

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

In the Matter of the Application of)	
ALLTEL Communications, Inc. for)	
Approval of its Successor Cellular/PCS)	
Interconnection Agreement and)	Case No. TK-2005-0114
Accompanying Amendment with)	
Southwestern Bell Telephone, L.P. d/b/a)	
SBC Missouri, Under 47 U.S.C. § 252.)	

**REPLY OF ALMA COMMUNICATIONS COMPANY D/B/A ALMA
TELEPHONE COMPANY, CHARITON VALLEY TELEPHONE CORP., MID-
MISSOURI TELEPHONE COMPANY, AND NORTHEAST MISSOURI RURAL
TELEPHONE COMPANY TO ALLTEL AND SBC MISSOURI'S RESPONSE TO
APPLICATION TO INTERVENE**

COMES NOW Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telephone Corp., Mid-Missouri Telephone Company, and Northeast Missouri Rural Telephone Company and submit the following Reply to the responses of ALLTEL and SBC to the Intervention and Hearing Requests:

1. In their responses both ALLTEL and SBC state that an Interconnection Agreement is a contract whose terms only affect the two parties who are executing it. We agree. Logically, then, the agreement should not reference traffic that concerns a carrier not party to the Agreement. But, illogically, both Alltel and SBC argue for the "transit" language to remain in the Agreement. If the agreement between ALLTEL and SBC Missouri cannot affect non-party carriers, there will be no harm in rejecting the transit traffic provisions.

2. In this case it appears ALLTEL opposes intervention so that it can maintain the status quo and avoid properly compensating the MITG Interveners for the traffic it terminates. SBC Missouri appears to oppose intervention so it can continue to

be compensated for “transiting” traffic to third party LECs, albeit SBC will now begin collecting non-reciprocal compensation rates for its transit services. Alltel appears to be willing to pay SBC even more than it has in the past to continue transiting traffic. What is ironic is that Alltel must do so in order to keep sending traffic to Intervenors for which Alltel will not pay for. Any suggestion that the transiting of traffic pursuant to an interconnection agreement does not affect Intervenors is betrayed by Alltel’s own actions

3. Section 30.1 of the agreement provides:

ALLTEL will not send to SBC-13STATE local traffic that is destined for the network of a Third Party unless ALLTEL has authority to exchange traffic with that Third Party.

4. ALLTEL suggests that this language *prohibits* ALLTEL from sending traffic to Intervenors. ALLTEL attempts to argue that striking the transit provisions will *allow* ALLTEL to send traffic to Intervenors, and Intervenors are requesting relief that would end up *authorizing* the delivery of transit traffic without an agreement.

While we appreciate ALLTEL looking out for our business interests, we must disagree. This is a farcical circular argument that amounts to no more than the type of wireless carrier “calculated inaction” the Court of Appeals has rejected.

5. ALLTEL’s suggestion is premised upon the notion that an agreement *silent* as to transit traffic would somehow *authorize* transit traffic. This suggestion is inconsistent with ALLTEL’s statement that an agreement does not affect carriers that are not party to the agreement. The circularity of reasoning regarding transit traffic provisions has become difficult to follow, if not comical.

6. The agreement between ALLTEL and SBC Missouri cannot lawfully be viewed to either “authorize” or “prohibit” transit traffic to Intervenors. The agreement

simply should not be allowed to effect the terms of any traffic other than that SBC and Alltel exchange to one another.

7. Neither ALLTEL nor SBC Missouri have ever honored or enforced the “prohibition” these transit provisions supposedly impose. For seven years these provisions have utterly failed to prevent traffic terminating to small LECs with whom wireless carriers had no approved agreement. If the prohibition means nothing, it should no longer be approved.

8. ALLTEL and SBC Missouri’s suggestion that seeking intervention here is a substitute/sidestep of direct negotiations is wrong. Intervenors are doing everything in their power to compel agreements. Our only options are state tariffs and opposing transit traffic provisions in SBC agreements. We are not in control of the ALLTEL agreement process, ALLTEL is. As the recent Court of Appeals opinion holds we can’t compel agreement, only they can. State ex rel. Alma Telephone Company et al. v. Public Service Commission, et al., 2004 WL 2216600 *5 (Mo. App. W.D. 2004);

“The rural companies had no alternative but to pursue tariff options under state law because the wireless companies could not be compelled to negotiate compensation rates under the federal Act. Sprint, 112 S.W.3d at 25. To avoid the tariffs, all the wireless companies have to do is engage in rate negotiations with the rural companies, and, thereby, invoke preemptive application of the Act’s reciprocal compensation procedures and pricing standards.”

9. It is these transit traffic provisions that have prevented agreements with the small rural companies. Intervenors have been attempting to negotiate with ALLTEL payment for pre-wireless termination tariff traffic, and the terms of traffic termination agreements, for several years. They have resulted in no agreements. The reason for this

is that the traffic is “transited” regardless of whether an agreement is reached. As the traffic has and will continue to terminate without ALLTEL having to pay anything, there is no real incentive for ALLTEL to reach an agreement.

10. Contrary to the suggestions of SBC, Wireless Termination Service Tariffs are not a remedy. First, these tariffs are temporary in the sense they are subject to being superseded by an approved agreement. Second, the Wireless Termination tariffs were not a remedy for traffic terminated prior to their effective date. Due to the existence of transit traffic provisions, and violations of transit traffic prohibitions, Intervenors have uncompensated traffic predating any Wireless Termination Tariff. The access tariff is the only remedy, but SBC opposes that tariff.

11. Transit traffic provisions in the SBC Missouri/ALLTEL agreement should be rejected in order to eliminate *any* basis for this traffic’s continued termination. It is time for the Commission to take the regulatory thumb off the bargaining scales, and terminate the approval of such “transit” traffic provisions in Interconnection Agreements.

12. In addition to the foregoing, ALLTEL and SBC Missouri oppose intervention based on factual conclusions disputed by Intervenors, which require a hearing to resolve.

WHEREFORE, Intervenors respectfully request that their Application for Intervention and request for hearing be granted, and any other relief the Commission deems just and reasonable.

**ANDERECK, EVANS, MILNE,
PEACE, AND JOHNSON, L.L.C.**

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CERTIFICATE OF SERVICE

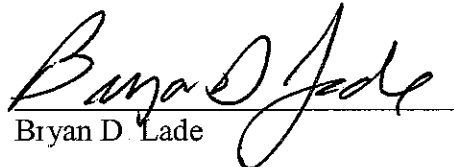
I do hereby certify that a true and accurate copy of the foregoing was hand delivered, e-mailed or mailed, postage pre-paid, via U.S. Mail, this 19th day of November, 2004 to:

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