

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

In the Matter of the Petition for Arbitration	)	
of Unresolved Issues in a Section 251(b)(5)	)	Case No. _____
Agreement with NEXTEL Wireless	)	

**VERIFIED PETITION  
FOR ARBITRATION OF A TRAFFIC TERMINATION AGREEMENT  
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

COME NOW BPS Telephone Company, Cass County Telephone Company, Ellington Telephone Company, Farber Telephone Company, Fidelity Telephone Company, Fidelity Communications Services I, Inc., Fidelity Communications Services II, Inc., Granby Telephone Company, Green Hills Telecommunications Services, Iamo Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, New Florence Telephone Company, and Steelville Telephone Exchange, Inc. (the "Petitioners"), pursuant to the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§251 and 252, Federal Communications Commission ("FCC") Rule 47 C.F.R §20.11, and Missouri Public Service Commission ("Commission") Rule 4 CSR 240-36.040, and for their Petition for Arbitration of unresolved issues remaining in the negotiation between Petitioners and Respondent, NEXTEL Communications, Inc. ("NEXTEL") for a Traffic Termination Agreement ("the Agreement") state to the Commission as follows:

## **I. INTRODUCTION**

1. Petitioners are small rural local exchange carriers (LECs) operating in the State of Missouri. Petitioners have previously filed Certificates from the Missouri Secretary of State showing that they are in good standing or authorized to do business in the State of Missouri which Petitioners request be incorporated by reference in this case. See Attachment A. Petitioners' legal names, mailing addresses, and contact persons are listed in Attachment B. Petitioners are telecommunications carriers as defined by the Act, providing "basic local telecommunications services" and "exchange access services", as those terms are defined in Section 386.020, RSMo 2000. Petitioners provide telecommunications service in rural areas of Missouri. As part of this service, Petitioners provide the facilities and services necessary to complete wireless-originated calls to customers in Missouri's rural exchanges. The wireless-originated traffic is terminated to Petitioners over common trunk groups owned by Southwestern Bell Telephone Company d/b/a SBC, Sprint, Missouri, Inc., and/or CenturyTel.

2. All communications and submissions in this proceeding should be served upon the following designated contacts for the Petitioners:

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  
[trip@brydonlaw.com](mailto:trip@brydonlaw.com)  
[bmccartney@brydonlaw.com](mailto:bmccartney@brydonlaw.com)  
(573) 635-7166  
(573) 634-7431 (Fax)

3. Respondent is a commercial mobile radio service (“CMRS” or “wireless”) telecommunications providers operating in the State of Missouri and delivering wireless-originated calls for termination to Petitioners’ Missouri exchanges.

4. On the same date that this Petition is filed it is being served upon the following contacts for Respondent:<sup>1</sup>

Fred Broughton  
Wholesale and Interconnection Management  
Sprint PCS  
6450 Sprint Parkway  
MS: KSOPHN0116  
Overland Park, KS 66251  
[Fred.Broughton@sprint.com](mailto:Fred.Broughton@sprint.com)

Jeff Pfaff  
Sprint PCS  
[Jpfaff01@sprintspectrum.com](mailto:Jpfaff01@sprintspectrum.com)

Bob Edgerly  
Senior Manager, Interconnect  
Telco Management  
NEXTEL Wireless  
[Robert.Edgerly@Nextel.com](mailto:Robert.Edgerly@Nextel.com)

5. On April 28, 2005, Petitioners sent a request for negotiation to Respondent by overnight courier for delivery on April 29, 2005. (See Attachment C, which is attached to and incorporated within this document.)

6. Negotiations have failed to produce a voluntary agreement as to all terms of a Traffic Termination Agreement.

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<sup>1</sup> As a result of the recent merger of Sprint PCS and NEXTEL Wireless, representatives of Sprint PCS have taken responsibility for negotiating this agreement on behalf of NEXTEL.

7. Petitioners are filing this petition with the Commission more than 135 days and less than 160 days after Petitioners sent the request for negotiation and had it delivered to Respondent. The attached copy of the request for negotiation demonstrates that this Petition complies with the time requirements of 47 U.S.C. §252(b)(1) and 4 CSR 240-36.040(2). See Attachment C.

8. A proposed Agreement is also attached to this Petition. See Attachment D. This proposed Agreement includes the fundamental organizational clauses and subjects contained in numerous other negotiated agreements that this Commission has approved between similarly situated small rural telephone companies and other similarly situated CMRS Providers, such as Alltel, Cingular, Sprint PCS, T-Mobile, Verizon Wireless, and U.S. Cellular. In addition, this proposed agreement is highlighted to show the areas of disagreement that still remain between the Parties. The proposed Agreement complies fully with both Missouri law and Section 252(e) of the Act because the proposed Agreement is consistent with the public interest, convenience and necessity, and it does not discriminate against any telecommunications carrier.

## **II. COMMISSION ARBITRATION AUTHORITY AND PROCEDURE**

9. Under the Act, the Commission has the authority to arbitrate the issues remaining in a negotiation as requested by Petitioners. Specifically, Section 252(b) of the Act provides:

## **AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION.**

(1) **ARBITRATION.** During the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State Commission to arbitrate any open issues.

