.4. Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and shall not disclose the Information to any other entity or use it for any other purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the Federal Communications Commission or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith, provided the Recipient gives the discloser prior written notice of such request.

8.5. Recipient agrees not to publish or use the Information for any advertising, sales promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

8.6. The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, or application which is now or may hereafter be owned by the Discloser.

8.7 All Proprietary Information shall remain the property of the Discloser, and all documents or other tangible media delivered to the Recipient that embody such Proprietary Information shall be, at the option of the Discloser, either promptly returned to Discloser or destroyed using appropriate and reasonable means, except as otherwise may be required from time to time by Governing Law (in which case the use and disclosure of such Proprietary Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Recipient's need for it has expired and (ii) the expiration or termination of this Agreement.

8.8. The Parties agree that an impending or existing violation of any provision of this Section would cause the Discloser irreparable injury for which it would have no adequate remedy at law, and agree that Discloser shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages.

8.9. Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 10 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement.

## SECTION 9 - LIABILITY AND INDEMNIFICATION

9.1 Neither Party assumes any liability for any act or omission of the other Party in the furnishing of its services to its subscribers solely by virtue of entering into the Agreement. To the extent not prohibited by law or inconsistent with the other terms of this Agreement, each Party shall indemnify the other Party and hold it harmless against any loss, costs, claims, injury or liability relating to any third-party claim arising out of any intentional misconduct or negligent act or omission of the indemnifying Party in connection with the indemnifying Party's performance under this Agreement. Furthermore, the Parties agree to arrange their own interconnection arrangements with other telecommunications carriers, and each Party shall be responsible for any and all of its own payments thereunder. Neither Party shall be financially or otherwise responsible for the rates, terms, conditions, or charges between the other Party and another telecommunications carrier.

9.2 NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, FOR ANY HARDWARE, SOFTWARE, GOODS, OR SERVICES PROVIDED UNDER THIS AGREEMENT. ALL WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND WAIVED.

9.3 Except as otherwise provided for in this paragraph, neither Party shall be liable to the other Party for any indirect, incidental, consequential, reliance, punitive, or special damages suffered by the other Party (including without limitation damages for harm to business, lost revenues, lost savings, or lost profits suffered by the other Party),

regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind whether active or passive, and regardless of whether the Parties knew of the possibility that such damages could result. In no event shall either Party's liability to the other for direct damages arising out of (1) a material breach of this Agreement, or (2) activities related to or involved in performance under this Agreement (whether such alleged damages in this second category arise in contract or tort) shall not exceed an amount equal to the proportionate charge for the affected service(s) during the period in which damages occurred. If that standard is not applicable, such damages shall not exceed the total amount billed under this Agreement (during the calendar year(s) in which the damage occurred) by the damaged Party to the other Party. The foregoing shall not limit a Party's obligation as set out in this Agreement to indemnify, defend, and hold the other Party harmless against amounts payable to third Parties.

#### SECTION 10 - TERM OF AGREEMENT

10.1 This Agreement shall commence on the Effective Date, and shall terminate two (2) years after the Effective Date. This Agreement shall renew automatically for successive one (1) year terms, commencing on the termination date of the initial term or latest renewal term. The automatic renewal shall take effect without notice to either Party, except that either Party may elect: 1) not to renew by giving the other Party at least thirty (30) days written notice of the desire not to renew; or 2) to negotiate a subsequent agreement by giving the other Party at least thirty (30) days written notice of the desire to commence negotiations. If a Party elects to negotiate a subsequent

agreement and a subsequent agreement has not been consummated prior to the termination date of the current Agreement, the current Agreement shall continue to be in effect until it is replaced by a new Agreement provided however, that if the Parties are unable to reach agreement, either Party has the right to submit this matter to the Commission for resolution pursuant to 47 U.S.C. § 252. The Parties expressly agree that the terms, conditions and rates of the successor agreement shall not be retroactive but shall apply only on a going-forward basis.

10.2 Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect to any act or omission prior to termination or from any obligation which is expressly stated herein to survive termination.

#### SECTION 11 - INDEPENDENT CONTRACTORS

11.1 The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power, or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind the other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

#### SECTION 12 - THIRD PARTY BENEFICIARIES

12.1 This Agreement is not intended to benefit any person or entity not a Party to it and no third Party beneficiaries are created by this Agreement.

### SECTION 13 - GOVERNING LAW, FORUM AND VENUE

13.1 The construction, validity, and enforcement of this Agreement shall be governed by the laws and regulations of the State of Missouri, except when Federal law may be controlling, in which case federal law will govern.

