

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

T-MOBILE USA, INC.,)	
)	
Complainant,)	
)	
vs.)	Case No. TC-2006-0486
)	
BPS TELEPHONE COMPANY, CASS)	
COUNTY TELEPHONE COMPANY,)	
CITIZENS TELEPHONE COMPANY)	
OF HIGGENSVILLE, CRAW-KAN)	
TELEPHONE COOPERATIVE, INC.)	
FIDELITY TELEPHONE COMPANY)	
GRAND RIVER MUTUAL TELEPHONE)	
COMPANY, GREEN HILLS TELEPHONE)	
CORPORATION, HOLWAY TELEPHONE)	
COMPANY, IAMO TELEPHONE)	
COMPANY, KINGDOM TELEPHONE)	
COMPANY, KLM TELEPHONE)	
COMPANY, LATHROP TELEPHONE)	
COMPANY, MARK TWAIN RURAL)	
TELEPHONE COMPANY,)	
)	
Respondents.)	

NOTICE

On June 27, 2006, T-Mobile filed language amending its complaint pursuant to Commission rules. For the convenience of the parties, T-Mobile attaches as an exhibit to this Notice the amended complaint which incorporates this language.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

/s/ Mark P. Johnson

Mark P. Johnson MO Bar #30740
Roger W. Steiner MO Bar #39586
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Telephone: (816) 460-2400
Facsimile: (816) 531-7545

ATTORNEYS FOR T-MOBILE USA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been mailed electronically this 28th day of June, 2006, to:

W. R. England, III
Brydon, Swearengen & England P.C.
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102-0456

Mr. Leo Bub
Attorneys for Southwestern Bell Telephone, L.P.
d/b/a/ AT&T Missouri
One SBC Center, Suite 3520
St. Louis, MO 63101

Mr. Gary Manderfeld
Embarq
6450 Sprint Parkway
Overland Park, KS 66251

Ms. Linda Gardner
Embarq - KSOPHN0204-2B503
6450 Sprint Parkway
Overland Park, KS 66251

Mr. John Van Eschen
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65102-2230

Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230

General Counsel
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102-2230

/s/ Mark P. Johnson
ATTORNEYS FOR T-MOBILE USA, INC.

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

T-MOBILE USA, INC.,)	
)	
Complainant,)	
)	
vs.)	Case No. _____
)	
BPS TELEPHONE COMPANY, CASS)	
COUNTY TELEPHONE COMPANY,)	
CITIZENS TELEPHONE COMPANY)	
OF HIGGENSVILLE, CRAW-KAN)	
TELEPHONE COOPERATIVE, INC.)	
FIDELITY TELEPHONE COMPANY)	
GRAND RIVER MUTUAL TELEPHONE)	
COMPANY, GREEN HILLS TELEPHONE)	
CORPORATION, HOLWAY TELEPHONE)	
COMPANY, IAMO TELEPHONE)	
COMPANY, KINGDOM TELEPHONE)	
COMPANY, KLM TELEPHONE)	
COMPANY, LATHROP TELEPHONE)	
COMPANY, MARK TWAIN RURAL)	
TELEPHONE COMPANY,)	
)	
Respondents.)	

**T-MOBILE FIRST AMENDED COMPLAINT AND
MOTION FOR EXPEDITED TREATMENT**

T-Mobile USA, Inc. ("T-Mobile"), pursuant to Commission Rules 240-2.070, 240-2.080(16) and 240-29.130(9), files this formal complaint against the 13 above-named rural local exchange carriers ("Rural LECs"). T-Mobile requests expedited resolution of this complaint pursuant to 240-29.130(9) and 240-2.080(16).

1. The Rural LECs have advised T-Mobile that, beginning on June 21, 2006, they intend to begin blocking calls made by T-Mobile's customers and thereby prevent their own customers from receiving these desired communications. Commission Rule 240-29.130(10) specifies that once a complaint such as this is filed, "the terminating carrier and originating tandem carrier

shall cease blocking preparations, pending the commission's decision." T-Mobile expects that the Rural LECs, AT&T-Missouri and Embarq, the tandem carriers that the Rural LECs seek to have implement their blocking request, will comply with the requirements of this Rule, including the cessation of blocking preparations pending resolution of this Complaint.

