

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

|                            |   |                       |
|----------------------------|---|-----------------------|
| T-MOBILE USA, INC.,        | ) |                       |
|                            | ) |                       |
| Complainant,               | ) |                       |
|                            | ) |                       |
| v.                         | ) | Case No. TC-2006-0486 |
|                            | ) |                       |
| BPS TELEPHONE CO., et al., | ) |                       |
|                            | ) |                       |
| Respondents                | ) |                       |

**BPS TELEPHONE COMPANY ET AL.'S  
MOTION FOR SUMMARY DETERMINATION**

COME NOW Respondents BPS Telephone Co. et al. and for their motion for summary determination regarding the Complaint filed by T-Mobile USA, Inc. ("T-Mobile") pursuant to Commission Rule 4 CSR 240-2.117, respectfully request that the Missouri Public Service Commission ("Commission" or "PSC") grant summary determination in favor of Respondents and against T-Mobile.

**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 2001 and 2005. Every other wireless carrier operating in the state has played by the rules and paid for the traffic that it sent to Respondents over the local exchange carrier ("LEC-to-LEC") network during this time period.

On January 27, 2005, in Case No. TC-2002-1077, this Commission expressly found that T-Mobile had failed to pay Respondents for T-Mobile's use of Respondents' network facilities and services and ordered T-Mobile to do so. T-Mobile has refused to comply with that Commission order and has failed to pay Respondents for the use of their networks

between 2001 and 2005 as ordered by the PSC. Accordingly, on May 12, 2006, BPS et al. 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 June 21, 2006. In response, T-Mobile filed the formal complaint which gave rise to this case.

## **II. MATERIAL FACTS**

### **A. Case No. TC-2002-1077**

The material facts at issue in this matter have already been resolved by this Commission in Case No. TC-2002-1077. Specifically, the Commission found the following facts in its January 27, 2005 *Report and Order* in Case No. TC-2002-1077. See Exhibit A.

1. T-Mobile f/k/a VoiceStream delivered wireless calls to Respondents' exchanges during the time period at issue in this case.<sup>1</sup>

2. T-Mobile did not have a Commission-approved agreement with the Respondents during the time period at issue in this case.<sup>2</sup>

3. Each of the Respondents had wireless termination service and intrastate exchange access tariffs that were lawful and in effect at all times.<sup>3</sup>

4. Respondents' wireless termination service tariffs were lawful during the time period at issue here.<sup>4</sup>

5. Accordingly, this Commission sustained the complaint filed by BPS Telephone et al. against T-Mobile for uncompensated wireless calls and directed T-Mobile to make payment for these past due amounts, plus late charges and attorneys' fees.<sup>5</sup>

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<sup>1</sup> *BPS Tel. Co. et al. v. VoiceStream*, Case No. TC-2002-1077, *Report and Order*, Jan. 27, 2005, p. 19.

<sup>2</sup> *Id.* at p. 18.

<sup>3</sup> *Id.* at pp. 16-17.

<sup>4</sup> *Id.* at pp. 28-29.

## B. Unpaid Bills

6. T-Mobile admits in its complaint that it has not paid its bills as ordered by the Commission in January of 2005.<sup>6</sup>

## C. Notice of Blocking

7. On May 12, 2006, Respondents advised T-Mobile that they intended to begin blocking calls made by T-Mobile's customers over the LEC-to-LEC network beginning on June 21, 2006.<sup>7</sup>

## D. Alternative Network Connections

8. Respondents' May 12, 2005 letter states that T-Mobile's wireless-originated calls "will be blocked **over the LEC-to-LEC network** on and after June 21, 2006."<sup>8</sup> The "LEC-to-LEC network" involves a specific set of network connections between small incumbent local exchange carriers (ILECs) such as Respondents and large ILECs such as AT&T Missouri and Sprint Missouri, but there are other ways to deliver wireless calls to Respondents' rural exchanges, such as through an interexchange or "long distance" carrier.<sup>9</sup> T-Mobile will remain free to deliver its calls to Respondents' exchanges through any long distance carrier, and the ERE Rules expressly allow carriers such as T-Mobile to deliver traffic via such alternate methods.<sup>10</sup>

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<sup>5</sup> *Id.* at pp. 31-32.

<sup>6</sup> See e.g., T-Mobile's First Amended Complaint, p. 6, ¶16 ("T-Mobile has not paid for certain mobile-to-land traffic that the Rural LECs terminated before April 29, 2005.")

