

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

T-MOBILE USA, INC.,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. TC-2006-0558
	)	
GREEN HILLS TELECOMMUNICATIONS	)	
SERVICES and MARK TWAIN	)	
COMMUNICATIONS COMPANY,	)	
	)	
Respondents.	)	

**T-MOBILE’S RESPONSE TO COMMISSION ORDER**

COMES NOW T-Mobile USA, Inc. (“T-Mobile”) and, for its response to the Commission’s Order of July 3, 2006, states:

**Summary of T-Mobile’s Position**

The Respondent Rural CLECs above and their Rural ILEC owners (in Case No. TC-2006-0486) have invoked the Enhanced Record Exchange (“ERE”) rules as the legal basis to justify their plans to block calls made by T-Mobile customers to their customers. It is T-Mobile’s position that neither the Rural CLECs nor the Rural ILECs (collectively “Rural LECs”) possess the legal authority to block this traffic – whether under the ERE rules or under any other law (State or federal). Nevertheless, because the Rural LECs have invoked the ERE rules for their blocking plans, T-Mobile had no choice but invoke the procedures set forth in those rules, so the Commission has the time to decide the threshold question – namely, whether the Rural LECs possess the legal authority to block T-Mobile traffic.

T-Mobile filed its June 30 Application for Rehearing and Reconsideration of the Commission’s June 20 “Notice Regarding Obligation to Cease Blocking Preparations Pending

Commission Decision” (issued in Case No. TC-2006-0486) out of an abundance of caution. The threshold issue raised by T-Mobile’s Rural LEC complaints is whether the Rural LECs possess the authority to block T-Mobile’s traffic, including under the ERE rules. Nevertheless, the Commission stated in its June 20<sup>th</sup> Notice: “T-Mobile, the originating carrier, has filed a formal complaint with the Commission” (Notice at 2). This statement could be read as a determination that the Commission has already rejected the central argument that T-Mobile makes in its complaint – namely, that the ERE rules do not, as the Rural LECs assert, authorize them to block consumer traffic. While T-Mobile does not believe that the Commission intended such a result, the drastic action that the Rural LECs want to pursue – prevent consumers from making and receiving desired communications – warrants proceeding with an abundance of caution (at least in T-Mobile’s judgment).

T-Mobile is willing to withdraw its June 30 Application for Rehearing *if* the Commission makes clear that it did not decide in its June 20 Notice the threshold issue in this case (*i.e.*, whether the Rural CLECs and ILECs even possess the legal authority to block T-Mobile mobile-to-land traffic). T-Mobile further provides below suggestions regarding how the Commission can most efficiently address the important consumer issues raised by the Rural LEC call blocking plans.

**The Threshold Issue in This Proceeding Is Whether the Rural LECs Have the Authority to Block Mobile-to-Land Traffic – Not Whether the Commission Should Order the LECs to Stop Blocking Preparations**

The Commission in its July 3 “Order Directing Responses Regarding Obligation to Cease Blocking Preparations” suggests that the principal issue before it is whether it can order the Rural LECs to stop their plans to block T-Mobile customer traffic:

If T-Mobile is not an originating carrier within the meaning of the rule, it is not clear that the terms of the Commission's rule require Green Hills, Mark Twain, and the originating tandem carrier to cease blocking preparations, pending the commission's decision regarding T-Mobile's complaint (Order at 2).

T-Mobile must respectfully disagree. The question of whether the CLECs (or their ILEC owners) should "cease blocking preparations" assumes they possess the legal authority to block mobile-to-land traffic. T-Mobile demonstrates below that the Rural LECs have no such authority. If the Rural LECs lack authority to block T-Mobile traffic, it necessarily follows there is no reason for them to engage in "blocking preparations."