### SECTION 14 - ENTIRE AGREEMENT

14.1 This Agreement, including all Parts and Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

### SECTION 15 - NOTICE

15.1 Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service, (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested or (iv) delivered by telecopy to the following addresses of the Parties:

In the case of Cingular Wireless to:

Cingular Wireless  
Senior Contract Manager - Interconnection  
7277 164th Avenue NE  
Redmond, WA 98052  
Facsimile: 425-580-8609

With a copy to:

Cingular Wireless  
Attn: Senior Network Counsel  
P.O. Box 97061  
Redmond, WA 98073-9761  
For Delivery:  
8645 154th Avenue NE  
Redmond, WA 98052  
Facsimile: 425-580-7825

In the case of ILEC to:

Citizens Telephone Company of Higginsville, Missouri  
Brian Cornelius  
1905 Walnut Street, P.O. Box 737  
Higginsville, MO 64037-0737  
Facsimile: 660-584-6211

With a copy to:

W.R. England, III  
Brydon, Swearngen & England P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102-0456  
Telephone Number: 573/635-7166  
Facsimile Number: 573/634-7431

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, (iii) three (3) days after mailing in the case of first class or certified U.S. mail or (iv) on the date set forth on the confirmation in the case of telecopy; provided, however, that the Party giving notice must be able to demonstrate actual receipt of notice (for example, by return receipt of certified mail, or by fax or e-mail confirmation). Notice received after 5:00 p.m. local time of the



receiving party, or received on a Saturday, Sunday or holiday recognized by the United States government, shall be deemed to have been received the following business day.

#### SECTION 16 - FORCE MAJEURE

16.1 The Parties shall comply with applicable orders, rules, or regulations of the FCC and the Commission and with applicable Federal and State law during the terms of this Agreement. Notwithstanding anything to the contrary contained herein, a Party shall not be liable nor deemed to be in default for any delay or failure of performance under this Agreement resulting from acts of God, civil or military authority, acts of the public enemy, war, hurricanes, tornadoes, storms, fires, explosions, earthquakes, floods, government regulation, strikes, lockouts, or other work interruptions by employees or agents not within the control of the non-performing Party.

#### SECTION 17 - TAXES

17.1 The Party collecting revenues shall be responsible for collecting, reporting, and remitting all taxes associated therewith, provided that the tax liability shall remain with the Party upon whom it is originally imposed. The billing Party shall charge and collect from the billed Party and the billed Party agrees to pay to the billing Party, appropriate federal, state, and local taxes where applicable, except to the extent the billed Party notified the billing Party and provides appropriate documentation that the billed Party qualified for a full or partial exemption.

## SECTION 18 - ASSIGNMENT

18.1 Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, a Party may assign this Agreement or any portion thereof, without consent but upon prior written notice to the other Party, to any entity that controls, is controlled by or is under common control with the assigning Party provided that the assignee/successor agrees in writing to be bound by all obligations and terms of the Agreement. Any such assignment shall not, in any way, affect or limit the rights and obligations of the Parties under the terms of this Agreement.

## SECTION 19 - TERMINATION OF SERVICE TO EITHER PARTY

19.1 If either Party fails to pay when due any undisputed charges billed under this Agreement ("Undisputed Unpaid Charges"), and any portion of such charges remain unpaid more than thirty (30) days after the due date of such Undisputed Unpaid Charges, the billing Party may elect to block further traffic from the billed Party only by means of the following procedure:

19.2 The billing Party shall provide the billed Party, and the manager of the telecommunications department of the Missouri Public Service Commission, written notice by certified mail (return receipt requested) at least thirty (30) days prior to implementing blocking. Such notice shall clearly indicate the reason(s) for blocking, the date blocking will begin, an explanation of what action the billed carrier should take to prevent blocking, when this corrective action must be completed by, and the person to contact to obtain further information.

19.3 If the billed Party disputes the proposed blocking, the billed carrier should immediately seek formal action by the Commission through the filing of a formal complaint providing all relevant evidence refuting any stated reasons for blocking, and including a request for expedited resolution.

19.4 If the billed Party files a formal complaint, the billing carrier will refrain from blocking (or cease blocking if blocking has already commenced), pending the Commission's decision.

#### SECTION 20 –MISCELLANEOUS

20.1 This Agreement is not an interconnection agreement under 47 U.S.C. 251(c), but rather a reciprocal compensation agreement under 47 U.S.C. 251(b)(5). The Parties acknowledge that ILEC may be entitled to a rural exemption as provided by 47 U.S.C. 251(f), and ILEC does not waive such exemption by entering into this Agreement.

