

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

T-Mobile USA, INC.,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2006-0558
)	
Green Hills Telecommunications Svcs. and)	
Mark Twain Communications Company)	
)	
Respondents)	

RESPONDENTS' ANSWER TO T-MOBILE'S COMPLAINT

COME NOW Green Hills Telecommunications Services and Mark Twain Communications Company ("Respondents" or "Rural CLECs") and for their answer to the Complaint filed by T-Mobile USA, Inc. ("T-Mobile") respectfully state to the Missouri Public Service Commission ("Commission" or "PSC") as follows:

I. INTRODUCTION AND SUMMARY

T-Mobile is the only wireless carrier in Missouri that has failed to pay for its use of Respondents' networks during the period of time between the effective date of their wireless tariffs and April 29, 2005. Every other wireless carrier operating in this state has played by the rules and paid for the traffic that was sent to Respondents over the local exchange carrier ("LEC-to-LEC") network during this time period. T-Mobile has refused to comply with these Commission-approved tariffs and has failed to pay Respondents for the use of their networks between 2001 and 2005. Accordingly, on June 12, 2006, Respondents notified both T-Mobile and the Commission's Staff that T-Mobile's traffic would be blocked over the LEC-to-LEC network beginning on July 21, 2006. In response, T-Mobile filed the formal complaint which gave rise to this case.

II. EXPEDITED RESOLUTION

Respondents concur in T-Mobile's request for expedited treatment and ask that the Commission resolve this matter as soon as possible.

III. ANSWER

Respondents BPS Telephone Company et al. deny all allegations in T-Mobile's Complaint not specifically admitted herein.

1. With respect to the averments contained in numbered paragraph one (1) of the Complaint, Respondents admit that on June 12, 2006, Respondents advised T-Mobile that they intended to begin blocking T-Mobile's calls made over the LEC-to-LEC network beginning on July 21, 2006 pursuant to the Commission's Enhanced Records Exchange (ERE) Rules. However, Respondents expressly deny that this blocking would prevent Respondents' customers from receiving calls from T-Mobile's customers, as T-Mobile will remain free to deliver its wireless calls to Respondents' exchanges via other network connections.¹ In fact, the Commission's ERE Rules expressly allow T-Mobile to deliver its traffic over other network connections. See e.g. 4 CSR 240-29.130(1). The Commission's ERE Rules located at 4 CSR 240-29 speak for themselves and, consequently, no admission or denial is required. The Respondents have ceased their preparations for blocking T-Mobile's traffic pending the outcome of this case.

2. With respect to numbered paragraph two (2) of the Complaint, Respondents state that they have ceased blocking preparations pursuant to the Commission's ERE Rule pending the outcome of this case. Respondents deny that blocking over the LEC-to-LEC network will disrupt wireless service to T-Mobile's customers because the ERE Rules

¹ Indeed, T-Mobile appears to admit that it will be able to deliver its traffic via an interexchange carrier ("IXC") later in its Complaint. See e.g. paragraph 16 of T-Mobile's Complaint.

expressly allow T-Mobile to deliver calls over alternate network connections. Moreover, when T-Mobile's traffic was blocked over the LEC-to-LEC network by a group of similarly-situated small Missouri incumbent local exchange carriers (ILECs) between December 15, 2004 and April 29, 2005, T-Mobile simply delivered its calls over other network connections and there was no customer disruption. Respondents deny that there will be no negative effect on customers or the general public by further delaying the payment of T-Mobile's past due bills. On the contrary, Missouri law is clear that the public interest is not served when a customer fails to pay its bills:

It is undeniable that the utility incurs added costs for processing bills not paid currently, which costs include not only the reduction in operating funds from lessened cash flow but billing and accounting expenses associated with follow-up procedures These costs would be unfairly borne by other ratepayers if the late charge schedule were not imposed on the few customers who do not pay bills currently.

Ashcroft v. Public Service Comm'n, 674 S.W.2d 660, 663 (Mo. App. 1984)(emphasis added). Respondents also incur attorneys' fees and litigation expenses as a result of what the U.S. District Court referred to as T-Mobile's "transparent litigation strategy."

