

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

In the Matter of Petition of Alma Telephone)	
Company for Arbitration of Unresolved Issues)	
Pertaining to a Section 251(b)(5) Agreement)	Case No. IO-2005-0468, <i>et al.</i>
With T-Mobile USA, Inc.)	Consolidated
_____)	

**T-MOBILE CONSOLIDATED RESPONSE TO
PETITIONS FOR ARBITRATION**

Comes now Respondent T-Mobile USA, Inc (“T-Mobile”), by its undersigned counsel, pursuant to 42 U.S.C. § 252(b)(3) and 4 CSR 240-36.040(7), and provides this Consolidated Response to the Petitions for Arbitration filed by Alma Telephone Company (“Alma”), Chariton Valley Telephone Corporation (“Chariton”), Mid-Missouri Telephone Company (“Mid-Missouri”), and Northeast Missouri Rural Telephone Company (“Northeast”) (collectively, “Petitioners” or “Rural LECs”), which the Commission consolidated by Order dated June 8, 2005.¹

1. Attached hereto as Exhibits A through D are Respondent’s responses to the numbered allegations in each of the Petitions in this consolidated proceeding. Respondent incorporates those Exhibits for all purposes.

2. Pursuant to 4 CSR 240-36.040(7), T-Mobile attaches hereto as Exhibit E a document that contains the interconnection agreement (the Traffic Termination Agreement proposed by the Rural LECs) language upon which the parties agree and shows where and how the parties disagree. As the language of the proposed interconnection agreements attached to the Petitions are identical, with the exception of the identity of the relevant Petitioner and traffic allocation

¹ The waiver the Rural LECs seek of Rule 240-36.040(2) appears to be unnecessary since, as Petitioners acknowledge, the Section 251(f)(1) rural exemption does not apply to Section 251(b)(2), which provides the basis for this arbitration proceeding. *See* Alma Petition at 1-2 ¶ 1.

factors, T-Mobile's Exhibit E may be used to determine the status of resolved and unresolved issues for purposes of this arbitration.

I. BACKGROUND

3. The Rural LECs requested negotiation with T-Mobile on January 13, 2005, and on the same day T-Mobile agreed to commence negotiations. The parties thereafter conducted discussions but made no progress – largely because the Rural LECs refused to consider any meaningful change to their opening positions. T-Mobile agrees that the arbitration petitions were timely filed – that is, submitted between the 135th and 160th day following the request for negotiations -- and that all other procedural requirements for submission of this arbitration have been met.

4. This arbitration addresses what terms and conditions will govern the parties' interconnection and exchange of traffic prospectively, from January 13, 2005, when the Rural LECs initiated their negotiation request. However, it is not appropriate for the Petitions to include issues relating to traffic and compensation prior to the initiation of negotiations of the Traffic Termination Agreement. Issues predating the commencement of these negotiations are already before the Commission in Case No. TC-2002-57 (the "Complaint Proceeding"), and are not proper issues for this consolidated arbitration. Although some of the parties are the same in the two, separate proceedings, the parties are not identical and the issues, procedural history and governing law are different.

II. T-MOBILE'S RESPONSE TO THE RURAL LECs' SEVEN ARBITRATION ISSUES

5. T-Mobile below responds to the seven unresolved issues identified in each of the Rural LECs' Petitions.

ISSUE 1: COORDINATED RESOLUTION OF PAST COMPENSATION ISSUES WITH PROSPECTIVE TERMINATION AGREEMENT

6. Rural LEC Position: The Rural LECs contend that “all issues associated with past uncompensated traffic should be resolved simultaneously with approval of [an agreement] applying to future traffic.”²

7. T-Mobile’s Position: The Complaint Proceeding involves which are of no relevant to this arbitration proceeding. Given the proper scope of this arbitration proceeding, the lengthy history in the Complaint Proceeding, and the severe time constraints under which the Commission must conclude this arbitration, the Commission should limit this arbitration proceeding are limited to the issues that must be resolved so the parties can execute the Traffic Termination Agreements, and decline to move Issue 1 from the Complaint Proceeding to this arbitration proceeding.

