

**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. TO-2006-0147
Agreement with T-Mobile USA, Inc.	)	

In the Matter of the Petition for Arbitration	)	
of Unresolved Issues in a Section 251(b)(5)	)	Case No. TO-2006-0151
Agreement with Cingular Wireless.	)	

**PETITIONERS' REPLY IN OPPOSITION TO  
CINGULAR'S MOTION TO DISMISS**

COME NOW PETITIONERS in the above captioned matter and for their Reply in Opposition to Cingular's Motion to Dismiss state to the Missouri Public Service Commission (Commission) as follows:

**A. PAST DUE COMPENSATION**

1. Cingular's motion to dismiss the issue of past due compensation for traffic that Cingular sent to the Petitioners' exchanges between 1998 and 2001 relies solely on the December 30, 2005 order granting a motion to dismiss filed by T-Mobile in this consolidated case. Cingular offers no legal argument of its own other than a reference to the Commission's December 30, 2005 order.

2. On January 9, 2006, the arbitrator set aside the December 30, 2005 order. This subsequent order explains that the Commission "has a federally mandated obligation to consider *all* issues presented." (original emphasis.) Thus, the only authority offered by Cingular to dismiss the issue of past due compensation has since been set aside, so Cingular's motion must be denied.

3. Petitioners in this matter hereby adopt by reference the arguments made in response to T-Mobile's motion to dismiss issues related to past traffic filed on November 28, 2005, December 19, 2005, and January 4, 2006, including but not limited to the following:

A. This issue has a substantial financial impact upon many of the Petitioners, and it should be addressed in this case;

B. Wireless carriers such as Cingular have violated Commission orders by delivering wireless calls to Petitioners' exchanges in the absence of an approved compensation agreement; and

C. Under Section 252(c) of the Act, compensation for this past due traffic is an "open issue" and the Commission may "impose conditions" on Cingular such as requiring Cingular to pay for its prior unlawful use of Petitioners' networks before taking advantage of a new agreement. Specifically, the Commission should decide whether Cingular should get the prospective benefit of an agreement to exchange local traffic where it has failed to pay for its prior use of the Petitioners' network facilities and services.

## **B. CLEC CLAIMS**

4. Although Cingular has willingly entered into agreements with some small rural competitive local exchange carriers ("CLECs") such as Fidelity Communications Services I and Fidelity Communications Services II,<sup>1</sup> Cingular has moved to dismiss CLECs Mark Twain Communications Company ("Mark

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<sup>1</sup> See *Fidelity Communications Services I's Application for Approval of a Traffic Termination Agreement with Cingular Wireless*, Case No. TO-2004-0446, *Order Approving Interconnection Agreement*, issued Mar. 26, 2004; *Fidelity Communications Services II's Application for Approval of a Traffic Termination Agreement with Cingular Wireless*, Case No. TO-2004-0447, *Order Approving Interconnection Agreement*, issued Mar. 26, 2004

Twain”) and Green Hills Telecommunications Services (“Green Hills”). Once again, Cingular relies on a Commission order granting a motion to dismiss filed by T-Mobile and offers no legal argument of its own. Petitioners in this matter hereby adopt by reference the arguments made in response to T-Mobile’s motion to dismiss CLECs filed on November 28, 2005.

5. **The Missouri PSC Arbitration Statute.** The Commission has authority under state law to arbitrate a dispute for a Missouri public utility such as the CLEC Petitioners where both parties agree to arbitration. Specifically, Section 386.230 RSMo. 2000 provides:

Whenever any public utility has a controversy with another public utility or person and all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrators, the commission shall act as such arbitrators, and after due notice to all parties interested shall proceed to hear such controversy, and their award shall be final. Parties may appear in person or by attorney before such arbitrators.

The Commission’s order granting T-Mobile’s motion to dismiss CLECs found that T-Mobile had clearly stated it was not willing to submit to state arbitration under Section 386.230 RSMo. 2000. Cingular has made no such declaration, and this is an important finding for both the purposes of this case and, if the CLECs are dismissed, subsequent complaint proceedings before this Commission and/or the Federal Communications Commission (FCC).

6. **Cingular has not stated that it is unwilling to arbitrate under the Missouri Statute.** If the Commission does not believe it has authority to arbitrate a dispute between the rural CLECs and Cingular under federal law, then the Commission should direct Cingular to answer whether it will consent to arbitration with the CLECs under Section 386.230 RSMo. 2000 before the Commission issues any order that dismisses the CLECs.

WHEREFORE, Petitioners respectfully request that the Commission deny Cingular's motion to dismiss and grant such other relief as is reasonable in the circumstances.

RESPECTFULLY SUBMITTED,

**/s/ Brian T. McCartney**  
W.R. England, III                      Mo.    #23975  
Brian T. McCartney                  Mo.    #47788  
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)

Attorneys for Petitioners

## 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 12<sup>th</sup> day of January, 2006, to the following parties:

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

Michael F. Dandino  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102

Mark P. Johnson  
Roger Steiner  
Sonnenschein, Nath, and Rosenthal LLP  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
[mjohnson@sonnenschein.com](mailto:mjohnson@sonnenschein.com)  
[rsteiner@sonnenschein.com](mailto:rsteiner@sonnenschein.com)

John Paul Walters, Jr.  
15 E. 1<sup>st</sup> Street  
Edmond, OK 73034  
[pwalters@sbcglobal.net](mailto:pwalters@sbcglobal.net)

/s/ Brian T. McCartney