2. The question of the lawfulness of the state tariffs upon which the Rural LECs base their call blocking proposal is currently pending before the Court of Appeals for the Eighth Circuit.¹ Because that Court has jurisdiction over both the parties and the subject matter, on May 26, 2006, T-Mobile filed with that Court a motion to stay or enjoin the Rural LECs from blocking calls made by T-Mobile's customers. As of the time of this filing, T-Mobile does not believe that the Court of Appeals has acted on T-Mobile's motion. T-Mobile files this complaint to ensure that call blocking is not implemented, at least until the Court of Appeals has had an opportunity to rule on T-Mobile's motion.

3. Because T-Mobile believes that the federal courts now have jurisdiction over this matter, it did not immediately file this Complaint with the Commission. T-Mobile files this complaint so that by operation of 4 CSR 240-29.130(10) the terminating and originating tandem carriers will cease blocking preparations, pending the Commission's decision. This complaint will prevent the possible disruption of wireless service to T-Mobile's customers. There will be no negative effect on customers (T-Mobile's or the Rural LEC's customers) or the general public by the Commission's hearing of this complaint. To the contrary, the public interest is promoted when consumers can make and receive desired communications.

¹ See *VoiceStream PCS II Corp. d/b/a T-Mobile, et al. v. BPS Telephone Co., et al.*, Appeal No. 05-4377 (8th Cir.).

Compliance with Commission Rule 240-2.070(5)

4. T-Mobile states as follows in compliance with 4 CSR 240-2.070(5):

(a) T-Mobile files this Complaint and relevant contact information includes:

Dan Menser, Esq.
Dan Williams, Esq.
Teri Ohta, Esq.
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Telephone: 425-383-4000
Facsimile: 425-383-4840
E-mail: ***dan.williams@t-mobile.com***
teri.ohta@t-mobile.com

and

Mark P. Johnson, Esq.
Roger W. Steiner, Esq.
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: 816-460-2400
Facsimile: 816-531-7545
E-mail: ***mjohnson@sonnenschein.com***
rsteiner@sonnenschein.com

(b) The Respondents are the following 13 Rural LECs:

BPS Telephone Company
Cass County Telephone Company
Citizens Telephone Company of Higginsville
Craw-Kan Telephone Cooperative, Inc.
Fidelity Telephone Company
Grand River Mutual Telephone Corporation
Green Hills Telephone Corporation
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Mark Twain Rural Telephone Company

(c) Counsel for the Rural LECs, by letter dated May 12, 2006 (*see* Exhibit A), notified T-Mobile that beginning on June 21, 2006, the Rural LECs intend to

block calls made by T-Mobile customers who attempt to call customers served by any of the Rural LECs. The Rural LECs state they are taking this drastic action because T-Mobile has not paid amounts they claim are due under their wireless termination tariffs that became void under federal law over a year ago. The Rural LECs are pursuing this action even though the very lawfulness of their tariffs is currently pending in *VoiceStream PCS v. BPS Telephone Co, et al.*, No. 05-4377 (8th Cir.). If the Eighth Circuit invalidates the tariffs, then there would be no amount due to the Rural LECs and, as a result, no basis for call blocking at all.

- (d) T-Mobile seeks a Commission ruling that the Rural LECs may not block traffic originated by T-Mobile's customers. The public interest is certainly not served when customers cannot call each other because one or more carriers engages in call blocking. There is no reason for call blocking; the Rural LECs do not allege that T-Mobile does not have the financial resources to pay the amounts they claim T-Mobile owes; and, as the Rural LECs are well aware, T-Mobile is challenging the very lawfulness under federal law of the tariffs upon which they proposing to block customer traffic.
- (e) T-Mobile has not contacted counsel for the Rural LECs regarding this blocking notice since receipt. The parties have repeatedly attempted to negotiate a settlement to their differences, but without success. The Rural LECs' notice of blocking makes a settlement of past disputes even more difficult.
- (f) If this Commission has jurisdiction over the matter, it is pursuant to 4 CSR 240-29.130(9), which provides in relevant part: "If an originating carrier . . . wishes to dispute a proposal whereby some or all of its LEC-LEC traffic would be blocked .

. . . , the originating carrier . . . should immediately seek action by the commission through the filing of a formal complaint. . . . Such a complaint shall include a request for expedited resolution.”²

- (g) T-Mobile is not an association.

