BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement With T-Mobile USA, Inc.	))))	Case No. TO-2006-0147

T-MOBILE'S RESPONSE TO THE CONSOLIDATED PETITION FOR ARBITRATION

Comes now Respondent T-Mobile USA, Inc. ("T-Mobile"), pursuant to 47 U.S.C. § 252(b)(3) and 4 CSR 240-36.040(7), and provides this response to the consolidated petition for arbitration filed by 28 rural local exchange carriers (collectively, "Petitioners" or "Rural LECs").[1]

1. Pursuant to 4 CSR 240-36.040(7), T-Mobile attaches hereto, as Exhibit A, a document containing the interconnection agreement proposed by the Rural LECs which shows the language upon which the parties agree and shows where and how the parties disagree. The language of the proposed interconnection agreement with each Petitioner would be identical with the exception of details unique to each Petitioner (e.g., rate and traffic allocation).

[1] The 28 Petitioners include: BPS Telephone Company; Cass County Telephone Company; Citizens Telephone Company of Higginsville, Missouri; Craw-Kan Telephone Cooperative, Inc.; Ellington Telephone Company; Farber Telephone Company; Fidelity Telephone Company; Fidelity Communications Services I, Inc.; Fidelity Communications Services II, Inc.; Granby Telephone Company; Grand River Mutual Telephone Corporation; Green Hills Telephone Corporation; Green Hills Telecommunications Services; Holway Telephone Company; Iamo Telephone Company; Kingdom Telephone Company; KLM Telephone Company; Lathrop Telephone Company; Le-Ru Telephone Company; Mark Twain Rural Telephone Company; Mark Twain Communications Company; McDonald County Telephone Company; Miller Telephone Company; New Florence Telephone Company; Oregon Farmers Mutual Telephone Company; Peace Valley Telephone Company, Inc.; Rock Port Telephone Company; and Steelville Telephone Exchange, Inc.

I. BACKGROUND

2. The Petitioners requested negotiation with T-Mobile by letter dated April 28, 2005, and T-Mobile agreed to commence negotiations on that same day.[2] The parties thereafter conducted discussions but made no progress – largely because the Petitioners refused to consider any change to their opening positions. T-Mobile agrees that the arbitration petition was timely filed – that is, submitted between the 135th and 160th day following the request for negotiations.[3]

3. Five points bear emphasis at the outset. First, this arbitration is being conducted pursuant to federal law, not state law. As the Commission recently explained:

> The Commission has only that authority which the Congress has expressly delegated to it. The obligation to apply federal law applies even if state law precedent differs from federal law. * * * [T]he Commission may not rewrite or ignore FCC rules. *Alma/T-Mobile Arbitration Report*, Case No. IO-2005-0468, at 15-16 (Oct. 6, 2005).

4. Second, the Commission recently completed an arbitration proceeding involving T-Mobile and four other Missouri rural LECs (Alma, Chariton Valley, Mid-Missouri and Northeast Missouri), Case No. IO-2005-0468 (consolidated)(hereafter "the Alma/T-Mobile arbitration"). The Commission has already decided in the Alma/T-Mobile arbitration case many of the issues in this proceeding. T-Mobile submits that to the extent the Commission resolved questions of law in the Alma/T-Mobile arbitration (*e.g.*, the scope of the Petitioners' duty to provide reciprocal compensation), the Arbitrator here is required to follow that precedent in this arbitration proceeding. Of course, factual issues (*e.g.*, whether the Petitioners' proposed rates comply with federal law) must be separately addressed based on the evidence submitted in this proceeding.

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[2] *See* Arbitration Petition, Attachment C. Although Petitioners sent their bona fide request ("BFR") *via* Federal Express, they also emailed their BFR on April 28, 2005. It is T-Mobile's understanding that Petitioners want their BRF to be effective on April 29, 2005, the date federal law invalidated their State tariffs.

[3] *See* 47 U.S.C. § 252(b)(1).

5. Third, this arbitration addresses what terms and conditions will govern the parties' interconnection and exchange of traffic prospectively, from April 29, 2005, when the Rural LECs initiated their negotiation request. It is not appropriate for the Petition to include issues relating to traffic and compensation prior to the initiation of negotiations. Moreover, issues predating the start of these negotiations are already the subject of separate proceedings, and the issues, procedural history and governing law are different for the past and the current/future exchange of traffic.

