

Exhibit No: _____
Issues: All except costs
Witness: Eric Pue
Type of Exhibit: Direct Testimony
Sponsoring Party: Cingular
Case No: TO-2006-0147, et al. (consolidated)
Date: January 6, 2006

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)) Case No. TO-2006-0147, et al.
Agreement with T-Mobile USA, Inc.) (consolidated)

DIRECT TESTIMONY

OF

ERIC PUE

ON BEHALF OF CINGULAR WIRELESS

Jefferson City, Missouri
January 6, 2006

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition)
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Case No. TO-2006-0147, et al.
(consolidated)

AFFIDAVIT OF ERIC PUE

Eric Pue, of lawful age, being duly sworn, deposes and states:

1. My name is Eric Pue. I am employed by Cingular Wireless as a Senior Contract Manager.
2. Attached hereto and made a part hereof for all purposes is my direct testimony with accompanying schedules.
3. I hereby affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief and that the information contained in the attached schedules is also true and correct to the best of my knowledge and belief.

Eric Pue
Eric Pue

Subscribed and sworn to before me this 4th day of January, 2006.

Renee M. Wimberly Notary Public
My Commission expires: 4/1/06



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**Direct Testimony of Eric Pue (on behalf of Cingular Wireless)
in Consolidated Cases**

Question: State your name, address and occupation.

Answer: My name is Eric G. Pue. I am a Senior Contract Manager for Cingular Wireless, and my office is at 7277 164th Avenue NE, Redmond, Washington 98052.

Question: Briefly state your education and experience as it relates to the provision of commercial mobile radio service.

Answer: I graduated from Washington State University in 1994 with a BA in Business Administration with an emphasis on Finance. I've been employed in the wireless industry for over 11 years. My work experience includes negotiating interconnection agreements, and economic analysis relating to reciprocal compensation.

Question: What is the purpose of your testimony?

Answer: The purpose of my testimony is to respond to the issues remaining in dispute between Cingular Wireless and the Petitioners. Several issues have been resolved, and I will not discuss them. The Joint Issues Matrix is not due to be filed until after the filing of direct testimony, and the parties have not yet fully agreed on how to list and phrase the issues. My testimony will phrase and discuss the issues in what seems to Cingular to be the most efficient manner at this stage of the proceeding.

Issue 2 contains a number of sub-issues involving the cost studies produced by Petitioners. Those specific sub-issues will be addressed by witness Craig Conwell (on behalf of Cingular and T-Mobile). I will not address any of those cost study sub-issues, except sub-issue 2A, which discusses why each Petitioner must establish its own separate transport and termination rate based upon its own separate costs.

1 **A. Traffic Exchanged Between 1998 and 2001**

2 **Issue 1: Upon what basis should Petitioners and Cingular compensate each other**
3 **for traffic exchanged between February of 1998 and the 2001 effective date of**
4 **Petitioners' wireless termination service tariffs? (Section 5.4)**
5

6 **Question: Has the Commission already decided this issue?**

7 Answer: Yes. On December 30, 2005, the Commission granted T-Mobile's
8 Motion to Dismiss Petitioners' claims for compensation for the same kind of past traffic.
9 Cingular intends to file a similar Motion to Dismiss.

10 **Question: What action should the Commission take on this issue?**

11 Answer: The Commission should dismiss all of Petitioners' claims against
12 Cingular for compensation alleged to be due for traffic exchanged prior to
13 commencement of negotiations in this case – specifically, for traffic exchanged prior to
14 the Petitioners' filing wireless termination tariffs in 2001.

15
16 **B. Appropriate Transport and Termination Rate**
17

18 **Issue 2: What are the appropriate reciprocal compensation rates to be paid by**
19 **Petitioners and Cingular for the termination of each other's intraMTA traffic?**
20 **(Sections 4.3, 4.4 and Appendix 1)**
21

22 **Question: Does the law require any specific methodology to be applied in**
23 **determining appropriate transport and termination rates?**

24 Answer: Yes. Federal law requires that the FCC's TELRIC methodology be
25 applied. T-Mobile and Cingular witness Craig Conwell discusses the applicable
26 provisions of FCC regulations in detail

27 **Question: Is application of the FCC's TELRIC methodology optional in this**
28 **proceeding? In other words, does the Commission have discretion not to apply the**
29 **TELRIC standard?**

1 Answer: No, the Commission has no discretion. FCC regulations make clear that
2 application of TELRIC principles is mandatory in all cases setting transport and
3 termination rates. Witness Conwell discusses this in depth in his testimony.

4 **Question: Under what circumstances is variance from the TELRIC**
5 **methodology permissible?**

6 Answer: During negotiations, parties are free to agree to any rate they choose.
7 Cingular, for example, has sometimes agreed to a rate higher than is justified by TELRIC
8 principles because of concession from the other side on other important issues.

9 **Question: The following testimony discusses what you term the “zone of**
10 **reasonableness.” Where does that term come from?**

11 Answer: This is a term I am using in this testimony to indicate the general range
12 within which TELRIC-based rates should fall, pursuant to FCC regulations. The FCC, in
13 establishing TELRIC, did not, in my opinion, intend that “anything goes.” Instead, I
14 believe that the FCC intended TELRIC-based rates to fall within a certain zone or range.
15 I am calling that range the “zone of reasonableness.” Anything outside the zone is
16 unreasonable and not contemplated by FCC regulations.