Background and Executive Summary

5. T-Mobile and the Rural LECs recently completed an arbitration which governs the parties’ exchange of traffic since April 29, 2005, the date the Rural LECs finally chose to invoke the negotiation procedures that Congress established for intercarrier compensation.³ The parties are currently paying each other pursuant to the FCC’s interim compensation rules; they will soon submit for Commission approval interconnection agreements consistent with the arbitration order, and once the Commission approves those agreements, the parties will begin paying each other at the cost-based rates that the Commission established in the arbitration proceeding. The interconnection agreements were submitted to the Commission on June 22, 2006. Upon Commission approval of the interconnection agreements, T-Mobile will pay the agreed rates going forward. In addition, T-Mobile has been paying the RLECs at the FCC interim rates, and will pay true-up compensation back to May, 2005 to the extent the payments made based on the interim rates are less than the payments which would have been made under the cost-based rates in the interconnection agreements. For those separate rural companies that were part of the arbitration in Case No. IO-2005-0468 *et al.* (Consolidated), T-Mobile is compensating those separate rural companies at the rates which the Commission approved in the interconnection

² T-Mobile does not believe that the Enhanced Record Exchange Rules apply to wireless carriers. Nevertheless, because the Rural LECs have invoked these Rules, it appears that T-Mobile has no choice but to follow the procedures contained in the Rules in order to prevent T-Mobile’s customers from being affected by the blocking. In submitting this complaint under these circumstances, T-Mobile is not conceding the Commission’s jurisdiction over the subject matter, but finds itself with no other available option.

agreements, and has paid compensation for the period prior to the effective date of those interconnection agreements. The disputes concerning past compensation with those separate rural companies have been resolved and T-Mobile has made all settlement payments.

6. By letter dated May 12, 2006, the Rural LECs notified T-Mobile that, beginning June 21, 2006, they intend to block calls made by T-Mobile customers placed to customers served by the Rural LECs because T-Mobile has not paid for certain mobile-to-land traffic that the Rural LECs terminated before April 29, 2005. *See* Exhibit A. The Rural LECs invoked the Commission's Enhanced Record Exchange Rules for the drastic action they want to pursue.

7. The Rural LECs have never explained why they are pursuing this call blocking proposal at this time. The amounts in question are disputed by the parties, and litigation over the lawfulness of their tariffs remains pending. The Rural LECs do not appear concerned about T-Mobile's ability to pay the amounts in dispute if T-Mobile is not successful in its appeal, given their own description of T-Mobile as "a large multinational carrier."⁴ The Rural LECs obviously are not pressed to obtain the amounts in dispute since they waited over nine months to invoke the Enhanced Record Exchange Rules. Indeed, at first blush, their blocking proposal would appear to be disadvantageous, since they would be spending money (to implement blocking) so they do not receive reciprocal compensation from T-Mobile.

8. On further analysis, however, the Rural LECs' intentions become apparent. The only intervening development of note is the Commission's March 23, 2006 arbitration order between the parties. The Rural LECs intend to challenge this order, having already appealed the order to

³ *See Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA*, Case No. TO-2006-0147 (March 23, 2006).

⁴ Appellees' Response in Opposition to T-Mobile's Motion for Injunction, Appeal No. 05-4377, at 12 (June 9, 2006)(filed with the 8th Circuit Court of Appeals). T-Mobile USA itself is a Delaware corporation that is wholly-owned by an international telecommunications company.

federal court.⁵ It appears that the Rural LECs believe that, as a result of the call blocking, T-Mobile will send its intraMTA traffic to an “IXC” for termination to the Rural LECs, in order to ensure that service to T-Mobile’s customers is uninterrupted. The Rural LECs presumably will then impose terminating access charges on this intraMTA traffic, which would be several times higher than the cost-based rates the Commission established in the arbitration order. In short, the Rural LECs are using call blocking as a means to avoid complying with the Commission’s arbitration order, and to obtain additional money that the Commission held that they are not entitled to receive when the calls originate and terminate within the same MTA.

9. There are many flaws with the Rural LECs’ blocking proposal;

- The Rural LECs propose to block T-Mobile’s interstate traffic in addition to its intrastate traffic. However, the Commission does not have any regulatory authority over interstate traffic. Thus, the Rural LECs cannot block any of T-Mobile’s interstate traffic until they first secure prior approval from the FCC, and absent a showing that they can accurately segregate interstate traffic from intrastate traffic, they cannot block any traffic without violating federal law.
- In any event, neither the Commission nor the Rural LECs have the legal authority to block any mobile-to-land traffic because such action would constitute entry regulation that Section 332(c)(3) of the Communications Act flatly forbids.
- The Enhanced Record Exchange Rules that the Rural LECs have invoked do not justify the proposed blocking because those rules do not apply to mobile-to-land traffic.
- The Rural LECs’ assumption – that they can impose access charges pursuant to their access tariffs for T-Mobile’s “IXC” traffic – is wrong. The FCC has repeatedly ruled that LECs may not impose access charges on intraMTA wireless traffic. Furthermore, FCC rules explicitly forbid the Rural LECs from assessing any charge for intraMTA mobile-to-land traffic, based on a tariff, including access tariffs.

