BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

ARBITRATOR'S FINAL REPORT

Issue Date: September 23, 2005

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TABLE OF CONTENTS

Appearances 1

Procedural History 2

Discussion 7

Statement of Findings and Conclusions 9

APPEARANCES

CRAIG S. JOHNSON, Attorney at Law, 1648-A East Elm Street, Jefferson City, Missouri, 65101, for Alma Telephone Company, Northeast Missouri Rural Telephone Company, Mid-Missouri Telephone Company, and Chariton Valley Telephone Corporation.

MARK P. JOHNSON, Attorney at Law, Sonnenschein, Nath & Rosenthal, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, for T-Mobile USA, Inc.

ARBITRATOR: **Ronald D. Pridgin, Regulatory Law Judge.**

Arbitration Advisory Staff:

Natelle Dietrich, Regulatory Economist III, Utility Operations Division, Missouri Public Service Commission.

Walter Cecil, Regulatory Economist II, Utility Operations Division, Missouri Public Service Commission.

William Haas, Deputy General Counsel, Office of the General Counsel, Missouri Public Service Commission.

ARBITRATION REPORT

PROCEDURAL HISTORY

Petition for Arbitration:

On June 7, 2005, Alma Telephone Company, Northeast Missouri Rural Telephone Company, Mid-Missouri Telephone Company, and Chariton Valley Telephone Corporation filed Verified Petitions for Arbitration with the Commission pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. The petitions ask the Commission to arbitrate unresolved issues in the negotiation of interconnection agreements between the Petitioners and T-Mobile USA, Inc. Because the petitions contained common questions of law and fact, the Arbitrator consolidated these cases on June 8, making Case No. IO-2005-0468 the lead case.

Notice of Arbitration:

The arbitration was conducted according to Commission Rule 4 CSR 240-36.040, which governs arbitrations under Section 251 of the Act ("the Rule"). On June 8, as required by Section (7) of the Rule, the Arbitrator issued a Notice of Arbitration, setting July 5 as the date for T-Mobile to respond. That notice also advised the parties of the appointment of the Arbitrator; and adopted the Commission's standard Protective Order. On June 9, the Arbitrator appointed his advisory staff. On June 20, the Arbitrator ordered the parties to appear at a June 29 Initial Arbitration Meeting.

Initial Arbitration Meeting:

The Initial Arbitration Meeting was held on June 29 as scheduled.[1] A principal topic of that meeting was the procedural schedule. Section (15) of the Rule authorizes the Arbitrator to vary the procedures and timelines set out in the Rule as necessary to complete the arbitration within the period specified in the Act:

> Because of the short time frame mandated by the Act, the arbitrator shall have flexibility to set out procedures that may vary from those set out in this rule; however, the arbitrator's procedures must substantially comply with the procedures listed herein. The arbitrator may vary from the schedule in this rule as long as the arbitrator complies with the deadlines contained in the Act.

Procedural Schedule:

On June 30, after considering the parties' proposals, the Arbitrator issued an Order Adopting Procedural Schedule. The schedule departed from the timelines in Rule 4 CSR 240-36.040 and modified various procedures so the Arbitrator could complete the arbitration by the required date.

Responses to the Petition for Arbitration:

T-Mobile responded on July 5. In its response, T-Mobile claimed some of the issues that Petitioners raised were beyond the scope of the Act. T-Mobile also disputed Petitioners' positions on other issues, and raised additional issues for the Arbitrator to resolve.

[1] The Arbitrator granted T-Mobile's motion to reschedule the meeting from 10:00 a.m. to 2:30 p.m.

Motions in Limine

As provided in the Order Setting Procedural Schedule, Petitioners, and Respondent filed Motions in Limine on July 11. Petitioners asked the Arbitrator to exclude Respondent's evidence and argument that wireless to landline traffic provisioned by interexchange carriers is traffic subject to reciprocal compensation. The Arbitrator denied Petitioners' motion.

Respondent's motion in limine asked the Arbitrator to exclude evidence and argument that traffic Respondent terminated to Petitioners before Petitioners requested interconnection negotiations with Respondent is subject to arbitration. The Arbitrator granted Respondent's motion.

Limited Evidentiary Hearing:

According to the procedural schedule, the parties filed prepared direct and rebuttal testimony. The parties also prepared and filed joint Decision Point Lists ("DPLs"). The Arbitrator held the hearing on August 11. The Arbitrator heard the testimony of 7 witnesses and received 17 exhibits. The Advisory Staff questioned the witnesses.

