BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Petition of	**)**	
Alma Telephone Company	**)**	
for Arbitration of Unresolved	**)**	**Case No. IO-2005-0468, et al.**
Issues Pertaining to a Section 251(b)(5)	**)**	**(consolidated)**
Agreement with T-Mobile USA, Inc.	**)**	

T-MOBILE REPLY COMMENTS TO
SMALL TELEPHONE COMPANY GROUP COMMENTS

Comes now T-Mobile, USA, Inc. ("T-Mobile"), pursuant to Commission Rule 4 CSR 240-36.040(20), and in to the comments filed by the Small Telephone Company Group ("STCG") on September 19, 2005, states the following:

I. THE ARBITRATOR'S DECISION DOES NOT, AS STCG CLAIMS, CONFLICT WITH FCC RULES CONCERNING THE SCOPE OF PETITIONERS' RECIPROCAL COMPENSATION OBLIGATION

STCG asserts repeatedly that the Arbitrator has "misread and misapplie[d] the FCC's rules":

> The Draft Order erroneously concludes that small rural ILECs must compensate wireless carriers for landline-to-mobile intraMTA calls that are carried by an IXC. This conclusion contradicts current FCC rules.[1]

According to STCG, a LEC's reciprocal compensation obligation depends on whether the LEC rates its customers' calls as local or toll and, STCG further asserts, intraMTA toll calls are excluded from their reciprocal compensation obligation:

> The [1+ toll] call does not fall under the FCC's rules for reciprocal compensation between ILECs and wireless carriers. * * * This [LEC-CMRS intraMTA reciprocal compensation] rule does not apply to situations involving IXCs.[2]

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[1] STCG Brief at 3 and 7. *See also id.* at 2 ("[T]he Draft Report contradicts (1) FCC Rules."); *id.* at 9 ("The Draft Report recites the wording of FCC Rule 51.701, but the Draft Report misreads and misapplies that rule."

[2] *Id.* at 6 and 10.

Although STCG criticizes the Arbitrator for "misreading and misapplying" FCC rules, its brief notably never quotes from these rules. Among other things, STCG neglects to mention that:

- The FCC in 2001 amended its reciprocal compensation rules, 47 C.F.R. §§ 51.701, 51.701(b), to delete the reference to "local" traffic because the word "created unnecessary ambiguities," thereby confirming that a LEC's reciprocal compensation obligation is not limited to traffic that the LEC believes is "local;"[3]
- The exemption for IXC traffic that STCG wants the Commission to create exists in the rule applicable to LEC-LEC traffic (*see* Rule 51.701(b)(1)), but the FCC chose not to include the same exemption in the intraMTA rule applicable to LEC-CMRS traffic (*see* Rule 51.701(b)(2));[4]
- FCC Rule 51.701(e) makes clear that a LEC's reciprocal compensation obligation applies to "traffic that originates on the *network facilities* of the other carrier," not whether the LEC for retail rating purposes classifies its customers' calls as local or toll;[5]
- FCC Rule 20.11(b)(1) further makes clear that a LEC's reciprocal compensation obligation applies "traffic that *originates on the facilities* of the local exchange carrier," whether or not the LEC classifies this traffic as local or toll;[6] and

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3 *See* T-Mobile Post-Hearing Brief at 32 (Aug. 24, 2005), for supporting citations.

4 *See id.*

5 *See id.* at 33-34.

6 *See id.* at 34 (emphasis added).

- The FCC in other orders has made clear that a LEC's reciprocal compensation obligations apply even if the LEC treats its customers' calls as toll.[7]

The Tenth Circuit Court of Appeals has ruled that the "mandate expressed in these [FCC rule] provisions is clear, unambiguous, and on its face admits of no exemptions."[8] And, as the Arbitrator further noted correctly, every other federal court considering the issue has "reached the same conclusion."[9]

STCG would have the Commission ignore the plain language of these FCC rules and every federal court order applying these rules. Instead, STCG urges the Commission to follow the "precedent found in the Eight circuit's "*Comptel*" decision.[10] But that case has no bearing on this arbitration proceeding. It did not involve LEC-wireless carrier interconnection and compensation. Rather, the issue on appeal was limited to whether IXCs were entitled to pay access charges based on TELRIC – that is, pay in access charges the same rate LECs charge for reciprocal compensation.[11]

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7 *See id.* at 36 n.71.

8 *Atlas Telephone* v . *Oklahoma Corporation Comm'n,* 400 F.3d 1256, 1264 (10th Cir. 2005).

9 Draft Report at 18. Although STCG claims that "foreign" federal courts made these decisions and that rural LECs in these other States have "very different telecommunications networks" (*see* Brief at 12), STCG never explains how these networks are different or how this difference is material. There is absolutely no evidence of record in this case to support STCG's claims concerning network differences. The FCC has one set of rules, and these rules apply whether wireless carriers and rural LECs connect directly or indirectly or whether rural LECs participate in a centralized interexchange network.