3. With respect to numbered paragraph three (3) of the Complaint, Respondents answer as follows:

- (a) Respondents admit the averments in paragraph 3(a).
- (b) Respondents admit the averments in paragraph 3(b).
- (c) Respondents admit that they sent the letter dated June 12, 2006 in order to notify T-Mobile that Respondents intended to begin blocking T-Mobile's traffic over the LEC-to-LEC network beginning July 21, 2006 pursuant to the ERE Rules. Respondents deny that they intended to block all calls from T-Mobile customers who attempt to call

customers served by Respondents. As explained above, T-Mobile will still be free to deliver its calls over alternate network connections, and T-Mobile has done so during prior blocking on the LEC-to-LEC network between December 15, 2004 and April 29, 2005. Respondents admit that they are taking this action because of T-Mobile's refusal to pay its bills. Respondents deny that "the very lawfulness of similar tariffs" is presently pending before the Eighth Circuit. Rather, T-Mobile's challenges to Missouri's wireless tariffs have already been resolved in final decisions by this Commission and Missouri's state courts.² With respect to the remainder of numbered paragraph 3(c) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

(d) Respondents deny that blocking traffic over the LEC-to-LEC network will prevent customers from calling each other. The Commission's ERE Rule expressly allows T-Mobile to deliver its calls over other network connections, and T-Mobile has done so during prior blocking on the LEC-to-LEC network between December 15, 2004 and April 29, 2005. Respondents are without information or belief upon the subject sufficient to enable them to answer whether or not T-Mobile has the financial resources to pay its past due bills; consequently, Respondents deny that averment pursuant to 4 CSR 240-2.070(8). Respondents deny that "the very lawfulness" of their tariffs is currently pending before the Eighth Circuit or any other court. First, this case is the first and only proceeding where T-Mobile has challenged the lawfulness of Respondents' specific tariffs. Second, T-Mobile's general challenges to wireless tariffs have already been rejected by final decisions from this Commission and Missouri's state courts, and the Eighth Circuit is only examining the

² *BPS Tel. Co. et al. v. T-Mobile*, Case No. TC-2002-1077, *Report and Order*, Jan. 27, 2005; *In the Matter of Mark Twain Rural Telephone Company's Wireless Termination Service Tariff*, Case No. TT-2001-139,

question of whether the U.S. District Court erred when it granted a motion to dismiss for lack of subject matter jurisdiction filed by a group of similarly-situated small LECs.

(e) Respondents admit that T-Mobile did not contact counsel for Respondents regarding the blocking notice. Respondents expressly deny that T-Mobile has “repeatedly attempted to negotiate a settlement to their differences.” Rather, T-Mobile has refused to address the matter through negotiations and arbitration before the Commission and engaged in what the U.S. District Court described as “transparent litigation strategy.” Respondents further deny that their notice of blocking makes settlement of past disputes any more difficult.

(f) Respondents admit that the Commission has jurisdiction over the ERE Rules. The Commission’s ERE Rules located at 4 CSR 240-29 speak for themselves and, consequently, no admission or denial is required. Respondents concur in T-Mobile’s request for expedited resolution.

(g) Respondents are without information or belief upon the subject sufficient to enable them to answer; consequently, Respondents deny that averment pursuant to 4 CSR 240-2.070(8).

4. With respect to numbered paragraph four (4) of the Complaint, Respondents deny that they have been exchanging traffic on a “bill-and-keep” basis with T-Mobile. On the contrary, T-Mobile’s “bill-and-keep” argument has been rejected in Missouri by both state and federal courts. T-Mobile has not negotiated or arbitrated an agreement with the Respondents,³ and the Respondents have never agreed to allow T-Mobile to use their

Report and Order, Feb. 8, 2001; *Sprint Spectrum v. Missouri PSC*, 112 S.W.3d 20 (Mo. App. 2003).