Arbitration Style:

Rule 4 CSR 240-36.040(5), "Style of Arbitration," provides:[2]

[2] This style of arbitration is also popularly known as "baseball arbitration," in which an arbitrator picks from the player's and the club's final offer and decides what a Major League Baseball player's salary will be when the parties cannot agree to a contract.

An arbitrator, acting pursuant to the commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(A) Final offer arbitration shall take the form of issue-by-issue final offer arbitration, unless all of the parties agree to the use of entire package final offer arbitration. The arbitrator in the initial arbitration meeting shall set time limits for submission of final offers and time limits for subsequent final offers, which shall precede the date of a limited evidentiary hearing.

* * *

(E) If a final offer submitted by one (1) or more parties fails to comply with the requirements of this section or if the arbitrator determines in unique circumstances that another result would better implement the Act, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission and the Federal Communications Commission pursuant to that section.

Rule 4 CSR 240-36.040(19), "Filing of Arbitrator's Draft Report," provides in pertinent part that, "[u]nless the result would be clearly unreasonable or contrary to the public interest, for each issue, the arbitrator shall select the position of one of the parties as the arbitrator's decision on that issue."

Arbitration Standards:

In conducting issue-by-issue final offer arbitration, Section 252(c) of the Act provides:

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall --

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

With respect to the public interest in the regulation of telecommunications, the Missouri General Assembly has provided an express statement of public policy to guide the Commission:[3]

The provisions of this chapter shall be construed to:

(1) Promote universally available and widely affordable telecommunications services;

(2) Maintain and advance the efficiency and availability of telecommunications services;

(3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;

(7) Promote parity of urban and rural telecommunications services;

(8) Promote economic, educational, health care and cultural enhancements; and

(9) Protect consumer privacy.

[3] Section 392.185, RSMo Supp. 2002.

Additional Proceedings:

Rule 4 CSR 240-36.040(24), "Commission's Decision," provides:

> The commission may conduct oral argument concerning comments on the arbitrator's final report and may conduct evidentiary hearings at its discretion. The commission shall make its decision resolving all of the unresolved issues no later than the two hundred seventieth day following the request for negotiation. The commission may adopt, modify or reject the arbitrator's final report, in whole or in part.

The Procedural Schedule provides for additional proceedings as follows:

Comments on Arbitrator's Final Report	September 27, 2005
Oral Argument before Commission All Parties	September 30, 2005 10:00 a.m.
Final Commission Arbitration Decision	October 12, 2005

DISCUSSION

The parties submitted the open issues requiring resolution in the form of Decision Point Lists (DPLs). These points fall into the following general categories:

1. What proportion of traffic terminating to Petitioners is interMTA and what proportion is intraMTA?

2. What rate should the Arbitrator adopt for intraMTA Respondent traffic terminating to Petitioners?

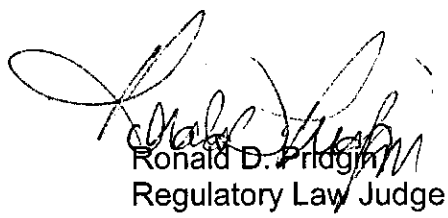
3. Must Petitioners compensate Respondent for landline-to-mobile intraMTA calls?

STATEMENT OF FINDINGS AND CONCLUSIONS

Attached in compliance with Commission Rule 4 CSR 240-36.040(21) is the Arbitrator's Statement of Findings and Conclusions, consisting of several topical sections in which each Decision Point identified by the parties is considered in the light

of the parties' arguments and the evidence they adduced. The Arbitrator has rendered a decision on each such Decision Point or group of related Decision Points and stated the basis therefore. The Arbitrator certifies that each such decision meets the requirements of §§ 251 and 252 of the Act.

Respectfully submitted,



Ronald D. Pridgin
Regulatory Law Judge,
Arbitrator.

Dated this 23rd day of September, 2005, in Jefferson City, Missouri.

STATEMENT OF FINDINGS AND CONCLUSIONS

The initial pleadings had identified sixteen open issues for resolution. The Arbitrator eliminated five issues (Nos. 1-5 in the arbitration petitions) in his August 3 Order on the motions in limine. The parties agree on Issues 6d (interMTA/intraMTA split for Alma Telephone) and 13 (effective date of the TTA). T-Mobile has abandoned Issue 11 (use of cell sites for traffic studies), and consolidated Issues 14 and 15 into Issue 8.

The Arbitrator will resolve the following issues:

6) What proportions of T-Mobile traffic terminating to Chariton Valley, Mid-Missouri and Northeast are interMTA and intraMTA?