<sup>7</sup> See T-Mobile's First Amended Complaint, Exhibit A.

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> 4 CSR 240-29.010.

<sup>10</sup> 4 CSR 240-29.130(1).

### **E. Prior Blocking of T-Mobile Traffic**

9. T-Mobile's traffic was previously blocked by the Respondents pursuant to their tariffs between December 15, 2004 and April 29, 2005. During this prior blocking on the LEC-to-LEC network, T-Mobile simply delivered its calls over the facilities of other interexchange or "long distance" carriers, as documented in a newspaper article from the ST. LOUIS POST-DISPATCH:

**T-Mobile USA, based in Bellevue, Wash., said it would route calls through long distance carriers to avert potential disruption.**

See Exhibit B, *Companies ask SBC to Block T-Mobile Calls*, ST. LOUIS POST-DISPATCH, ¶12 (Dec. 15, 2004). This is exactly what happened, and there was no disruption of service for anyone's customers.<sup>11</sup> It is misleading for T-Mobile to suggest that its calls will be disrupted, especially when it has already successfully rerouted its calls during the prior four-month period of blocking on the LEC-to-LEC network.

### **F. Eighth Circuit Decision**

10. On June 20, 2006, the Eighth Circuit reviewed most of the arguments now raised by T-Mobile before the Commission and denied T-Mobile's request for an injunction to prevent Respondents from blocking T-Mobile's traffic over the LEC-to-LEC network. See Exhibit C. Respondents expressly deny that the question of the lawfulness of their state tariffs is currently pending before the Court of Appeals for the Eighth Circuit in Case No. 05-4377.<sup>12</sup> Rather, the only points raised by T-Mobile on appeal are whether the U.S. District

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<sup>11</sup> Alternatively, T-Mobile could contract with another wireless carrier to terminate traffic on the LEC-to-LEC network.

<sup>12</sup> T-Mobile claims that the lawfulness of Respondents' wireless tariffs and this Commission's decision in Case No. TC-2002-1077 are currently on appeal before the Eighth Circuit, but T-Mobile never made the Commission a party to the federal court cases. "[S]urely Congress would not give a court the power to determine the validity

Court for the Western District of Missouri erred in granting Respondents' motion to dismiss for lack of jurisdiction and denying T-Mobile's request for transfer. The only other matter currently pending before the Eighth Circuit is Respondents' motion to dismiss for lack of subject matter jurisdiction. Respondents do not agree that the Eighth Circuit has jurisdiction. Respondents further state that on March 17, 2006 the Eighth Circuit Court of Appeals 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 the Respondents from blocking T-Mobile's calls on the LEC-to-LEC network. Thus, the Eighth Circuit has already rejected most of the arguments T-Mobile now seeks to revive before the Commission.

### **III. CONCLUSION**

Ultimately, the question presented by T-Mobile's request for expedited relief is whether the Commission is going to enforce its final orders and rules, or not. In Case No. TC-2002-1077, the Commission held that T-Mobile had failed to pay for service between 2001 and 2005. Contrary to T-Mobile's claims, that Commission order is final, and the United States District Court for the Western District of Missouri dismissed T-Mobile's purported appeal for lack of jurisdiction. Moreover, the District Court stated, "**[T]here has already been an unreasonable delay in the resolution of this matter because of T-Mobile's transparent litigation strategy.**"

The Eighth Circuit declined to grant T-Mobile's request for an injunction to prevent blocking on the LEC-to-LEC network. Thus, Respondents are entitled to block T-Mobile's traffic pursuant to the PSC's ERE Rules. The Commission's ERE Rules have the force and

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of an agency's rules when the agency itself is not a party." *GTE South v. Morrison*, 119 F.3d 733, 743 (4<sup>th</sup> Cir. 1990).

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. The Commission should decline to reward T-Mobile's "transparent litigation strategy."

WHEREFORE, Respondents respectfully request that the Commission grant summary determination in favor of Respondents and against T-Mobile and expressly authorize Respondents to begin blocking T-Mobile's traffic over the LEC-to-LEC network pursuant to both: (1) the Commission's ERE Rules; and (2) longstanding state and federal law allowing Respondents to block or discontinue service for failure to pay tariffed rates.

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COUNSEL FOR RESPONDENTS

## **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was emailed this 12<sup>th</sup> day of July, 2006, to the following parties:

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