

**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. |) | |

FILED

AUG 18 2005

Missouri Public
Service Commission

DIRECT TESTIMONY

OF

JAMES SIMON

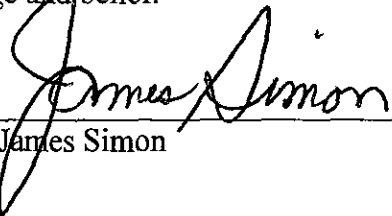
Jefferson City, Missouri
July 21, 2005

Exhibit No. 5
Date 8/11/05 Case No. IO-2005-0468
Reporter SJM

AFFIDAVIT OF JAMES SIMON

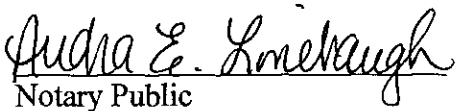
STATE OF MISSOURI)
) ss.
COUNTY OF Macon)

James Simon, of lawful age, on my oath states, that I have participated in the preparation of the foregoing direct testimony in question and answer form, consisting of 10 pages, to be presented in this case; that the answers in the foregoing testimony were given by me; that I have knowledge of the matters set forth in such answers; and that such matters are true to the best of my knowledge and belief.


James Simon

Subscribed and sworn to before me this 14th day of July, 2005.

AUDRA E. LINEBAUGH
Notary Public - Notary Seal
STATE OF MISSOURI
Chariton County
My Commission Expires: May 27, 2006


Notary Public

My Commission Expires:
May 27, 2006

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

2 A. My name is James Simon. I am the general manager for Petitioner Chariton
3 Valley Telephone Corporation (Chariton Valley). My business address is 109 Butler
4 Street, Macon, MO 63552.

5 **Q. On whose behalf are you testifying.**

6 A. I am testifying on behalf of petitioner Chariton Valley Telephone Corporation
7 (Chariton Valley).

8 **Q. What topics will you address in this testimony?**

9 A. In this testimony I will address the amounts of past T-Mobile traffic terminating
10 to Chariton Valley, traffic studies identifying the jurisdictional proportions of T-Mobile
11 traffic, the rates applicable to such traffic, the amount of compensation due Chariton
12 Valley, and my views as to whether Chariton Valley should be responsible to compensate
13 T-Mobile for landline to mobile traffic provisioned by interexchange carriers (IXCs).

14 Mr. Schoonmaker will be presenting cost support for the prospective intraMTA
15 rate, and will also address whether mobile to landline IXC carried traffic is properly
16 reciprocal compensation traffic.

17 **Past Traffic**

18 **Q. What amount of T-Mobile traffic does Chariton Valley show as being**
19 **uncompensated?**

20 A. 1,273,055 minutes of use.

21 **Q. What period did that traffic terminate?**

22 A. This traffic terminated between February 5, 1998 and May 17, 2005.

23 **Q. Why were those dates selected?**

1 A. February 5, 1998 was selected because that is the date SBC was allowed to stop
2 paying terminating compensation to small rural ILECs for such traffic. May 17, 2005
3 was selected because it was the most recent billing period used in the negotiations with
4 T-Mobile prior to filing the arbitration petition.

5 **Q. What records was this traffic volume taken from?**

6 A. For 1998 to the summer of 2004, we used SBC provided Cellular Terminating
7 Usage Summary Records (CTUSRs). After SBC terminated the CTUSR, we have used
8 electronic records SBC provides to us. Both types of record identified the T-Mobile
9 traffic by volume, but not by call jurisdiction. On a monthly basis Chariton Valley
10 converted the SBC provided information into invoices which have been billed to T-
11 Mobile, but which have not been paid.

12 **Jurisdiction of Traffic**

13 **Q. Have you performed traffic studies to determine the proportions of traffic**
14 **that are interMTA and intraMTA in jurisdiction?**

15 A. Yes. We were ordered to do so for all wireless carriers in TC-2002-57, and
16 complied.

17 **Q. With respect to T-Mobile, what did your traffic study reveal?**

18 A. The traffic study, attached hereto as Attachment 1 HC, showed that for the two
19 months of November and December of 2001, Chariton Valley received 5,308 T-Mobile
20 calls, and 73 percent of the traffic volumes were interMTA.