17 **Question: Are the rates proposed by the Missouri ICOs within the “zone of**
18 **reasonableness”?**

19 Answer: No. Attached as Confidential Schedule A is a document prepared by
20 Petitioners, listing the transport and termination costs produced for each company by the
21 HAI 5.0a cost model (with certain inputs modified by ICO witness Schoonmaker). That
22 Schedule shows costs as high as [REDACTED] per MOU for Peace Valley Telephone
23 Company, [REDACTED] per MOU for Iamo Telephone Company and [REDACTED] per MOU

1 for Holway Telephone Company. The lowest rate on the Schedule is [REDACTED] cents per MOU
2 for Steelville Telephone Exchange.

3 I understand that Petitioners are proposing a blanket rate of [REDACTED] cents per MOU to
4 apply to all ICOs, even though that means, in theory, that a company like Peace Valley
5 would be losing about [REDACTED] cents per MOU on every minute of traffic it terminates from
6 Cingular. To me, to the extent those rates were based upon HAI 5.)a, it demonstrates that
7 the HAI 5.0a model has produced costs far in excess of reality. I don't believe that Peace
8 Valley, or any other ICO, would be willing to accept a rate lower than its actual costs. In
9 today's competitive environment, no carrier can do that.

10 The rates produced by the ICOs' HAI cost model runs, and indeed the proposed
11 blanket rate of [REDACTED] cents per MOU, are far in excess of the reciprocal compensation rates
12 envisioned by the Act and FCC. Thus, a company like Peace Valley can accept a rate of
13 [REDACTED] 5 cents per MOU and more than recover its costs.

14 In the First Report and Order, the FCC indicated that the zone of reasonableness
15 for end office switching costs was 0.2-0.4 cents (\$0.002-0.004) per minute.¹ For tandem
16 switching a ceiling of 0.15 cents (\$0.0015) per minute was given.² For common
17 transport, the FCC indicated that "interstate direct-trunked transport rates provide a

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, ¶ 29 (rel. Aug. 8, 1996) ("First Report and Order"): "The Commission establishes a default range of 0.2-0.4 cents per minute for switching." The zone of rates for end office switching was established in 1997 in the First Report and Order. Since that time, the FCC has ruled in the Virginia arbitration between Verizon and AT&T / MCI that usage-sensitive end office switching costs are effectively zero, and that all end office switching costs are attributable to the non-usage sensitive line ports. This issue is discussed in detail in witness Craig Conwell's testimony.

² *Id.*, ¶ 29: "For tandem switching, the Commission establishes a default ceiling of 0.15 cents per minute."

1 reasonable default proxy ceiling for unbundled dedicated transport rates.”³ For RBOCs,
2 this range was between \$0.000331 and \$0.000664 per MOU.

3 FCC regulations therefore establish the above figures as “ceilings” for transport
4 and termination rates: \$0.004 for end office switching, \$0.0015 for tandem switching,
5 and a blended rate for common transport based upon DS1 and DS3 circuits used in the
6 incumbent’s tandem to end office links.⁴ The costs alleged in Confidential Schedule A,
7 and the proposed blanket rate of [REDACTED] cents per MOU, are far in excess of these ceilings.

8 **Question: Isn’t it true that the FCC’s default proxy rates were invalidated**
9 **by the Eighth Circuit Court of Appeals?**

10 Answer: Yes. However the invalidation had nothing to do with the range or
11 reasonableness of the default rates. It is my understanding is that the default proxy rates
12 were invalidated because the Court felt that, under the Act, the FCC had jurisdiction only
13 to establish a pricing methodology, not set actual rates. I am not suggesting that this
14 Commission impose the FCC’s proxy rates upon the ICOs. The FCC proxy rates are still
15 useful and highly relevant, however, to indicate the “zone of reasonableness” within
16 which all transport and termination rates should fall, and to demonstrate how far out of
17 line the ICOs’ proposed rates are.

18 **Question: But haven’t many wireless carriers in Missouri agreed to a rate of**
19 **[REDACTED] cents per MOU?**

20 Yes. Cingular, in fact, has in the past agreed to such a rate with certain Missouri
21 ICOs. Cingular agreed to such an inflated rate because at the time of the negotiations, the

³ *Id.*, ¶ 822. See footnote 1950: “The average charge by RBOCs in Density Zone 1 for transport termination and one mile of switched common transport facility between a tandem switching office and end office equals 0.033 cents (\$0.000331) per minute. For a five-mile facility, the average charge is 0.048 cents (\$0.000479) per minute; for a ten-mile facility, 0.066 cents (\$0.000664) per minute.”

⁴ 47 CFR §51.513(c)(2), (c)(4) and (c)(5).

1 Commission had already approved a wireless tariff rate substantially above ■ cents per
2 MOU. At that time, Cingular lacked measurement capability to determine the full extent
3 of the cost to Cingular of a transport and termination rate of ■ cents per MOU.
4 Cingular is now beginning to develop that measurement capability and can begin to
5 quantify the very negative effects of such a high rate. Moreover, because of changes in
6 law and technology, including the desire of rural consumers to share fully in the
7 economic and developmental benefits of cutting edge wireless technology, Cingular now
8 believes that the Missouri Commission should be willing to revisit the issue of an
9 appropriate transport and termination rate.