⁵ The Rural LECs recently dismissed their appeal once it was pointed out to them that an appeal may not be filed until the Commission approves the arbitrated agreements, but it was made clear to T-Mobile that the Rural LECs intend on filing again once the arbitrated agreements are approved by the Commission.

10. T-Mobile requests that the Commission enter an order prohibiting the Rural LECs from implementing their call blocking proposal for traffic that predates the arbitration proceeding. The Commission has already ruled that the blocking of arbitration traffic for claims involving pre-arbitration traffic is not appropriate and is rather “better addressed in the context of a complaint case.”⁶ The Rural LECs’ rights are already protected by the complaint they have filed and, as noted, appeals of that complaint proceeding remain pending. The Commission should instruct the Rural LECs to let the legal process take its course. The Rural LECs, having invoked the complaint remedy, cannot now undermine that remedy while the appeals remain pending.

Argument

I. THE RURAL LECS MAY NOT BLOCK T-MOBILE’S TRAFFIC WITHOUT FIRST SECURING FCC APPROVAL OF THEIR BLOCKING PROPOSAL

11. A Commission order holding that the Rural LECs may not block T-Mobile’s mobile-to-land traffic would prevent them from blocking this traffic. But even if the Commission permits the Rural LECs to block T-Mobile’s traffic, they may not begin blocking until they first secure prior approval from the Federal Communications Commission (“FCC”).

A. The Rural LECs Must Secure FCC Approval Before Blocking Any T-Mobile Traffic

12. Some of the intraMTA mobile-to-land traffic that T-Mobile sends to the Rural LECs is interstate traffic – that is, the caller is located in a State other than the State of Missouri. The Rural LECs cannot distinguish between T-Mobile’s interstate calls from its intrastate calls.⁷

⁶ *Rural LEC/T-Mobile Arbitration Order*, TO-2006-0147, at 17 (March 23, 2006)(Issue No. 25).

⁷ Because wireless service is mobile, the Rural LECs cannot ascertain whether a T-Mobile call is interstate or intrastate based on the telephone number assigned to the wireless customer. For example, a wireless customer might be assigned a Kansas City number containing the 816 area code. But the Rural LECs do not know at the time of the call whether this customer is originating the call from Kansas City, Missouri, Kansas City, Kansas, New York City, San Francisco, or from some other location across the county.

Thus, if the Rural LECs were to begin blocking T-Mobile's traffic, they necessarily would block T-Mobile's interstate traffic as well.

13. This Commission, however, has no jurisdiction over interstate traffic, including the authority to permit carriers to block interstate traffic.⁸ Under State law, the Commission's authority is limited to intrastate telecommunications service, and does not extend to interstate telecommunications services.⁹ In addition, with certain exceptions not relevant here, the federal Communications Act recognizes State authority over intrastate communications only.¹⁰ Congress has determined instead to give the FCC exclusive authority over interstate communications.¹¹ As courts have uniformly held, "as to interstate and foreign communications, [FCC] jurisdiction is exclusive of state regulation commissions."¹²

14. Section 214(a) of the Communications Act, which applies to common carriers like the Rural LECs, provides in relevant part:

No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the [FCC] a certificate that neither the present nor future public convenience and necessity

⁸ By the same token, the Rural LECs' State wireless termination tariffs necessarily are limited in scope to intrastate traffic. Thus, these tariffs cannot be used to justify blocking of interstate traffic.

⁹ See Sections 386.030 and 386.250(2), RSMo.

¹⁰ See 47 U.S.C. § 152(b).

¹¹ See *id.* at § 152(a).