20.2 In the event that any effective legislative, regulatory, judicial, or other legal action affects any material terms of this Agreement, or the ability of the Parties to perform any material terms of this Agreement, either Party may, on thirty (30) days' written notice, require that such items be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the dispute may be referred to the Dispute Resolution procedure set forth herein.

This Agreement is executed this 21<sup>st</sup> day of June, 2006.

Signatures

Cingular Wireless LLC

Michael F. Van Weelden  
(Signature)

Michael F. Van Weelden  
(Print Name)

Director - Sem-Network  
(Title)

6-19-06  
(Date)

Citizens Telephone Company  
of Higginsville, Missouri

Brian L. Cornelius  
(Signature)

Brian L. Cornelius  
(Print Name)

President  
(Title)

6-21-06  
(Date)

**APPENDIX 1 TO THE AGREEMENT BETWEEN CITIZENS TELEPHONE  
COMPANY OF HIGGINSVILLE, MISSOURI AND CINGULAR WIRELESS**

Rates for termination of Local Traffic via an indirect interconnection

Local Termination Rate: \$0.0073 per minute of use

Traffic ratio for termination of Local Traffic: 89% MTL  
11% LTM

NET BILLING ARRANGEMENT

ILEC will calculate the amount Cingular Wireless owes ILEC based on one hundred percent (100%) of the IntraMTA traffic originated by Cingular Wireless and delivered to ILEC for termination. ILEC will calculate the estimated ILEC traffic delivered to Cingular Wireless for termination based on the following formula: Total MTL Minutes of Use will be calculated based on total MTL IntraMTA MOUs (identified by CTUSR records, ATIS/OBF EMI Category 11-01-XX Records, or other mutually acceptable calculation) less any MTL InterMTA traffic, divided by 89% (MTL percent). The resulting dividend will then be multiplied by 11% (LTM percent) to determine the traffic originated by ILEC and delivered to Cingular Wireless for termination. ILEC will bill Cingular Wireless based on the total amount Cingular Wireless owes ILEC minus the amount ILEC owes Cingular Wireless.

Transit Traffic - the rate for transport of Local Transit Traffic as defined in Sections 1.2, 2.10, and 4.1.4 of this Agreement shall be: \$0.01 per minute.

**APPENDIX 2 TO THE AGREEMENT BETWEEN CITIZENS TELEPHONE  
COMPANY OF HIGGINSVILLE, MISSOURI AND CINGULAR WIRELESS**

Pursuant to Section 5.2, the interMTA percentage is 0%

Pursuant to Section 4.2:

100% of traffic shall be deemed to be Local (intraMTA factor)

0% of traffic shall be deemed to be interMTA

Of the InterMTA traffic:

20% shall be deemed to be Interstate

80% shall be deemed to be Intrastate

**APPENDIX 3 TO THE AGREEMENT BETWEEN CITIZENS TELEPHONE  
COMPANY OF HIGGINSVILLE, MISSOURI AND CINGULAR WIRELESS**

MC Cellular, LLC

Missouri RSA 11/12 Limited Partnership

Missouri RSA 8 Limited Partnership

Missouri RSA 9B1 Limited Partnership

New Cingular Wireless PCS, LLC

## TRAFFIC TERMINATION AGREEMENT

This Agreement for the termination of traffic between Citizens Telephone Company of Higginsville, Missouri, an Incumbent Local Exchange Carrier ("ILEC"), and T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corp., with offices located at 12920 SE 38<sup>th</sup> Street, Bellevue, WA 98006 ("TMUSA"), effective April 29, 2005 ("Effective Date"). This Agreement has been executed pursuant to Section 251(b)(5) of the Telecommunications Act of 1996. (ILEC and TMUSA are also sometimes referred to herein as "Party" or, collectively, "Parties.")

ILEC is a local exchange carrier operating in Missouri. TMUSA is a commercial mobile radio service carrier operating in Missouri. TMUSA delivers traffic originating on its network through third-party networks in Missouri to ILEC for termination. ILEC delivers traffic originating on its network through third-party networks in Missouri to TMUSA for termination. TMUSA and ILEC recognize their respective responsibilities to compensate the other pursuant to Section 4 of this Agreement for termination of the traffic originated on the other Party's network.