10 STCG Brief at 13, *citing CompTel* v. *FCC,* 117 F.3d 1068 (8th Cir. 1997). STCG would also have the Commission rely on a single sentence from a 91-page/221 paragraph FCC notice of proposed rulemaking. *See* STCG Brief at 8, *quoting Unified Intercarrier Compensation Regime Further NPRM,* 20 FCC Rcd 4685, 4746 ¶ 138 (2005). Specifically, STCG would have the Commission believe that in this single sentence, where it only "seek[s] comment," the FCC vacated its rules that had been affirmed on appeal – even though in this NPRM the FCC reaffirmed that "traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges." *Id.* at 4744 ¶ 134.

11 The Eighth Circuit rejected the IXC argument because of 47 U.S.C. § 251(g). But as T-Mobile has already explained, Section 251(g) is not relevant to LEC-CMRS interconnection because the FCC explicitly superseded prior access arrangements as applied to LEC-CMRS intraMTA traffic by adopting 47 U.S.C. § 51.701. *See* T-Mobile Post-Hearing Brief at 35. *See also Local Competition Order,* 11 FCC

STCG additionally argues (repeatedly) that the Arbitrator's decision conflicts with prior Commission orders, industry practice in Missouri, and more than 70 negotiated agreements.[12] The terms of ***negotiated*** agreements between ***other*** carriers are legally irrelevant to this arbitration proceeding, as T-Mobile has previously documented.[13] Prior Commission orders and industry practice also are not relevant to the extent they conflict with federal law. STCG concedes, as it must, that the Commission in this proceeding "must comply with federal law and FCC rules."[14] Indeed, Congress has been clear that in rendering its arbitration decision, this Commission "*shall* (1) ensure that such resolution and conditions meet the requirements of section 251 of this tile, including the regulations prescribed by the [FCC] . . . [and] (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section."[15] Furthermore, STCG merely repeats the same points that the Petitioners had already made and should be accorded no weight.

II. STCG MISSTATES UNREBUTTED RECORD EVIDENCE THAT T-MOBILE IS NOT COMPENSATED BY IXCS FOR LEC-ORIGINATED TRAFFIC

T-Mobile agrees with STCG on one point: no carrier should be "compensated twice for the same call."[16] Without any citation to the record in this proceeding,[17] STCG claims that

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Rcd 15499, 16014 ¶ 1036 (1996)("[T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges.").

12 *See* STCG Brief at 2, 3, 4, 6 and 10-12.

13 *See* T-Mobile Post-Hearing Brief at 11-12.

14 STCG Brief at 2. *See also id.* at 7 ("STCG agrees that the Arbitrator must 'defer to the FCC's view' of reciprocal compensation and apply the federal regime.").

15 47 U.S.C. § 252(c)((emphasis added).

16 STCG Brief at 11. Thus, T-Mobile cannot agree with the Petitioners latest argument – namely, they should be compensated twice for the same intraMTA call: once from T-Mobile and also from an IXC if an IXC is used in transporting the call from T-Mobile's network to one of the Petitioners' networks. *See* Petitioners' Comments on Arbitrator's September 9, 2005 Draft Report at 14 (Sept. 16, 2005). This is an entirely new issue that Petitioners should not be permitted to raise for the first time ***after*** the arbitration hearing has been concluded.

"wireless carriers are already receiving compensation from the IXCs."[18] Based on this assertion, STCG argues that permitting T-Mobile to receive reciprocal compensation from the Petitioners would result in a windfall to T-Mobile:

> [T]he Draft Order errs in that it would effectively allow the wireless carriers to be compensated twice for the same call: once from the IXC and a second time from the small rural ILEC.[19]

In point of fact, it has ***never*** been T-Mobile's position that it should be compensated twice for terminating a call. The record is very clear on this point – although STCG conveniently neglects to advise the Arbitrator of this record evidence:

> Q. [Mr. Craig Johnson]: . . . [I]s it your position that the IXC owes you terminating compensation – terminated access compensation, and the ILEC owes you terminating reciprocal comp. for that call?
>
> A. [Mr. Pruitt]: No.[20]

The record evidence is also clear – and unrebutted – that T-Mobile does not receive any compensation from IXCs when it terminates calls originating on T-Mobile's network.[21]

III. THE ARBITRATOR'S DECISION REGARDING THE NET BILLING 65/35 TRAFFIC FACTOR IS SUPPORTED BY UNREBUTTED EVIDENCE

STCG claims that the Arbitrator "erred by imposing an arbitrary and unreasonable 65%/35% net billing factor for intraMTA traffic."[22] STCG first asserts that the Arbitrator's

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17 *But see* Commission Rule 4 CSR 240-36.040(20)("Commenters shall make specific references to the record to support each claim of error.").