ISSUE 2: PAST TRAFFIC VOLUMES

8. Rural LEC Position: The Rural LECs identify the number of minutes of T-Mobile traffic they claim they terminated in the past.³

9. T-Mobile Position. T-Mobile does not agree with the traffic data figures that the Rural LECs have submitted. More importantly, however, the volume of traffic exchanged prior to the request for negotiations in January 2005 is not relevant to this arbitration proceeding. The Commission should find that this arbitration proceeding is limited to the issues that must be resolved so the parties can execute the Traffic Termination Agreements, and decline to move Issue 2 from the Complaint Proceeding to this arbitration proceeding.

ISSUE 3: PAST TRAFFIC JURISDICTION

² Alma Petition at 4 ¶ 1.

³ See Alma Petition at 5 ¶ 1.

10. Rural LEC Position: The Rural LECs identify the percent of traffic at issue in their Complaint Proceeding that they believe should be treated as intraMTA as opposed to interMTA.⁴

11. T-Mobile Position. T-Mobile does not agree with the intraMTA/interMTA proposals that the Rural LECs have made in the Complaint Proceeding, with the exception of Alma's proposal, which concedes that all T-Mobile traffic is intraMTA. More importantly, however, issues pertaining to the exchange of traffic prior to the request for negotiations in January 2005 are not relevant to this arbitration proceeding, and should not be addressed in the Traffic Termination Agreements which result from this arbitration. The Commission should find that this arbitration proceeding is limited to the issues that must be resolved so the parties can execute the Traffic Termination Agreements, and decline to move Issue 3 from the Complaint Proceeding to this arbitration proceeding.

ISSUE 4: RATES FOR PAST TRAFFIC VOLUMES

12. Rural LEC Position: The Rural LECs identify the rate they want to charge T-Mobile for traffic prior to the effective date of a completed interconnection agreement.⁵

13. T-Mobile Position. T-Mobile does not agree with these rates proposed by the Petitioners for the past exchange of traffic. More importantly, however, issues pertaining to the exchange of traffic prior to the request for negotiations in January 2005 are not relevant to this arbitration proceeding, and should not be addressed in the Traffic Termination Agreements which result from this arbitration. The Commission should find that this arbitration proceeding is limited to the issues that must be resolved so the parties can execute the Traffic Termination

⁴ See Alma Petition at 5 Second ¶ 1.

⁵ See Alma Petition at 5 Third ¶ 1.

Agreements, and decline to move Issue 4 from the Complaint Proceeding to this arbitration proceeding.

ISSUE 5: COMPENSATION FOR PAST TRAFFIC EXCHANGE

14. Rural LEC Position: The Rural LECs identify in their Petitions the total amount they claim T-Mobile owes them for past traffic.⁶

15. T-Mobile Position. T-Mobile does not agree with the amounts proposed by the Petitioners. More importantly, however, issues pertaining to the exchange of traffic prior to the request for negotiations in January 2005 are not relevant to this arbitration proceeding, and should not be addressed in the Traffic Termination Agreements which result from this arbitration. The Commission should find that this arbitration proceeding is limited to the issues that must be resolved so the parties can execute the Traffic Termination Agreements, and decline to move Issue 5 from the Complaint Proceeding to this arbitration proceeding.

ISSUE 6: PROSPECTIVE INTERMTA/INTERSTATE FACTORS

16. Rural LEC Position: The Rural LECs identify the interMTA and interstate factors they believe should be utilized in the Traffic Termination Agreements which result from this arbitration.⁷

17. T-Mobile Position. T-Mobile agrees that the interMTA and interstate factors to be included in the prospective Traffic Termination Agreements are proper issues for arbitration. T-Mobile agrees with Alma's proposal to treat all traffic as intraMTA (0% interMTA factor). T-Mobile does not agree to the proposals made by the other three Rural LECs: Chariton (26 % interMTA/20 % interstate); Mid-Missouri (16 % interMTA/20 % interstate); and Northeast (22.5 % interMTA/20 % interstate). These proposals are not based on empirical evidence, but rather

⁶ See Alma Petition at 6 ¶ 1.