### **The ERE Rules Do Not Permit the Blocking of Mobile-to-Land Calls**

The Rural CLECs, like the Rural ILECs before them, have invoked the ERE rules as the legal basis authorizing their plans to block T-Mobile traffic. In fact, as T-Mobile has documented in its complaints, the ERE rules do not authorize their call blocking proposal because these rules do not apply to wireless carriers and to mobile-to-land traffic:

- The ERE blocking rule that the Rural LECs have invoked apply to an "originating carrier's Local Exchange Carrier-to-Local Exchange (LEC-to-LEC) traffic." 4 C.S.R. 240-29.130(2).
- The ERE rules define an "originating carrier" as a "telecommunications company that is responsible for originating telecommunication traffic that traverses the LEC-to-LEC network." *Id.* at 240-29.020(29).
- The rules define "Telecommunications Company" as a company set forth in section 386.020(51) RSMo. *Id.* at 240-29.020(34).
- Under RSMo. 386.020(51), a telecommunications company includes telephone corporations and every corporation owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state.
- However, under RSMo. 386.020(53), "telecommunications service" does not include the offering of radio communication services and facilities when such services and facilities are provided under a FCC license under the commercial mobile radio services rules and regulations.

The conclusion is inescapable that if FCC radio licensees are not a telecommunications company under State law, they cannot be an “originating carrier” within the scope of the ERE rules.

It is further noteworthy that in promulgating its final ERE rules, the Commission did not adopt its initial proposal to define “telecommunication company” to “include companies providing radio communications services.”<sup>1</sup> The Commission also did not adopt in its final rules its proposed rule 240-29.070 that would have applied the ERE rules to “wireless-originated traffic.” *See* 30 Mo. Reg. 49, 58 (Jan. 3, 2005). This provides yet further evidence that the Commission did not intend to encompass wireless carriers (and mobile-to-land traffic) within the scope of its ERE rules.

T-Mobile offers radio communications services under FCC licenses. Accordingly, T-Mobile is not an “originating carrier” within the scope of the ERE rules, and those rules by definition do not apply to mobile-to-land traffic. Since the Rural LECs have explicitly relied on the ERE rules to justify their consumer call blocking plans, it necessarily follows that the ERE rules do not authorize the Rural LECs to block T-Mobile’s mobile-to-land traffic – and their blocking proposals are void as a matter of law.

**Since the ERE Rules Do Not Authorize the Proposed Call Blocking, the Commission Should Hold That the Rural LECs’ Notices of Discontinuance Are Invalid as a Matter of Law**

The only legal authority the Rural LECs cited in their Notices of Discontinuance of Service were the ERE rules. Those rules, however, do not authorize the proposed call blocking as demonstrated above. Because the Rural LECs have cited in their Notices no other legal

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<sup>1</sup> Proposed Rule 240-29.020(34). *See* 30 Mo. Reg. 49, 51 (Jan. 3, 2005). In response, T-Mobile and other wireless carriers demonstrated that the Commission lacks the authority to apply its proposed rules to wireless carriers and their traffic. *See* Joint Wireless Carriers’ Comments Concerning Proposed Enhanced Record Exchange Rules, TX-2003-0301 (Feb. 2, 2005).

justification for their blocking proposal, the Commission should rule that their Notices are invalid and are entitled to no legal effect. The Rural LECs cannot be permitted to engage in call blocking without demonstration that they possess the legal authority to do so.

**The Commission Should Be Apprised That There Is No Other Basis in Law Authorizes Rural LECs to Block Mobile-to-Land Calls at This Time**

The Rural LECs, realizing that the ERE rules do not justify their call blocking proposal, may now argue that there is some other legal basis to justify their plans. For example, they may contend that their State tariffs authorize their proposed call blocking. However, their State tariffs as applied to intraMTA mobile-to-land traffic are void under federal law. FCC Rule 20.11(d) provides unequivocally:

Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs. 47 C.F.R. § 20.11(d).

If LECs cannot impose compensation obligations *via* tariffs, it necessarily follows they cannot impose *via* tariffs blocking provisions for an alleged failure to pay compensation.

Moreover, the Commission has made clear that LECs must comply with its ERE rules regardless of the provisions they may include in their State tariffs or interconnection agreements. Rule 240-29-030(1) specifies that LECs “may . . . terminate” traffic “only upon compliance with the rules set forth in this chapter.” Similarly, Rule 240-29.030(6) states that LEC interconnection agreements must be amended to comply with the ERE rules.