Discussion:

The following is a summary of the factors that Chariton Valley's, Mid-Missouri's, and Northeast's traffic studies established. These factors include the interMTA traffic factor and the factor for determining what proportions of interMTA access traffic is interstate and intrastate. This summary also sets forth the factors Petitioners included in their final offers.

T-Mobile offered interMTA factors that were one-half of the factors Petitioners offered.[4] T-Mobile also proposed factors that assigned more of the interMTA traffic to the interstate jurisdiction. The factors T-Mobile offered are included in parentheses:

[4] Tr. 287, lines 8-21

Company Proportion	Traffic Study InterMTA Factor	InterMTA Factor Co. offered in Negotiations	Interstate of InterMTA Traffic
Ch. Valley	73.0%	26.0% (13.0%)	20% (50.0%)
Mid-Missouri	16.7%	16.0% (8.0%)	20% (50.0%)
Northeast	100.0%	22.5% (11.25%)	20% (50.0%)

Chariton Valley, Mid-Missouri, and Northeast introduced traffic studies into evidence to support their respective interMTA factors, and also the 20%/80% interstate/intrastate proportions of interMTA traffic. Chariton Valley, Mid-Missouri, and Northeast performed these traffic studies for the T-Mobile wireless-to-landline traffic terminating to them over SBC trunks. These studies measured the proportions of SBC transited wireless-to-landline traffic that are interMTA or intraMTA in jurisdiction. These studies further indicate the proportions of interMTA traffic that are interstate and intrastate.

Chariton Valley, Mid-Missouri, and Northeast performed these studies on actual call data for traffic actually terminated to them. The studies assigned the Major Trading Areas (MTAs) associated with the originating caller's NPA-NXX and the terminating party's NPA-NXX. If the originating and terminating MTAs were different, the calls were categorized as interMTA calls. If the originating and terminating MTAs were the same, the calls were categorized as intraMTA calls.[5]

Chariton Valley, Mid-Missouri, and Northeast further analyzed the interMTA traffic to produce the intrastate/interstate proportions of interMTA traffic. Because interstate access rates are lower than intrastate, the higher the interstate factor, the lower cost T-Mobile's costs will be. Northeast's study showed 22.5% of interMTA traffic

[5] *See* Ex. 1, 3, 5, Attachment 1 (HC) to each. *See also* Tr. 70-71, 75-78.

to be interstate. Mid-Missouri's study showed 19.259% of interMTA traffic to be interstate. Chariton Valley's study showed 15.9% of the interMTA traffic to be interstate.[6]

The Commission has previously accepted the validity of the method that Chariton Valley, Mid-Missouri, and Northeast used in its traffic studies. In a complaint that involved the same type of traffic—T-Mobile to landline traffic transited by SBC—the Commission adopted the factors established by Mark Twain's study:

> "A month-long traffic study for Complainant Mark Twain, based on originating NXXs, suggested that 70% of the traffic is interMTA traffic. Complainant Mark Twain and the Wireless Respondents nonetheless agreed on the 53% factor after negotiation. Based on the traffic study, the Commission finds that 70% of this traffic is interMTA traffic."[7]

The *BPS* decision is guidance for the Commission's accepting the validity of the studies that Chariton Valley, Mid-Missouri, and Northeast submitted. The Commission accepted the methodology of an NPA-NXX study to ascertain traffic jurisdiction. The Commission accepted the one-month traffic study factor notwithstanding that Mark Twain and T-Mobile had stipulated to a lower factor. Here, Mid-Missouri's study is one month, Chariton Valley's is two months, and Northeast's is a three-month study.

The Arbitrator recognizes that Petitioners' traffic studies, as well as any other traffic study, are imperfect. But in its testimony, T-Mobile stated the Commission should reject any traffic factors not substantiated by empirical studies and appropriate surrogates.[8] In contrast to Petitioners, T-Mobile offered no empirical studies or

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[6] Ex. 1, p. 6; Ex. 3, p. 6; Ex 5, p. 6; Tr. 77-78, 97-98, 111-113, 123.

[7] *In re BPS Telephone Company,* Case No. TC-2002-1077, Report and Order, page 25 (January 27, 2005).

