

**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))
Agreement with Sprint PCS) Case No. _____

**VERIFIED PETITION
FOR ARBITRATION OF A TRAFFIC TERMINATION AGREEMENT
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

COME NOW Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Green Hills Telecommunications Services, Holway Telephone Company, KLM Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, Mark Twain Communications Company, McDonald County Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, and Seneca Telephone Company, (the "Petitioners"), pursuant to the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§251 and 252, Federal Communications Commission ("FCC") Rule 47 C.F.R §20.11, and Missouri Public Service Commission ("Commission") Rule 4 CSR 240-36.040, and for their Petition for Arbitration of unresolved issues remaining in the negotiation between Petitioners and Respondent, Sprint Spectrum L.P ("Sprint PCS") for a Traffic Termination Agreement ("the Agreement") state to the Commission as follows:

I. INTRODUCTION

1. Petitioners are small rural local exchange carriers (LECs) operating in the State of Missouri. Petitioners have previously filed Certificates from the Missouri Secretary of State showing that they are in good standing or authorized to do business in the State of Missouri which Petitioners request be incorporated by reference in this case. See Attachment A. Petitioners' legal names, mailing addresses, and contact persons are listed in Attachment B. Petitioners are telecommunications carriers as defined by the Act, providing "basic local telecommunications services" and "exchange access services", as those terms are defined in Section 386.020, RSMo 2000. Petitioners provide telecommunications service in rural areas of Missouri. As part of this service, Petitioners provide the facilities and services necessary to complete wireless-originated calls to customers in Missouri's rural exchanges. The wireless-originated traffic is terminated to Petitioners over common trunk groups owned by Southwestern Bell Telephone Company d/b/a SBC, Sprint, Missouri, Inc., and/or CenturyTel.

2. All communications and submissions in this proceeding should be served upon the following designated contacts for the Petitioners:

W.R. England, III
Brian T. McCartney
Brydon, Swearengen & England, P.C.
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Jefferson City, MO 65102-0456
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3. Respondent is a commercial mobile radio service (“CMRS” or “wireless”) telecommunications provider operating in the State of Missouri and delivering wireless-originated calls for termination to Petitioners’ Missouri exchanges.

4. On the same date that this Petition is filed it is being served electronically upon the following contacts for Respondent:

Fred Broughton
Wholesale and Interconnection Management
Sprint PCS
6450 Sprint Parkway
MS: KSOPHN0116
Overland Park, KS 66251
Fred.Broughton@sprint.com

Jeff Pfaff
Sprint PCS
Jpfaff01@sprintspectrum.com

5. On April 28, 2005, Petitioners sent a request for negotiation to Respondent by overnight courier for delivery on April 29, 2005. (See Attachment C, which is attached to and incorporated within this document.)

6. Negotiations have failed to produce a voluntary agreement as to all terms of a Traffic Termination Agreement.

7. Petitioners are filing this petition with the Commission more than 135 days and less than 160 days after Petitioners sent the request for negotiation and had it delivered to Respondent. The attached copy of the request for negotiation demonstrates that this Petition complies with the time requirements of 47 U.S.C. §252(b)(1) and 4 CSR 240-36.040(2). See Attachment C.

8. A proposed Agreement is also attached to this Petition. See Attachment D. This proposed Agreement includes the fundamental organizational clauses and subjects contained in numerous other negotiated agreements that this Commission has approved between similarly situated small rural telephone companies and other similarly situated CMRS Providers, such as Alltel, Cingular, Sprint PCS, T-Mobile, Verizon Wireless, and U.S. Cellular. In addition, this proposed agreement is highlighted to show the areas of disagreement that still remain between the Parties. The proposed Agreement complies fully with both Missouri law and Section 252(e) of the Act because the proposed Agreement is consistent with the public interest, convenience and necessity, and it does not discriminate against any telecommunications carrier.

II. COMMISSION ARBITRATION AUTHORITY AND PROCEDURE

9. Under the Act, the Commission has the authority to arbitrate the issues remaining in a negotiation as requested by Petitioners. Specifically, Section 252(b) of the Act provides:

AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION.

(1) **ARBITRATION.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State Commission to arbitrate any open issues.

47 U.S.C. §252.

10. 4 CSR 240-36.040, Rules and Regulations of the Public Service Commission provides the procedure for requesting and conducting arbitrations.