10 The HAI 5.0a cost model, on which the Petitioner's proposed rates are based, is
11 almost ten years old and populated with default data 10 or more years old. Transport and
12 termination rates have been steadily decreasing over the past ten years – in part due to the
13 enormous competition in the telecommunications industry, and in part due to the falling
14 costs of digital switching and transport equipment. Rates have also declined due to a
15 growing realization that rates paid by one carrier to another to transport its traffic should
16 not be burdened with subsidies. This is evidenced by the fundamental changes in
17 interstate switched access rates and changes in intrastate rates toward interstate levels in
18 many states. Rates that may have been acceptable ten years ago – even five years ago –
19 are now well above market realities.

20 **Question: Can you give examples of other transport and termination rates in**
21 **Missouri and elsewhere?**

22 Answer: Cingular will operate at a significant loss if it pays ■ cents per MOU
23 in reciprocal compensation rates to all carriers with which it exchanges traffic. In

1 Missouri, for example, Cingular and all other carriers (including all other wireless
2 carriers) pay a reciprocal compensation rate of \$0.0007 (.07 cents) per MOU to SBC.
3 Similarly, the Tennessee Regulatory Authority recently established interim transport and
4 termination rates for Tennessee ICOs of less than one-half cent per MOU. Cingular
5 recently participated in a mediation in one of the BellSouth states with a large group of
6 ICOs. The transport and termination rates agreed to in that mediation session (conducted
7 by the Staff of the state PSC) were 1.2 cents per MOU for the first year, and 1 cent per
8 MOU for the second year.

9 The Public Service Commission of West Virginia has compiled a Survey of
10 Unbundled Network Element Prices in the United States which can be found at
11 <http://www.cad.state.wv.us/JanIntro2004.htm>. Table 1 to that Survey gives the UNE
12 rates for incumbent carriers in each state as of January, 2004. Collectively, these rates
13 provide an alternative “zone of reasonableness” by which the ICOs’ proposed rate in this
14 case can be measured.

15 For example, in Wyoming, which is geographically rugged and sparsely
16 populated, and which has only 253,233 total access lines, Qwest’s end office switching
17 rate is \$0.00092/MOU, tandem switching is \$0.00069 and common transport is
18 \$0.00111—for a total transport and termination rate (minus the SS7 switching
19 component, which is nominal) of \$0.00272/MOU. The Missouri ICOs’ proposed rate of
20 3.5 cents per MOU is 12.88 times higher.

21 Similarly, in Montana, a mountainous state with only 363,764 access lines,
22 Qwest’s end office switching rate is \$0.001574, tandem switching is \$0.00069 and

1 common transport is \$0.00111—for a total transport and termination rate of \$0.003374.
2 The Missouri ICOs’ proposed rate of 3.5 cents per MOU is 10.37 times higher.

3 I recognize that several of the Missouri ICOs provide service in territories that are
4 geographically rugged. That is why I have picked Wyoming and Montana as comparison
5 states.

6 **Question: Are the negotiated rates in filed interconnection agreements, both**
7 **in Missouri and elsewhere, relevant to establishing transport and termination rates**
8 **for the Petitioners – pursuant to the arbitration process?**

9 Answer: No. By definition, a negotiated agreement is the net by-product of many
10 variables and factors. A party will often agree to a rate based upon another party’s
11 willingness to concede another point or the time sensitivity of the transaction. A rate
12 produced by the “give and take” of negotiation may or may not bear any relationship to
13 the appropriate rate produced by application of the FCC’s TELRIC methodology. A
14 party waives the right to negotiated set-offs when it decides to pursue arbitration. At that
15 point, the rules of law control-- rather than a negotiated standard of arbitrary
16 reasonableness-- and they are explicit for transport and termination rates.

17 **Question: How does the proposed rate of ■ cents per MOU compare to the**
18 **Missouri ICOs’ interstate switched access rates?**

19 Answer: The proposed rate is much higher than the ICOs’ interstate switched
20 access rates. Confidential Schedule A demonstrates that none of the ICOs is seeking a
21 tandem switching rate. All of the ICOs are seeking only end office switching and
22 common transport. An examination of NECA Tariff # 5, which contains all of the ICOs
23 interstate switched access rates, demonstrates that the proposed transport and termination

1 rate of ■ cents per MOU (composed of end office switching and common transport) is
2 substantially higher than the ICOs interstate access charges for those same elements.

3 Cass County Telephone Company can be used as an example. Cass County is in
4 NECA rate band 6, one of the highest NECA rate bands, which gives Cass County an end
5 office switching rate of \$0.01427 per MOU for its interstate access charge. (See sections
6 17.2.3 and 17.5.1 of NECA # 5.) Cass County's common transport rate is composed of
7 two elements: (1) a termination charge of \$0.000807 per MOU (NECA # 5 § 17.2.2), and
8 (2) a transport charge of \$0.000164 per MOU per mile (NECA # 5, § 17.2.2). Based on
9 information provided by Cass County in response to T-Mobile data request No. 32 and
10 discussed in the deposition of ICO witness Schoonmaker, I know that the average
11 transport distance from the Southwestern Bell meet point to Cass County's switches is
12 14.59 miles. Also, I will assume an average of two terminations from the meet point to
13 the serving end office. Thus, for a call terminating to Cass County, the interstate
14 switched access rate is $0.01427 + 2 \times 0.000807 + 0.000164 \times 14.59 = \0.0183 per MOU
15 (1.83 cents per MOU).