[8] Ex 16, p. 14, lines 13-14.

appropriate surrogates to support its offered intraMTA/interMTA split.[9] Furthermore, much of the reason that Petitioners did not have better data was that T-Mobile failed to keep records of the tower location from which the call is made.[10]

T-Mobile acknowledged that it is the only entity that captures the mobile customer's tower location at the time a call is made. T-Mobile chose not to produce that data to Petitioners.[11] T-Mobile acknowledged that Chariton Valley's, Mid-Missouri's, and Northeast's studied the only call information available to them.[12] Petitioners' final offers are the following:

Company	**InterMTA Factor**	**Interstate Proportion of InterMTA Traffic**
Alma	0.0	N/A
Ch. Valley	26.0%	20%
Mid-Missouri	16.0%	20%
Northeast	22.5%	20%

Decision: The Arbitrator decides this issue in favor of Petitioners, and against T-Mobile.

7) What intraMTA rate should be adopted for intraMTA traffic terminating to Petitioners?

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[9] Tr. 253, line 23 through Tr. 255, line 7.
[10] Ex. 11; Tr. 252, line 11 through Tr. 253, line 16.
[11] Ex. 11, T-Mobile's objections to Petitioners' requests for this traffic data.
[12] Tr. 250-262.

Discussion:

The following summarizes the cost result that each witness has placed into evidence:[13]

Company	Schoonmaker	Conwell
Alma	$0.0912	$0.0074
Chariton Valley	$0.0532	$0.0074
Mid-Missouri	$0.0685	$0.0074
Northeast	$0.0571	$0.0074

In reviewing these proposed costs, the Commission can only approve rates that do not exceed the forward-looking economic cost per unit.[14] In addition, Petitioners have the burden to prove their forward-looking costs.[15] For the following reasons, the Arbitrator concludes that Petitioners met their burden.

Each Petitioner offered a 3.5 cent rate for intraMTA traffic. This rate is between 1.82 to 5.72 cents less than the rate that their cost studies show. Petitioners' cost studies are based on the HAI model, which is a widely-accepted method of determining forward-looking economic cost per unit.[16] Petitioners agreed to a 3.5 cent rate in their approved agreements with Cingular, Sprint PCS, Alltel, and US Cellular. Petitioners have offered that same rate to T-Mobile.

In contrast, in its final offers, T-Mobile proposed a rate of 1.5 cents. This rate is more than the rate produced in its witness' cost study. T-Mobile's witness made adjustments to Petitioners' results from the HAI model. Some of these adjustments

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[13] See Exhibit 8, Direct Testimony Schoonmaker, Schedule RCS-1, Page 1. See Exhibit 13, Direct Testimony Conwell, Page 33.

[14] 47 CFR § 51.505(e).

[15] See id.; see also *AT&T Communs. of Cal., Inc. v. Pac. Bell Tel. Co., 375 F.3d 894, 908 (9th Cir. 2004).*

[16] *See In re Mark Twain Rural Telephone Company*, Case No. TT-2001-139, Report and Order, at pages 22-23 (February 8, 2001).

were based on inputs or standards used by Regional Bell Operating Companies and were not necessarily representative of Petitioners' business practices.

T-Mobile previously agreed to a 3.5 cent rate with other Missouri rural ILECs with similar forward-looking costs as developed by Mr. Schoonmaker. T-Mobile has agreed to this 3.5 cent rate with Ozark Telephone Company, Seneca Telephone Company, and Goodman Telephone Company in TK-2004-0166, TK-2004-0167, and TK-2004-0165. The Commission has approved a 3.5 cent intraMTA rate in approximately 70 agreements between rural Missouri ILECs and wireless carriers.[17]

T-Mobile calculates a single average cost of $0.0074, less than eight-tenths of a cent per minute. T-Mobile states individual Petitioner rates should not be allowed to exceed this figure, although T-Mobile offered to accept a $0.015 rate. The cost that T-Mobile calculates for Petitioners appears to be *less than* the rates T-Mobile pays for traffic exchanged with SBC.

It is counter-intuitive to conclude that the forward-looking costs of Alma, Chariton Valley, Mid-Missouri, and Northeast would be less than those of SBC. Alma serves one rural exchange.[18] Chariton Valley serves about 8,600 customers in 18 rural exchanges.[19] Mid-Missouri serves about 4,200 in 12 rural exchanges.[20] Northeast serves about 8,800 customers in 14 rural exchanges.[21] On a combined basis, Petitioners serve about 22,000 customers in 45 exchanges, an average of about 2,000 per exchange. The Petitioners' costs to serve those exchanges would be at least as

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[17] *See* Petitioners' Motion in Limine, pp. 8-11 (filed July 11, 2005).
[18] Tr. at 128.
[19] Ex. 6, Sch. 10; Tr. at 106.
[20] Ex. 4, Sch. 10; Tr. at 83.
[21] Ex. 2, Sch. 10; Tr. at 47.