⁷ See Alma Petition at 6 Second ¶ 1.

on voluntary settlements which other wireless carriers have reached with the Petitioners. Given the specific circumstances of the arbitrations in question (the local service areas of the and T-Mobile, and the relationship of those areas to the LATA and MTA boundaries), the factors must be determined through use of empirical evidence and appropriate surrogates.

ISSUE 7: PROSPECTIVE INTRAMTA RATE

18. Rural LEC Position: The Rural LECs claim they should be able to charge T-Mobile 3.5 cents/minute (\$0.035) for terminating T-Mobile's intraMTA traffic under the future Traffic Termination Agreement.⁸

19. T-Mobile Position. T-Mobile agrees that the intraMTA rate to be included in the Traffic Termination Agreements is a proper issue for arbitration. FCC orders and rules specify that an incumbent LEC has the burden of demonstrating that its proposed rate for call termination is based on the forward-looking (TELRIC) costs of the traffic sensitive component of local switching, plus a reasonable allocation for forward-looking (TELRIC) common costs. It does not appear that the Petitioners have attempted to meet this burden of proof. They have not shared with T-Mobile a TELRIC cost study of their respective traffic sensitive switching costs and common costs. The only justification the Petitioners provide in support of their proposed 3.5-cent rate is that some other wireless carriers have agreed in the past to this rate in agreements that were negotiated without arbitration.⁹ That some other carriers in the past voluntarily agreed to pay 3.5 cents prospectively as part of an overall settlement of all issues (including traffic factors, balance-of-traffic determinations, other terms and conditions, and possibly also past traffic issues) is not relevant. Having chosen arbitration as their preferred procedure for resolving the open issues, the Rural LECs must now live by the rules developed for arbitration – including the

⁸ See Alma Petition at 6 Third ¶ 1.

⁹ See Alma Petition at 6 Third ¶ 1.

preparation, presentation, and defense of documented, Rural LEC-specific TELRIC cost studies, and proving that each of the proposed call termination rates complies with governing federal law.

20. In their presentation of the issues in their Petitions, the Petitioners have failed to comply with 4 CSR 240-36.040(3)(E), which specifies that an arbitration petition “must contain . . . [a]ll relevant documentation that supports the petitioner’s position on each unresolved issue.” Because they did not submit with their Petitions a TELRIC cost study justifying their proposed rate of 3.5 cents/minute, the Commission has no choice but to dismiss the Petitioners’ proposed rate for call termination.

21. Alternatively, in the absence of valid and proper cost support, T-Mobile is willing, as a show of good faith, to implement a reciprocal and symmetrical interim per minute rate of \$0.004 per minute for end-office switching and \$0.0015 per minute for tandem switching provided under 47 C.F.R. Section 51.715, as described by the FCC in its Declaratory Ruling and Report and Order in CC Docket No. 01-02 (effective April 29, 2005).

III. ADDITIONAL UNRESOLVED ISSUES FOR ARBITRATION

22. T-Mobile, pursuant to 4 CSR 240-36.040(7), identifies additional unresolved issues for arbitration.

ISSUE 8: THE RURAL LECs ARE REQUIRED TO COMPENSATE T-MOBILE FOR CALL TERMINATION OF ALL INTRAMTA TRAFFIC – INCLUDING TRAFFIC THEY CHOOSE TO FIRST SEND TO AN INTERMEDIATE CARRIER

23. T-Mobile Position: FCC rules specify that reciprocal compensation shall be paid for all intraMTA traffic that is exchanged between a LEC and a wireless carrier. There is no exemption in FCC rules for calls that a LEC originates but first sends to an intermediate carrier. In this regard, federal courts have confirmed that these rules require a LEC to pay compensation for