16 The proposed blanket transport and termination rate of ■ cents per MOU is thus
17 approximately two cents per MOU higher than Cass County's interstate switched access
18 rate for end office switching and common transport. Moreover, as T-Mobile and
19 Cingular witness Craig Conwell testifies, the FCC in 2003 has held that end office
20 switching costs today are non-usage-sensitive. So, while interstate switched access rates
21 (based on embedded costs) would permit recovery of \$0.01427 per MOU for switching,
22 reciprocal compensation would not, leaving just \$0.0040 as a benchmark for Cass County
23 transport and termination rates.

1 This analysis holds true for the other Petitioners. I have used Cass County as an
2 example because (1) it is in one of the highest NECA rate bands, thus producing a very
3 high end office switching rate (so that I will not be accused of choosing a carrier with a
4 lower than average end office switching rate), and (2) Cass County was used as the
5 example ICO in the deposition of ICO witness Schoonmaker.

6 **Question: In your opinion, may transport and termination rates be set at a**
7 **Petitioner's interstate switched access rate?**

8 47 C.F.R. § 51.515(a) states:

9 Neither the interstate access charges described in part 69 of this chapter
10 nor comparable intrastate access charges shall be assessed by an
11 incumbent LEC on purchaser of elements that offer telephone exchange or
12 exchange access services.

13
14 Similarly, 47 C.F.R. § 51.505(d) specifically removes from the calculation of
15 transport and termination rates several elements included in access charges: for example,
16 embedded costs and revenues to subsidize other services.

17 If access charges cannot be used for transport and termination rates, and if
18 transport and termination rates cannot contain several of the elements included in access
19 charges (such as embedded costs and subsidies), then it is clear to me that the FCC
20 intends transport and termination rates to be generally lower than access charges.

21 **Question: What would the net effect be if Petitioners are allowed to charge**
22 **rates substantially above their costs of transporting and terminating wireless**
23 **traffic?**

24 Answer: The higher cost of doing business in rural areas would ultimately mean
25 that fewer wireless facilities would be constructed in those areas, since it would be
26 uneconomical to do so.

1 **Question: What is your recommendation regarding the rate for transport**
2 **and termination?**

3 Answer: As discussed immediately below in Issue 2A, the Act and FCC
4 regulations require each ICO to establish its own transport and termination rate based
5 upon its own costs. The testimony of Cingular and T-Mobile witness Craig Conwell
6 analyzes Petitioners' cost data in detail and makes recommendations to bring Petitioners'
7 cost studies in line with the FCC's TELRIC methodology. Mr. Conwell's testimony
8 accurately reflects FCC regulations and should be adopted by the Commission.

9

10 **Issue 2A: Must each Petitioner establish its own separate transport and termination**
11 **rate based upon its own separate costs? (Appendix 1)**

12

13 **Question: The ICOs have proposed a blanket rate of ■ cents per MOU to**
14 **apply to all ICOs. Do you think such a procedure is appropriate?**

15 Answer: No. FCC regulations require that each Petitioner's transport and
16 termination rate be based solely upon each Petitioner's own separate costs. Each
17 Petitioner's rate cannot be based upon the costs of other carriers or upon the average
18 costs of multiple carriers. Each Petitioner must establish its own separate rate through
19 the use of its own separate cost study.

20 FCC regulations state:

21 An incumbent LEC must prove to the state commission that the rates for
22 each element *it offers* [not an element offered by another carrier] do not
23 exceed the forward-looking economic cost per unit of providing the
24 element, using a cost study that complies with the methodology set forth
25 in this section and § 51.511.⁵
26

⁵ 47 C.F.R. § 51.505(e). Emphasis and bracketed comment added.

1 If the rule were otherwise, ICOs would have the ability to arbitrage their rates
2 based on the potentially higher costs of other carriers. Accordingly, the Act and FCC
3 regulations require each individual ICO to prove its costs by using a cost study that
4 complies with the FCC's TELRIC methodology found in 47 C.F.R. §§ 51.505 and
5 51.511. Moreover, the cost study relied upon by each ICO must be made a part of the
6 record of the state proceeding that establishes transport and termination rates:

7 Any state proceeding conducted pursuant to this section shall provide
8 notice and an opportunity for comment to affected parties and shall result
9 in the creation of a written factual record that is sufficient for purposes of
10 review. The record of any state proceeding in which a state commission
11 considers a cost study for purposes of establishing rates under this section
12 *shall include any such cost study.*⁶
13

14 Similarly, the First Report and Order makes clear that the cost study produced by
15 each incumbent LEC must be made a part of the record:

16 In setting a rate pursuant to the cost-based pricing methodology . . . the
17 state must give full and fair effect to the economic costing methodology
18 we set forth in this Order and must create a factual record, including the
19 cost study, sufficient for purposes of review after notice and opportunity
20 for the affected parties to participate.”⁷
21

22 Thus, whenever a state commission sets transport and termination rates, each ICO must
23 file its own cost study in the record, and the state commission must set a separate
24 reciprocal compensation rate for each carrier, based upon that company's individual
25 costs. Neither the Act nor FCC regulations allow a blanket rate applicable to all carriers.