18 STCG Brief at 10. The only support STCG cites in support of this sweeping statement is the testimony of Mr. Pruitt in a different case several years ago, where he testified that at the time, Sprint PCS was receiving access charges from some IXCs, but not all IXCs (including the largest IXC). T-Mobile is not familiar with the arrangements between IXCs and other wireless carriers. However, given the FCC's subsequent decision that IXCs are not required to pay access charges to wireless carriers *unless they agree voluntarily to pay such charges, see CMRS Access Charge Order,* 17 FCC Rcd 13192 (2002), it is unlikely that IXCs are voluntarily paying access charges to wireless carriers.

19 STCG Brief at 10-11.

20 Hearing Transcript 275, lines 21-24.

21 Pruitt Rebuttal Testimony, Exhibit 17, at p. 4, lines 12-21 and p. 5, lines 5-7.

22 STCG Brief at 13.

decision is "unsupported by any empirical evidence."[23] But there was no reason for "empirical evidence" in this case because the Petitioners did not challenge Mr. Pruitt's testimony that a 65%/35% net billing factor is "a standard that's commonly used throughout the industry. And – and certainly wireless carriers and rural LECs in other states have agreed to factors in that range."[24]

STCG further claims that a 65%/35% net billing factor is inconsistent with an "80%/20% shared facility factor" that T-Mobile negotiated with SBC in an agreement that was approved 4.5 years ago.[25] Interconnection arrangements that may exist between T-Mobile and SBC are not relevant to this proceeding.[26] Even if such arrangements were relevant, STCG never explains its implication that a "shared facility factor" in one agreement bears any relation to the net billing factor at issue in this proceeding. STCG also never explains, even assuming the two factors are/should be in any way related, the shared facility factor may have changed or if not, why a factor that may have been appropriate in April 2001 is still appropriate in October 2005, given the intervening exponential growth in the wireless industry.[27]

STCG finally asserts that that the 65%/35% net billing factor "fails to take into account" that calls originated by customers of other LECs (*i.e.*, the Petitioners) "likely" involve "fewer

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23 *Id.*

24 Hearing Transcript, p. 256, lines 23-25 and p. 257, line 1. *See also* Draft Report at 19-20 ("[T]hey [the Petitioners] have not countered the reasonable balance of traffic that T-Mobile proposed in its Final Offer of 65% mobile-originated and 35% land-originated.").

25 *See* STCG Brief at 14 and n.17.

26 T-Mobile has previously explained that negotiated agreements with other carriers are legally irrelevant to this arbitration proceeding because, among other thing, "the very essence of negotiated agreements is compromise, whereby each party makes a concession in one area to receive a benefit in another area." T-Mobile Post-Hearing Brief at 11.

27 For example, during the four-year period from the end of 2000 to the end of 2004, the number of wireless customers increased by over 79% -- from 101 million to over 181 million. *See* FCC, *Local Telephone Competition: Status as of December 31, 2004,* Table 13 (July 8, 2005).

calls and shorter calls."[28] But STCG has not presented any evidence for its view that calls made by customers served by other carriers (*i.e.,* the Petitioners) are "likely" to involve "fewer calls and shorter calls." STCG is asking the Arbitrator to engage in rank speculation without the merest shred of record evidence. STCG would have the Commission ignore the unrebutted testimony of an expert witness for its own speculation. There is, moreover, a more fundamental reason to ignore this STCG argument: the appropriate traffic factor for net billing is no longer an "open issue" in need of arbitration because the Petitioners do not challenge the factor that the Arbitrator adopted.[29]

IV. STCG'S BRIEF CONFIRMS THAT THE PETITIONERS' POSITION CONTRAVENES THE FCC'S LOCAL DIALING PARITY RULE

T-Mobile has previously explained that the Petitioners' claim – they can send to an IXC calls to T-Mobile customers with locally rated telephone numbers – contravenes the FCC's local dialing parity rule.[30] Example 1 in STCG's brief confirms that the Petitioners' position on this issue is improper and unlawful:

> [A]ssume an intraMTA call from a Sprint local landline customer in Jefferson City, to a Cingular wireless customer with a Jefferson city NPA-NXX. This call would be dialed as a local call (*i.e.* **without dialing "1+"**).[31]

T-Mobile acknowledges that the Arbitrator decided not to decide Issue 16 because of the availability of a complaint remedy.[32] This remedy certainly does exist. The problem, however, is that while a complaint proceeding is pending, the Petitioners, in direct contravention of the FCC's local dialing rules, can harm T-Mobile's customers by refusing to honor their locally rated telephone numbers.

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28 STCG Brief at 15 (underscoring omitted).

29 Under 47 U.S.C. § 252(c), State commissions are required to arbitrate "any open issue."

30 *See* T-Mobile Post-Hearing Brief at 47-50.

31 STCG Brief at 4.

32 *See* Draft Report at 25.

V. CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Arbitrator reject the positions and arguments advanced by the Small Telephone Company Group and reaffirm that under existing FCC rules, the Petitioners are required to compensate T-Mobile for ***all*** intraMTA traffic pursuant to the net billing arrangement that the Petitioners no longer challenge.

Respectfully submitted,

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Certificate of Service

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