

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

T-Mobile USA, INC.,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2006-0558
	)	
Green Hills Telecommunications Svcs. and	)	
Mark Twain Communications Company	)	
	)	
Respondents	)	

**RESPONDENTS'
MOTION FOR SUMMARY DETERMINATION**

COME NOW Respondents Green Hills Telecommunications Services and Mark Twain Communications Company ("Respondents" or "Rural CLECs") and for their motion for summary determination of the Complaint filed by T-Mobile USA, Inc. ("T-Mobile") pursuant to Commission Rule 4 CSR 240-2.117, respectfully request that the Missouri Public Service Commission ("Commission" or "PSC") grant summary determination in favor of Respondents and against T-Mobile.

I. INTRODUCTION AND SUMMARY

T-Mobile is the only wireless carrier in Missouri that has failed to pay for its use of Respondents' networks during the period of time between 2001 and 2005. Every other wireless carrier operating in the state has played by the rules and paid for the traffic that it sent to Respondents over the local exchange carrier ("LEC-to-LEC") network during this time period. Accordingly, on June 12, 2006, Respondents notified T-Mobile (and the PSC Staff) that T-Mobile's traffic would be blocked over the LEC-to-LEC network beginning on July 21, 2006. In response, T-Mobile filed the complaint which gave rise to this case.

II. MATERIAL FACTS

A. T-Mobile's Traffic and Respondents' Tariffs

1. T-Mobile f/k/a VoiceStream delivered wireless calls to Respondents' exchanges during the time period at issue in this case.¹

2. T-Mobile did not have a Commission-approved agreement with the Respondents during the time period at issue in this case.²

3. T-Mobile does not currently have an agreement with the Respondents.³

4. Both of the Respondents had wireless termination service and intrastate exchange access tariffs that were lawful and in effect at all times.⁴

5. The Mark Twain Communications wireless service tariff was approved by the Commission in Case No. TT-2001-646 and became effective on October 23, 2001. The Green Hills Telecommunications Services tariff became effective by operation of law on March 13, 2002.

B. T-Mobile's Unpaid Bills

6. T-Mobile has not paid its bills for service between the effective date of Respondents' wireless service tariffs and April 29, 2005.⁵

C. Notice of Blocking

7. On June 12, 2006, Respondents advised T-Mobile that they intended to begin blocking calls made by T-Mobile's customers over the LEC-to-LEC network beginning on June 21, 2006.⁶

¹ See Attached Affidavits of Renee' Reeter for Green Hills Telecommunications Services and Bill Rohde for Mark Twain Communications Company.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

D. Alternative Network Connections

8. Respondents' May 12, 2005 letter states that T-Mobile's wireless-originated calls "will be blocked **over the LEC-to-LEC network** on and after June 21, 2006."⁷ The "LEC-to-LEC network" involves a specific set of network connections between small local exchange carriers (LECs) such as Respondents and large LECs such as AT&T Missouri and Sprint Missouri, but there are other ways to deliver wireless calls to Respondents' rural exchanges, such as through an interexchange or "long distance" carrier.⁸ T-Mobile will remain free to deliver its calls to Respondents' exchanges through any long distance carrier, and the ERE Rules expressly allow carriers such as T-Mobile to deliver traffic via such alternate methods.⁹

E. Prior Blocking of T-Mobile Traffic

9. T-Mobile's traffic was previously blocked pursuant to wireless tariffs between December 15, 2004 and April 29, 2005. During this prior blocking on the LEC-to-LEC network, T-Mobile simply delivered its calls over the facilities of other interexchange or "long distance" carriers, as documented in a newspaper article from the ST. LOUIS POST-DISPATCH:

T-Mobile USA, based in Bellevue, Wash., said it would route calls through long distance carriers to avert potential disruption.

See Exhibit A, *Companies ask SBC to Block T-Mobile Calls*, ST. LOUIS POST-DISPATCH, ¶12 (Dec. 15, 2004). This is exactly what happened, and there was no disruption of service for

⁶ See T-Mobile's Complaint, Exhibit A.

⁷ *Id.* (emphasis added).

⁸ 4 CSR 240-29.010; See also Attached Affidavits of Renee' Reeter for Green Hills Telecommunications Services and Bill Rohde for Mark Twain Communications Company.