³ In fact, Respondents requested to negotiate an agreement with T-Mobile on April 29, 2005, and when those

facilities for free under a bill-and-keep arrangement. The Telecommunications Act requires agreements to be negotiated or arbitrated and then approved by state commissions, but no such agreements were ever established, filed with, or approved by the PSC as required by 47 U.S.C. §252. A state commission can only impose a bill-and-keep arrangement after making a specific finding that the traffic between two carriers is roughly balanced and is expected to remain so.⁴ The PSC has made no such finding for these carriers, so there is no factual basis upon which a bill-and-keep arrangement could be imposed. As a matter of law, there is no provision in the Telecommunications Act or the FCC's Rules for one carrier to unilaterally impose a bill-and-keep arrangement upon another carrier.

5. With respect to numbered paragraph five (5) of the Complaint, Respondents admit that the issue involves traffic sent by T-Mobile and terminated by Respondents between 2001 and April 29, 2005. Respondents admit that T-Mobile is currently in litigation with Respondents' affiliates Green Hills Telephone Corporation and Mark Twain Rural Telephone Company. Respondents admit that they are not parties to the litigation in the Eighth Circuit, and Respondents further state that T-Mobile has not challenged the lawfulness of Respondents' tariffs in any forum prior to this Complaint. Respondents admit that their tariffs are nearly identical to the Green Hills Telephone Corporation and Mark Twain Rural Telephone Company wireless tariffs that T-Mobile is seeking to challenge. Respondents deny that the question of the lawfulness of those state tariffs is currently

negotiations failed to produce an agreement, Respondents sought arbitration from the Commission in accordance with the Telecommunications Act. T-Mobile refused to agree to arbitrate an agreement; instead, T-Mobile filed a motion to dismiss Respondents' request for arbitration on the grounds that the Commission lacked authority to arbitrate disputes between competitive local exchange carriers ("CLECs") and wireless carriers. The Commission granted T-Mobile's motion to dismiss in Case No. TO-2006-1047 on Dec. 20, 2006. ⁴ 47 C.F.R. §51.713(b) ("A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so....").

pending before the U.S. Court of Appeals for the Eighth Circuit in Case No. 05-4377. Rather, the only points raised by T-Mobile on appeal are whether the U.S. District Court for the Western District of Missouri erred in: (a) dismissing T-Mobile's complaint for lack of jurisdiction; and (b) denying T-Mobile's request for transfer to the Eighth Circuit. The only other matter currently pending before the Eighth Circuit is a motion to dismiss for lack of subject matter jurisdiction. Thus, Respondents do not agree that the Eighth Circuit has jurisdiction. Moreover, on March 17, 2006, the Eighth Circuit denied T-Mobile's motion to stay the proceedings, and on June 20, 2006, the Eighth Circuit denied T-Mobile's request for an injunction to prevent blocking T-Mobile's calls on the LEC-to-LEC network. Thus, the Eighth Circuit has already rejected the majority of the arguments T-Mobile now seeks to revive before the Commission.

6. With respect to numbered paragraph six (6) of the Complaint, Respondents admit that by letter dated June 12, 2006, Respondents notified T-Mobile that, beginning July 21, 2006 they intended to block T-Mobile's calls over the LEC-to-LEC network pursuant to the Commission's ERE Rules because T-Mobile has failed to pay its bills for service between the effective date of their wireless tariffs and April 29, 2005.

7. With respect to numbered paragraph seven (7) of the Complaint, Respondents deny that they have failed to explain why they are pursuing call blocking at this time. First, Respondents' letter dated May 12, 2006 states, "T-Mobile has repeatedly refused to pay for the tariffed charges associated with this terminating wireless traffic." Second, T-Mobile refused to negotiate or arbitrate the issue of its past due bills during the recent arbitration case, and T-Mobile has refused to negotiate or arbitrate any agreement with Respondents. Respondents deny that it would be a "sensible course" to wait for the

outcome of T-Mobile's litigation with other rural companies, particularly when T-Mobile also seeks to raise a statute of limitations bar in its Complaint.⁵ Respondents further deny that T-Mobile is entitled to engage in self-help by refusing to pay disputed bills. On the contrary, state and federal law prohibit such self-help and require disputed bills to be paid pending the outcome of litigation.