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

### SECTION 1 - SCOPE OF AGREEMENT

1.1 This Agreement shall cover traffic originated by one of the Party's networks and delivered to the other Party for termination without the direct interconnection of the Parties' networks. "Traffic originated by" a Party means traffic that is originated on one Party's network, irrespective of the identity of any intermediary carrier for which the originating Party has contracted with, including but not limited to an Interexchange Carrier or transiting LEC. This



Agreement shall cover both Local and Non-local Traffic as those terms are defined in this Agreement. The termination of traffic under this Agreement will be accomplished by both Parties interconnecting their networks with a third-party network(s) that transports traffic between the Parties on their network(s).

## SECTION 2 - DEFINITIONS

Certain terms used in this Agreement shall have the meanings as defined below. Other terms used but not defined herein will have the meanings ascribed to them in the Act or in the Rules and Regulations of the FCC or the Missouri Public Service Commission. The Parties acknowledge that other terms appear in this Agreement that are not defined or ascribed as stated above. The Parties agree that any such terms shall be construed in accordance with their customary usage in the telecommunications industry as of the Effective Date of this Agreement.

2.1 "Act" - the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and as further amended from time to time and as interpreted in the duly authorized rules and regulations and Orders of the Federal Communication Commission or a state regulatory commission.

2.2 "CMRS" - Commercial Mobile Radio Service, as defined in the Act.

2.3 "Commission" - Missouri Public Service Commission.

2.4 "CTUSR" - Cellular Transiting Usage Summary Report, provided by Southwestern Bell Telephone Company, tracks the minutes of Transiting Traffic for calls originating from CMRS providers and terminating to LECs.

2.5 "FCC" - Federal Communications Commission.

2.6 "ILEC" - Local Exchange Carrier, includes any provider of local exchange telecommunications service that holds a certificate of public convenience and necessity or certificate of service authority from the Missouri Public Service Commission.

2.7 "Local Traffic" - Local Traffic under this Agreement is traffic between an ILEC and TMUSA that, at the beginning of the call, originates and terminates within the same Major Trading Area (MTA). For ILEC, the origination or termination point of a call shall be the end office switch that serves, respectively, the calling or called party at the beginning of the call. For TMUSA the origination or termination point of a call shall be the cell site/base station that serves, respectively, the calling or called party at the beginning of the call.

2.8 "MTA" - Major Trading Area as defined in 47 C.F.R. 24.202 of the FCC Rules and Regulations.

2.9 "Non-local Traffic" - Non-local Traffic under this Agreement is traffic between ILEC and TMUSA that is not Local Traffic. Non-local Traffic may be either interstate or intrastate traffic, depending on the locations where the call originates and terminates.

### SECTION 3 - TRAFFIC EXCHANGE

3.1 The Parties may exchange traffic under this Agreement by each Party physically connecting its network to a third-party network(s), which transits the traffic between the two Parties. Each Party shall be responsible for establishing appropriate contractual relationships with this third-party network(s) for interconnecting with its network and transiting traffic over that network to the other Party. Each Party shall be responsible for providing the trunks from its network to the point of interconnection with the third-party network and for paying the third-party network provider for the costs of transiting calls that the Party originates. The Party

terminating traffic is not responsible for the costs incurred in transiting that traffic from the originating Party's network to the terminating Party's network.

#### SECTION 4 - COMPENSATION

4.1 Compensation for traffic originated on a Party's network and delivered to the other Party's network for termination shall be based upon the specific type and jurisdiction of the call as follows:

4.1.1 Local Traffic - Local Traffic calls as defined in Section 2 of this Agreement shall be compensated based on the rates established in Appendix 1, and such compensation for Local Traffic shall be reciprocal and symmetrical.

4.1.2 Non-local Intrastate Traffic - Non-local Traffic (as defined in Section 2 of this Agreement) originated by TMUSA and delivered to ILEC for termination within the same State will be compensated based upon the intrastate access tariffs of ILEC. Compensation for Non-local Intrastate Traffic originated on the ILEC's network and delivered to TMUSA for termination shall be based on the intrastate access tariffs of ILEC.

4.1.3 Non-local Interstate Traffic - Non-local Traffic (as defined in Section 2 of this Agreement) originated by TMUSA and delivered to ILEC for termination within different States will be compensated based upon the interstate access tariffs of ILEC. Compensation for Non-local Interstate Traffic originated on the ILEC's network and delivered to TMUSA for termination shall be based on the interstate access tariffs of ILEC.