¹² *MCI v. AT&T*, 462 F. Supp. 1072, 1095 (N.D. Ill. 1978). See also *Crockett Telephone v. FCC*, 963 F.2d 1564, 1566 (D.C. Cir. 1992) ("The FCC has exclusive jurisdiction to regulate interstate common carrier services."); *Qwest v. Scott*, 2003 U.S. Dist. LEXIS 818 at *16 (D. Minn., Jan. 8, 2003) ("§ 152 of the Act vests in the FCC the exclusive authority to regulate interstate communications."); *id.* at * 30 ("The FCC's exclusive jurisdiction over interstate communications is established."); *AT&T v. PAB*, 935 F. Supp. 584, 590 (E.D. Pa. 1996) ("The FCC retains exclusive jurisdiction over interstate communication by wire or interstate transmission of energy by radio."); *AT&T v. People's Network*, 1993 U.S. Dist. LEXIS 21248 at *14 (D.N.J., March 31, 1993) ("The FCC retains exclusive jurisdiction over interstate communications."); *GTE Sprint v. Downey*, 628 F. Supp. 193, 194 (D. Conn. 1986) ("Congress charged the FCC with exclusive federal jurisdiction to uniformly regulate interstate transmissions or communications."); *AT&T v. Public Service Comm'n*, 625 F. Supp. 1204, 1208 (D. Wy. 1985) ("Exclusive FCC jurisdiction over interstate matters is well-established).

will be adversely affected thereby; except that the [FCC] may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section.¹³

15. The call blocking that the Rural LECs want to implement would constitute a “partial discontinuance, reduction, or impairment of service,” because their customers may no longer receive interstate calls from T-Mobile customers. Accordingly, the Rural LECs cannot implement their call blocking proposal without first following the procedures specified in Section 214(a) of the Communications Act – that is, they must secure FCC prior approval before blocking any of T-Mobile’s traffic.

B. In Any Event, The FCC Has Preempted States from Regulating How Wireless Carriers Route Their Mobile-to-Land Traffic

16. The Rural LECs will no doubt respond to the above argument by claiming they do not require FCC prior approval because they are not proposing any discontinuance, reduction, or impairment of service – even though their May 12, 2006 letter is explicitly labeled: **“Discontinuance of Service.”** Exhibit A at 1 (bold in original). Specifically, the Rural LECs will likely assert that they do not propose to block T-Mobile traffic altogether, but rather require T-Mobile to send its intraMTA traffic to an “interexchange carrier” (like AT&T) rather than to a local exchange carrier (like AT&T-Missouri) that provides transit services.¹⁴ This argument fails even if the Commission accepts the Rural LECs’ characterization of the facts. Neither the Rural

¹³ 47 U.S.C. § 214(a).

¹⁴ T-Mobile suspects that few, if any, IXC’s are connected directly to the Rural LECs’ networks. Thus, the traffic T-Mobile sends to an IXC, just like the traffic T-Mobile sends directly to AT&T-Missouri, is routed through AT&T-Missouri’s tandem switches before it is sent to the Rural LECs. The Rural LECs want AT&T-Missouri to block the mobile-to-land traffic that T-Mobile sends directly to AT&T-Missouri, but not the same mobile-to-land traffic that T-Mobile sends indirectly to AT&T-Missouri. As a practical matter, the Rural ILECs want to force T-Mobile to interconnect with AT&T-Missouri indirectly (*via* IXC) rather than directly.

LECs nor this Commission possess the authority to tell a wireless carrier holding a federal radio license how it must route its traffic.

17. At the outset, Congress has determined that wireless carriers may connect with terminating carriers either directly or indirectly.¹⁵ Under FCC rules, it is the competitive wireless carrier, not the incumbent carrier, that determines whether to connect directly or indirectly.¹⁶ Implicit within this right is the right to select one's preferred transit carrier. After all, as this Commission has recognized, it is the originating carrier that pays for transit services,¹⁷ and the originating carrier therefore has the right to choose its preferred transit carrier based on its "most efficient technical and economic choices."¹⁸

18. What the Rural LECs characterize as an "interexchange carrier" is not, in fact, an interexchange carrier for mobile-to-land traffic. With T-Mobile's "one-rate" plans, customers are charged the same rate whether a customer calls across the street or across the country. For these customers, T-Mobile does not provide a toll, or interexchange, service.¹⁹ Thus, although T-Mobile may choose as a transit provider a carrier the Rural LECs ordinarily classify as an "interexchange carrier," that carrier is actually providing a transit service, not an "interexchange service."

19. In fact, the FCC has already preempted States from regulating wireless carrier interconnection with other carriers, including when the interconnection is used for intrastate wireless services. Specifically, the FCC has declared that "separate interconnection

¹⁵ See 47 U.S.C. § 251(a)(1).