26 **Question: How should the Commission rule on this issue?**

27 Answer: The Commission should rule that each ICO must establish its own rate
28 based on its own costs.
29

⁶ 47 C.F.R. § 51.505(e)(2) (emphasis added).

⁷ First Report and Order, ¶ 619.

C. IntraMTA Compensation

Issue 3: Do the parties' compensation obligations apply to intraMTA traffic that one Party hands off to an IXC for termination to the other party? (Introduction, 1.1, 4.1, 4.1.2, 4.1.3 and 4.2)

Question: What do you understand Petitioners' position to be on this issue?

Answer: I understand Petitioners' position to be that they owe no compensation on land-to-mobile traffic that they hand off to an IXC.

Question: What is Cingular's position on this issue?

Answer: Cingular takes no position on this issue.

Issue 4: Should the Commission establish an IntraMTA Traffic Ratio for use by Cingular in billing Petitioners for the termination of Petitioners' traffic? (Section 4.3 and Appendix 1)

Question: Does Cingular currently have the capability to measure traffic that it receives from the ICOs?

Answer: Currently, Cingular does not have the system-wide capability to measure traffic that it receives from the ICOs. This is not unusual in the wireless industry. Other wireless carriers also lack that capability.

Question: What is the industry standard for wireless carriers that cannot measure traffic received from landline carriers?

Answer: In the wireless industry, "standard industry format" for carriers that lack the capability to measure traffic requires the wireless carrier to base its bills to a landline carrier upon the bills received from that same landline carrier. In order for such a process to work, the parties must agree upon a traffic ratio.

1 Accordingly, many of Cingular's contracts (those that do not provide for bill-and-
2 keep) with landline carriers (and all of Cingular's contracts that pre-date its merger with
3 AT&T Wireless, which properties did have some measurement capability) contain a
4 stipulated traffic ratio. For example, recently, Cingular has entered into agreements
5 stipulating a traffic ratio of 70% wireless-originated to 30% landline-originated. If the
6 "traffic factor" is set at 70/30, the MOUs billed by the ICO to Cingular (i.e. the Mobile-
7 to-Land traffic) represent 70% of the total traffic exchanged in both directions between
8 the parties. Cingular, in turn, uses the known MOUs billed by the ICO to calculate the
9 remaining 30% of the traffic exchanged between the parties for which Cingular bills the
10 ICO (i.e. the Land-to-Mobile traffic). In the 70/30 example, the MOUs billed by
11 Cingular to the ICO are determined by the following simple formula: Mobile-to-Land
12 MOUs x (30/70) = Land-to-Mobile MOUs to be billed by Cingular.

13 **Question: Under FCC regulations, may the Commission presume a traffic**
14 **ratio?**

15 Answer: 47 C.F.R. § 51.713 states:

16 (b) A state commission may impose bill-and-keep arrangements if the
17 state commission determines that the amount of telecommunications
18 traffic from one network to the other is roughly balanced . . .

19
20 (c) Nothing in this section precludes a state commission from presuming
21 that the amount of telecommunications traffic . . . is roughly balanced . . .
22 and is expected to remain so, unless a party rebuts such a presumption.
23

24 I read the above language to mean that the Missouri Commission may presume
25 that traffic between Cingular and the ICOs is "roughly balanced" unless either the ICOs
26 or Cingular present a traffic study to rebut that presumption. When traffic is roughly

1 balanced, the Commission may impose bill-and-keep as the appropriate form of
2 compensation.

3 Presuming that traffic is “roughly balanced” is exactly what the Oklahoma
4 Corporation Commission did recently in an arbitration involving Cingular – in which the
5 Oklahoma Commission imposed bill-and-keep as the appropriate form of
6 wireline/wireless compensation. The ICOs appealed that decision to the United States
7 District Court for the Western District of Oklahoma, which wrote in its opinion affirming
8 the Oklahoma Commission:

9 Clearly, these rules allow a state commission to place the burden of proof
10 on carriers asserting that traffic is not in balance--here, the RTCs. It is also
11 clear that they authorize commissions to invoke a presumption of roughly
12 balanced traffic unless the commission finds that such a presumption has
13 been adequately rebutted. Invoking this presumption is exactly what the
14 Oklahoma Corporation Commission did when it stated in its Interlocutory
15 Order (reaffirmed at p. 3 of the Commission's Final Orders), that "there is
16 a presumption of 'balanced traffic.'"⁸
17

18 **Question: Have the ICOs presented any traffic studies rebutting the**
19 **presumption of roughly balanced traffic?**

20 Answer: No.

21 **Question: Would the Commission be justified in presuming that traffic**
22 **between Cingular and Petitioners is roughly balanced and imposing bill-and-keep as**
23 **the appropriate form of compensation?**

24 Answer: In my opinion, yes. However, Cingular itself has conducted traffic
25 studies and presents the results in Confidential Schedule B. Rather than seeking bill-and-
26 keep, Cingular proposes that the Commission adopt the intraMTA traffic ratios listed in
27 Confidential Exhibit B to apply to the contract between Cingular and each Petitioner.