## SECTION 5 - RECORD EXCHANGES AND BILLING

5.1 The Parties will work cooperatively to exchange billing records in standard industry formats regarding calls they originate that terminate on the other Party's network. The Party terminating traffic under this Agreement (i.e., the "Billing Party") shall issue bills based on the best information available including, but not limited to, records of terminating traffic created by the Party at its end office or tandem switch. Records should be provided at an individual call detail record, if possible, with sufficient information to identify the specific date and time of the call, the call duration, and the originating and terminating numbers. Neither Party shall be obligated as a result of this Agreement to develop or create new billing formats or records to satisfy any duty or obligation hereunder.

5.1.1 The parties agree that, notwithstanding the foregoing, they will use a net billing approach, as follows: Each Party will pay the other for the Local Traffic it originates and that is delivered to the other Party's network for termination. The Parties agree that, in light of the Parties' inability to measure the amount of certain traffic, including interMTA traffic exchanged between the Parties, the following traffic percentages will be applied to determine compensation owed for terminating Local Traffic: eight-four percent (84%) T-Mobile originated and sixteen percent (16%) ILEC originated. Should either Party believe there has been a material change in the ratio of land-to-mobile and mobile-to-land traffic, the foregoing traffic ratio will be adjusted by mutual agreement of the Parties following a valid traffic study.

5.1.2 ILEC will calculate the amount T-Mobile owes ILEC based on one hundred percent (100%) of the Local Traffic originated by T-Mobile and delivered to ILEC for termination. ILEC will calculate the estimated ILEC traffic delivered to T-Mobile for

termination based on the following formula: Total Minutes of Use will be calculated based on total IntraMTA MOUs (identified by CTUSR records or other mutually acceptable calculation) less any InterMTA traffic (see Section 5.2), divided by 0.84 (eighty-four percent). The Total Minutes of Use will then be multiplied by 0.16 (sixteen percent) to determine the traffic originated by ILEC and delivered to T-Mobile for termination. ILEC will bill T-Mobile based on the total amount T-Mobile owes ILEC minus the amount ILEC owes T-Mobile.

5.2 If a Billing Party is unable to record traffic terminating to its network and the other Party is unable to provide billing records of the calls that it originates to the other Party, the Billing Party may use usage reports and/or records (such as a CTUSR) generated by a third-party LEC whose network is used to transit the traffic as a basis for billing the originating Party. As of the effective date of this Agreement, the Parties are unable to measure the amount of interMTA traffic exchanged between the Parties. For the purposes of this Agreement, the Parties agree to use the percentage(s) referenced in Appendix 2 as a fair estimate of the amount of interMTA traffic exchanged between the Parties (including, where appropriate, the interstate and intrastate percentages). This percentage shall remain in effect until amended as provided herein.

Notwithstanding the foregoing, if either Party provides to the other a valid interMTA traffic study or otherwise requests a reexamination of the network configuration of either Party's network, the Parties shall use such interMTA traffic study or reexamination to negotiate in good faith a mutually acceptable revised interMTA percentage. For purposes of this Agreement, a "valid interMTA traffic study" may be based upon, but not necessarily limited to, calling party information (i.e., originating NPA NXX, minutes of use, etc.) which, for several consecutive billing periods, indicates an amount of interMTA traffic that is at least five (5) percentage points

greater or lesser than the interMTA percentage amount to which the Parties previously agreed. The Parties agree to cooperate in good faith to amend this Agreement to reflect this revised interMTA percentage, and such revised percentage will be effective upon amendment of this Agreement, including any state commission approval, if required. Such studies or reexaminations shall be conducted no more frequently than once annually.

5.3 The originating Party shall pay the Billing Party for all charges properly listed on the bill. Such payments are to be received within thirty (30) days from the effective date of the billing statement. The originating Party shall pay a late charge on any undisputed charges that are not paid within the thirty (30) day period. The rate of the late charge shall be the lesser of 1.5% per month or the maximum amount allowed by law. Normally, neither Party shall bill the other Party for traffic that is more than 90 days old. However, in those cases where billing cannot be performed within that time frame because of record unavailability, inaccuracies, corrections, etc., billing can be rendered or corrected for periods more than 90 days old. In no case, however, will billing be made for traffic that is more than two years old; provided, however, that neither Party may issue a bill under this Agreement corresponding to traffic exchanged before the Effective Date.

5.4 The Billing Party agrees not to render a single bill totaling less than \$250.00, but rather will accumulate billing information and render one bill for multiple billing periods when the total amount due for the multiple billing periods exceeds \$250.00; provided however that a Billing Party is entitled to render a bill at least once per calendar quarter, even if the bill rendered is for less than \$250.00. No late charges or interest shall be assessed during any deferring billing period.