6. Fourth, T-Mobile acknowledges the federal right of at least the incumbent LEC Petitioners to receive interim compensation from April 29, 2005.[4] Because of internal administrative miscommunications in modifying systems to implement a recent FCC order concerning interim compensation, T-Mobile has not paid to-date interim compensation owed. T-Mobile expects this glitch will be fixed shortly and will ensure that incumbent LEC petitioners will begin receiving such compensation. In order to offset any inconvenience to the Petitioners, T-Mobile agrees that it will not bill the Petitioners reciprocal interim compensation until T-Mobile begins paying such compensation to the Petitioners.

7. Finally, the Commission should be apprised that T-Mobile's cost expert (Mr. Conwell) has been unable to install the HAI model that the Petitioners have produced to support their proposed rates for call termination. Petitioners have chosen to use an older version of the HAI Model (5.0a) that was developed in 1998 and designed to run on a Windows operating system and version of Excel from that era. Mr. Conwell uses Microsoft Windows XP Professional (Version 2002) and Microsoft Office XP (Version 2002), including Excel, and he has been unable to install and run Petitioners' cost data on his modern computer.

8. Mr. Conwell notified Petitioners' cost witness (Mr. Schoonmaker) of this problem via voice mail on October 19, 2005. In response to Mr. Schoonmaker's request, Mr. Conwell on October 20 sent Mr. Schoonmaker the error message he was receiving, and he asked Mr. Schoonmaker whether he could provide copies of the Excel files produced by the model so he can begin deciphering the cost calculations and thus, begin his evaluation. Mr. Schoonmaker did not respond for a week, until October 27, leaving a voice mail while Mr. Conwell was traveling. Mr. Schoonmaker has not yet identified how to fix the compatibility problem, nor has he committed to produce the spreadsheet data that his model produces so Mr. Conwell can begin his analysis.

9. This is a serious problem that requires immediate attention because T-Mobile cannot begin preparing its case on the rate issue when its cost expert cannot access the Petitioners' cost data. T-Mobile expects the Petitioners will fix this problem before the end of this week (by November 4, 2005). If they refuse or are unwilling to fix this matter, T-Mobile will be compelled to seek emergency relief from the Commission.

II. T-MOBILE'S RESPONSE TO PETITIONERS' FACTUAL ALLEGATIONS

1. T-Mobile denies the allegation in paragraph 1 of the arbitration petition that all of the Petitioners are small rural local exchange carriers entitled to bring an arbitration petition against T-Mobile. T-Mobile admits all other allegations in Paragraph 1, but it notes that T-Mobile also terminates land-to-mobile traffic that originates on the Petitioners' networks.

2. The allegations of Paragraph 2 require no response.

3. T-Mobile admits the allegations in Paragraph 3, but it notes that T-Mobile also terminates land-to-mobile traffic that originates on the Petitioners' networks.

[4] FCC rules are clear, however, that only incumbent LECs, and not competitive LECs, are entitled to interim compensation. *See* 47 C.F.R. §§ 20.11(e), 51.715.

4. The allegations of Paragraph 4 require no response, although T-Mobile notes that the Petitioners have correctly identified T-Mobile's contacts for this proceeding.

5. T-Mobile admits the allegations in Paragraph 5.

6. T-Mobile admits the allegations in Paragraph 6.

7. T-Mobile admits the allegations in Paragraph 7.

8. T-Mobile admits that the Petitioners attached to their Petition a contract that one of them (Kingdom) negotiated with another wireless carrier (Verizon Wireless), but several points bear noting about the contract. First, T-Mobile does not understand why the Petitioners propose use of this Kingdom/Verizon Wireless contract because this is ***not*** the contract proposal the parties used in their discussions; certainly the intent of 4 CSR 240-36.040(3)(D) is that the petitioner would use the actual document utilized by parties. Second, T-Mobile also does not understand why the Petitioners here propose use of a contract that two parties negotiated without arbitration, when 4 CSR 240-36.040(3)(D) is very clear that "the petitioner should rely on . . . an agreement previously *arbitrated* and approved by this commission" (emphasis added). As T-Mobile will explain in more detail later in this proceeding, contracts that one party may have negotiated with third parties (without arbitration) have no legal relevance to this arbitration proceeding because the governing standards for approval applied to arbitrated agreements are much different (and more rigorous) than those applied to negotiated agreements.[5] For example, the Kingdom/Verizon Wireless contract that the Petitioners append to their Petition may comply with Section 252(e)(2)(A) of the Communications Act, but it certainly does not comply with Section 252(e)(2)(B) of the Act, as confirmed by the Commission's recent Arbitration Report in