¹⁶ See 47 C.F.R. § 20.11(a). See also *Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996).

¹⁷ See *Alma/T-Mobile Arbitration Order*, Case No. IO-2005-0468, at 22-24 (Oct. 6, 2005).

¹⁸ *Local Competition Order*, 11 FCC Rcd at 15991 ¶ 997.

¹⁹ See 47 U.S.C. § 153(48).

arrangements for interstate and intrastate commercial mobile radio services are not feasible (*i.e.*, intrastate and interstate interconnection in this context is inseverable) and that state regulation of the right and type of interconnection would negate the important federal purpose of ensuring CMRS interconnection to the interstate network”:

Therefore, we preempt state and local regulations of the kind of interconnection to which CMRS providers are entitled.”²⁰

Notably, Congress specifically empowered the FCC to establish how wireless carriers should interconnect with other carriers, including for intrastate traffic, because it recognized that “the right to interconnect [is] an important one which the [FCC] shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.”²¹

Congress explicitly found:

[B]ecause commercial mobile services require a Federal license and the Federal Government is attempting to promote competition for such services, and because providers of such services do not exercise market power *vis-à-vis* telephone exchange service carriers and State regulation can be a barrier to the development of competition in this market, uniform national policy is necessary and in the public interest.²²

20. The FCC’s recent *Vonage Preemption Order* is instructive.²³ In that proceeding, States argued that the Communications Act “requires the [FCC] to recognize state jurisdiction over [VoIP] to the extent it enables ‘intrastate’ communications to occur.”²⁴ The FCC rejected this

²⁰ *Second CMRS Order*, 9 FCC Rcd 1411, 1498 ¶ 230 (1994).

²¹ *Id.* at 261 (1993). *See also Unified Inter-carrier Compensation Regime*, 16 FCC Rcd 9610, 9640 ¶ 84 (2001)(“The 1993 Budget Act significantly changed the regulatory framework for CMRS. In place of traditional public utility regulation, the 1993 Budget Act sought to establish a competitive *nationwide* market for commercial mobile radio services with limited regulation. CMRS interconnection was a significant element of this framework.”)(emphasis added); 47 U.S.C. §§ 152(b), 332(c)(1).

²² H.R. CONF. REP. NO. 103-213 at 481 (“incorporating herein by reference findings made in the Senate bill).

²³ *See Vonage Preemption Order*, 19 FCC Rcd 22404 (2004).

²⁴ *Id.* at 22418 ¶ 22.

argument and preempted states from asserting regulatory authority over VoIP services, holding the VoIP providers have “no means of directly or indirectly identifying the geographic location of a [VoIP] subscriber” and “no service-driven reason to know user’ locations”:

Furthermore, to require Vonage to attempt to incorporate geographic “end-point” identification capabilities into its service solely to facilitate the use of an end-to-end approach *would serve no legitimate policy purpose*. Rather than encouraging and promoting the development of innovative, competitive advanced service offerings, we would be taking the opposite course, molding this new service into the same old familiar shape.²⁵

It is noteworthy that in preempting States from regulating VoIP services, the FCC observed that VoIP is “similar to CMRS, which provides mobility, is offered as an all-distance service, and needs uniform treatment on many issues.”²⁶

21. In summary, because the Rural LECs cannot separate at the time of call termination interstate from intrastate mobile-to-land traffic, wireless traffic is jurisdictionally mixed, and the routing of mobile-to-land traffic is subject to the FCC’s exclusive jurisdiction. Accordingly, neither this Commission nor the Rural LECs may tell T-Mobile what transit carriers it may, or may not, use in the provision of its federally licensed services.

II. CALL BLOCKING WOULD CONSTITUTE IMPERMISSIBLE STATE ENTRY REGULATION

22. Congress has been clear in specifying that “no State . . . shall have any authority to regulate the entry of . . . any commercial mobile service.”²⁷ Federal courts have ruled that there can be “no doubt that Congress intended complete preemption”:

This clause completely preempted the regulation of rates and market entry. . . . Cases that involve the “entry of or the rates charged by any commercial mobile

²⁵ *Id.* at 22418-19 ¶ 23 and 22430-21 ¶ 25 (emphasis added). *See also id.* at 22422-23 ¶ 29.

²⁶ *Id.* at 22418 ¶ 22.