III. UNRESOLVED ISSUES

11. Petitioners request arbitration of the remaining unresolved issues in order to obtain an approved agreement and resolution of all issues which have surrounded the uncompensated termination of wireless originated traffic and which will obviate future disputes for the term of the approved agreement.

12. The following is a statement of each unresolved issue with a listing of both parties' positions on each unresolved issue as understood by Petitioners to the best of their knowledge and belief. This listing utilizes numbers corresponding to the sections of the proposed Agreement. Documentation supporting Petitioners' position is attached.

A. PRE-WIRELESS TARIFF TRAFFIC (*Section 5.4*)

The wireless traffic records provided by SBC establish that Respondent sent a total of 26,693 minutes of wireless-originated calls to Petitioners' small rural exchanges between February of 1998 and the 2001 effective date of the wireless termination service tariffs approved by this Commission. Company-specific minutes of use are detailed in Attachment E (Proprietary). Respondent delivered this traffic in the absence of an agreement and therefore in violation of the Commission's prohibition against sending such traffic in Case No. TT-97-524. The FCC has held that state law tariffs could and did apply to traffic delivered in the absence of an agreement in CC Docket No. 01-92.¹ Moreover, the Missouri Supreme Court is presently considering whether exchange access tariff rates

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile Petition for Declaratory Ruling*, CC Docket No. 01-92, *Declaratory Ruling and Report and Order*, released Feb. 24, 3005.

applied to this traffic in Case No. SC86529 (oral argument held and case submitted on Sept. 28, 2005).

(1.) *Petitioners' Position.* If the Missouri Supreme Court issues a decision before the completion of this arbitration finding that Petitioners should be compensated for this traffic pursuant to their intrastate intraLATA exchange access tariff rates that were approved by and on file with the Commission during the time period between 1998 and 2001, then the Petitioners expect to be compensated for this traffic under their intrastate intraLATA exchange access tariffs. Otherwise, Petitioners' position is that they will accept \$0.035 per minute of use for all intraMTA 1998-2001 traffic (which is the rate that Petitioners have proposed as part of the Traffic Termination Agreement attached hereto as Attachment D).

(2.) *Respondents' Position.* Respondent has refused to pay for some or all of its pre-tariff traffic, and Respondent has not offered a rate or any agreement language to address 1998-2001 wireless traffic.

B. IntraMTA Wireless Termination Rate (*Appendix 1*)

The Parties disagree on the appropriate rate to apply for termination of "Local Traffic" via an indirect interconnection.

(1.) *Petitioners' Position.* Petitioners propose that the wireless termination service rate for intraMTA wireless traffic delivered pursuant to the agreement should be \$0.035 per minute. This rate (\$0.035) is supported by the forward-looking cost studies that are being filed contemporaneously with the filing of this Petition as Attachment F. It is also the same rate that has been agreed to

in numerous other negotiated agreements between small rural ILECs and wireless carriers such as Cingular, Sprint PCS, T-Mobile, U.S. Cellular, and Verizon Wireless.

(2.) Respondents' Position. Respondent has not agreed to the \$0.035 rate or provided an alternative rate.

C. InterMTA Factors (*Appendix 2*)

The Parties disagree on the appropriate interMTA factor.

(1.) Petitioners' Position. Petitioners' position is that the Commission should adopt the InterMTA factors listed in Attachment G.

(2.) Respondents' Position. Petitioners have provided no language or proposals for interMTA factors.

D. Reciprocal Compensation for Interexchange Carrier (IXC) Traffic (*Section 1.1- Scope*)

The Parties disagree as to whether Respondents have an obligation to pay reciprocal compensation on landline traffic terminated to Respondent by third party carriers (such as IXCs) where that traffic is neither originated by, nor the responsibility of, Petitioners.

(1.) Petitioners' Position. Petitioners' position is that they have no obligation to pay reciprocal compensation on landline traffic terminated to Respondent by third party carriers (such as IXCs) where that traffic is neither originated by, nor the responsibility of, Petitioners. This is consistent with the Act, FCC rules, industry practice and numerous Commission approved traffic termination agreements between Small Rural ILECs and Wireless Carriers.

(2.) Respondents' Position. Respondent's position is that all intraMTA landline traffic originated by end-users in Petitioners' exchanges and terminated to Respondent, regardless of which carrier carries the call, are subject to reciprocal compensation for which Petitioners are financially responsible.