“all calls originated by [a LEC] and terminated by [a wireless carrier] within the same MTA, *regardless of whether the calls are delivered via an intermediate carrier.*”¹⁰

24. Rural LEC Position: The Rural LECs contend that they can exempt themselves from their statutory reciprocal compensation obligation when they choose to send their customer’s intraMTA calls to another carrier before delivery of the calls to T-Mobile.¹¹

ISSUE 9: THE RURAL LECs ARE REQUIRED TO COMPENSATE T-MOBILE FOR CALL TERMINATION OF ALL INTRAMTA TRAFFIC – INCLUDING TRAFFIC THEY SEND TO A T-MOBILE CUSTOMER WITH A PORTED NUMBER.

25. T-Mobile Position: FCC rules specify that reciprocal compensation shall be paid for all intraMTA traffic that is exchanged between a LEC and a wireless carrier. There is no exemption in FCC rules for calls to wireless customers that utilize a ported telephone number.

26. Rural LEC Position: The Rural LECs contend that they can exempt themselves from their statutory reciprocal compensation obligation when a T-Mobile customer happens to use a ported telephone number rather than a non-ported number.¹²

ISSUE 10: THE COMMISSION SHOULD ORDER AN APPROPRIATE BILLING MECHANISM BETWEEN THE PARTIES

27. T-Mobile Position: For the termination of wireless to wireless traffic, use of bill-and-keep is appropriate for two independent reasons. First, the Rural LECs have not demon-

¹⁰ *WWC License, L.L.C. v. Anne C. Boyle, et al.*, No. 4:03CV3393, Memorandum Opinion, Slip op. at 6 (D. Neb., Jan. 20, 2005)(emphasis added)(appended hereto as Exhibit F). *See also Atlas Telephone v. Oklahoma Corporation Comm’n*, 309 F. Supp. 2d 1299, 1309-10 (W.D. Ok. 2004), *aff’d*, 400 F.3d 1256, 1264 (10th Cir., March 10, 2005)(“[T]he mandate expressed in these [FCC rule] provisions is clear, unambiguous, and on its face admits of no exceptions. . . . Nothing in the text of these provisions provides support for the RTC’s contention that reciprocal compensation requirements do not apply when traffic is transported on an IXC network.”).

¹¹ *See* Proposed Agreement at ¶ 1.1 (“This Agreement does not cover traffic for which the originating party has contracted with an Interexchange Carrier (“IXC”) to assume responsibility for terminating the traffic, or traffic originated by an IXC pursuant to the IXC’s rate schedules, tariffs, end-user contracts, or presubscription rules.”). Other provisions in the RLEC’s Proposed Contract need to be modified as well. *See, e.g.*, ¶ 4.1 (delete the “under the responsibility” clause”).

¹² *See id.* at ¶ 1.1 (“This Agreement shall not apply to traffic or calls completed by either Party in compliance with any obligation to port numbers of the former customers of one Party when that customer takes service from the other Party.”).

strated that the traffic they exchange with T-Mobile is out of balance when all intraMTA traffic is considered (*see* Issues 8 and 9 above).¹³ Second, as discussed in Issue 7 above, the Rural LECs have utterly failed to support their 3.5 cent rate with a TELRIC study and have further failed to comply with Commission rules requiring the submission of such a study with their arbitration petitions. In the alternative, a net-billing approach is an industry-standard mechanism for capturing the balance of traffic (land-to-mobile and mobile-to-land percentages) while reducing the administrative burden of cross-billing.

28. Rural LEC Position: T-Mobile is reasonably confident that the Rural LECs would oppose bill-and-keep. T-Mobile does not have any current knowledge of the Rural LECs' position regarding net billing based upon balance of traffic percentages.