47 U.S.C. §252.

10. 4 CSR 240-36.040, Rules and Regulations of the Public Service Commission provides the procedure for requesting and conducting arbitrations.

### **III. UNRESOLVED ISSUES**

11. Petitioners request arbitration of the remaining unresolved issues in order to obtain an approved agreement and resolution of all issues which have surrounded the uncompensated termination of wireless originated traffic and which will obviate future disputes for the term of the approved agreement.

12. A copy of this Petition is being provided electronically to the above-named representative(s) of Respondent on the same date that it is being filed with the Commission.

13. The following is a statement of each unresolved issue with a listing of both parties' positions on each unresolved issue as understood by Petitioners to the best of their knowledge and belief. This listing utilizes numbers corresponding to the sections of the proposed Agreement. Documentation supporting Petitioners' position is attached.

#### **A. PRE-WIRELESS TARIFF TRAFFIC (*Section 5.4*)**

The wireless traffic records provided by SBC establish that Respondent sent a total of 542,053 minutes of wireless-originated calls to Petitioners' small

rural exchanges between February of 1998 and the 2001 effective date of the wireless termination service tariffs approved by this Commission. Company-specific minutes of use are detailed in Attachment E (Proprietary). Respondent delivered this traffic in the absence of an agreement and therefore in violation of the Commission's prohibition against sending such traffic in Case No. TT-97-524. The FCC has held that state law tariffs could and did apply to traffic delivered in the absence of an agreement in CC Docket No. 01-92.<sup>2</sup> Moreover, the Missouri Supreme Court is presently considering whether exchange access tariff rates applied to this traffic in Case No. SC86529 (oral argument held and case submitted on Sept. 28, 2005).

**(1.) *Petitioners' Position.*** If the Missouri Supreme Court issues a decision before the completion of this arbitration finding that Petitioners should be compensated for this traffic pursuant to their intrastate intraLATA exchange access tariff rates that were approved by and on file with the Commission during the time period between 1998 and 2001, then the Petitioners expect to be compensated for this traffic under their intrastate intraLATA exchange access tariffs. Otherwise, Petitioners' position is that they will accept \$0.035 per minute of use for all intraMTA 1998-2001 traffic (which is the rate that Petitioners have proposed as part of the Traffic Termination Agreement attached hereto as Attachment D).

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<sup>2</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile Petition for Declaratory Ruling*, CC Docket No. 01-92, *Declaratory Ruling and Report and Order*, released Feb. 24, 2005.

**(2.) Respondents' Position.** Respondent has refused to pay for some or all of its pre-tariff traffic, and Respondent has not offered a rate or any agreement language to address 1998-2001 wireless traffic.

**B. IntraMTA Wireless Termination Rate (*Appendix 1*)**

The Parties disagree on the appropriate rate to apply for termination of "Local Traffic" via an indirect interconnection.

**(1.) Petitioners' Position.** Petitioners propose that the wireless termination service rate for intraMTA wireless traffic delivered pursuant to the agreement should be \$0.035 per minute. This rate (\$0.035) is supported by the forward-looking cost studies that are being filed contemporaneously with the filing of this Petition as Attachment F. It is also the same rate that has been agreed to in numerous other negotiated agreements between small rural ILECs and wireless carriers such as Cingular, Sprint PCS, T-Mobile, U.S. Cellular, and Verizon Wireless.

**(2.) Respondents' Position.** Respondent has not agreed to the \$0.035 rate or provided an alternative rate.

**C. InterMTA Factors (*Appendix 2*)**

The Parties disagree on the appropriate interMTA factor.

**(1.) Petitioners' Position.** Petitioners' position is that the Commission should adopt the InterMTA factors listed in Attachment G.

**(2.) Respondents' Position.** Petitioners have provided no language or proposals for interMTA factors.

#### **D. Reciprocal Compensation for Interexchange Carrier (IXC) Traffic**

##### **(Section 1.1- Scope)**

The Parties disagree as to whether Respondents have an obligation to pay reciprocal compensation on landline traffic terminated to Respondent by third party carriers (such as IXCs) where that traffic is neither originated by, nor the responsibility of, Petitioners.

**(1.) *Petitioners' Position.*** Petitioners' position is that they have no obligation to pay reciprocal compensation on landline traffic terminated to Respondent by third party carriers (such as IXCs) where that traffic is neither originated by, nor the responsibility of, Petitioners. This is consistent with the Act, FCC rules, industry practice and numerous Commission approved traffic termination agreements between Small Rural ILECs and Wireless Carriers.

**(2.) *Respondents' Position.*** Respondent's position is that all intraMTA landline traffic originated by end-users in Petitioners' exchanges and terminated to Respondent, regardless of which carrier carries the call, are subject to reciprocal compensation for which Petitioners are financially responsible.

