BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Petition of	)	
Alma Telephone Company	)	
for Arbitration of Unresolved	)	**Case No. IO-2005-0468, et al.**
Issues Pertaining to a Section 251(b)(5)	)	**(consolidated)**
Agreement with T-Mobile USA, Inc.	)	

APPLICATION FOR REHEARING

Comes now T-Mobile, USA, Inc. ("T-Mobile"), pursuant to §386.500 RSMo. and for its Application for Rehearing of the October 6, 2005 Arbitration Report issued by the Missouri Public Service Commission ("Commission"), requests that the Report be reconsidered, reheard, and/or set aside as being unjust, unlawful, and unreasonable for the following reasons:

I. THE ARBITRATION REPORT ERRONEOUSLY CONCLUDES THAT A 3.5 CENT RATE IS APPROPRIATE FOR INTRAMTA TRAFFIC EXCHANGED BETWEEN T-MOBILE AND THE PETITIONERS.

The Arbitration Report erroneously and unreasonably adopts the Petitioners' proposed rate of 3.5 cents per minute, rather than T-Mobile's proposal of 1.5 cents per minute. The Arbitration Report relies on evidence which is, as a matter of fact and law, not consistent with the requirement that Commission orders be founded on substantial and competent evidence on the record as a whole.

First, the Arbitration Report incorrectly deals with T-Mobile's request that the Petitioners' cost information be stricken for their failure to comply with Section 252(b)(2) of the Federal Act and the Commission's own arbitration rule, 4 CSR 240.36.040(3)(E), which require the Petitioners to provide all relevant documentation in support of their petitions. These regulations do not contain any exception; they are clear and mandatory. The Petitioners failed to comply with those regulations when they failed to include the Schoonmaker cost study with the

initial arbitration filing. Petitioner's failure to timely and fully file cost information in support of their 3.5 cent rate is fatal to Petitioner's position in this arbitration issue. The Commission erred in even considering Petitioner's cost information, and thereby erred in ruing in Petitioner's favor on this issue.

In reviewing the Arbitration Report's discussion on Issue 7, it appears that in adopting the Petitioners' 3.5 cent proposal, the Arbitration Report relies on (1) the cost evidence proffered by the Petitioners in the form of Mr. Schoonmaker's testimony concerning application of the Hatfield cost model, (2) the Petitioners' agreement to the 3.5 cent rate in negotiated (not arbitrated) traffic termination agreements with other wireless carriers, and (3) T-Mobile's agreement to the 3.5 cent rate in traffic termination agreements with three Missouri rural ILECs that are not parties to this arbitration proceeding. The evidence on which the Arbitration Report relies is simply not sufficient to support the finding that the 3.5 cent rate is appropriate. On the other hand, the evidence introduced by T-Mobile fully supports the 1.5 cent rate it proposed, and the Commission should reconsider its finding and adopt the T-Mobile position on the compensation rate.

Any reliance on negotiated compensation rates voluntarily agreed to by carriers not parties to this proceeding is misplaced. The Arbitration Report cites such agreements as two of the three evidentiary bases for its conclusion. Evidence related to negotiated agreements between *other* carriers, or even between Respondent and *other* Missouri LECs, is simply not relevant to a determination of forward-looking cost-based rates in an arbitration proceeding. (*See* T-Mobile Post-Hearing Brief, at 11-12; incorporated herein). Federal law controls in this arbitration, and federal law points out that negotiated agreements do not have to follow the standards which the Commission must observe in this case, which will result in an arbitrated

agreement: negotiated agreements include provisions "without regard to the standards set forth in subsections (b) and (c) of section 251..." 47 U.S.C. § 252(a)(1).

Further, the give-and-take of negotiation can result in agreement terms which are far different from terms in arbitrated agreements. The parties to negotiations do not engage in "final offer" negotiation, unlike the procedure which is followed in this arbitration proceeding. Parties may yield on one issue because they receive beneficial concessions from the other party on other, unrelated issues or because the cost of arbitration cannot be justified given the traffic volumes involved. In short, the terms of negotiated agreements should not be considered as evidence that identical terms are appropriate in arbitrated agreements. As the Petitioners pointed out at the hearing, the Petitioners have long offered the 3.5 cent rate to T-Mobile in negotiations. The mere fact that they offered that rate in negotiation is not evidence that the rate is appropriate and is fully supported by the cost evidence. The Commission has unjustly given the Petitioners what they were unable to obtain in negotiation, for the simple reason that they were able to persuade other wireless carriers to accept that rate in earlier, unrelated negotiations. Nothing was presented at the arbitration hearing to explain why the other carriers voluntarily accepted that rate, nor was there any evidence presented as to why T-Mobile chose to accept that rate in negotiations with other rural ILECs. The Commission acted unreasonably when it found that the existence of involuntary agreements is evidentiary support for the selection of that rate in this arbitration.

Similarly, the Arbitration Report unjustly bases its conclusions on intuition concerning the comparison of costs between the Petitioners and SBC. Petitioners did not introduce any evidence of arbitrated or negotiated agreements between SBC and T-Mobile. Instead, they merely alluded to the fact of the existence of such an agreement. No evidence was introduced in

this proceeding concerning SBC's costs, so the Arbitrator should not have drawn any conclusion concerning SBC's costs. However, that is precisely what the Arbitration Report does in page 13, where it intuits that SBC's costs must be greater than the costs incurred by the Petitioners. There is simply no evidence to support that conclusion.

T-Mobile asks the Commission to review the arguments T-Mobile presented on pages 11 and 12 of its Post-Hearing Brief, as well as those presented in the immediately preceding paragraphs, and to reconsider the finding that the presence of the 3.5 cent rate in negotiated agreements (involving other wireless carriers and other rural ILECs) is of evidentiary relevance to the adoption of the same rate in this arbitration.