[5] *Compare* 47 U.S.C. § 252(e)(1) *with* § 252(e)(2). *See also id.* at § 252(c).

the Alma/T-Mobile arbitration. T-Mobile denies the allegations regarding the lawfulness of their proposed contract.

9. T-Mobile denies the allegations in Paragraph 9. Federal law is clear that the Commission's responsibility is to resolve "open" (or unresolved) issues, whether the petitioner or the respondent raises them.[6] The Petitioners are, therefore, wrong in suggesting that the Commission is limited to deciding issues raised by the petitioner only. In addition, and as discussed in Issue 6 below, T-Mobile denies that the Commission has the authority to arbitrate a dispute between two competitive carriers (*e.g.*, a wireless carrier and a competitive LEC).

10. T-Mobile admits the allegations in Paragraph 10.

III. T-MOBILE'S RESPONSE TO THE FIVE ISSUES THE PETITIONERS HAVE RAISED

1. T-Mobile below responds to each of the five issues the Petitioners identified in their arbitration petition for Commission resolution.

ISSUE 1: PRE-WIRELESS TARIFF TRAFFIC (1998-2001), AND
ISSUE 2: WIRELESS TARIFF TRAFFIC (2001-APRIL 28, 2005)

2. At issue is whether Paragraph 5.4 of the Petitioners' proposed agreement should be included in the final agreement. Paragraph 5.4 provides:

> At the same time that the Parties execute this Agreement, they are entering into a confidential agreement to settle all claims related to traffic exchanged between the Parties prior to the effective date of this Agreement. Each Party represents that this settlement agreement completely and finally resolves all such past claims.

3. The Petitioners' Position: The Petitioners want T-Mobile to "settle all claims related to traffic exchanged between the Parties prior to the effective date of this Agreement."[7] Issue 1

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[6] *See* 47 U.S.C. § 252(b)(4)(A)("The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition *and in the response ,if any, filed under paragraph (3).*")(emphasis added).

[7] Proposed Agreement at ¶ 5.4.

involves T-Mobile mobile-to-land traffic that the Petitioners terminated during the time they had no wireless termination tariff on file with the Commission (from February 1998 until their tariff took effect in 2001). Issue 2 involves T-Mobile mobile-to-land traffic that the Petitioners terminate during the time their wireless termination tariffs were in effect (from 2001 through April 28, 2005, when such tariffs became unlawful).[8] The Petitioners additionally assert that "[u]ntil these past due amounts are paid in full," T-Mobile should "not get the benefit of any agreement" and transit carriers "should be authorized to take the necessary steps to block Respondent's traffic."[9]

4. T-Mobile's Position: Section 5.4 of the Petitioners' proposed agreement should be deleted from the final agreement. The rural LECs in the Alma/T-Mobile arbitration wanted to include the same paragraph in their agreements but the Arbitrator rejected this position, stating:

> Instead of the arbitrator's ruling on pre-January 13, 2005 traffic under the extremely compressed schedule the Communications Act sets for arbitration costs, a complaint case would be a better vehicle for resolving this case. The parties' due process rights would be better protected by having more time, not less time, to argue their positions. The Arbitrator will grant [T-Mobile's] motion in limine. *Arbitrator Order Regarding Motions in Limine*, Case No. IO-2005-0468, at 2-3 (Aug. 3, 2005).