**ISSUE 11: FUTURE INTERMTA OR INTERSTATE TRAFFIC STUDIES MAY NOT USE
WIRELESS TELEPHONE NUMBERS**

29. T-Mobile Position: The FCC has ruled that the location of the originating cell site should be used to separate intraMTA traffic from interMTA traffic and that a wireless customer's telephone number does not reflect the customer's location at the time of a call. T-Mobile therefore agrees with the Rural LEC proposal that for T-Mobile, "the origination or termination point of a call *shall* be the cell site/base station that serves, respectively, the calling or called party at the beginning of the call."¹⁴ Yet, the Rural LECs appear to disregard this rule, because they propose that they be allowed to use instead a wireless customer's telephone number in the preparation of a "valid interMTA traffic study."¹⁵

¹³ Under FCC rules, a state commission may presume that traffic exchanges are balanced "unless a party rebuts such a presumption." 47 C.F.R. § 51.713(c). The Rural LECs have not, at least to date, submitted any evidence that traffic between the parties is not balanced when all intraMTA traffic is considered.

¹⁴ *See* Proposed Agreement at ¶ 2.6 (emphasis added)

¹⁵ *See id.* at ¶¶ 5.1, 5.2.

30. Rural LEC Position: Given their proposal to use “originating and terminating NPA/NXX minutes of use” in the preparation of future traffic studies, T-Mobile assumes that they would oppose an arrangement that uses the criteria and procedures that the FCC has established.

ISSUE 12: SCOPE OF COMPENSATION FOR TRAFFIC EXCHANGED

31. T-Mobile Position: T-Mobile requests an explicit statement in the Traffic Termination Agreements that the compensation obligation for intraMTA traffic is reciprocal and symmetrical. T-Mobile objects to certain compensation language proposed by Petitioners because the language is unclear and subject to varying interpretations, including potentially imposing an obligation upon T-Mobile to compensate Rural LECs for traffic originated by the Rural LECs.¹⁶

32. Rural LEC Position. Subject to Issues 8 and 9 above, T-Mobile is not aware of the Rural RLECs’ position or explanation regarding its proposed compensation language.

Issue 13: EFFECTIVE DATE OF THE TRAFFIC TERMINATION AGREEMENTS

33. T-Mobile Position: T-Mobile considers January 13, 2005 as the proper effective date of the Traffic Termination Agreements, because that is the date the parties’ agreed to negotiate those agreements. T-Mobile does not understand the rationale behind the Rural LECs’ proposed effective dates that range from March to May, 2005.

34. Rural LEC Position. T-Mobile is not aware of the Rural RLECs’ position or explanation regarding the January 13, 2005 effective date.

Respectfully submitted,

¹⁶ See Proposed Agreement at ¶4.1.2, “Compensation for Non-local Intrastate Traffic originated by, and under the responsibility of, ILEC and terminating to TMUSA, if any, shall be based on the rate for termination of non-local intrastate traffic identified in Appendix 1”. and similar language at ¶4.1.3.

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ATTORNEYS FOR T-MOBILE USA, INC.

Certificate of Service

I hereby certify that a true and final copy of the foregoing was served via electronic transmission on this 5th day of July, 2005, to the following counsel of record:

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/s/ Mark P. Johnson
Mark P. Johnson

EXHIBIT A

RESPONSE TO PETITION IN CASE NO. IO-2005-0468 (ALMA TELEPHONE)

1. Respondent admits the allegations in Paragraph 1.
2. The allegations in Paragraph 2 require no response.
3. Respondent admits the allegations in Paragraph 3.
4. The allegations in Paragraph 4 require no response.
5. Respondent admits the allegations in Paragraph 5 that it has sent traffic to Petitioner for termination to Petitioner's customers, and that a portion of that traffic is the subject of the unresolved complaint in Case No. TC-2002-57, but denies all other allegations in Paragraph 5.
6. Respondent admits the allegations in Paragraph 6 through 10.
7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies same.
8. Respondent admits the allegations in Paragraph 12.
9. Respondent admits the allegations in Paragraph 13 that Respondent has attached a proposed Traffic Termination Agreement to its Petition, but denies all other allegations in Paragraph 13.
10. Respondent admits the allegations in Paragraph 14 that the Petition contains a recitation of some of the unresolved issues between the parties, but denies the allegations that each of the issues presented in the Petition as unresolved is an issue properly before the Commission in this proceeding, rather than in Case No. TC-2002-57, and denies all other allegations in Paragraph 14.