E. Other Issues

As of the filing date of this Petition, the Parties disagree on several other issues, as indicated by the highlighted language in the proposed Agreement (Attachment D). However, these issues are less significant than those identified above, and Petitioners anticipate that these issues will be resolved prior to any hearing scheduled in this arbitration.

IV. CONCLUSION

WHEREFORE, Petitioners respectfully request the Commission to issue an Order: (1) appointing an arbitrator to schedule an initial arbitration meeting as soon as possible and to resolve the disputed issues; (2) approving an Agreement setting forth both the voluntarily agreed terms and also the arbitrated matters and terms; and (3) granting such other relief as is reasonable under the circumstances.

RESPECTFULLY SUBMITTED,

/s/ Brian T. McCartney

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LIST OF ATTACHMENTS

Attachment A	Case Numbers for Certificates from Missouri Secretary of State
Attachment B	Petitioner Contact Information
Attachment C	Request for Negotiation
Attachment D	Proposed Agreement
Attachment E	Unpaid Pre-Wireless Tariff Traffic (PROPRIETARY)
Attachment F	Cost Studies
Attachment G	InterMTA Factor Chart

Attachment A

Case Numbers for Certificates from Missouri Secretary of State

<u>Telephone Companies</u>	<u>Certificate From Secretary of State Filed in Case Nos.:</u>
Ellington Telephone Company	TK-2003-0307
Farber Telephone Company	TO-2004-0437
Goodman Telephone Company	TK-2004-0165
Green Hills Telecommunications Services	CO-2003-0162
Holway Telephone Company	TC-2002-1077
KLM Telephone Company	TC-2002-1077
Le-Ru Telephone Company	IK-2003-0255
Mark Twain Rural Telephone Company	TC-2002-1077
Mark Twain Communications Company	TA-98-305
McDonald County Telephone Company	TO-2004-0491
Ozark Telephone Company	TK-2004-0166
Rock Port Telephone Company	IK-2003-0259
Seneca Telephone Company	TK-2004-0167

ATTACHMENT A

ATTACHMENT B – COMPANY NAME AND CONTACT INFORMATION

Ellington Telephone Company
Dee McCormack
200 College Avenue
P.O. Box 400
Ellington, MO 63638

Farber Telephone Company
Charles Crow
Main & Linn Streets
Farber, MO 63345

Goodman Telephone Company
Ozark Telephone Company
Seneca Telephone Company
Jay Mitchell
P.O. Box 592
Seneca, MO 64865

Green Hills Telecommunication Services
Steve Gann/Renee Reeter
7926 N.E. State Route M
P.O. Box 227
Breckenridge, MO 64625

Holway Telephone Company
Bruce Copsey
208 Ash
P.O. Box 112
Maitland, MO 64466-0112

KLM Telephone Company
Bruce Copsey
616 E. Park Avenue
P.O. Box 30
Rich Hill, MO 64779

Le-Ru Telephone Company
Robert Hart
P.O. Box 147
Stella, MO 64867-0147

Mark Twain Rural Telephone Company
Mark Twain Communications Company
Jim Lyon
Highway 6 East
P.O. Box 68
Hurdland, MO 63547

McDonald County Telephone Company
Ross Babbitt
704 North Main Street, Hwy. W
P.O. Box 207
Pineville, MO 64856-0207

Rock Port Telephone Company
Raymond Henagan
107 West Opp
P.O. Box 147
Rock Port, MO 64482

**ATTACHMENT E (PROPRIETARY)
UNPAID PRE-WIRELESS TARIFF TRAFFIC**

ATTACHMENT E IS PROPRIETARY

ATTACHMENT G
SUMMARY OF INTERMTA FACTORS
AND PETITIONERS' PROPOSED FACTORS

Telephone Company	Proposed Factors
Ellington Telephone Company	0%
Farber Telephone Company	0%
Green Hills Telecommunication Services	0%
Holway Telephone Company	0%
KLM Telephone Company	0%
Le-Ru Telephone Company	0%
Mark Twain Rural Telephone Company	70%
Mark Twain Communications Co.	70%
McDonald County Telephone Co.	0%
Ozark Telephone Company	0%
Rock Port Telephone Company	0%
Seneca Telephone Company	0%

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 4th day of October, 2005, to the following parties:

General Counsel
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