In fact, as T-Mobile has previously explained, federal law does not empower the Arbitrator to address in this arbitration proceeding issues arising before the date of the request for negotiations (here, April 29, 2005).[10]

5. In addition, the Arbitrator cannot grant the Petitioners' request that T-Mobile be precluded from getting "the benefit of any agreement" until it pays past amounts in dispute (al-

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[8] FCC Rule 20.11(d) provides that "[l]ocal 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). This new rule took effect on April 29, 2005. *See Intercarrier Compensation,* 60 Fed. Reg. 16141 (March 30, 2005).

[9] Arbitration Petition at 6 and 7-8.

[10] *See* T-Mobile Application to Dismiss Certain Issues and for Rulings in Limine, IO-2005-0468, at 2-5 (July 11, 2005).

though it is unclear what Petitioners mean by "benefits," since they never explain their position). The FCC has ruled that an incumbent LEC acts in bad faith if it attempts to tie resolution of interconnection negotiations/arbitrations to another proceeding:

> We believe that requesting carriers have certain rights under sections 251 and 252, and those rights may not be derogated by an incumbent LEC demanding *quid pro quo* concessions in another proceeding.[11]

And, the Petitioners neglect to mention that the parties are currently in litigation in federal court concerning these past disputes. Thus, even if the Arbitrator had the authority to grant the Petitioners' request (and it does not), such an order would place a Hobson's choice before T-Mobile: forgo its rights under Section 251-252 of the Communications Act or drop its federal court appeal, a right also guaranteed by federal statutes.

6. Equally baseless is the Petitioners' request that the Arbitrator authorize them (or their agents) to block T-Mobile's mobile-to-land traffic, which would be contrary to the public interest and harmful to Petitioners' and T-Mobile's customers. Within the scope of this arbitration proceeding, the only compensation the incumbent LEC Petitioners are entitled to receive at the present time (at least until this arbitration proceeding is completed) is the interim compensation specified in FCC rules.[12] As noted above, T-Mobile acknowledges the right of these Petitioners to receive interim compensation, and it is working to begin paying such compensation (effective April 29, 2005 for traffic exchanged starting that date) shortly.

ISSUE 3: INTRAMTA RATE FOR CALL TERMINATION

7. Governing FCC rules specify than an incumbent LEC "must prove to the state commission that the rates [for call termination] do not exceed the forward-looking economic cost per unit of providing [call termination] using a cost study that complies with the [FCC's TELRIC]

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11 *Local Competition Order*, 11 FCC Rcd 15499, 15576 ¶ 153 (1996).

12 *See* 47 C.F.R. § 20.11(e).

methodology."[13] FCC rules further provide that a competitive carrier like T-Mobile should ordinarily receive for terminating land-to-mobile calls the same rate that the incumbent LEC charges it for terminating mobile-to-land calls.[14]

8. The Petitioners' Position: The Petitioners want T-Mobile to pay to each of them $0.035 per minute for call termination of intraMTA mobile-to-land traffic, which they assert "is supported by [their] forward-looking cost studies."[15]

9. T-Mobile's Position:

(a) BPS, Granby, Steelville and the three Fidelity companies

Six of the Petitioners seek a call termination rate of 3.5 cents per minute even though their own cost studies show their cost of call termination is lower than 3.5 cents per minute:

Petitioner	Claimed TELRIC Cost (MOU)
BPS	$0.0269
Fidelity Communications I	$0.0159
Fidelity Communications II	$0.0241
Fidelity Telephone	$0.0255
Granby	$0.0268
Steelville	$0.0263

10. The Commission cannot grant these Petitioners' request as a matter of law. Under governing FCC rules, affirmed by the U.S. Supreme Court,[16] these six Petitioners may not charge more than their TELRIC costs.[17] *See also Alma/T-Mobile Arbitration Report* at 12 ("[T]he Com-

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13 47 C.F.R. § 51.505(e).

14 *See* 47 C.F.R. § 51.711(a)("Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.").

15 Arbitration Petition at 8.

16 *See Verizon* v. *FCC,* 535 U.S. 467 (2002).

17 *See* 47 C.F.R. § 51.505(e)("An incumbent LEC must prove to the state commission that the rates [for call termination] do *not exceed* the forward-looking economic cost per unit of providing [call termination] using a cost study that complies with the [FCC's TELRIC] methodology.")(emphasis added).

mission can only approve rates that do not exceed the forward-looking economic cost per unit."). Thus, for example, a LEC cannot possibly claim entitlement to a call termination rate of 3.5 cents/minute when its own cost study shows termination costs of 1.6 cents/minute.

