

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

In the Matter of the Application of Southwestern)	
Bell Telephone Company, d/b/a AT&T Missouri,)	
For Approval of an Interconnection Agreement)	Case No. IK-2013-0394
Under the Telecommunications Act of 1996 with)	
365Wireless, LLC)	

**Application to Intervene,
Opposition To Certain Provisions of Interconnection Agreement,
and Request for Hearing**

Come now Missouri local exchange carriers Alma Communications Company d/b/a Alma Telephone Company (Alma), Chariton Valley Telephone Corp. (“CV Telephone”), Chariton Valley Telecom Corporation (“CV Telecom”), Choctaw Telephone Company (Choctaw), Otelco Mid-Missouri LLC (“Otelco”), and MoKan Dial Inc. (MoKan), collectively referred to herein as “Intervenors”, pursuant to the Commission’s February 14, 2013 Order Directing Notice, Setting Intervention Deadline, and Making 365 Wireless a Party, and hereby apply to intervene in opposition to certain provisions of the interconnection agreement proposed to be approved herein (“Agreement”), and request hearing therefore.

Introduction

The Telecommunications Act of 1996 authorized the Missouri Public Service Commission (Commission) to reject all or any portion of an interconnection agreement that discriminates against a telecommunications carrier that is not a party to the agreement, or if the implementation of that agreement or portion is not consistent with the public interest, convenience, or necessity.

Certain provisions of the proposed Agreement address traffic originated by or terminating to carriers that are not party to the agreement. In Missouri, experience has shown that non-party carriers have the real potential to be adversely impacted by interconnection agreements between two carriers that purport to address traffic originated by or terminating to non-party carriers. This was particularly true in the Halo Wireless experience, where Halo used its interconnection with AT&T Missouri to terminate traffic that was subject to intrastate and interstate access tariffs without paying appropriate compensation. It appears that 365 Wireless may have a relationship with a provider terminating traffic not properly within the ambit of a CMRS interconnection agreement. Intervenors are concerned about repeating the Halo Wireless experience.

These provisions have been shown to operate to the prejudice of Intervenors, depriving them of property rights, and requiring them to expend moneys in litigation before this Commission and other tribunals in order to attempt to avoid such prejudice. Such “Third Party Carrier” and “transit traffic” provisions should no longer be permitted in Missouri. Historically these provisions have not been adhered to, and wireless carriers have sent terminating traffic to third party carriers without first establishing an agreement for local traffic, and without paying local or access compensation, as appropriate. The problems resulting from non-compliance with the Third Party Carrier and transit traffic provisions has been demonstrated by years of Commission proceedings, state and federal court litigation, including the recent Halo litigation.

As a result, Intervenors and similarly situated carriers have lost great sums of intercompany compensation they were entitled to receive, and have been forced to expend time and money to enforce their rights. The Commission, Commission Staff, and the Office of Public Counsel have been required to expend resources unnecessarily. In the process compliance with

and enforcement of the Commission's Enhanced Record Exchange Rule has been frustrated and delayed.

Summary of Relief Requested

The provisions of the interconnection agreement that address Third Party Carriers, or contain Transit traffic provisions, including but not limited to, General Terms and Conditions 2.144 and 34.1, and the provisions of Attachment 02 Sections 4-12 that contain or address similar provisions, should be rejected, or the entire Agreement should be rejected, or that 365 Wireless be directed not to utilize the offending provisions of the interconnection agreement until agreements between 365 Wireless and each Intervenor has been approved and effective.

Allegations

1. Alma is a Missouri corporation with its principal office and place of business located at:

113 S. County Road
Alma, MO 64001

2. CV Telephone is a Missouri corporation with its principal office and place of business located at:

1213 East Briggs Drive
Macon, MO 63552

3. CV Telecom is a Missouri corporation with its principal office and place of business located at:

1213 East Briggs Drive
Macon, MO 63552

4. Choctaw is a Missouri corporation with its principal office and place of business located at:

112 South Broadway
Louisburg, KS 66053

5. Otelco is a Missouri corporation, and a wholly-owned corporate division of Otelco, Inc., with its principal office and place of business located at:

215 Roe Street
Pilot Grove, MO 65276

6. MoKAN DIAL, Inc. (MoKAN) is a Kansas corporation doing business in Missouri, with its principal office and place of business located at:

112 South Broadway
Louisburg, KS 66053

7. Intervenor are local exchange telecommunications companies certificated by the Commission to do business in Missouri.

8. Copies of Intervenor's certificates of good standing issued by the Missouri Secretary of State were filed with the Commission in Mo RLECs complaint docketed as IC-2011-0385 as Exhibits 1, 2, 3, 4, 5, 6, and 7, and are incorporated by reference.

9. Matters regarding this Application may be directed to the attention of:

Craig S. Johnson
Johnson and Sporleder, LLP
304 E. High, Suite 200
P.O. Box 1670
Jefferson City, MO 65102
(573)659-8734
(573)761-3587 fax
cj@cjaslaw.com

10. Intervenor are "telecommunications companies" providing "basic local telecommunications services" and "exchange access services," as those terms are defined by §386.020, to customers located in their service areas pursuant to a certificates of service authority

issued by the Commission.

11. Intervenor's are unaware of any pending action or final unsatisfied judgments or decisions issued against them from any state or federal agency or court within three years of the date of this complaint which involved customer service or rates. Intervenor's' annual reports to the Commission and assessment fees are not overdue.

