

**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 T-Mobile USA, Inc.) Case No. TO-2006-0147

**OBJECTION TO T-MOBILE'S REQUEST
TO SHORTEN RESPONSE PERIOD**

On November 16, 2005, T-Mobile filed a motion for summary determination on one issue raised in this arbitration proceeding. T-Mobile's motion proposes that the Commission shorten Rule 4 CSR 240-2.117's 30-day response period in half and require the Petitioners to respond within fifteen (15) days. T-Mobile's request to shorten the time period for Petitioners' response should be denied for the following reasons:

1. **Failure to State Good Cause.** T-Mobile offers no good cause for its request to shorten Petitioners' response period, particularly in light of the fact that T-Mobile has had at least 40 days to prepare and file its motion.¹ T-Mobile's only explanation for its request to shorten Petitioners' response period to 15 days is to avoid preparation of "their prefiled written testimony (so they know whether testimony must address Issue E)."² Because T-Mobile has already provided prefiled written testimony on the very same issue in the recent Alma Arbitration

¹ The Petition for Arbitration was filed on October 4, 2005, and the Arbitration Report in the Alma case was issued on October 6, 2005. The Commission's Alma Arbitration Report is currently on appeal before the U.S. District Court for the Western District of Missouri in Case No. 05-4358.

² T-Mobile Motion, p. 3.

Case,³ T-Mobile's reasoning does not rise to the level of good cause and does not outweigh the burden it would impose on Petitioners.

2. **Thanksgiving Holiday.** T-Mobile's proposed 15-day response period falls over the Thanksgiving holiday, resulting in only nine business days for response and conflicting with holiday travel plans.

3. **T-Mobile's Two Other Motions to Dismiss.** Responses to the two other motions to dismiss filed by T-Mobile on November are due within ten (10) days, or the Monday after the Thanksgiving holiday. It would create an unreasonable burden to require Petitioners to also respond to the motion for summary determination within this time period.

4. **Ongoing Discovery.** Commission Rule 4 CSR 240.2.117(D) provides that a motion for summary determination may be continued "for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination." Petitioners are currently in the process of conducting discovery with T-Mobile on this contested issue, and the discovery may lead to additional evidence not made part of the record in the *Alma* Arbitration case.

5. **FullTel is Distinguishable.** T-Mobile cites a case in which the Commission ordered a party to respond to a motion for summary judgment within four (4) days.⁴ That case is distinguishable for a number of reasons. First, the motion in *FullTel* had already been pending for 15 days when the order was

³ Alma Arbitration Case No. IO-2005-0468.

⁴ *Petition of FullTel*, Case No. TK-2005-0079, Order Directing Response, issued Nov. 8, 2004.

issued, so the net result was a 19-day response period. Second, an expedited response was necessary in the FullTel case because the Petitioner alleged that the Commission had only 90 days to act on the Petition, and more than half of that time would have already run at the end of the 30-day response period. Neither the Commission nor the parties face a similar time crunch in this case. On the contrary, the parties voluntarily extended the procedural schedule in order to allow this case to proceed at a more reasonable pace.

WHEREFORE, the Petitioners OBJECT to T-Mobile's request to shorten Petitioners' response time to fifteen (15) days and respectfully request that the Commission grant Petitioners the full thirty (30) days for a response provided by Commission Rule 4 CSR 240-2.117.

RESPECTFULLY SUBMITTED,

/s/ Brian T. McCartney

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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 18th day of November, 2005, to the following parties:

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