11. T-Mobile will further show in this proceeding that these six Petitioners have not satisfied their burden of proving that their claimed costs of call termination as listed above comply fully with FCC rules.

12. (b) The Remaining Petitioners

T-Mobile will show in this proceeding that the remaining 22 Petitioners have not satisfied their burden of proving that their claimed costs of call termination comply fully with FCC rules and that their proposed uniform rate of 3.5 cents/minute does not exceed their respective actual TELRIC cost. As noted above, the fact that some of the Petitioners may have negotiated a 3.5 cent/minute rate with certain wireless carriers other than T-Mobile is legally irrelevant to this arbitration proceeding.

ISSUE 4: INTERMTA FACTORS

13. The call termination rate that the Commission adopts in this proceeding will apply to "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area" – that is, intraMTA traffic.[18] Access charges ordinarily apply to the exchange of any interMTA traffic.

14. The Petitioners' Position: The Petitioners propose in Attachment G to their arbitration petition an interMTA factor specific to each Petitioner.

15. T-Mobile Position: T-Mobile does not contest the interMTA factors that the ILEC Petitioners have proposed in Attachment G to their arbitration petition. Accordingly, the in-

[18] 47 C.F.R. § 51.701(b)(2).

terMTA factor T-Mobile and each of the ILEC Petitioners will use is no longer an open issue relevant to this arbitration proceeding.

16. Access charges applicable to interMTA traffic may be either interstate or intrastate, depending on the points of origination and termination of a given call. The Petitioners did not propose any "interstate/intrastate factors" in their arbitration petition or proposed agreement for those few Petitioners claiming they terminate some interMTA traffic. The only conclusion the Commission can draw from this omission is that the Petitioners agree with T-Mobile's position that all interMTA traffic the parties exchange should be rated based on the rates set forth in the Petitioners' interstate access tariffs.

ISSUE 5: SCOPE OF THE PETITIONERS' INTRAMTA RECIPROCAL COMPENSATION OBLIGATION

17. FCC Rule 51.701(b)(2) specifies that a LEC's reciprocal compensation obligation applies to "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area" – that is, intraMTA traffic.[19]

18. The Petitioners' Position: The Petitioners ask the Commission to create an exemption from this intraMTA rule. Specifically, they claim they should be able to avoid their federal reciprocal compensation duty simply by sending certain intraMTA land-to-mobile traffic to an interexchange carrier ("IXC"). For example, Paragraph 1.1 of their proposed agreement provides in part:

> The Agreement does not cover traffic for which the originating Party has contracted with an Interexchange Carrier ("IXC") to assume the responsibility for terminating the traffic.

[19] *See* 47 C.F.R. § 51.701(b)(2).

Other provisions of the Petitioners' proposed agreement similarly suggest that Petitioners should be exempt from their reciprocal compensation obligation for intraMTA traffic they send to an IXC.[20]

19. T-Mobile's Position: T-Mobile requests an explicit statement in the final traffic termination agreement that the compensation obligation for intraMTA traffic is reciprocal and symmetrical. The Commission has already rejected the very argument that the Petitioners make in this proceeding (and unsuccessfully made in the Alma/T-Mobile arbitration proceeding):

> Although federal appellate courts have held that the "mandate expressed in these [reciprocal compensation] provisions is clear, unambiguous, and on its face admits of no exceptions." Petitioners nonetheless ask the Commission to create a new exception. Specifically, they claim that they should be excused from paying reciprocal compensation for intraMTA traffic they deliver to interexchange carriers ("IXCs"), But the Commission may not rewrite or ignore FCC rules. *Alma/T-Mobile Arbitration Report*, Case No. IO-2005-0468, at 18 (supporting citations omitted).

T-Mobile respectfully submits that the Arbitrator does not have the discretion to ignore or depart from this Commission ruling on point.

IV. ADDITIONAL UNRESOLVED ISSUES FOR ARBITRATION

20. T-Mobile, pursuant to 47 U.S.C. § 252(b)(3) and 4 CSR 240-36.040(7), below identifies additional unresolved issues for arbitration.