²⁷ 47 U.S.C. § 332(c)(3)(A)(emphasis added).

service or any private mobile service” are the province of federal regulators and courts.²⁸

The FCC has similarly observed that Section 332(c)(3) “completely preempts state entry regulation of CMRS.”²⁹ Importantly, Section 332(c)(3) bars any state regulation affecting wireless entry, even if the state action does not have the effect of prohibiting entry.³⁰

23. A Commission order authorizing the Rural LECs to block T-Mobile’s intrastate mobile-to-land traffic would constitute entry regulation that Section 332(c)(3) flatly prohibits. By blocking T-Mobile’s calls, the Rural LECs would be determining unilaterally the types of services that T-Mobile would be able to provide and the types of carriers it may utilize in the provision of its federally licensed services.

III. THE COMMISSION’S ENHANCED RECORD EXCHANGE RULES DO NOT APPLY TO MOBILE-TO-LAND TRAFFIC

24. The Rural LECs have invoked the Enhanced Record Exchange (“ERE”) rules for their proposed blocking:

This request to block traffic is being made pursuant to Missouri Public Service Commission Enhanced Record Exchange rule, 4 CSR 240-29.130 of Missouri’s Code of State Regulations.³¹

In fact, the ERE rules do not authorize the call blocking that the Rural LECs want to implement.

25. The ERE rules permit “terminating carriers” to ask an “originating tandem carrier” to block an originating carrier’s LEC-to-LEC traffic, “if the originating carrier has failed to fully

²⁸ *Bastien v. AT&T Wireless*, 205 F.3d 983, 986-87 (7th Cir. 2000).

²⁹ *Ohio CMRS Regulation Petition Denial Order*, 10 FCC Rcd 12427, 12432 ¶ 10 (1995).

³⁰ The entry regulation prohibition in Section 332(c)(3) is far more expansive than the entry prohibition contained in Section 253. Section 253 prohibits state rules that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). In stark contrast, Section 332(c)(3) prohibits “any” regulation involving entry – whether or not it has the effect of prohibiting the provision of any service.

³¹ Exhibit A at 6.

compensate the terminating carrier for terminating compensable traffic.”³² An “originating carrier” is defined as a “telecommunications company that is responsible for originating telecommunication traffic that traverses the LEC-to-LEC network.”³³ A “telecommunications company” is defined in the ERE rules as “those companies set forth by section 386.020(51), RSMo. Supp. 2004.”³⁴ However, Section 386.020 of the Missouri Revised Statutes specifically excludes from the definition of a “telecommunications company” those companies offering “radio communications and services and facilities when such services and facilities are provided under a licensed granted by the [FCC] under the commercial mobile radio services rules and regulations.”³⁵ In other words, mobile-to-land traffic of the sort T-Mobile sends to the Rural LECs is not encompassed within the ERE rules.

26. In summary, the Rural LECs’ invocation of the ERE rules is unavailing because those rules, on their face, do not apply to mobile-to-land traffic, including the T-Mobile traffic they seek to block.

IV. THE COMMISSION CANNOT APPROVE THE LECS’ BLOCKING PROPOSAL BECAUSE THE LECS CANNOT IMPOSE ACCESS CHARGES FOR INTRAMTA MOBILE-TO-LAND TRAFFIC

27. As discussed above, the Rural LECs will almost certainly claim that they do not propose to block T-Mobile’s intraMTA mobile-to-land traffic, but only require T-Mobile to route these calls to an “interexchange carrier.” The Rural LECs undoubtedly expect to impose access

³² 4 CSR 240-29.130(2). The ERE rules raise substantial issues of constitutional due process, since the rules appear to authorize call blocking without any proof that the carrier whose traffic would be blocked sent the traffic claimed to support the blocking. This Commission can avoid this constitutional issue by holding that the Rural LECs cannot block T-Mobile’s traffic.

³³ 4 CSR 240-29.020(29).

³⁴ 4 CSR 240-29.020(34).

³⁵ Section 286.020, RSMo.

charges on these IXC's for terminating this intraMTA mobile-to-land traffic pursuant to their access tariffs.

28. However, the FCC has ruled, again and again, that LECs may not assess access charges for intraMTA mobile-to-land traffic:

- “[W]e will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5). . . . [W]e conclude that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5). . . . Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.”³⁶
- “We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties’ locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges.”³⁷
- “The Commission also held that reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA).”³⁸
- “LEC-CMRS interconnection for calls that originate and terminate in the same MTA (as of the start of a call) are governed by section 251, and are subject to reciprocal compensation.”³⁹
- “The term ‘non-access traffic’ means any telecommunications traffic that is . . . exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area (MTA).”⁴⁰

The Missouri Supreme Court has agreed: LECs may not impose access charges for terminating intraMTA mobile-to-land traffic.⁴¹ Thus, the Rural LECs may not impose access charges on this

³⁶ *Local Competition Order*, 11 FCC Rcd 15499, 16014 ¶ 1036 (1996).