With respect to the cost support presented by the Petitioners and cited by the Arbitration Report, T-Mobile notes that the HAI Model on which the Arbitrator bases his conclusion that 3.5 cents is an appropriate rate is, by admission of the Petitioners' own cost witness, significantly flawed.

The Arbitration Report states at page 13 that the HAI model is a widely-accepted method of determining forward-looking economic cost per unit, but there is no record evidence as to where the Hatfield model has ever been accepted, such as a listing of States in which the Hatfield model is accepted. Mr. Schoonmaker stated in his testimony that the model has been widely used, but again provides no citations to cases in which HAI results were accepted. And, as noted in T-Mobile's Post-Hearing Brief, Mr. Schoonmaker expressed real concerns about the validity of the model. In fact, it appears that the only citation in the record to proceedings in another State in which the HAI model was at issue was provided by Mr. Conwell on T-Mobile's behalf, in his reference to the Oklahoma case in which the arbitrator flatly rejected the model. If the Arbitrator's decision, particularly his view that the proposed rate "is between 1.82 to 5.72 cents

less than the rate that their cost studies show," is grounded at all on his conclusion that the Hatfield Model as a "widely-accepted method," there is no evidence in the record that supports that finding.

The Arbitration Report fails to address the unrebutted testimony of Mr. Conwell that although each of the Petitioners stated that its current network is forward-looking and least cost as required by the FCC rules (interoffice distances, cable sizes, transport system sizes, *etc.*), the HAI Model does not model these networks. Since the Model does not accurately represent the Petitioners' networks, its results cannot be consistent with the FCC rules.

Finally, as stated in the controlling FCC rules, the burden is squarely on the ILECs to demonstrate that their costs (a) meet the FCC rules and (b) are reasonable. The relevant federal regulation is 47 C.F.R. § 51.505(e). In the case of evidence concerning the costs the Petitioners incur to support the intraMTA compensation rate they are advocating, there is no dispute that the Petitioners must come forward with that evidence.

In short, the Commission should reconsider its ruling that a 3.5 cent per minute rate is appropriate compensation between T-Mobile and the Petitioners.

II. THE ARBITRATION REPORT ERRONEOUSLY ADOPTS THE PETITIONERS' TRAFFIC FACTORS.

The Commission unreasonably adopts the Petitioners' intraMTA/interMTA and intrastate/interstate traffic factors. The Petitioners' factors are based on traffic studies using vintage data. This proffer of outdated information does not satisfy the Petitioners' burden of proof. None of the data upon which the Arbitrator relied on in adopting the factors is less than two years old, none involved more than three months' traffic figures, and none was based on the FCC's definition of an intraMTA call. Further, none of the Petitioners explained the methodology of the studies. In short, the traffic studies which form the basis of the Petitioners'

factors on traffic are unreliable. The Commission, therefore, erred in adopting the Petitioners' traffic factors which were based on these studies.

The Commission should have adopted T-Mobile's alternative proposal which relies on more current traffic data. Based on the traffic data reported by the Petitioners in their annual reports to the Commission, for the year ending December 31, 2004, T-Mobile's interstate/intrastate proposal of 50% for each jurisdiction is far more reasonable than the Petitioners' 80% intrastate/20% interstate proposal, which is inappropriately based on the fact that many other wireless carriers have agreed to that split in negotiated agreements. Moreover, the historical data the Petitioners suggest lends support to their uniform proposal fails to reflect current, aggregate traffic allocation patterns.

Furthermore, the Commission accepted an allocation of intrastate traffic between interMTA and intraMTA jurisdictions that is similarly tainted with the Petitioners' incentive to "pump up" the interMTA percentage, yielding greater revenues from access charges (the Petitioners' intraMTA 3.5 cent rate proposal is significantly less than their intrastate access charges, which range from 7.9 cents to 14.9 cents per minute, so they have a financial incentive to increase their interMTA traffic. The T-Mobile interMTA/intraMTA proposals for the three Petitioners recognize that reality, but still allow for a substantial amount of interMTA traffic.

The Commission also ignored the FCC's rules about what constitutes an intraMTA call between wireline and wireless carriers. The section of the FCC's rules on reciprocal compensation for exchange of local traffic defines "telecommunications traffic" subject to reciprocal compensation as a call "exchanged between a LEC and a CMRS provider that, at the

beginning of the call, originates and terminates within the same Major Trading Area..."[1] The attachments to the Petitioners' prefiled testimony indicate that the studies were based solely on the NPA-NXX's of the wireless numbers from which the traffic was originated, without regard to the geographic location of the wireless customer when originating the traffic. The studies fly in the face of the controlling FCC rules, and should therefore have been discounted as providing support for the Petitioners' traffic allocation proposals.

In the absence of current data using reliable measurements, the Commission should have selected the most reasonable proposals. Chariton Valley, Mid-Missouri and Northeast proposed interstate/intrastate percentages simply because they are the numbers other wireless carriers have agreed to in voluntary negotiations. T-Mobile proposed a 50%/50% interstate/intrastate allocation which is fully supported by the split between intrastate and interstate terminating minutes in the Petitioners' 2004 annual reports, the most recent information available. On the interMTA/intraMTA allocation, none of the Petitioners' numbers is based upon traffic data challenged in a going-forward arbitration proceeding. The Chariton Valley and Northeast traffic studies are based on particularly old data. The Petitioners' proposals are not supported by competent and substantial evidence on the record.

III. CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Arbitration Report be reconsidered, reheard, and/or set aside to correct the errors of fact and law identified above.

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[1] 47 C.F.R. §51.701(b)(2).

Respectfully submitted,

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Certificate of Service

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