#### **E. Other Issues**

As of the filing date of this Petition, the Parties disagree on several other issues, as indicated by the highlighted language in the proposed Agreement (Attachment D). However, these issues are less significant than those identified above, and Petitioners anticipate that these issues will be resolved prior to any hearing scheduled in this arbitration.



#### IV. CONCLUSION

WHEREFORE, Petitioners respectfully request the Commission to issue an Order: (1) appointing an arbitrator to schedule an initial arbitration meeting as soon as possible and to resolve the disputed issues; (2) approving an Agreement setting forth both the voluntarily agreed terms and also the arbitrated matters and terms; and (3) granting such other relief as is reasonable under the circumstances.

RESPECTFULLY SUBMITTED,

**/s/ Brian T. McCartney**

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Attorneys for Petitioners

## **LIST OF ATTACHMENTS**

Attachment A	Case Numbers for Certificates from Missouri Secretary of State
Attachment B	Petitioner Contact Information
Attachment C	Request for Negotiation
Attachment D	Proposed Agreement
Attachment E	Unpaid Pre-Wireless Tariff Traffic ( <b>PROPRIETARY</b> )
Attachment F	Cost Studies
Attachment G	InterMTA Factor Chart

## Attachment A

### Case Numbers for Certificates from Missouri Secretary of State

<b><u>Telephone Companies</u></b>	<b><u>Certificate From Secretary of State Filed in Case Nos.:</u></b>
BPS Telephone Company	TC-2002-1077
Cass County Telephone Company	TC-2002-1077
Ellington Telephone Company	TK-2003-0307
Farber Telephone Company	TO-2004-0437
Fidelity Telephone Company	TC-2002-1077
Fidelity Communications Services I, Inc.	TC-2002-1077
Fidelity Communications Services II, Inc.	CK-2003-0285
Granby Telephone Company	TO-2004-0493
Green Hills Telecommunications Services	CO-2003-0162
Iamo Telephone Corporation	TC-2002-1077
Kingdom Telephone Company	TC-2002-1077
Lathrop Telephone Company	TC-2002-1077
New Florence Telephone Company	TA-2002-0314
Steelville Telephone Exchange, Inc.	IK-2003-0222

**ATTACHMENT A**

## **ATTACHMENT B – COMPANY NAME AND CONTACT INFORMATION**

BPS Telephone Company  
Lisa Winberry/David Carson  
120 Stewart Street  
P.O. Box 550  
Bernie, MO 63822-0550

Cass County Telephone Company  
Bob Schoonmaker  
260 West First Street  
P.O. Box 398  
Peculiar, MO 64078

Ellington Telephone Company  
Dee McCormack  
200 College Avenue  
P.O. Box 400  
Ellington, MO 63638

Farber Telephone Company  
Charles Crow  
Main & Linn Streets  
Farber, MO 63345

Fidelity Telephone Company  
Fidelity Communications Services I, Inc.  
Fidelity Communications Services II, Inc.  
Dave Beier  
64 North Clark  
Sullivan, MO 63080

Granby Telephone Company  
Jon Stouffer  
P.O. Box 200  
Granby, MO 64844

Green Hills Telecommunication  
Services  
Steve Gann/Renee Reeter  
7926 N.E. State Route M  
P.O. Box 227  
Breckenridge, MO 64625

Iamo Telephone Company  
Jack Jones  
104 Crook Street  
P.O. Box 368  
Coin, IA 51636

Kingdom Telephone Company  
Randy Boyd  
211 South Main  
P.O. Box 97  
Auxvasse, MO 65231

Lathrop Telephone Company  
Bruce Copsey  
P.O. Box 167  
Princeton, MO 64673

New Florence Telephone Company  
Bob Williams  
P.O. Box 216  
Oregon, MO 64473

Steelville Telephone Exchange, Inc.  
Don Santhuff  
61 East Hwy. 8  
P.O. Box 370  
Steelville, MO 65565

**ATTACHMENT E (PROPRIETARY)  
UNPAID PRE-WIRELESS TARIFF TRAFFIC**

**ATTACHMENT E IS PROPRIETARY**

**ATTACHMENT G**  
**SUMMARY OF INTERMTA FACTORS**  
**AND PETITIONERS' PROPOSED FACTORS**

<b>Telephone Company</b>	<b>Proposed Factors</b>
BPS Telephone Company	<b>52%</b>
Cass County Telephone Company	<b>0%</b>
Ellington Telephone Company	<b>0%</b>
Farber Telephone Company	<b>0%</b>
Fidelity Telephone Company	<b>5%</b>
Fidelity Communications Services I	<b>5%</b>
Fidelity Communications Services II	<b>5%</b>
Granby Telephone Company	<b>0%</b>
Green Hills Telecommunication Services	<b>0%</b>
Iamo Telephone Company	<b>0%</b>
Kingdom Telephone Company	<b>0%</b>
Lathrop Telephone Company	<b>0%</b>
New Florence Telephone Company	<b>0%</b>
Steelville Telephone Exchange, Inc.	<b>0%</b>

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or via electronic mail, or hand-delivered on this 4<sup>th</sup> day of October, 2005, to the following parties:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

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**/s/ Brian T. McCartney**

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