high as the costs that a Regional Bell Operating Company, such as SBC, would have to serve its exchanges.[22]

Mr. Schoonmaker's study was based upon the most widely used model for calculating forward-looking costs. The HAI model, while imperfect, has evolved and been subjected to a vast amount of peer review and refinement.[23] Mr. Conwell stated that the T-Mobile methodology was his own set of assumptions and interpretations of forward-looking costs.[24]

The 3.5 cent rate that Petitioners propose is reasonable. This rate is less than the forward-looking costs of each Petitioner as determined by the HAI model. This is the same rate T-Mobile has agreed to with Seneca, Goodman, and Ozark. This is the same rate that rural ILECs and other wireless carriers have agreed to in the overwhelming majority of approved traffic termination agreements in Missouri.

Also, the Arbitrator notes that in its July 5 response, T-Mobile asked the Arbitrator to dismiss Petitioners' request for an intraMTA rate. For support, T-Mobile stated that Section 252(b)(2) of the Act requires a petitioning party to provide "all relevant documentation" simultaneously with its petition. T-Mobile argues that because Petitioners did not submit cost studies with the petition, Petitioners violated Section 252(b)(2), and the Arbitrator should therefore dismiss Petitioners' claim.

The Arbitrator is unwilling to grant such a drastic remedy. Assuming *arguendo* that Petitioners violated Section 252(b)(2), the statute does not provide any remedy for

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[22] Ex. 8, pp. 18-19, 24; Ex. 9, pp. 8, 11, 15, 17, 21.; Tr. 167, lines 19-23.
[23] The HAI model was once known as the Hatfield model. See Tr. 171, lines 1-7.
[24] See Tr. pp. 217-219

that violation. The Arbitrator is unwilling to create a remedy, especially one as harsh as dismissing the claim entirely.

Decision: The Commission finds this issue in favor of Petitioners, and against T-Mobile.

8) Are Petitioners required to compensate T-Mobile for landline-to-mobile intraMTA calls?

Discussion:

The Arbitrator has only that authority which the Congress has expressly delegated to him.[25] The obligation to apply federal law applies even if state law precedent differs from federal law. The Eighth Circuit has stated: "We must defer to the FCC's view . . . . The new regime for regulating compensation in this industry is federal in nature, and while Congress has chosen to retain a significant role for the state commissions, *the scope of that role is measured by federal, not state law.*"[26] The

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[25] As a federal district court in Missouri has held, "[a]bsent Congressional authority, the PSC would have no right to participate in the unique dispute resolution process devised by Congress, in which the PSC is authorized to arbitrate disputes between private telecommunication companies." *AT&T* v. *Southwestern Bell,* 86 F. Supp. 2d 932, 946 (W.D.Mo.1999)

[26] *Southwestern Bell* v. *FCC,* 225 F.3d 942, 946-47 (8th Cir. 2000)(emphasis added; internal citations omitted); *see also Atlas Telephone* v. *Oklahoma Corporation Comm'n,* 400 F.3d 1256, 1263 (10th Cir. 2005)("These FCC determinations have since been codified as regulations *binding on* the industry and *state commissions.*")(emphasis added).

federal courts have jurisdiction over any appeal of arbitration decisions by state commissions.[27]

With these precepts in mind, the Arbitrator resolves this issue in T-Mobile's favor. As local exchange carriers, Petitioners have the federal statutory "duty to establish *reciprocal* compensation arrangements for the transport and termination of telecommunications."[28] FCC implementing rules, affirmed on appeal,[29] define the scope of this duty. Specifically, FCC Rule 51.701 provides in relevant part:

> (a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.
>
> (b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means:
>
> * * *
>
> (2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in Sec. 24.202(a) of this chapter.[30]

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[27] *See* 47 U.S.C. § 252(e)(6)("In any case in which a state commission makes a determination under this section, any party aggrieved by such determination may bring an action in the appropriate Federal district court."). *See also Iowa Network Services* v. *Qwest,* 363 F.3d at 692 ("Once the agreement is either approved or rejected by the [state commission], any aggrieved party is directed by Congress to bring an action in federal court to challenge the [state commission's] determination that the agreement is, or is not, in compliance with §§ 251 and 252."); *id.* at 693-94 ("Congress gave the authority to interpret § 251(b)(5) to the federal courts."). Indeed, Congress has provided that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." 47 U.S.C. § 252(e)(4).

[28] 47 U.S.C. § 251(b)(5)(emphasis added). The obligation of CMRS carriers to pay reciprocal compensation is instead based on FCC rules. *See* 47 U.S.C. § 20.11(b)(2)("A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.").