EXHIBIT B

**RESPONSE TO PETITION IN CASE NO. IO-2005-0469 (NORTHEAST MISSOURI
RURAL TELEPHONE)**

1. Respondent admits the allegations in Paragraph 1.
2. The allegations in Paragraph 2 require no response.
3. Respondent admits the allegations in Paragraph 3.
4. The allegations in Paragraph 4 require no response.
5. Respondent admits the allegations in Paragraph 5 that it has sent traffic to Petitioner for termination to Petitioner's customers, and that a portion of that traffic is the subject of the unresolved complaint in Case No. TC-2002-57, but denies all other allegations in Paragraph 5.
6. Respondent admits the allegations in Paragraph 6 through 10.
7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies same.
8. Respondent admits the allegations in Paragraph 12.
9. Respondent admits the allegations in Paragraph 13 that Respondent has attached a proposed Traffic Termination Agreement to its Petition, but denies all other allegations in Paragraph 13.
10. Respondent admits the allegations in Paragraph 14 that the Petition contains a recitation of some of the unresolved issues between the parties, but denies the allegations that each of the issues presented in the Petition as unresolved is an issue properly before the Commission in this proceeding, rather than in Case No. TC-2002-57, and denies all other allegations in Paragraph 14.

EXHIBIT C

RESPONSE TO PETITION IN CASE NO. IO-2005-0470 (MID-MISSOURI TELEPHONE COMPANY)

1. Respondent admits the allegations in Paragraph 1.
2. The allegations in Paragraph 2 require no response.
3. Respondent admits the allegations in Paragraph 3.
4. The allegations in Paragraph 4 require no response.
5. Respondent admits the allegations in Paragraph 5 that it has sent traffic to Petitioner for termination to Petitioner's customers, and that a portion of that traffic is the subject of the unresolved complaint in Case No. TC-2002-57, but denies all other allegations in Paragraph 5.
6. Respondent admits the allegations in Paragraph 6 through 10.
7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies same.
8. Respondent admits the allegations in Paragraph 12.
9. Respondent admits the allegations in Paragraph 13 that Respondent has attached a proposed Traffic Termination Agreement to its Petition, but denies all other allegations in Paragraph 13.
10. Respondent admits the allegations in Paragraph 14 that the Petition contains a recitation of some of the unresolved issues between the parties, but denies the allegations that each of the issues presented in the Petition as unresolved is an issue properly before the Commission in this proceeding, rather than in Case No. TC-2002-57, and denies all other allegations in Paragraph 14.

EXHIBIT D

RESPONSE TO PETITION IN CASE NO. IO-2005-0471 (CHARITON VALLEY TELEPHONE CORPORATION)

1. Respondent admits the allegations in Paragraph 1.
2. The allegations in Paragraph 2 require no response.
3. Respondent admits the allegations in Paragraph 3.
4. The allegations in Paragraph 4 require no response.
5. Respondent admits the allegations in Paragraph 5 that it has sent traffic to Petitioner for termination to Petitioner's customers, and that a portion of that traffic is the subject of the unresolved complaint in Case No. TC-2002-57, but denies all other allegations in Paragraph 5.
6. Respondent admits the allegations in Paragraph 6 through 10.
7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies same.
8. Respondent admits the allegations in Paragraph 12.
9. Respondent admits the allegations in Paragraph 13 that Respondent has attached a proposed Traffic Termination Agreement to its Petition, but denies all other allegations in Paragraph 13.
10. Respondent admits the allegations in Paragraph 14 that the Petition contains a recitation of some of the unresolved issues between the parties, but denies the allegations that each of the issues presented in the Petition as unresolved is an issue properly before the Commission in this proceeding, rather than in Case No. TC-2002-57, and denies all other allegations in Paragraph 14.