

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

In the Matter of Petition for Arbitration )	
of Unresolved Issues in a Section 251(b)(5) )	
Agreement With T-Mobile USA, Inc. )	Case No. TO-2006-0147
_____ )	

**MOTION OF T-MOBILE USA FOR SUMMARY DETERMINATION  
ON ISSUE E OF THE ARBITRATION PETITION**

Comes now Respondent T-Mobile USA, Inc. (“T-Mobile”), pursuant to 4 CSR 240-2.117, and moves the Commission to grant summary determination in T-Mobile’s favor on Issue E raised by the Petitioners in their arbitration petition. T-Mobile also files herewith a Memorandum in support of this Motion.

In Issue E, the Petitioners ask the Commission to rule that they have “no obligation to pay reciprocal compensation on landline [intraMTA] traffic terminated to Respondent by third party carriers (such as IXC’s) where that traffic is neither originated by, nor the responsibility of, Petitioners.” (Arbitration Petition at 9). The Commission rejected this very legal argument in its October 6, 2005 Report in *In the Matter of the Petition of Alma Telephone Company for Arbitration of Unresolved Issues Pertaining to a Section 251 Agreement with T-Mobile USA, Inc.*, Docket Nos. IO-2005-0468 *et al.* (“the Alma/T-Mobile Arbitration”), and then approved interconnection agreements incorporating reciprocal compensation provisions in Case Nos. TK-2006-0165 through 0168. T-Mobile demonstrates in the accompanying brief that the Petitioners’ claim -- that the Commission erred in finding *as a matter of law* that LECs such as Petitioners must pay compensation for all landline to mobile traffic -- lacks all merit.

### **A. MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE**

As required by 4 CSR 240-2.117(1)(A), T-Mobile lists those material facts about which there is no genuine issue:

1. Persons served by the Petitioners' networks place calls to T-Mobile customers and those calls originate and terminate in the same MTA.

2. The Petitioners route at least some of the calls described in Material Fact No. 1 through interexchange carriers (IXCs).

*See, e.g.,* Small Telephone Company Group's Application for Rehearing in the Alma/T-Mobile Arbitration, at 5 ("[V]irtually all traffic from rural LECs to wireless carriers is dialed on a '1+' basis and carried by an IXC..").

### **B. SUMMARY OF ARGUMENT IN FAVOR OF MOTION**

As T-Mobile demonstrates in the accompanying brief, the Commission has already rejected the identical arguments made by the Petitioners in the Alma/T-Mobile Arbitration. T-Mobile submits that no purpose would be served by requiring the parties to address this resolved legal issue in their pre-filed testimony or in oral testimony at the hearing. The hearing should address contested issues, not questions of law that the Commission has already reviewed and decided. In addition, there exists the possibility that expeditious grant of this motion may encourage the Petitioners to engage in meaningful compromise rendering this arbitration proceeding unnecessary. There is no reasonable chance of a negotiated agreement so long as Petitioners believe they can exempt themselves from FCC rules governing the scope of their reciprocal compensation obligation.

As the Commission has observed, "summary determination is appropriate where no genuine issue of material fact remains for hearing and one of the parties is entitled to determination as a matter of law." *Commission Staff v. Lockheed Martin Global Telecommunications Services*,

Case No. TC-2004-0415, Order Granting Motion for Summary Disposition, at 2 (Nov. 2, 2004).

In that order, the Commission also noted that summary determination is often appropriate “because the public interest favors a quick and efficient resolution of th[e] matter.” *Id.* See also 4 CSR 240-2.117(E) (Summary determination is appropriate if “the commission determines that [the procedure] is in the public interest.”).

### **C. REQUEST TO SHORTEN RESPONSE PERIOD**

Responses to motions for summary determination ordinarily are due in 30 days. 4 CSR 240-2.117(C). In this matter, Petitioners are very familiar with the relevant legal issues, having filed two sets of comments and one application for rehearing on this very issue in the Alma/T-Mobile Arbitration. See, e.g., Small Telephone Company Group’s Comments on the Arbitrator’s Draft Report, at 3-14 (Sept. 19, 2005); Small Telephone Company Group’s Comments on the Arbitrator’s Final Report, at 4-15 (Sept. 27, 2005); Small Telephone Company Group’s Application for Rehearing, at 3-14 (Oct. 7, 2005). T-Mobile therefore asks the Commission to require the Petitioners to respond to this motion within 15 days. See, e.g., *Petition of FullTel, Inc. for Approval of an Interconnection Agreement*, Case No. TK-2005-0079, Order Directing Response to Motion for Summary Determination (Nov. 8, 2004) (Commission orders a response in four days). For the summary disposition procedure to be of most value to the parties, the Commission should issue its decision before the parties begin to prepare their pre-filed written testimony (so they know whether testimony must address Issue E). Setting a 15-day response timeline will allow the Petitioners ample time to respond, considering their familiarity with the issues, and permit the Commission the necessary time to prepare an order sufficiently in advance of the date pre-filed written testimony is due under the procedural schedule.

Wherefore, for the reasons above and those set forth in the attached legal memorandum, T-Mobile respectfully request that the Commission grant a summary determination in its favor on Petitioners' Issue E, and shorten the period within which the Petitioners may respond to this Motion.

Respectfully submitted,

By: /s/ Mark P. Johnson  
Mark P. Johnson, MO Bar No. 30740  
Roger W. Steiner, MO Bar No. 39586  
Sonnenschein Nath & Rosenthal LLP  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
Telephone: 816.460.2400  
Facsimile: 816.531.7545  
mjohnson@sonnenschein.com  
rsteiner@sonnenschein.com

ATTORNEYS FOR T-MOBILE USA, INC.

**Certificate Of Service**

I hereby certify that a true and final copy of the foregoing was served via electronic transmission on this 16th day of November, 2005, to the following counsel of record:

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

Paul Walters, Jr.  
15 E. 1st St.  
Edmond, OK 73034

Paul S. DeFord  
Lathrop & Gage LC  
2345 Grand Boulevard  
Suite 2800  
Kansas City, MO 64108

/s/Mark P. Johnson

Mark P. Johnson