[29] *See Iowa Utilities Board* v. *FCC,* 120 F.3d 753, 800 n.21 (8th Cir. 1997). Incumbent LECs chose not to challenge the Eighth Circuit's affirmance of the FCC's LEC-CMRS interconnection rules in their appeal to the Supreme Court. *See AT&T* v. *Iowa Utilities Board,* 525 U.S. 366.

[30] 47 C.F.R. § 51.701(a), (b)(2).

Although federal appellate courts have held that the "mandate expressed in these provisions is clear, unambiguous, and on its face admits of no exceptions,"[31] Petitioners nonetheless ask the Arbitrator to create a new exception. Specifically, the claim that they should be excused from paying reciprocal compensation for intraMTA traffic they deliver to interexchange carriers ("IXCs"). But the Arbitrator may not rewrite or ignore FCC rules.

The Arbitrator addressed this disputed issue in the August 3, 2005 Limine Order:

> 47 USC 251(b)(5) imposes upon local exchange carriers the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. For purposes of applying reciprocal compensation, 47 CFR 51.701(b)(2) defines telecommunications traffic in relevant part as that "exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area. *The MTA's geographic boundary, and nothing else, determines whether reciprocal compensation applies.*

August 3 Order, at (emphasis added). Every federal court that has considered the issue has reached the same conclusion as the Arbitrator.[32] The Eighth Circuit case that Petitioners cite has no bearing on an arbitration case; that case did not involve an LEC-wireless carrier interconnection and compensation. It was merely an appeal of an FCC rulemaking that entitled IXC's to pay access charges based on TELRIC.[33]

Decision: The Arbitrator finds this issue in favor of T-Mobile, and against Petitioners.

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[31] *Atlas*, 400 F.3d at 1264.

[32] *See id.; see also* WWC License v. Anne C. Boyle, et al., No. 4:03CV3393, Slip op. at 5-6 (D. Neb., Jan. 20, 2005); See Rural Iowa Independent Telephone Ass'n v. Iowa Utilities Board, No. 4:02-cv-40348; 3 Rivers Telephone v. U.S. WEST, 2003 U.S. Dist. LEXIS 24871 *67.

[33] *See Comptel v. FCC*, 117 F.3d 1068, 1072-73 (8th Cir. 1997).

10) If T-Mobile does not measure landline-to-mobile traffic, should the formula T-Mobile proposes for determining such landline-to-mobile traffic, which takes the volume of mobile to landline traffic, divides it by 65%, and then multiplies that result by 35%, be used to determine the amount of landline-to-mobile intraMTA traffic?

Discussion:

T-Mobile asks the Arbitrator to require the parties to compute the amount of compensation flowing in each direction and make only one payment of the net amount owed, rather than multiple payments. Petitioners have no competing proposal, as they assert that there should be no compensation from wireline to wireless carriers.

The keystone of net billing is that compensation must be reciprocal; that is, the Petitioners will pay T-Mobile for terminating land-to-mobile traffic, and T-Mobile will pay the Petitioners for terminating mobile-to-land traffic. The parties would determine the net amount of the compensation, and make one payment. Recognizing that mobile-to-land traffic might regularly exceed land-to-mobile traffic, T-Mobile would pay the net amount to the LEC each month.

The way that the net billing would work is as follows: After the wireless to landline interMTA traffic is calculated, the interMTA traffic will be subtracted from the total traffic on the SBC trunk to arrive at the total intraMTA traffic. Then, 65% of that total intraMTA traffic can be allocated to T-Mobile, 35% to the proper Petitioner, and the difference net billed.

As Mr. Pruitt testified, net billing is "an industry standard mechanism for capturing the balance of traffic ... while reducing the administrative burden of cross-billing."[34] The mechanism is simple, as explained by Mr. Pruitt:

> As indicated in Section 5.1.3 of T-Mobile's proposed Traffic Termination Agreement, the LEC would determine how much T-Mobile owes it from terminating traffic sent by T-Mobile, subtract the amount its [sic] owes T-Mobile for terminating LEC-originated traffic to T-Mobile customers, and delivering [sic] a payment to T-Mobile for their difference. This would require a single payment every month, rather than a possibility of multiple payments between the parties.[35]

Mr. Pruitt testified that T-Mobile's proposal to use a 65% measure for the T-Mobile share of traffic generated between it and the LEC is "a standard that's commonly used throughout the industry."[36] The amount paid would depend on the volume of traffic and the rate paid for intraMTA termination (Issue 7).