⁸ *Atlas Telephone Co. v. Corp. Comm'n of Okla.*, 309 F. Supp. 2d 1299, 1307 (2004).

Question: How should the Commission rule on this issue?

Answer: The Commission should adopt the traffic ratios set out in Confidential Schedule B attached hereto.

**Issue 5: Should the contract allow for modification of the intraMTA traffic ratio?
(Section 4.4)**

Question: Once the traffic ratio is established, should the Parties be allowed to alter it?

Answer: In my opinion, yes. Traffic ratios can change over time. Cingular has proposed language in Section 4.4 that would allow a party to demonstrate, after approval of the interconnection agreement, that the traffic ratio has changed. If an appropriate traffic study has been conducted, and if the parties can reach agreement, then the proposed provision would allow the traffic ratio to be changed. If the parties cannot reach agreement, then dispute resolution may be invoked.

Cingular believes that the proposed language is reasonable and should be adopted.

Issue 6: Should the parties employ bill-and-keep for compensation purposes if the traffic exchanged between Cingular and any Petitioner does not exceed a specific *de minimis* level (5,000 MOUs)? (Section 4.5)

Question: Why does Cingular support inclusion of a *de minimis* traffic provision?

Answer: A *de minimis* traffic provision, such as that proposed by Cingular in Section 4.5, states that the parties will not begin billing each other for traffic until the parties have exchanged a total of at least 5,000 MOUs per month for three consecutive

1 months. If traffic falls below such a level, then the expense of billing generally
2 outweighs the revenue collected.

3 For example, assume that Cingular and an ICO exchange a total of 5,000 MOUs
4 of traffic a month. Even if one were to assume that the transport and termination rate
5 should be 3.5 cents per MOU and that the appropriate traffic ratio is 70% mobile-
6 originated / 30% landline originated, the amount of compensation due the ICO each
7 month would be only \$70.00 per month (5,000 x 40% x \$0.035).

8 If you assume a more reasonable transport and termination rate of 0.5 cents per
9 MOU, then the compensation due the ICOs is \$10.00 per month.

10 It costs Cingular more to generate and pay bills than can be recouped by either
11 \$10.00 or \$70.00 per month. And Cingular has conducted recent traffic studies in
12 jurisdictions other than Missouri, showing that Cingular is now a net payee with some
13 ICOs. Cingular is willing to take this same position even as a net payee. Exchanging
14 bills for such tiny amounts simply makes no economic sense – for either Cingular, or an
15 individual ICO.

16 Cingular has reached agreement with many carriers to include a *de minimis*
17 provision in interconnection agreements. For example, Cingular has approximately 80
18 interconnection agreements in Minnesota, containing *de minimis* provisions like the one
19 Cingular is proposing in this case. Cingular believes that such is sound public policy and
20 should be adopted by the Missouri Commission.

21
22 **D. Dialing Parity**

23 **Issue 7: Should Petitioners be required to provide local dialing for calls to a**
24 **Cingular NPA/NXX rate centered in Petitioners' EAS calling scopes? (Section 3.2)**

Question: Does the Act require dialing parity?

Answer: 47 U.S.C. §251(b)(3) requires Petitioners to provide “dialing parity” to Cingular. 47 U.S.C. §151(15) defines “dialing parity” to mean:

. . . that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among 2 or more telecommunications services providers (including such local exchange carrier).

The F.C.C. regulations implementing this section of the Act provide, in pertinent part:

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer’s or the called party’s telecommunications service provider.⁹

This means that if an ICO customer can place a landline to landline call on a local basis whenever the number dialed is part of an extended local calling area, then the ICO customer must also be able to dial the call as local if the called number is assigned to a wireless carrier. Thus, Cingular has proposed the following language in section 3.2 of the interconnection agreement:

The exchange of the Parties' traffic on ILEC's EAS ("Extended Area Service") routes shall be considered Local Traffic.

The Act and FCC regulations absolutely require this result. Under no circumstances can Petitioners force their customers to dial ten digit toll calls to numbers that would be rated within an extended local calling area (and dialed as seven digit calls) if assigned to a landline customer.

Petitioners have proposed to qualify the above language by adding the following, which Cingular objects to:

⁹ 47 C.F.R. § 51.207.

1 . . . where (i) Cingular is locally interconnected within the exchange with
2 which ILEC has EAS and (ii) the vertical and horizontal coordinates of
3 Cingular's exchange lie within the local calling area of the exchange with
4 which ILEC has EAS.
5

6 Cingular understands that the ICOs' proposed language is taken from a previous
7 Commission Order in Case No. TO-99-279. However, the proposed language is
8 inapplicable in this situation for two reasons.

9 First, the Act is very clear that all ICOs must provide dialing parity. Specifically,
10 the Act states that "each local exchange carrier" has the duty "to provide dialing parity to
11 competing providers of telephone exchange service . . ." There is no requirement that
12 dialing parity must be provided only in the case of direct interconnection.

