

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

In the Matter of the Petition of)	
Alma Telephone Company)	
for Arbitration of Unresolved)	Case No. IO-2005-0468, et al.
Issues Pertaining to a Section 251(b)(5))	(consolidated)
Agreement with T-Mobile USA, Inc.)	

APPLICATION FOR REHEARING

Petitioners Alma Telephone Company, Chariton Valley Telephone Corporation, Mid-Missouri Telephone Company, and Northeast Missouri Rural Telephone Company, pursuant to §386.500 RSMo request that the Commission's October 6, 2005 Arbitration Report Order ("Order") be reheard, reconsidered, and set aside as being unlawful, unjust, and unreasonable on the following grounds:

IXC Traffic is not subject to Reciprocal Compensation to be paid by Petitioners

1. Petitioners are not satisfied that there is a full understanding of the effect of the Order. If not revised, the effect will be, for the first time in Missouri, to make ILECs pay reciprocal compensation to a wireless carrier for an IXC's traffic. This is a significant departure from the *status quo*. To Petitioners' knowledge, there are no approved agreements in Missouri, involving either small ILECs or large ILECs, that apply reciprocal compensation to IXC traffic. This decision will create a new dynamic in negotiating, renegotiating, and arbitrating agreements in the future.

2. The Order will also create negative financial impacts upon Petitioners here. The financial effect depends upon whether Petitioners will lose originating IXC access revenues, in addition to being required to pay T-Mobile terminating reciprocal

compensation for IXC traffic. The financial effect of the IXC traffic issue upon Petitioners was not calculated or placed into the record. This was in part due to T-Mobile's objection to Petitioners' data request to provide the quantities of IXC traffic involved. In the absence of this information, the Order accepts T-Mobile's testimony that a balance of 65% mobile-to-landline and 35% landline-to-mobile traffic is a standard that is "commonly used throughout the industry".

3. The Order refers to the traffic in question as "landline-to-mobile intraMTA calls". The undisputed evidence in this case that this traffic is dialed with a "1+", and is carried by the toll customer's chosen IXC¹.

4. IXC traffic is not the compensation responsibilities of Petitioners. Whenever an IXC originates or terminates its traffic, it is responsible to pay originating and terminating access compensation to the carriers whose facilities are used. FCC rule 47 CFR 69.5(b) provides that:

(b) Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.

For the landline-to-mobile traffic in question, it is the IXC's responsibility to pay originating access to Petitioners, and terminating access to T-Mobile.² For mobile-to-landline IXC traffic, most wireless carriers do not offer equal access to their customers, the wireless carriers provision their customers' long distance calls themselves. As a consequence they typically contract with the IXC to carry and terminate this traffic. It is the responsibility of the IXC to pay Petitioner's terminating access for use of Petitioners' terminating facilities. The Order fails to analyze or consider the effect of making

¹ Except for Chariton Valley Telephone-to-Chariton Valley Wireless traffic, which is dialed locally and transported across a direct interconnection.

² In the FCC *Sprint PCS* decision, the FCC affirmed the wireless carrier's right to receive access from the IXC.

Petitioners pay T-Mobile for IXC calls upon these structures. One could interpret the Order as transferring the responsibility to pay terminating compensation from the IXC to Petitioners, who are not IXCs. One could also interpret the Order as meaning the IXC is relieved from compensation responsibility, in contravention to FCC rule 47 CFR 69.5(b).

5. The *Atlas* decision relied upon by the Order concluded that IXC traffic is subject to reciprocal compensation on the sole ground that it originates and terminates within the same MTA. This is an incomplete analysis.

6. IXC traffic does not fall within the scope of reciprocal compensation. FCC Rule 47 CFR 51.701 defines the traffic subject to 47 USC 251(b)(5) reciprocal compensation. This rule excludes IXC traffic because it is not “exchanged between a LEC and CMRS provider”. IXC traffic simply belongs to the IXC which is responsible to pay. The IXC does not “exchange” traffic with any LEC or CMRS provider.

7. This same rule 701 also excludes IXC traffic because reciprocal compensation is intended for an “arrangement between two carriers in which each of the two carriers receives compensation from the other carrier”. IXC calls do not fit this definition. IXCs do not receive compensation from any carrier for IXC calls.

8. In its August 8, 1996 *First Local Competition Order*, the FCC determined that access compensation was to be retained, and that IXC traffic would not be subject to reciprocal compensation. The FCC has reaffirmed this initial conclusion in subsequent decisions.

9. The initial FCC conclusion that IXC traffic would remain subject to access, and not reciprocal compensation, was upheld by the 8th Circuit Court of Appeals in its *Comptel* decision. In the Order the *Comptel* decision was distinguished because it

was not a LEC-wireless arbitration decision. The Order calls *Comptel* “an appeal of an FCC rulemaking that entitled IXC’s to pay access charges”. In *Comptel* the IXC’s challenged the FCC’s refusal to allow IXCs to have reciprocal compensation instead of access. The 8th Circuit upheld the FCC’s decision. *Comptel* ruled that the FCC was justified in retaining access for IXC traffic. The Order fails to consider that the 8th Circuit’s *Comptel* decision means what it holds—that the FCC’s action in refusing to allow reciprocal compensation to apply to IXC traffic. If reciprocal compensation is not to apply to IXC traffic, the Order here is in error.

10. The legal authorities presented in paragraphs 4 through 9 above are extensively discussed in Petitioners’ September 27, 2005 Comments regarding the final arbitration report. Those comments are incorporated by reference as if full set forth herein.

11. As IXC traffic is not subject to reciprocal compensation, the Order’s adoption of net billing provision Section 5.1.3 is not reasonable, lawful, or just.

WHEREFORE, on the basis of the foregoing, Petitioners respectfully request that the Commission rehear its October 6 Order, and change the arbitration result to exclude IXC traffic from the agreements here in arbitration, and to do so on or before October 12, 2005.

/s/
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was emailed this 6th day of October, 2005, to the following representatives of Respondent:

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