

# 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**

## **ORDER REGARDING MOTIONS IN LIMINE**

Issue Date: August 3, 2005

Effective Date: August 3, 2005

On July 11, 2005, Petitioners and Respondent filed motions in limine.<sup>1</sup> For the reasons given below, the Arbitrator will deny Petitioners' motion, and will grant Respondent's motion.

### **Petitioners**

Petitioners ask that the Arbitrator exclude any and all consideration of landline to wireless IXC provisioned calls. Petitioners state that the Commission has previously held that such calls are not within the scope of a reciprocal compensation agreement.

On July 15, T-Mobile replied in its pre-hearing legal memorandum. T-Mobile suggests that federal law conflicts with the Commission's prior rulings. T-Mobile cites to *Atlas Telephone Company v. Oklahoma Corporation Commission*, 400 F.3d 1256 (10th Cir. 2004). The Court of Appeals affirmed the OCC's determination that reciprocal

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<sup>1</sup> The Arbitrator consolidated Cases No. IO-2005-0468 through IO-2005-0471 into this case. The Petitioners are Alma Telephone Company, Chariton Valley Telephone Corporation, Mid-Missouri Telephone Company, and Northeast Missouri Rural Telephone Company.

obligations applied to all calls originated by rural telephone companies (RTCs) and terminated by a wireless provider within the same major trading area (MTA), without regard to whether those calls were delivered via an intermediate carrier.

The *Atlas* opinion is persuasive. 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. Therefore, the Arbitrator will deny Petitioners' motion in limine.

## **Respondent**

Respondent asks the Arbitrator to exclude any and all consideration of traffic volumes and compensation for traffic prior to January 13, 2005, the date on which Petitioners requested negotiations. Respondent states that the federal Telecommunications Act does not give the Arbitrator authority to rule on the issue, and that Petitioners also have a pending complaint concerning the same issue.

Petitioners argue that the Arbitrator does have authority, and should he not exercise it, then Petitioners will either amend their complaint case, or file a new complaint case, to address the issue. Petitioners further state that addressing the issue in this case, rather than relying on piecemeal litigation, would be efficient.

The Arbitrator finds the opposite to be true. Instead of the Arbitrator's ruling on pre-January 13, 2005 traffic under the extremely compressed schedule the

Telecommunications Act sets for arbitration cases, a complaint case would be a better vehicle for resolving this case. The parties' due process rights would be better protected by having more time, not less time, to argue their positions. The Arbitrator will grant Respondent's motion in limine.

**IT IS THEREFORE ORDERED:**

1. That Petitioners Motion in Limine to Exclude Discovery, Evidence, and Consideration of T-Mobile's Contention that Landline to Wireless Traffic Carried by Interexchange Carriers is Reciprocal Compensation Traffic is denied.
2. That Respondent's Application to Dismiss Certain Issues and for Rulings in Limine is granted.
3. That this order shall become effective on August 3, 2005.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Ronald D. Pridgin, Regulatory Law  
Judge and Arbitrator, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 3rd day of August, 2005.