13 Second, Cingular does not have "exchanges" with "vertical and horizontal
14 coordinates," nor does any other wireless carrier, to Cingular's knowledge. Such
15 "exchanges" are purely the creation of the landline network and have no application
16 whatever to wireless service. Thus, Petitioners' proposed language in subsection (ii)
17 literally makes no sense.

18 **Question: How should the Commission rule on this issue?**

19 Answer: Because the Act and FCC regulations require dialing parity in cases of
20 both direct and indirect interconnection, and because wireless carriers do not have
21 "exchanges," Cingular's proposed language in Section 3.2 (without the additions
22 proposed by Petitioners) should be adopted.
23

24 **Issue 8: Should Petitioners be required to accept and recognize as local all calls**
25 **from/to Cingular subscribers who have been assigned numbers that are locally**
26 **rated in Petitioners' switches, if Cingular does not have direct interconnection to**
27 **those switches? (Section 20.1)**
28

1 **Question: Will Petitioners accept calls from Cingular customers assigned**
2 **numbers locally rated in Petitioners' switches, if Cingular has not established direct**
3 **interconnection trunks to those switches?**

4 Answer: Primarily to frustrate wireless competition, in my opinion, Petitioners
5 have refused to program their switches to recognize local numbers (i.e., numbers rate-
6 centered in an ICO's local calling scope) assigned to Cingular, unless Cingular
7 establishes direct interconnection trunks. Establishing direct trunks with Petitioners is
8 generally uneconomical, because of the relatively small amount of traffic exchanged with
9 any given Petitioner. Establishing direct trunks is cost prohibitive except when large
10 amounts of traffic are exchanged with a single carrier. Thus, at present, no direct
11 interconnection trunks have been established between Cingular and any Petitioner.

12 By refusing to recognize local numbers in their switches, absent direct
13 interconnection trunks, Petitioners force Cingular to assign non-local numbers to
14 Cingular's customers who would otherwise prefer local numbers, thereby making
15 wireless service less desirable in rural areas.

16 This practice violates the requirement of dialing parity established in 47 U.S.C.
17 §151(15) and 47 C.F.R. § 51.207 and quoted above in Issue 7. By refusing to recognize
18 numbers that are rated locally in their switches, Petitioners are requiring their customers
19 to dial ten digit toll calls to reach Cingular customers who would choose, if permitted by
20 the ICOs, to be reached through the dialing of a seven digit local call.

21 The Tenth Circuit Court of Appeals, in affirming a recent decision of the
22 Oklahoma Corporation Commission requiring ICOs to recognize local numbers when no
23 direct interconnection has been established, has stated:

1 The RTCs interpret 47 U.S.C. § 251(c) as imposing a requirement of
2 direct connection on a competing carrier. We disagree. As detailed above,
3 the affirmative duty established in § 251(c) runs solely to the ILEC, and is
4 only triggered on request for direct connection. The physical
5 interconnection contemplated by § 251(c) in no way undermines
6 telecommunications carriers' obligation under § 251(a) to interconnect
7 "directly or indirectly."¹⁰
8

9 In other words, the ICOs are required under §251(a)(1) to connect both directly and
10 indirectly. Consequently, the ICOs cannot, as a requirement to recognizing local
11 numbers in their switches, require Cingular to establish direct interconnection trunks.

12 **Question: How should the Commission rule on this issue?**

13 Answer: Cingular has proposed language in section 20.1 that would require
14 Petitioners to recognize numbers rated locally in their switches whether or not Cingular
15 has established a direct interconnection trunk to any particular switch. Cingular's
16 proposed language should be adopted.
17

18 **E. Direct Interconnection**

19 **Issue 9: Should this contract contain provisions for both direct and indirect**
20 **interconnection? (Sections 3.3, 3.4, 3.5, 3.6, 3.7 and 21.1)**
21

22 **Question: Are petitioners willing to include provisions for direct**
23 **interconnection in the contract.**

24 Answer: No. In language proposed in paragraph 21.1 of the contract, Petitioners
25 claim: "This Agreement is not an interconnection agreement under 47 U.S.C. 251(c), but
26 rather a reciprocal compensation agreement under 47 U.S.C. 251(b)(5)." Based on this
27 language, Petitioners have refused to include provisions for direct interconnection in the
28 contract.

¹⁰ *Atlas Telephone Co. v. Okla. Corp. Com'n*, 400 F.3d 1256, 1268 (10th Cir. 2005).

Question: Is there any basis in the Act for Petitioners' claim?

Answer: No. Under section 251(a)(1), each “telecommunications carrier” has the duty “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” Nothing in the Act allows Petitioners to refuse to negotiate the § 251(a)(1) obligation to provide direct interconnection.

In addition, Petitioners have a duty outside the Act to provide direct interconnection. 47 C.F.R. § 20.11(a), specifically requires that “[a] local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable.”

In short, there is no support in the Act or FCC regulations for Petitioners' claim that they cannot be required to provide direct interconnection.

Question: Has Cingular proposed contractual language that would require Petitioners to provide direct interconnection?