## SECTION 6 - AUDIT PROVISIONS

6.1 As used herein, "Audit" shall mean a comprehensive review of services performed under this Agreement. Either Party (the "Requesting Party") may perform one (1) Audit per 12-month period commencing with the Effective Date.

6.2 Upon thirty (30) days written notice by the Requesting Party to the other "Audited Party", the Requesting Party shall have the right, through its authorized representative(s), to perform an Audit, during normal business hours, of any records, accounts and processes which contain information bearing upon the services provided, and performance standards agreed to, under this Agreement. Within the above-described 30-day period, the Parties shall reasonably agree upon the scope of the Audit, the documents and processes to be reviewed, and the time, place and manner in which the Audit shall be performed. The Audited Party agrees to provide Audit support, including reasonable access to and use of the Audited Party's facilities (e.g., conference rooms, telephones, copying machines.)

6.3 Each party shall bear the cost of its own expenses in connection with the conduct of the Audit. The reasonable cost of special data extraction required by the Requesting Party to conduct the Audit will be paid for by the Requesting Party. For purposes of this Section 6.3, "Special Data Extraction" shall mean the creation of an output record or information report (from existing data files) that is not created in the normal course of business by the Audited Party. If any program is developed to the Requesting Party's specifications and at the Requesting Party's expense, the Requesting Party shall specify at the time of request whether the program is to be retained by the Audited Party for reuse during any subsequent Audit.

6.4 Adjustments, credits or payments shall be made, and any correction action shall commence, within thirty (30) days from the Requesting Party's receipt of the final audit report to

compensate for any errors or omissions which are disclosed by such Audit and are agreed to by the Parties. One and one-half (1 ½) percent or the highest interest rate allowable by law for commercial transactions, whichever is lower, shall be assessed and shall be computed on any adjustments, credits or payments if the audit establishes an overpayment or underpayment of greater than two (2) percent of the actual amount due by compounding monthly from the time of the error or omission to the day of payment or credit.

6.5 Neither the right to Audit, nor the right to receive an adjustment, shall be affected by any statement to the contrary appearing on checks or otherwise, unless such statement expressly waiving such right appears in writing, is signed by the authorized representative of the Party having such right and is delivered to the other Party in a manner provided by this Agreement.

6.6 This Section 6 shall survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of this Agreement.

#### SECTION 7 - DISPUTE RESOLUTION

7.1 The Parties agree to resolve disputes arising out of this Agreement with a minimum amount of time and expense. Accordingly, the Parties agree to use the following dispute resolution procedure as a sole remedy with respect to any controversy or claim arising out of or relating to this Agreement, except for an action seeking to compel compliance with the confidentiality provision of Section 8 or this dispute resolution process (venue and jurisdiction for which would be in St. Louis or Kansas City, Missouri). No cause of action, regardless of form, arising out of the subject matter of this Agreement may be brought by either Party more than 2 years after the cause of action has accrued. The Parties waive the right to invoke any



different limitation on the bringing of actions provided under state or federal law unless such waiver is otherwise barred by law.

7.2 At the written request of a Party commencing the dispute resolution process described herein, each Party will appoint a representative to meet and negotiate in good faith for a period of sixty (60) days (unless the parties agree that a voluntary resolution is unlikely) after the request to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by non-lawyer business representatives, but nothing prevents either Party from also involving an attorney in the process. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon mutual agreement of the representatives, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussion and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the Commission proceeding or arbitration described below or in any lawsuit without concurrence of both Parties.

7.3 If the negotiations do not resolve the dispute within sixty (60) days (sooner if the parties agree that a voluntary resolution is unlikely) after the initial written request, the dispute may be brought in any lawful forum for resolution unless the Parties mutually agree to submit the dispute to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or such other rules to which the Parties may agree. If the Parties mutually agree to submit the dispute to binding arbitration, the arbitration hearing shall be commenced within forty-five (45) days after the agreement for arbitration and shall be held in Saint Louis or Kansas City, Missouri, or any other location to which the Parties mutually agree.

The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearing. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. The decision of the arbitrator shall be final and binding upon the Parties, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Each party shall bear its own costs and attorneys' fees of the arbitration procedures set forth in this Section and shall equally split the fees and costs of the arbitration and the arbitrator.