Net billing is difficult to question, once the issue of reciprocal compensation has been resolved. To reduce the number of bills crossing between the parties, and to foster cooperation in determining compensation owed, net billing is the best solution.

Petitioners have not presented any proposal that would capture reciprocal compensation owed to T-Mobile for intraMTA land-to-mobile calls. Also, they have not countered the reasonable balance of traffic that T-Mobile proposed in its Final Offer of 65% mobile-originated and 35% land-originated. The only portion of T-Mobile's proposed billing language the Petitioners have specifically addressed is the definition of certain billing records (the CTUSR, or Cellular Transiting Usage Summary Report) that SBC provides to T-Mobile, upon which the volume of mobile-to-land traffic may be

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[34] Ex. 16, p. 24 lines 16-18.
[35] Ex. 16, p. 24 line 20 - p. 25 line 3.
[36] Tr. 256 lines 23-24.

based for billing purposes.[37] Petitioners ask that the CTUSR definition be stricken from the TTA because SBC does not currently provide them with these records. The Petitioners misread the proposed language, which allows for flexibility. T-Mobile's proposed net billing language allows the parties to use traffic volume information "identified by CTUSR records plus records of intraMTA calls handed off to IXCs *or other mutually acceptable calculation.*"[38] This language allows the parties to identify and agree upon the appropriate sources for determining the volume of mobile-to-land, intraMTA calls delivered to each Petitioner for termination.

Decision: The Arbitrator decides this issue in favor of T-Mobile, and against Petitioners.

12) Depending upon the resolution of Issue 8, should the TTAs include an explicit statement that the compensation obligation for intraMTA traffic is reciprocal and symmetrical?

Discussion:

Much of the discussion with respect to Issue 8 also applies to Issue 12. The Petitioners owe compensation to T-Mobile to terminate their traffic, just as T-Mobile owes compensation to Petitioners for mobile-to-landline IXC traffic. Petitioners have a federal statutory obligation to pay reciprocal compensation – whereby "*each* carrier [recovers its] costs associated with the transport and termination on each carrier's

[37] *See* Pet. Final Offer Mem. at 24-25.
[38] *See* T-Mobile Consolidated Response to Petitions for Arbitration, Exhibit, p. 7 (emphasis added).

network facilities of [intraMTA] calls that originate on the network facilities of the *other* carrier."[39]

1. The Petitioners' reciprocal compensation obligation applies to all intraMTA traffic, whether T-Mobile interconnects with them directly or indirectly.

The type of interconnection that carriers use has nothing to do with the compensation the carriers must pay each other. A carrier's interconnection obligations are set forth in Section 251(a)(1) of the Act; a LEC's reciprocal compensation obligation to transport and terminate traffic is in Section 251(b)(5). Similarly, FCC rules define "interconnection" as "the linking of two networks for the mutual exchange of traffic. *This term does not include the transport and termination of traffic.*"[40]

Section 251(b)(5) requires Petitioners to establish "*reciprocal* compensation arrangements for the . . . termination of telecommunications."[41] FCC rules define "termination" as "the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises."[42] In other words, the Petitioners must compensate T-Mobile for costs incurred in terminating intraMTA traffic originating on the Petitioners' networks. Ordinarily, wireless carriers charge a reciprocal compensation rate that is equal to the rate the incumbent carrier charges it for call termination.[43]

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[39] 47 U.S.C. § 252(d)(2)(A)(i)(emphasis added).

[40] *See* 47 C.F.R. § 51.5 (definition of "interconnection")(emphasis added). According to the FCC, "interconnection is direct when the carrier's facilities or equipment is attached to another carrier's facilities or equipment," and "indirect when the attachment occurs through the facilities or equipment of an additional carrier." *Wireline Services Offering Advanced Telecommunications Capability,* 15 FCC Rcd 17806, 17805 n.198 (2000).

[41] 47 U.S.C. § 251(b)(5)(emphasis added).

[42] 47 C.F.R. § 51.701(d).

[43] 47 C.F.R. § 51.711(a)("Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.").