8. With respect to numbered paragraph eight (8) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

9. With respect to numbered paragraph nine (9) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

10. With respect to numbered paragraph ten (10) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

11. With respect to numbered paragraph eleven (11) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

12. Respondents are without information or belief upon the subject sufficient to enable them to answer whether or not some of the intraMTA traffic that T-Mobile sends is interstate; consequently, Respondents deny that averment pursuant to 4 CSR 240-2.070(8).

13. With respect to numbered paragraph thirteen (13) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is

⁵ See Complaint, ¶¶31-33.

required.

14. With respect to the averments contained in paragraph fourteen (14) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required. Respondents state that 47 U.S.C. §214(a) speaks for itself and, consequently, no admission or denial is required.

15. With respect to numbered paragraph fifteen (15) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

16. With respect to numbered paragraph sixteen (16) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

17. With respect to numbered paragraph seventeen (17) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

18. With respect to numbered paragraph eighteen (18) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

19. With respect to numbered paragraph nineteen (19) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

20. With respect to numbered paragraph twenty (20) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

21. With respect to numbered paragraph twenty-one (21) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

22. With respect to numbered paragraph twenty-two (22) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

23. With respect to numbered paragraph twenty-three (23) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

24. With respect to numbered paragraph twenty-four (24) of the Complaint, Respondents admit that they have invoked the Commission's ERE Rules as authority to implement their proposed blocking of T-Mobile's calls over the LEC-to-LEC network. The rest of T-Mobile's averments in this paragraph are legal assertions and conclusions and, as such, no admission or denial is required.

25. With respect to numbered paragraph twenty-five (25) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

26. With respect to numbered paragraph twenty-six (26) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

27. With respect to numbered paragraph twenty-seven (27) of the Complaint, Respondents admit that they intend to block T-Mobile's traffic over the LEC-to-LEC network but allow T-Mobile to deliver intraMTA traffic over other network connections. With respect

to the remainder of numbered paragraph twenty-seven (27) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

28. With respect to numbered paragraph twenty-eight (28) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

29. With respect to numbered paragraph twenty-nine (29) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

30. With respect to numbered paragraph thirty (30) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

31. With respect to numbered paragraph thirty-one (31) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

32. With respect to numbered paragraph thirty-two (32) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

33. With respect to numbered paragraph thirty-three (33) of the Complaint, these averments are legal assertions and conclusions and, as such, no admission or denial is required.

IV. FURTHER ANSWERS AND AFFIRMATIVE DEFENSES

For further answer and defense, pursuant to Commission Rule 4 CSR 240-2.070(8), Respondents provide the following additional grounds of defense, both of law and of fact, in further answer and response to the Complaint:

A. **Failure To State A Claim.** The Complaint fails to set forth facts showing that Complainant is entitled to relief prayed for or any relief whatsoever, and fails to state a claim upon which relief can be granted against Respondents.

B. **Collateral Estoppel, Law of the Case, and Res Judicata.** Respondents' wireless tariffs have been found lawful by this Commission during the time period at issue here. See e.g. *In the Matter of Mark Twain Communications Company's Proposed Tariff to Introduce Its Wireless Termination Service*, Case No. TT-2001-646, *Order Approving Tariffs*, issued Oct. 16, 2001. T-Mobile's general challenges to wireless service tariffs have already been rejected by a final decision from the Missouri Court of Appeals. Accordingly, T-Mobile is barred from contesting these matters further.

C. **State and Federal Law Allow a Telecommunications Carrier to Block/Disconnect Service for Failure to Pay for Service.** The right to block calls or disconnect service for failure to comply with Commission-approved tariffs has been consistently upheld by the Missouri Court of Appeals. *State ex rel. Tel-Central of Jefferson City, Inc. v. Public Service Comm'n*, 806 S.W.3d 432 (Mo. App. 1991); *Allstates Transworld Van Lines v. Southwestern Bell*, 937 S.W.2d 314 (Mo. App. 1996); *Sprint Spectrum v. Missouri PSC*, 112 S.W.3d 20, 26 (Mo. App. 2003). The same is true for federal law. *Tel-Central of Jefferson City, Missouri v. United Telephone Co. of Missouri*;⁶ *Tel-Central of*

⁶ *In the Matter of Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone Company of Missouri*, File No. E-87-59, *Memorandum Opinion and Order*, 4 FCC Rcd 8338, rel. Nov. 29, 1989.