In other words, under State law, a Missouri LEC may engage in call blocking only in the circumstances set forth in the ERE rules. Because the ERE rules do not apply to mobile-to-land traffic, it necessarily follows that no Missouri LEC can block any mobile-to-land traffic. The

Rural LECs must instead pursue other available legal remedies for a failure to pay compensation allegedly due.

In addition, the Rural LECs must also comply with federal law, because they propose to block T-Mobile's interstate traffic (in addition to its intrastate traffic). This Commission lacks the jurisdiction to authorize a LEC to block interstate traffic, as T-Mobile has previously explained. Federal law is also very clear in specifying the process the Rural LECs must pursue before they may block interstate traffic. Specifically, Section 214(a) of the federal Communications Act prohibits the Rural LECs from discontinuing service "unless and until there shall first have been obtained from the [FCC] a certificate that neither the present nor future public convenience and necessity will be adversely affected." 47 U.S.C. § 214(a). The Rural LECs have not sought (much less obtained) such an FCC discontinuance certificate.

### **The Rural LECs Have An Existing Legal Remedy for Their Complaints**

The Rural CLECs complain that T-Mobile has not paid them for traffic they assert they terminated prior to April 29, 2005, and they use this as their stated reason for blocking T-Mobile traffic.<sup>2</sup> The Rural CLECs have a legal remedy available to them to attempt to recover the amounts they claim are due: file a complaint against T-Mobile – just as their Rural ILEC owners filed such a complaint.<sup>3</sup> In such a complaint proceeding, the Rural CLECs would be required to prove that T-Mobile sent to them the traffic they claim T-Mobile sent. And in such a

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<sup>2</sup> However, the Rural LECs never explain why they waited until the summer of 2006 to propose blocking existing traffic based on compensation disputes over traffic exchanged over a year ago.

<sup>3</sup> The Rural ILEC T-Mobile complaint proceeding is currently pending in the Eighth Circuit Court of Appeals.

proceeding, T-Mobile would have the opportunity to demonstrate that the CLECs' tariffs are unlawful under federal law.

The Rural CLECs should not be allowed to bypass the complaint procedures and shift the burden of proof by invoking the call blocking provisions of the ERE rules.

### **There Are No Interconnection Agreements Between the Rural CLECs and T-Mobile**

The Commission has asked the parties to "indicate whether any provision of the interconnection agreements between these carriers would affect the proposed blocking of traffic." As is common when carriers interconnect indirectly with each other, T-Mobile and the Rural CLECs today exchange traffic without a formal interconnection agreement. Thus, interconnection agreements have no relevance to this complaint proceeding.

### **A Recommended Course of Action for the Commission**

T-Mobile recommends that the Commission adopt the following course in this case and in the TC-2006-0486 proceeding:

1. Confirm that the Commission has not yet decided the central issue in these cases: whether the Rural LECs possess the legal authority to block T-Mobile customer traffic. With such a confirmation, T-Mobile would withdraw its June 30 Application for Rehearing and Reconsideration; and
2. Instruct the Rural LECs, AT&T Missouri and Embarq that they may not block T-Mobile traffic until the Rural LECs obtain all necessary regulatory approvals authorizing them to block T-Mobile's interstate and intrastate mobile-to-land traffic.

## Conclusion

While T-Mobile does not agree that it is an “originating carrier” under the ERE Rules, it had no choice but to file a complaint under those rules to stop the blocking preparations by the Rural LECs and transit carriers, so the Commission has the time to consider the fundamental issue in this proceeding: whether the Rural LECs possess the legal authority to engage in call blocking. T-Mobile encourages the Commission to rule expeditiously that (1) the ERE rules do not justify the proposed call blocking, and (2) the Rural LECs’ Notices of Discontinuance are void as a matter of law because the Notices did not recite any legal authority other than the ERE rules for their proposal. If the Commission needs time to consider the question of the applicability of the ERE rules, then it should expeditiously instruct the Rural LECs, AT&T Missouri and Embarq that they may not implement call blocking until the Commission renders its final decision.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been mailed electronically this 7th day of July, 2006, to:

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