21 **Q. Have you done a more recent study?**

22 A. No. It is a laborious undertaking. There has been no request to perform another
23 since then.

1 **Q. In TC-2002-57 did T-Mobile directly contradict this traffic study?**

2 A. I was not a witness present at that hearing. Counsel reports that T-Mobile did not
3 retain traffic information, and had no traffic records or study contradicting Chariton
4 Valley's study. Counsel reports T-Mobile did challenge the validity of the study.

5 **Q. Has the Commission ever accepted the validity of a traffic study such as this**
6 **one?**

7 A. Yes, in its January 27, 2005 Report and Order in TC-2002-1077, the Commission
8 approved the same type of traffic study performed by Mark Twain Rural Telephone
9 Company and T-Mobile, even though the study resulted in a higher interMTA traffic
10 percentage than the parties agreed to.

11 **Q. Why in your arbitration petition did you request that an interMTA factor of**
12 **26%, instead of 73%, be approved?**

13 A. These negotiations were initiated prior to the Commission's January, 2005
14 decision in TC-2002-1077 accepting the validity of Mark Twain's traffic study. The
15 negotiations were also initiated prior to the FCC's February, 2006 Decision rejecting T-
16 Mobile's request to declare the application of state tariffs to wireless traffic unlawful¹.
17 Chariton Valley had previously settled with other wireless carriers, and as I understand
18 the system Chariton Valley is obligated to make the terms available to other carriers. In
19 the negotiations Chariton Valley had already made traffic proportion and rate offers that
20 were less than what these decisions later indicated we were entitled to. It is my

¹ See the February 17, 2005 Declaratory Ruling regarding T-Mobile's Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92, In the Matter of Developing a Unified Inter-carrier Compensation Regime.

1 understanding of the negotiation and arbitration rules that it would not have demonstrated
2 good faith to have negotiated "upwards" after those decisions.

3 **Q. Is Chariton Valley willing to accept an interMTA factor of 26%?**

4 A. Yes, that is what we offered prior to arbitration.

5 **Q. Of the interMTA traffic, what interstate and intrastate proportions are you**
6 **requesting?**

7 A. That 80% of the interMTA traffic be rated at intrastate rates, and 20% be rated at
8 interstate rates.

9 **Q. Why do you propose these proportions?**

10 A. These are the proportions that had been agreed to with Cingular, Sprint PCS,
11 Alltel, and US Cellular. We offered the same to T-Mobile. When you review the
12 interMTA traffic identified in the study, Attachment 1HC, the proportion of interstate
13 seconds to total seconds is 15.9%. Using an interMTA percentage greater than that
14 shown in the study will financially benefit T-Mobile.

15 **Q. Is Chariton Valley willing to use the 26.0% interMTA factor, and the 80/20**
16 **intrastate/interstate proportions of interMTA traffic prospectively in the Traffic**
17 **Terminating Agreement?**

18 A. Yes.

19 **Rates to Apply**

20 **Q. What rates are you requesting be applied to this past traffic?**

21 A. Terminating intrastate access rates should be applied to terminating intrastate
22 interMTA traffic. Chariton Valley's tariffed rate is \$0.078859 per minute. Terminating
23 interstate access rates should be applied to terminating interstate interMTA traffic.

1 Chariton Valley's tariffed rate is \$0.014414 per minute. With respect to intraMTA
2 traffic, Chariton Valley requests that a "compromise" rate of \$0.05693 per minute be
3 awarded.

4 **Q. Please explain this "compromise" rate?**

5 A. We used a "compromise" rate analysis to settle with Cingular, Sprint PCS, Alltel,
6 and US Cellular. These were done prior to the FCC decision upholding the application of
7 state tariffs to wireless traffic terminating in the absence of an agreement. The
8 compromise rate was a compromise between the agreement's 3.5 cent intraMTA rate and
9 access rates applicable to wireless traffic terminating prior to the agreement. We offered
10 it to T-Mobile as well. Actually, because T-Mobile is the last wireless carrier to
11 complete, the "compromise rate we offered to T-Mobile may be lower than the ones used
12 with the other wireless carriers. It represents a "splitting of the difference between the
13 3.5 cent intraMTA² rate and our 7.8859 cent intrastate rate.