⁹ 4 CSR 240-29.130(1).

anyone's customers.¹⁰ It is misleading for T-Mobile to suggest that its calls will be disrupted, especially when it has already successfully rerouted its calls during the prior four-month period of blocking on the LEC-to-LEC network.

F. Eighth Circuit Decision

10. On June 20, 2006, the Eighth Circuit reviewed most of the arguments now raised by T-Mobile before the Commission and denied T-Mobile's request for an injunction to prevent Respondents' affiliates from blocking T-Mobile's traffic over the LEC-to-LEC network. See Exhibit B. Respondents expressly deny that the question of the lawfulness of state wireless tariffs is currently pending before the Court of Appeals for the Eighth Circuit in Case No. 05-4377.¹¹ Rather, the only points raised by T-Mobile on appeal are whether the U.S. District Court for the Western District of Missouri erred in granting a motion to dismiss for lack of jurisdiction and denying T-Mobile's request for transfer. The only other matter currently pending before the Eighth Circuit is a motion to dismiss for lack of subject matter jurisdiction. Respondents do not agree that the Eighth Circuit has jurisdiction. Moreover, on March 17, 2006 the Eighth Circuit Court of Appeals denied T-Mobile's motion to stay the proceedings, and on June 20, 2006, the court denied T-Mobile's request for an injunction to prevent the Respondents' affiliates from blocking T-Mobile's calls on the LEC-to-LEC network. Thus, the Eighth Circuit has already rejected the arguments T-Mobile now seeks to revive before this Commission.

¹⁰ Alternatively, T-Mobile could contract with another wireless carrier to terminate traffic on the LEC-to-LEC network.

¹¹ T-Mobile claims that the lawfulness of Respondents' affiliates' wireless tariffs and this Commission's decision in Case No. TC-2002-1077 are currently on appeal before the Eighth Circuit, but T-Mobile never made the Commission a party to the federal court cases. "[S]urely Congress would not give a court the power to determine the validity of an agency's rules when the agency itself is not a party." *GTE South v. Morrison*, 119 F.3d 733, 743 (4th Cir. 1990).

III. CONCLUSION

Ultimately, the question presented by T-Mobile's complaint is whether the Commission is going to enforce its final orders and rules, or not. In Case No. TT-2001-646, the Commission approved Respondent Mark Twain's wireless termination service tariff and agreed that "it would be fundamentally inequitable to allow ILECs to recover termination costs through termination service tariffs, but to deny a CLEC the same opportunity." The Commission explained:

The intent of the Telecommunications Act is to encourage competition, and preventing one of the few CLECs that is trying to compete outside of urban areas from using the same method of collecting termination costs used by ILECs would frustrate that intent. A level playing field for competition requires that a CLEC be able to use the same tools to recover costs that ILECs use.

In the Matter of Mark Twain Communications Company's Proposed Tariff to Introduce Its Wireless Termination Service, Case No. TT-2001-646, *Order Approving Tariffs*, Oct. 16, 2001. That Commission order is final, and T-Mobile has not challenged the lawfulness of Respondents' tariffs before any court. Instead, T-Mobile has engaged in unlawful self-help by refusing to pay its bills.

The Eighth Circuit declined to grant T-Mobile's request for an injunction to prevent Respondents' affiliates from blocking on the LEC-to-LEC network. Thus, Respondents are entitled to block T-Mobile's traffic pursuant to the PSC's ERE Rules. The Commission's ERE Rules have the force and effect of law, and Respondents have complied with those rules. T-Mobile, on the other hand, has pursued a constant course of delay and litigation.

Every other wireless carrier in Missouri has played by the rules and paid for its calls. The Commission should decline to reward T-Mobile's "transparent litigation strategy."

WHEREFORE, Respondents respectfully request that the Commission grant summary determination in favor of Respondents and against T-Mobile and expressly authorize Respondents to begin blocking T-Mobile's traffic over the LEC-to-LEC network pursuant to both: (1) the Commission's ERE Rules; and (2) longstanding state and federal law allowing Respondents to block or discontinue service for failure to pay tariffed rates.

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CERTIFICATE OF SERVICE

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