7.4 In addition to the foregoing Dispute Resolution process, if any portion of an amount due to the Billing Party under this Agreement is subject to a bona fide dispute between the parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give notice to the Billing Party of the amounts in dispute ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The balance of the Disputed Amount shall thereafter be paid, with late charges as provided in Section 5.3, if appropriate, upon final determination of such dispute. Late charges assessed on those amounts that were unpaid but disputed after thirty (30) days from the receipt of the invoice, shall be credited to the non-paying Party for any disputed amounts which were ultimately found to be not due and payable.

## SECTION 8 - CONFIDENTIAL INFORMATION

8.1 The Parties recognize that they or their authorized representatives may come into possession of confidential and/or proprietary data about each other's business as a result of this

Agreement. Each Party agrees to treat all such data as strictly confidential and to use such data only for the purpose of performance under this Agreement. Each Party agrees not to disclose data about the other Party's business, unless such disclosure is required by lawful subpoena or order, to any person without first securing the written consent of the other Party. If a Party is obligated to turn over, divulge, or otherwise disclose the other Party's confidential information as the result of an order or subpoena issued by a court or other tribunal of competent jurisdiction, then the Party to which such demand is being made shall notify the other Party as soon as possible of the existence of such demand, and shall provide all necessary and appropriate assistance as the Party whose information is sought to be disclosed may reasonably request in order to preserve the confidential nature of the information sought.

#### SECTION 9 - LIABILITY AND INDEMNIFICATION

9.1 Neither Party assumes any liability for any act or omission of the other Party in the furnishing of its services to its subscribers solely by virtue of entering into the Agreement. To the extent not prohibited by law or inconsistent with the other terms of this Agreement, each Party shall indemnify the other Party and hold it harmless against any loss, costs, claims, injury or liability relating to any third-party claim arising out of any act or omission of the indemnifying Party in connection with the indemnifying Party's performance under this Agreement.

Furthermore, the Parties agree to arrange their own interconnection arrangements with other telecommunications carriers, and each Party shall be responsible for any and all of its own payments thereunder. Neither Party shall be financially or otherwise responsible for the rates, terms, conditions, or charges between the other Party and another telecommunications carrier.

9.2 NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, FOR ANY HARDWARE, SOFTWARE, GOODS, OR SERVICES PROVIDED UNDER THIS AGREEMENT. ALL WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND WAIVED.

9.3 In any event, each Party's liability for all claims arising under this Agreement, or under the provision of the service provided under this Agreement, shall be limited to the amount of the charges billed to the Party making a claim for the month during which the claim arose.

#### SECTION 10 - TERM OF AGREEMENT

10.1 This Agreement shall commence on the Effective Date, and shall terminate two (2) years after the Effective Date. This Agreement shall renew automatically for successive one (1) year terms, commencing on the termination date of the initial term or latest renewal term. The automatic renewal shall take effect without notice to either Party, except that either Party may elect: 1) not to renew by giving the other Party at least ninety (90) days written notice of the desire not to renew; or 2) to negotiate a subsequent agreement by giving the other Party at least ninety (90) days written notice of the desire to commence negotiations. If a Party elects to negotiate a subsequent agreement and a subsequent agreement has not been consummated prior to the termination date of the current Agreement, the current Agreement shall continue to be in effect until it is replaced by a new Agreement, or one hundred eighty (180) days beyond the termination date of the current Agreement, whichever is less.

## SECTION 11 - INDEPENDENT CONTRACTORS

11.1 The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power, or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind the other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

## SECTION 12 - THIRD PARTY BENEFICIARIES

12.1 This Agreement is not intended to benefit any person or entity not a Party to it and no third party beneficiaries are created by this Agreement.

## SECTION 13 - GOVERNING LAW, FORUM AND VENUE

13.1 The construction, validity, and enforcement of this Agreement shall be governed by the laws and regulations of the State of Missouri, except when Federal law may be controlling, in which case federal law will govern.

## SECTION 14 - ENTIRE AGREEMENT

14.1 This Agreement, including all Parts and Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

SECTION 15 - NOTICE

15.1 Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by overnight express delivery service with tracking capability, or (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested, or (iv) delivered by telecopy, with a follow-up copy delivered pursuant to (i), (ii) or (iii) above, to the following addresses of the Parties:

T-Mobile USA, Inc.  
Attn: General Counsel  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
425-378-4040 facsimile  
dan.menser@t-mobile.com

With a Copy To:

T-Mobile USA, Inc.  
Attn: Carrier Management  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
425-378-4040 facsimile  
chris.sykes@t-mobile.com

In the case of ILEC:

Citizens Telephone Company of Higginsville, Missouri  
Brian Cornelius  
1905 Walnut Street, P.O. Box 737  
Higginsville, MO 64037-0737  
Facsimile: 660-584-6211

With a copy to:

W.R. England, III  
Brydon, Swearngen & England P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102-0456  
Telephone Number: 573/635-7166  
Facsimile Number: 573/634-7431  
[Trip@brydonlaw.com](mailto:Trip@brydonlaw.com)

or to such other address as either Party shall designate by proper notice.

or to such other location as the receiving Party may direct in writing. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via overnight mail or personal delivery, (iii) three (3) days after mailing in the case of first class or certified U.S. mail or (iv) on the date set forth on the confirmation in the case of telecopy. Notice received after 5:00 p.m. local time of the receiving Party, or received on a Saturday, Sunday or holiday recognized by the United States government, shall be deemed to have been received the following business day.

#### SECTION 16 - FORCE MAJEURE

16.1 The Parties shall comply with applicable orders, rules, or regulations of the FCC and the Commission and with applicable Federal and State law during the terms of this Agreement.

Notwithstanding anything to the contrary contained herein, a Party shall not be liable nor deemed to be in default for any delay or failure of performance under this Agreement resulting from acts of God, civil or military authority, acts of the public enemy, war, hurricanes, tornadoes, storms, fires, explosions, earthquakes, floods, government regulation, strikes, lockouts, or other work interruptions by employees or agents not within the control of the non-performing Party.

## SECTION 17 - TAXES

17.1 The Party collecting revenues shall be responsible for collecting, reporting, and remitting all taxes associated therewith, provided that the tax liability shall remain with the Party upon whom it is originally imposed.

## SECTION 18 - ASSIGNMENT

18.1 Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, a Party may assign this Agreement or any portion thereof, without consent but upon written notice to the other Party, to any entity that controls, is controlled by or is under common control with the assigning Party or to an entity acquiring all or substantially all of the assets of a Party. Any such assignment shall not, in any way, affect or limit the rights and obligations of the Parties under the terms of this Agreement.

## SECTION 19 - TERMINATION OF SERVICE TO EITHER PARTY

19.1 If either party fails to pay when due any undisputed charges billed to them under this Agreement ("Undisputed Unpaid Charges"), and any portion of such charges remain unpaid more than thirty (30) days after the due date of such Undisputed Unpaid Charges, the billing Party may follow the procedures for blocking the traffic of the non-paying Party as established by 4 CSR 240-29.120, Rules and Regulations of the Missouri Public Service Commission.



## SECTION 20 - MISCELLANEOUS

20.1 This Agreement is not an interconnection agreement under 47 U.S.C. 251(c), but rather a reciprocal compensation agreement under 47 U.S.C. 251(b)(5). The Parties acknowledge that ILEC may be entitled to a rural exemption as provided by 47 U.S.C. 251(f), and ILEC does not waive such exemption by entering into this Agreement.

20.2 In the event that any effective legislative, regulatory, judicial, or other legal action affects any material terms of this Agreement, or the ability of the Parties to perform any material terms of this Agreement, either Party may, on thirty (30) days' written notice, require that such items be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the dispute may be referred to the Dispute Resolution procedure set forth herein.

Signature Page to the Agreement Between Citizens Telephone Company of Higginsville, Missouri (ILEC) and TMUSA

This Agreement is executed this 16th day of June, 2006.

T-Mobile USA, Inc.

Chris Sykes  
Signature

CHRIS SYKES  
Name

DIRECTOR, CARRIER MGMT  
Title

6/13/06  
Date

Citizens Telephone Company of Higginsville, Missouri

Brian L. Cornelius  
Signature

Brian L. Cornelius  
Name

President  
Title

6/16/06  
Date

T-Mobile Legal Approval By:  
[Signature]  
6/19/06

APPENDIX 1 to the Agreement Between Citizens Telephone Company of Higginsville, Missouri (ILEC) and TMUSA

Rates for termination of Local Traffic via an indirect interconnection<sup>1</sup>

Local Termination Rate \$ 0.0073 per minute

Traffic factor 84/16 (MTL/LTM)

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<sup>1</sup> The rates, terms and conditions contained in this Agreement will apply to services rendered on and after April 29, 2005, in accordance with the FCC rules regarding interim transport and termination pricing (§51.715).

APPENDIX 2 to the Agreement Between Citizens Telephone Company of Higginsville, Missouri (LEC) and TMUSA

Pursuant to Section 5.2, the interMTA percentage is 0%.

Interstate percentage: 20%

Intrastate percentage: 80%