ISSUE 6: COMMISSION AUTHORITY TO ARBITRATE DISPUTES BETWEEN TWO COMPETITIVE CARRIERS

21. The Commission has recognized that it "only has that authority which the Congress has expressly delegated to it":

> As a federal district court in Missouri has held, "[a]bsent Congressional authority, the PSC would have no right to participate in the unique dispute resolution proc-

[20] For example, the second paragraph on page 1 and Paragraphs 1.1 and 4.2 suggest that reciprocal compensation obligations would apply only for traffic exchanged "through the local exchange carrier network" and for traffic "under the responsibility of each Party."

> ess devised by Congress, in which the PSC is authorized to arbitrate disputed between private telecommunications companies."[21]

Congress has made clear that the negotiation and arbitration provisions in Section 252 of the Communications Act apply only when one of the parties is "an incumbent local exchange carrier."[22] In other words, this statutory procedure does not apply to interconnection/reciprocal compensation disputes between two competitive carriers (where neither carrier is an incumbent LEC).

22. T-Mobile's Position: It appears that the four following Petitioners are competitive LECs, not incumbent LECs:

- Fidelity Communications Services I, Inc.;
- Fidelity Communications Services II, Inc.;
- Green Hills Telecommunications Services; and
- Mark Twain Communications Company.

T-Mobile submits that the Commission has no authority, under federal or state law,[23] to arbitrate disputes between a competitive LEC and a competitive wireless carrier and that, as a result, these four Petitioners must be dismissed from this arbitration proceeding.

23. The Petitioners' Position: T-Mobile presumes these four competitive LEC Petitioners will not agree with T-Mobile's position – although it is not apparent how they could oppose T-Mobile's position given the clarity with which Congress has spoken in Section 252 of the Act..

ISSUE 7: COST OF TRANSPORTING INTRAMTA TRAFFIC

24. T-Mobile proposes that the following language be included in the final agreement:

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[21] *T-Mobile Arbitration Report*, No. IO-2005-0468, at 15 and n.25 (supporting citation omitted).

[22] *See, e.g.*, 47 U.S.C. §§ 252(a)(1), (b)(1), (d)(2)(A), and (j).

[23] The Commission's rules are likewise clear that its arbitration authority extends only to arbitration petitions filed "under section 252 of the Act." 4 CSR 240-36.010(7). These rules further confirm that Section 252 arbitrations apply only where one of the parties is an incumbent LEC. *See, e.g., id.* at 240-36-020(7), 36-040(2).

3.2 The Party terminating traffic exchanged under this Agreement is not responsible for the costs incurred in transporting that traffic from the originating carrier's network to the terminating carrier's network..

25. T-Mobile's Position: Paragraph 3.1 of the Petitioners' proposed agreement specifies that each party shall "provid[e] the trunks from its network to the point of interconnection with the third-party LEC(s) network and to pay the third-party LEC(s) the costs of transiting calls that the Party originates." While T-Mobile agrees that the originating carrier is responsible for paying the costs incurred by any intermediary carrier (*e.g.*, tandem switching costs, interconnecting trunks provided by the intermediary carrier), Paragraph 3.1 does not specify who pays for the trunks connecting each party's network with the third-party transit network.

26. The Commission ruled in its *Alma/T-Mobile Arbitration Report* that the originating carrier is responsible for any transport costs incurred in delivering its intraMTA traffic between its network and the network of the terminating carrier.[24] Because the rural LECs in the Alma/T-Mobile arbitration proceeding had claimed that T-Mobile is responsible for the transport costs for land-to-mobile traffic (in addition to the transport costs for mobile-to-land traffic), T-Mobile seeks explicit confirmation in its agreement with the Petitioners here that any transport costs for intraMTA traffic are paid by the originating carrier. Thus, a rural LEC would pay the transport costs for land-to-mobile traffic, just as T-Mobile would pay the transport costs for mobile-to-land traffic. Such an arrangement would be fully consistent with the Petitioner's statutory duty to "establish *reciprocal* compensation arrangements for the *transport* and termination of telecommunications."[25]

27. The Petitioners' Position: T-Mobile presumes that the Petitioners would not oppose proposed Paragraph 3.2 because this paragraph is consistent with the Commission's decision in

[24] *See Arbitration Report*, No. IO-2005-0468, at 22-24.

the *Alma/T-Mobile Arbitration Report* and the plain language of Section 251(b)(5) of the Communications Act.