12. To the best of Intervenor's knowledge, 365 Wireless' address and contact person for purposes of this proceeding is:

Tony Cash
General Counsel
365 Wireless, LLC
1500 Trotter's Cove
Atlanta, GA 30338
(404) 281-3377
tony@365wireless.net

13. To the best of Intervenor's knowledge, AT&T Missouri's address and contact person for service of process is:

Leo J. Bub, General Attorney
AT&T Missouri, One AT&T Center
Room 3518
St. Louis, MO 63101
(314) 235-2508
(314) 247-0014 fax
leo.bub@att.com

14. AT&T Missouri and 365 Wireless have entered into the "AT&T-22 State Two Way CMRS ICA" interconnection agreement (the "Agreement"), which must be approved by this Commission to become effective.

15. The Agreement contains transit traffic and Third Party Carrier provisions that will

affect carriers that are not parties to the agreement. Intervenor have been provided no notice or opportunity to review or comment upon such provisions prior to them being filed for approval. To date 365 Wireless has not requested interconnection agreement negotiations from Intervenor. If 365 Wireless intended to obtain interconnection agreements with Intervenor, it should have done so prior to the filing of the Agreement at issue.

16. Intervenor have interconnection, interconnection agreement, and intercompany compensation rates that are equal in dignity to those of AT&T Missouri. The Commission only has to look at the proposed interconnection agreement filed herein, 246 pages in length, to determine the scope and detail of potential contract provisions involved in an interconnection agreement negotiation.

17. Recognizing this complexity, the Telecommunications Act of 1996 provides for a 135-160 day negotiation period, followed by a possible subsequent mediation/arbitration period, before an interconnection agreement may be approved or rejected by a state public utility commission.

18. In the past approval of these third party and transit traffic provisions has resulted in Intervenor receiving traffic originated by CMRS providers, transited by AT&T Missouri, and terminated by Intervenor with no approved agreement in place between Intervenor and the CMRS provider covering such traffic. Receipt of such traffic is a result of the CMRS providers failing to comply with the “Third Party Carrier” and “transit” traffic provisions of the agreements, which ostensibly require them to obtain agreements with carriers such as Intervenor prior to sending them traffic. This failure to comply has been universal, or practically universal, since adoption of the Telecommunications Act of 1996. The provisions continue to be in the proposed

CMRS interconnection agreements, even though they have not been complied with.

19. Once a CMRS carrier fails to comply, traffic has been terminated to Intervenors and similarly situated carriers over the “LEC to LEC” network by AT&T Missouri as an originating tandem provider. Due to the limitations of the “LEC to LEC” network, Intervenors cannot stop the receipt of such traffic until and unless the provisions of the Enhanced Record Exchange Rule are complied with, which takes time, money, and the expenditure of Commission resources. Even when the traffic is stopped, Intervenors must then initiate litigation to collect for the inappropriate use of their networks. Successful collection requires the offending entity to still be present, viable, and solvent. Unfortunately this has not been the case, as most recently seen with Halo Wireless.

20. The use of CMRS interconnection agreements with such Third Party Carrier and Transit traffic provisions has resulted in Intervenors and similarly situated carriers losing their right to have an approved agreement in place prior to receipt of such traffic, loss of intercompany compensation for local traffic pursuant to such an agreement, loss of intercompany compensation for exchange access traffic pursuant to tariffs, and being forced to litigate to terminate the inappropriate use of their networks, then to attempt to collect for such use.

21. This unapproved, unauthorized, and unlawful use of Intervenors’ networks resulting from approval of such an interconnection agreement with Third Party Carrier and Transit provisions places Intervenors in an inferior position compared to AT&T Missouri, and therefore discriminated against Intervenors.

22. This unapproved, unauthorized, and unlawful use of Intervenors’ networks resulting from approval of such an interconnection agreement with Third Party Carrier and Transit

provisions places 365 Wireless in a superior position compared to other CMRS providers who now have approved traffic termination or interconnection agreements with Intervenors, and in a superior position to CMRS providers and interexchange carriers who pay Intervenors' terminating exchange access charges in compliance with approved interconnection agreements or tariffs.

23. Based upon the foregoing, all of which is contrary to the public interest, convenience, and necessity, Intervenors request that the offending provisions of the interconnection agreement be rejected, or that the entire Agreement be rejected, that 365 Wireless be directed not to utilize the offending provisions of the interconnection agreement until agreements between 365 Wireless and each Intervenor has been approved and effective, or for such other, further, or different relief as may be proper to avoid the harms set forth herein.

24. 47 USC 252 (e) (2) (A) authorizes this Commission, and gives this Commission the jurisdiction and discretion, to reject an interconnection agreement, or any portion thereof, adopted by negotiation under subsection (a) if it find that (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) if the implementation of such agreement or portion is not consistent with the public interest, convenience, or necessity.

PRAYER FOR RELIEF

WHEREFORE, Intervenors respectfully request that the Commission enter an order rejecting and terminating those provisions of the interconnection agreement between 365 wireless and AT&T Missouri that authorize and permit 365 wireless to send to AT&T Missouri, and AT&T Missouri to transit traffic destined to terminate on, over, or via Intervenor's networks, rejecting the entire agreement, that 365 Wireless be directed not to utilize the offending provisions of the

interconnection agreement until agreements between 365 Wireless and each Intervenor has been approved and effective, or for such other, further, or different relief as may be proper to avoid the harms set forth herein.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was electronically mailed this 1st day of March, 2013 to:

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