Jefferson City, Missouri, Inc. v. FCC, 920 F.2d 1039 (D.C. Cir. 1990); *Business WATS, Inc. v. AT&T*;⁷ *MCI Telecom. Corp. v. AT&T*.⁸

D. **Unlawful Self-Help.** T-Mobile is prohibited from engaging in “self-help” by refusing payment of the disputed rates during its purported appeal:

The clear line of authority regarding rate disputes is that the customer may not resort to self-help; that is, the customer may not merely refuse payment of the disputed rate but must pay the rate and then bring an action to determine the validity of the carrier’s actions.⁹

E. **The Commission’s ERE Rules.** T-Mobile raises various jurisdictional challenges to the Commission’s ERE Rules, but T-Mobile’s arguments were addressed and rejected by the Commission in its *Order of Rulemaking*.

The ERE Rules “do not regulate wireless carriers, as [T-Mobile] and Sprint suppose. Rather, **what the rules would regulate is the use of the LEC-to-LEC network – not the wireless carriers.** . . . We reject [T-Mobile’s] apparent contention that nonregulated carriers may use the Missouri LEC-to-LEC network without regard to service quality, billing standards, and in some instances, with **an apparent disregard for adequate compensation.**”¹⁰

Thus, the Commission has already rejected T-Mobile’s jurisdictional arguments.

F. **Additional Affirmative Defenses.** Respondents reserve the right to raise additional affirmative defenses which may become apparent through the course of this case.

⁷ *In the Matter of Business WATS. v. AT&T*, File No. E-93-011, *Memorandum Opinion and Order*, 7 FCC Rcd 7942, rel. Dec. 7, 1992.

⁸ *In the Matter of MCI Telecommunications Corp. v. AT&T and Pacific Telephone*, Rel. No. FCC 76-2119, *Memorandum Opinion and Order*, 62 F.C.C. 2d 703, rel. July 30, 1976.

⁹ *National Communications Ass’n v. AT&T*, 2001 U.S. Dist LEXIS 951 (S.D.N.Y. 2001) *19.

¹⁰ *Order of Rulemaking*, 30 Mo. Reg. 1373, 1377, June 15, 2005 (emphasis added).

V. CONCLUSION

Ultimately, the question presented by T-Mobile's complaint is whether the Commission is going to enforce its final orders and rules, or not. T-Mobile has failed to pay for service under Respondents' tariffs that were approved by and on file with the Commission between 2001 and April 29, 2005. Every state and federal agency and court to review T-Mobile's challenges to wireless tariffs during this time period has rejected them.

On June 20, 2006, the U.S. Court of Appeals for the Eighth Circuit refused to grant T-Mobile's request for an injunction to prevent Respondents' affiliates from blocking on the LEC-to-LEC network that raised the same challenges that T-Mobile seeks to resurrect before the Commission in this case. Thus, Respondents are entitled to block T-Mobile's traffic pursuant to the Commission's ERE Rules. The ERE Rules have the force and effect of law, and Respondents have complied with those rules. T-Mobile, on the other hand, has pursued a constant course of delay and litigation. Every other wireless carrier in Missouri has played by the rules and paid for its calls.

WHEREFORE, having fully answered the Complaint, Respondents request that the Complaint be dismissed for failure to state a claim with respect to which relief can be granted and specifically find and conclude that Respondents are entitled to begin blocking T-Mobile's calls over the LEC-to-LEC network pursuant to both: (1) the ERE Rule, and (2) state and federal law that allows for blocking or disconnection of service for nonpayment.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was emailed this 27th day of July, 2006, to the following parties:

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