ISSUE 8: SELECTION OF INTERMEDIARY CARRIER

28. The Commission has recognized that very few rural LECs and wireless carriers connect directly with each other and instead find it more economical to connect indirectly through the network of an intermediary carrier.[26] Although the Petitioners send some of their intraMTA traffic destined to T-Mobile to an IXC, Paragraphs 1.1 and 3.1 of their proposed agreement would nonetheless direct that the Parties "shall exchange traffic under this Agreement by each Party physically connecting its network to a third-party LEC(s), which shall transit the traffic between the two parties."

29. T-Mobile's Position: T-Mobile would agree to send all of its intraMTA mobile-to-land traffic *via* a LEC transit carrier (*e.g.*, a LEC access tandem switch) *if* the Petitioners likewise agree to send all of their intraMTA land-to-mobile traffic *via* a LEC transit carrier. Nevertheless, T-Mobile doubts whether the Petitioners truly intend to stop routing certain of their intraMTA traffic to IXCs (because it doubts they would be willing to forego access revenues). Accordingly, T-Mobile believes that Paragraphs 1.1 and 3.1 should be modified to make clear that the originating carrier, which is responsible for the costs incurred by an intermediate carrier (*see* Paragraph 3.1), can use any intermediary carrier that is capable of delivering the traffic to the terminating carrier – whether that carrier happens to be labeled as a LEC or an IXC. This proposal would also eliminate potential controversy because of the increasing difficulty of determining whether a given intermediary carrier (*e.g.*, SBC, MCI) is acting as a LEC or an IXC.

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[25] 47 U.S.C. § 251(b)(5)(emphasis added).

[26] *Alma/T-Mobile Arbitration Report*, No. IO-2005-0468, at 22.

30. The Petitioners' Position: T-Mobile does not know the Petitioners' position on this issue.

ISSUE 9: NET BILLING

31. T-Mobile proposes that the following language be included in the final agreement:

5.1.1 The parties agree that, notwithstanding the foregoing, they will use a net billing approach, as follows: Each Party will pay the other for the Local Traffic it originates and that is delivered to the other Party's network for termination. The Parties agree that, in light of the Parties' inability to measure the amount of certain traffic, including interMTA traffic exchanged between the Parties , the following traffic percentages will be applied to determine compensation owed for terminating Local Traffic: sixty-five percent (65%) T-Mobile originated and thirty-five percent (35%) ILEC originated. Should either Party believe there has been a material change in the ratio of land-to-mobile and mobile-to-land traffic, the foregoing traffic ratio will be adjusted by mutual agreement of the parties following a valid traffic study.

5.1.2 ILEC will calculate the amount T-Mobile owes ILEC based on one hundred (100) percent of the traffic originated by T-Mobile and delivered to ILEC for termination. ILEC will calculate the estimated ILEC traffic delivered to T-Mobile for termination based on the following formula: Total Minutes of Use will be calculated based on total IntraMTA MOUs (identified by CTUSR records plus records of intraMTA calls handed off to IXCs or other mutually acceptable calculation), divided by 0.65 (sixty-five percent). The Total Minutes of Use will then be multiplied by 0.35 (thirty-five percent) to determine the traffic originated by ILEC and delivered to T-Mobile for termination. ILEC will bill T-Mobile based on the total amount T-Mobile owes ILEC minus the amount ILEC owes T-Mobile.

32. T-Mobile's Position: The Commission has already recognized that "[n]et billing is difficult to question" and constitutes "the best solution" because it "reduce[s] the number of bills crossing between the parties, and . . . foster[s] cooperation in determining compensation owed."[27] In fact, both parties benefit by a net-billing approach, because each will save money by processing (*e.g.*, creating, sending, verifying and paying) fewer bills.

[27] *Alma/T-Mobile Arbitration Report*, IO-2005-0468, at 19.