As discussed above, these rules apply to all intraMTA traffic exchanged between a LEC and a wireless carrier. Nothing in the FCC rules limits an ILEC's reciprocal compensation obligation to when a wireless carrier connects directly to the incumbent's network. The Tenth Circuit has already rejected Petitioners' argument, holding that an "RTC's obligation to establish reciprocal compensation arrangements with the CMRS provider in the instance case is not impacted by the presence or absence of a direct connection."[44]

2. The Petitioners' position on transport costs for intraMTA land-to-mobile traffic conflicts with FCC rules. Historically, wireless carriers and rural LECs have found it most efficient to interconnect indirectly with each other. This is demonstrated by the facts of this case, where the Petitioners' witnesses admitted of only one direct interconnect with a wireless carrier, and that was the direct interconnection between Chariton Valley and its wholly-owned subsidiary, Chariton Valley Wireless.[45] In this regard, one of the Petitioners' own trade associations has told the FCC that "[s]ince all carriers in a service area or market must at some point connect to the area tandem, there is efficiency in utilizing the tandems to route calls to other carriers instead of building a direct connection to each carrier": "As a practical matter, the most feasible and cost-effective option for most rural ILECs is to use the RBOC's tandem for transiting functions."[46]

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[44] *Atlas,* 400 F.3d at 1268.

[45] Tr. 116, lines 5-22.

[46] National Telecommunications Cooperative Association, *Bill and Keep: Is It Right for Rural America?,* at 41.

Section 251(b)(5) imposes on the Petitioners the duty to establish "*reciprocal* compensation arrangements for the transport . . . of telecommunications."[47] FCC rules define "transport" as the transmission of traffic "from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC."[48] If a rural LEC and wireless carrier were to interconnect directly, the interconnection point ordinarily would be located at the edge of the rural LEC's network. Under a rural LEC's reciprocal compensation obligation, which applies to both "transport and termination," the rural LEC would be responsible for that portion of the facility to the extent it is used for land-to-mobile traffic – just as the wireless carrier would be responsible for that portion of the facility to the extent it is used for mobile-to-land traffic. As the FCC General Counsel explained recently to a federal appellate court:

> Under current intercarrier compensation rules, then, when a wireless customer calls a rural LEC customer, the wireless carrier is responsible for transporting the call and paying the cost of this traffic. And, conversely, when a rural LEC customer calls a wireless customer, the rural LEC is responsible for transporting the call and paying the cost of this transport.[49]

The FCC has made clear that the cost of a direct interconnection facility is to be shared between the two carriers:

> If the providing carrier provides two-way trunks between its network and the interconnecting carrier's network, then the interconnecting carrier should not have to pay the providing carrier a rate that recovers the full cost of those trunks. These two-way trunks are used by the providing carrier to send terminating traffic to the interconnecting carrier, as well as by the interconnecting carrier to

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[47] 47 U.S.C. § 251(b)(5)(emphasis added).

[48] 47 C.F.R. § 51.701(c).

[49] Brief for Federal Communications Commission, *United States Telecom Ass'n, et al.* v. *FCC,* Nos. 03-1414, 1443, at 35 (D.C. Cir., filed July 9, 2004).

> send terminating traffic to the providing carrier. Rather, the interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send terminating traffic to the providing carrier.[50]

The Tenth Circuit has ruled that the "RTCs' argument that CMRS providers must bear the expense of transporting RTC-originating traffic on the SWB network must fail."[51] The Petitioners' own trade association has stated that "the carrier that originates the call will pay for the transiting function."[52] If rural LECs must bear the cost of transport for land-to-mobile calls with indirect interconnection, it necessarily follows that they must bear the cost of transport for land-to-mobile calls when direct interconnection is utilized.

Decision: The Arbitrator finds this issue in favor of T-Mobile, and against Petitioner.[53]

16) Do the Petitioners have the right to discriminate against T-Mobile by requiring their customers to dial 1+ to reach all T-Mobile customers, including those with telephone numbers in the same locale?

Discussion:

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[50] *Local Competition Order,* 11 FCC Rcd 15499, 16028 ¶ 1062 (1996). *See also id.* at 16027 ¶ 1062 ("The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility."); 47 C.F.R. § 51.709(b)("The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnection carrier to send traffic that will terminate on the providing carrier's network.").

[51] *Atlas Telephone* v. *Oklahoma Corporation Comm'n,* 400 F.3d at 1267, n.11.

[52] *Supra* note 46, at 40.

[53] The Arbitrator notes that the compensation will be reciprocal, but may not be symmetrical, because the compensation Petitioners and T-Mobile owe each other may not be exactly identical.

What T-Mobile proposes is nothing more than an abstract statement of law. In the parties' Decision Points List, they offer no proposed language to the interconnection agreement. The Arbitrator will not rule on this issue. T-Mobile may later file a complaint if it believes the Petitioners are unlawfully discriminating against it.

Decision: The Arbitrator will not rule on this issue, as the parties propose no language for the interconnection agreement.