Answer: Yes. In sections 3.3, 3.4, 3.5, 3.6, and 3.7, Cingular has proposed language setting out the section 251(a)(1) obligation to interconnect directly. The proposed language is taken from Cingular's standard interconnection contract that has been accepted by many carriers and approved in many states.

Question: How should the Commission rule on this issue?

Answer: The Commission should approve Cingular's proposed language in contract sections 3.3, 3.4, 3.5, 3.6 and 3.7. As discussed above, the Commission should also reject Petitioners' proposed language in section 21.1.

F. Rural Exemption

**Issue 10: Should Petitioners be entitled to claim the Rural Exemption?
(Section 21.1)**

Question: What does this issue involve?

Answer: Petitioners have proposed language (section 21.1) stating: “The Parties acknowledge that ILEC may be entitled to a rural exemption as provided by 47 U.S.C. 251(f), and ILEC does not waive such exemption by entering into this Agreement.” Cingular believes that such language is inappropriate.

Question: Why does Cingular challenge Petitioners’ proposed language?

Answer: The only “exemption” that Petitioners automatically obtain under the Act is contained in section 252(f)(1). That exemption (which applies until it is terminated by a state commission) applies only to the obligations enumerated in section 251(c) of the Act. The disputes in this arbitration do not involve subsection (c) obligations (collocation, unbundled network elements, etc.). Thus, the rural exemption of section 251(f)(1) is simply not applicable to this dispute.

Question: Petitioners’ proposed language would also state that Petitioners have not waived the rural exemption. Do you think that language is appropriate?

Answer: It is my understanding that it is inappropriate for a party to first invoke a statute (as Petitioners have done by filing a Petition for Arbitration against Cingular), and then to claim that portions of the statute do not apply to that party (which is what Petitioners seek in proposed paragraph 21.1 by claiming they may be entitled to the “Rural Exemption”). My understanding is that a party who invokes a statute is thereafter bound by the entire statute and may not pick and choose only beneficial aspects of the statute.

1 In my opinion, it would be unfair and inequitable to allow Petitioners to invoke
2 the Act and file Petitions for Arbitration, and then at the same time allow Petitioners to
3 claim that they may not be bound by certain provisions of the Act. I understand the
4 general rule to be that a party cannot seek to take advantage of law when it is to his
5 benefit, and then seek to be immune from the same law when it is not to his benefit.
6 Since Petitioners have filed a Petition for Arbitration against Cingular, I believe the
7 Commission should reject the proposed language in Section 21.1 that would allow
8 Petitioners to potentially retain an exemption from certain sections of the Act.

9 I would refer the Commission to the follow language from the Missouri Supreme
10 Court:

11 The rule is well settled that one voluntarily proceeding under a statute or
12 ordinance, and claiming benefits thereby conferred, will not be heard to
13 question its validity in order to avoid its burdens. The same or similar
14 rules have been applied in litigation involving many different types of
15 instruments, licenses, or other transactions. The designation used in
16 referring to this rule or doctrine is obviously unimportant. It is frequently
17 called an estoppel. However, it is akin to the rule against assuming
18 inconsistent positions and it involves the principles of waiver, election,
19 and ratification rather, perhaps, than being limited to the precise principles
20 of equitable estoppel. Regardless of the name of principle designated, the
21 result is clearly the same. It precludes one who accepts the benefits from
22 questioning the validity of the accompanying obligation.¹¹
23
24
25

26 G. CLEC Claims

27
28 **Issue 11: Can CLECs properly seek arbitration of interconnection agreements with**
29 **Cingular? (List of Petitioners and Attachment E)**
30

31 **Question: Has the Commission already decided this issue?**

32 Answer: Yes. On December 20, 2005, the Commission granted T-Mobile's
33 Motion to Dismiss all CLEC claims against T-Mobile in these consolidated arbitrations.

¹¹ *St. Louis Public Service Company v. City of St. Louis, et al.*, 302 S.W.2d 875, 879-881(1957).

1 Cingular intends to file a similar Motion to Dismiss all CLEC claims. In response to a
2 specific data request, Petitioners have admitted that the following Petitioners are CLECs:
3 Green Hills Telecommunication Services and Mark Twain Communications Company.

4 **Question: What action should the Commission take on this issue?**

5 Answer: The Commission should dismiss the claims of Green Hills
6 Telecommunication Services and Mark Twain Communications Company as against
7 Cingular.

8 **Question: Does this conclude your testimony?**

9 Answer: Yes.

10

11

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail on this 6th day of January, 2006, to the following parties:

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/s/ John Paul Walters, Jr.
John Paul Walters, Jr.

Exhibit No: _____
Issues: All except costs
Witness: Eric Pue
Type of Exhibit: Direct Testimony
Sponsoring Party: Cingular
Case No: TO-2006-0147, et al. (consolidated)
Date: January 6, 2006

CONFIDENTIAL SCHEDULE A

(This Schedule has been redacted in its entirety.)

Exhibit No: _____
Issues: All except costs
Witness: Eric Pue
Type of Exhibit: Direct Testimony
Sponsoring Party: Cingular
Case No: TO-2006-0147, et al. (consolidated)
Date: January 6, 2006

CONFIDENTIAL SCHEDULE B

(This Schedule has been redacted in its entirety.)