33. The Petitioners' Position: The Petitioners do not appear to oppose the concept of net billing, but they did oppose in the Alma/T-Mobile arbitration proceeding the 65/35 that the Commission approved.[28] T-Mobile notes, however, that net billing was not among the issues the Petitioners raised in their application for rehearing in response to the Arbitrator's Final Report issued in the Alma/T-Mobile arbitration proceeding.[29]

ISSUE 10: SUSPENDED BILLING UNTIL THE AMOUNTS OWED EXCEED $250

34. In the Alma/T-Mobile negotiations, the parties agreed to defer billing the other until the amount owed reached $250. Paragraph 5.4 of the agreement that the Commission approved provides:

> The Billing Party agrees not to render a single bill totaling less than $250.00, but rather will accumulate billing information and render one bill for multiple billing periods when the total amount due for the multiple billing periods exceeds $250.00; provided however that a Billing Party is entitled to render a bill at least once per calendar year, even if the bill rendered is for less than $250.00.

35. T-Mobile's Position: Like net billing, such a deferred billing arrangement would benefit both parties by reducing by their respective costs (because fewer smaller bills would be generated). Indeed, if deferring billing is appropriate for rural LECs the size of Alma, Mid-Missouri, *etc.,* the deferred billing is even more appropriate for the smaller rural LECs involved in this proceeding since the traffic volumes the parties here exchange is even smaller. The contract should further confirm explicitly that no "late charge" is appropriate before a deferred bill is rendered and that the late charge specified in Paragraph 5.3 applies only if payment is not made within 30 days of the date of the deferred invoice.

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[28] *See* Small Telephone Company's Group's Comments on the Arbitrator's Draft Report, at 14-15 (Sept. 19, 2005).

[29] *See* Small Telephone Company Group Application for Rehearing (Oct. 7, 2005).

36. The Petitioners' Position: T-Mobile does not know the Petitioners' position on this issue.

ISSUE 1I: TRAFFIC BLOCKING

37. In Section 19 of their proposed agreement, the Petitioners propose several paragraphs that would enable them to block land-to-mobile traffic under certain circumstances.

38. T-Mobile's Position: T-Mobile vigorously opposes Section 19 in its entirety. Blocking customer traffic because of disputes between two carriers is inappropriate and inconsistent with the public interest. No carrier should have the authority to block, unilaterally, traffic originated by its competitor's customers. Rather, the extraordinary remedy of call blocking should be available, if at all, only if a regulator (the Commission or the FCC) explicitly approves use of this remedy on a case-by-case basis in response to a specific request for call blocking.

39. The blocking provisions are also unnecessary. Paragraph 5.3 of the proposed agreement would enable the Petitioners to assess a "late charge" of 18 percent annually if an undisputed bill is not paid within 30 days – a rate that is exorbitant given current interest rates. There is utterly no basis in law or equity to permit the Petitioners to impose two penalties for the same incident: exorbitant interest plus call blocking. If the Commission permits the Petitioners to include a blocking provision in the final agreement, then at minimum it should require the Petitioners to first obtain Commission or FCC approval ("provided ILEC first obtains approval of the Commission or the FCC, as appropriate"), eliminate Paragraph 5.3 (containing the exorbitant late fee), and confirm that the Petitioners will pay all costs of blocking (and later unblocking).

40. The Petitioners' Position: T-Mobile presumes the Petitioners' will oppose T-Mobile's position.

ISSUE 12: EFFECTIVE DATE OF THE INTERCONNECTION AGREEMENTS

41. T-Mobile Position: T-Mobile considers April 29, 2005 as the proper effective date of the Interconnection Agreements, because that is the date the parties' agreed to begin negotiating those agreements. T-Mobile may be open to the later effective date proposed by the Petitioners, but would like to understand the rationale behind the effective date included in the Petitioners' proposed agreement, which would be, for each agreement, the date that it is ultimately signed by both T-Mobile and the respective Petitioner.

42. Rural LEC Position. T-Mobile is not aware of the Rural RLECs' position or explanation regarding the proposed effective date language.

Respectfully submitted,

By: /s/ Mark P. Johnson

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Certificate of Service

I hereby certify that a true and final copy of the foregoing was served via electronic transmission on this 31st day of October, 2005, to the following counsel of record:

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