³⁷ *Id.* at 16016 ¶ 1043.

³⁸ *ISP Remand Order*, 16 FCC Rcd 9151, 9173 ¶ 47 (2001).

³⁹ *Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9642-43 ¶ 91 (2001).

⁴⁰ *Small Entity Compliance Guide: Reciprocal Compensation Arrangements Between LECs and CMRS Providers*, 20 FCC Rcd 12158 (July 14, 2005).

intraMTA traffic even though it is handled by a carrier that they would ordinarily classify as an “IXC.”

29. Furthermore, the Rural LECs are prohibited by governing FCC rules from assessing any charges for intraMTA traffic pursuant to any tariff. FCC Rule 20.11(d) provides unequivocally:

Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio services providers pursuant to tariffs.⁴²

As discussed above, T-Mobile’s intraMTA traffic is not subject to access charges. Traffic that T-Mobile may route to a carrier the rural LECs ordinarily classify as an “IXC” is not interexchange traffic, but rather intraMTA traffic subject to reciprocal compensation. While the Rural LECs do not propose to block intraMTA traffic that T-Mobile routes through an IXC, if they are going to charge for terminating this traffic, they can charge a rate no higher than the cost-based rates the Commission established in its recent arbitration order.

30. The Rural LECs do not have the systems in place to distinguish between different kinds of “IXC traffic” – that is, separate T-Mobile’s intraMTA mobile-to-land traffic routed through an “IXC” (for which charges may be no higher than the arbitrated rates) from other traffic they receive from an “IXC” (that may lawfully be subject to their access charge tariffs). The Commission certainly cannot permit the Rural LECs to block T-Mobile’s intraMTA traffic that it sends directly to AT&T-Missouri and, in the process, permit them to begin violating federal law by assessing access charges on the intraMTA traffic that T-Mobile instead sends to an “IXC.” This is yet another reason why the Commission should not permit the Rural LECs to block T-Mobile’s traffic.

⁴¹ See *State ex rel. Alma Telephone v. Missouri Public Service Comm’n*, 183 S.W.2d 575, 578 (Mo. Sup. Ct., 2006).

⁴² 47 C.F.R. § 20.11(d).

V. THE COMMISSION'S ENHANCED RECORD EXCHANGE RULES ONLY APPLY PROSPECTIVELY.

31. The Commission's ERE rules were effective July 30, 2005. The traffic at issue in this complaint (March 2001 through April 2005) predates the effective date of the rules. The general rule of construction in Missouri is that rules are deemed to operate prospectively only. See St. Louis Police Officers' Association v. Sayad, 685 S.W.2d 913, 917 (Mo. App. 1984). By contrast, procedural rules operate retrospectively, unless a contrary intent is evidenced in the rule. Id. 4 C.S.R. 240-29.130 is not a procedural rule. It establishes a new right for certain carriers to request the blocking of traffic. Because the ERE rules are not procedural rules, they operate prospectively only and cannot apply to traffic at issue before the effective date of the ERE rules.

Conclusion

32. For the foregoing reasons, T-Mobile respectfully asks the Commission to

- (a) On or before June 21, 2006, rule that the Rural LECs, AT&T Missouri, and Embarq are prohibited from blocking pending a hearing of the Commission regarding the issues contained herein; and
- (b) Rule that section 214(a) of the Communications Act prohibits any discontinuance of service and that the FCC has exclusive jurisdiction over blocking of CMRS traffic;
- (c) Or, in the alternative, that the amounts claimed by the Rural LECs are now subject to litigation, are not due until that litigation is finally adjudicated and therefore the Rural LECs have no authority to block T-Mobile's traffic; and
- (d) For such other relief as the Commission deems proper.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

/s/ Mark P. Johnson

Mark P. Johnson MO Bar #30740

Roger W. Steiner MO Bar #39586

4520 Main Street, Suite 1100

Kansas City, Missouri 64111

Telephone: (816) 460-2400

Facsimile: (816) 531-7545

ATTORNEYS FOR T-MOBILE USA, INC.