14 **Compensation Due**

15 **Q. Taking these rates and traffic jurisdictions, how much is Chariton Valley**
16 **requesting that T-Mobile pay for this past traffic?**

17 A. The total is \$78,466.00.

18 **Q. If Chariton Valley assumed that both the Commission's decision regarding**
19 **traffic studies and the FCC's decision upholding state tariffs applied, what would**
20 **the total amount due for this past traffic be?**

² T-Mobile and other CMRS providers have agreed to a 3.5 cent rate in about 60 agreements with small rural ILECs. See Attachment 2 hereto.

1 A. If you rate 80 percent of the traffic at intrastate access rates, and 20% at interstate
2 access rates, T-Mobile would owe Chariton Valley \$83,982. I believe Chariton Valley's
3 request that \$78,466 be awarded is reasonable.

4 **Landline to Mobile IXC Traffic**

5 **Q. In its response to the arbitration petition, T-Mobile claims Chariton Valley**
6 **should be responsible to pay T-Mobile reciprocal compensation when Chariton**
7 **Valley customers make a 1+ call to call a T-Mobile customer. Do you agree?**

8 A. No. T-Mobile has chosen to directly interconnect with SBC, and send its traffic
9 to Chariton Valley indirectly. Without a T-Mobile facility connected to Chariton Valley,
10 Chariton Valley does not offer its subscribers the ability to dial T-Mobile customers on a
11 "local" basis. Chariton Valley does not own the facilities to do this, does not desire to
12 purchase the use of other carriers' facilities, and therefore does not offer T-Mobile
13 NPA/NXXs as part of the local calling scope of Chariton Valley local subscribers.

14 Chariton Valley local subscribers must dial a "1+" in order to reach T-Mobile
15 customers. As an ILEC under federal and state rules, Chariton Valley is required to route
16 all such "1+" calls to the facilities of the customers chosen interexchange carrier (IXC).
17 These calls are the provisioning and compensation responsibility of the chosen IXC, not
18 Chariton Valley. The IXC gets the end user revenue, pays Chariton Valley originating
19 compensation, and to my understanding is obligated to pay T-Mobile terminating
20 compensation.

21 It is the IXC, not the LEC, that is deemed to have "originated" such calls, and
22 pays Chariton Valley for using Chariton Valley facilities to originate the call.

1 **Q. T-Mobile characterizes this as a situation where Chariton Valley is**
2 **attempting to exempt itself from reciprocal compensation obligations by choosing to**
3 **send calls Chariton Valley originates but then sends to an intermediate carrier. Do**
4 **you agree?**

5 A. No. Chariton Valley is not required to provide local calling that includes the
6 expense of purchasing other carriers' facilities. Chariton Valley's tariffs determine its
7 customer's local calling scope. The local NPA NXXs do not include T-Mobile numbers.
8 Our rate structure is based upon local calling within the areas set forth in Chariton Valley
9 tariffs.

10 If receiving reciprocal compensation for these calls is important to T-Mobile, T-
11 Mobile should do what it did with larger ILECs such as SBC. It should order and provide
12 a direct connection to Chariton Valley facilities. Calls going to T-Mobile would
13 thereafter not have to leave Chariton Valley exchange facilities, and could be delivered to
14 T-Mobile as locally dialed calls without having to be routed to interexchange facilities.

15 **Q. Do you believe T-Mobile is losing compensation rights if this traffic is not**
16 **reciprocal compensation traffic?**

17 A. No. It is my understanding that the IXC delivering these calls to T-Mobile is
18 obligated to compensate T-Mobile, so T-Mobile should be receiving intercarrier
19 compensation for this traffic. I believe it is also true that T-Mobile gets paid by its end
20 users for receiving these calls. If Chariton Valley were responsible to pay reciprocal
21 compensation as well, you could argue T-Mobile is getting paid three times for this
22 traffic; twice by intercarrier compensation and once by end user compensation.

- 1 Q. Does that conclude your direct testimony?
- 2 A. Yes.