

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

In the Matter of the Petition of)	
Alma Telephone Company)	
for Arbitration of Unresolved)	Case Nos. IO-2005-0468, et al.
Issues Pertaining to a Section 251)	
Agreement with T-Mobile USA, Inc.)	

APPLICATION FOR REHEARING

COMES NOW the Small Telephone Company Group ("STCG"),¹ pursuant to §386.500 RSMo. and for its Application for Rehearing of the October 6, 2005 Arbitration Report issued by the Missouri Public Service Commission ("Commission") in this case, requests that the Report be reconsidered, reheard, and/or set aside as being unjust, unlawful, and unreasonable for the following reasons:

INTRODUCTION AND SUMMARY

1. The Arbitration Report marks a major sea change from prior Commission orders and industry practice in Missouri. First, prior Commission rulings hold that when an interexchange carrier (IXC) carries a call to a commercial mobile radio service ("CMRS" or "wireless") carrier, then **"the IXC must compensate the CMRS carrier for the termination of the call."**² Indeed, T-Mobile's own witness has admitted that wireless carriers are already being

¹ See Attachment A.

² *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce its Wireless Termination Service Tariff*, Case No. TT-2001-139, *Report and Order*, issued Feb. 8, 2001 (emphasis added).

compensated by IXCs.³ Second, the evidence in this case demonstrates that Missouri's largest local exchange carrier (LEC), Southwestern Bell Telephone d/b/a SBC Missouri, does not pay reciprocal compensation for land-to-mobile traffic that is carried by an IXC.⁴

2. The Arbitration Report errs as a matter of law when it finds that small rural LECs must pay for traffic that is carried outside of their Commission-defined local service areas by an IXC. This finding is in direct conflict with the language in a recent decision issued by the U.S. District Court for Western District of Missouri in *T-Mobile v. BPS Telephone*, Case No. 05-4037, on Aug. 24, 2005 (Laughrey, J.)(Attachment B). Language in the federal district *T-Mobile* case explains:

“A call that originates from an MTA that does not correspond with a local telephone carrier’s region is considered a “toll call” and a different system of compensation exists.”⁵

The Arbitration Report is also inconsistent with the FCC's March, 2005 *Notice of Proposed Rulemaking* (“NPRM”) seeking comment on whether the FCC should **change** its current rules such that IXC-carried calls should be made subject to reciprocal compensation in the future.⁶ In short, the Arbitration Report errs as a matter of law in finding that IXC-carried calls are subject to the FCC's rules on reciprocal compensation for “local” traffic.

³ *Mark Twain* case, Tr. 342-43.

⁴ Tr. 263.

⁵ *T-Mobile* at p. 3, footnote 3 (emphasis added).

⁶ *Further Notice of Proposed Rulemaking in the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, issued March 3, 2005.

DISCUSSION

A. Landline-to-Mobile IntraMTA Calls

3. The Arbitration Report erroneously concludes that small rural LECs must compensate wireless carriers for landline-to-mobile intraMTA calls that are carried by an IXC. The Arbitration Report contradicts current FCC rules, prior Commission decisions, standard industry practice in Missouri, and more than seventy (70) agreements that have been approved by the Commission. The United States District Court for the Western District of Missouri recently stated, ***“A call that originates from an MTA that does not correspond with a local telephone carrier’s region is considered a “toll call” and a different system of compensation exists.”*** See Attachment B, p. 3, fn 3 (emphasis added). This Commission clearly explained the issue in the context of Missouri’s unique telecommunications network in its *Mark Twain Wireless Tariff* decision:

At present, with the termination of the PTC [Primary Toll Carrier] Plan, it is the norm that traffic between the small LECs and CMRS carriers is one-way traffic. The Filing Companies’ expert witness, Robert Schoonmaker, explained that the CMRS carriers’ switches are located outside of the local calling scopes of the small LECs and that such calls are necessarily toll calls, and thus carried by an IXC. The CMRS carriers’ witnesses admitted that the traffic is being carried by IXCs, but contend that this is a business choice made by the small LECs in order to generate access charges. **In either case, if the traffic is carried by an IXC, the IXC must compensate the CMRS carrier for the termination of the call.**⁷

⁷ *In the Matter of Mark Twain Rural Telephone Company’s Proposed Tariff to Introduce its Wireless Termination Service Tariff*, Case No. TT-2001-139, *Report and Order*, issued Feb. 8, 2001 (emphasis added).

Thus, the issue for IXC-carried calls in Missouri is not whether the wireless carrier is entitled to reciprocal compensation, but rather, which carrier is financially responsible for compensating the wireless carrier for terminating the call. In 2001, the Commission correctly recognized that IXCs were responsible for compensating the wireless carriers.⁸

4. The Arbitration Report erroneously misapplies the FCC rules, state and federal tariffs, and business practices that govern relationships between LECs, end user customers, and IXCs. As demonstrated by the following examples, the Arbitration Report erroneously relies on the mistaken assumption that IXC traffic is the same as traffic between LECs and wireless carriers.

EXAMPLE A.

Wireline-to-Wireless Call with a Local NPA/NXX Number

First, assume an intraMTA call from a Sprint local landline customer in Jefferson City, Missouri to a Cingular wireless customer with a Jefferson City NPA-NXX. This call would be dialed as a local call (*i.e.* **without dialing “1+”**) and would be switched and delivered to Cingular’s facilities by Sprint. Under this scenario, the traffic is exchanged between Sprint and Cingular, and reciprocal compensation applies.

⁸ See also *In the Matter of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-36, 2002 FCC LEXIS 3262, *Declaratory Ruling*, rel. July 3, 2002. This FCC case was a referral from the United States District Court for the Western District of Missouri, and it involved a wireless carrier (Sprint PCS) seeking compensation from an IXC (AT&T). The FCC held that Sprint PCS “was not prohibited from charging access fees” to AT&T. *Id.* at ¶1.

EXAMPLE B.

Wireline-to-Wireless Call with a Non-Local NPA/NXX

Now, assume an intraMTA call from a Sprint local landline customer in Jefferson City, Missouri to a Cingular wireless customer with a Columbia, Missouri NPA-NXX. This call would be dialed **with a “1+”** and would be handed off in Jefferson City to the Sprint wireline customer’s chosen (i.e. presubscribed) IXC (e.g. AT&T) and carried to Cingular’s facilities by that IXC. Under this scenario, the traffic is exchanged between the IXC (AT&T) and Cingular, and those two parties are responsible for compensating each other. The wireline carrier (Sprint) has no responsibility for compensating the wireless carrier for terminating the call. It is this second scenario that is most prevalent in rural LEC service areas because wireless carriers seldom have local NPA-NXX numbers in rural exchanges. Thus, virtually all traffic from rural LECs to wireless carriers is dialed on a “1+” basis and carried by an IXC, and the IXC is responsible for compensation. The Commission properly recognized this fact in the *Mark Twain Wireless Tariff Order* quoted above.

B. “1+” calls from Rural Exchanges are IXC-CMRS Calls

5. In this case, Petitioners’ rural end user customers are customers of the rural LECs for local service only. The Petitioners’ local tariffs approved by the Commission define the Petitioners’ local calling areas. All calls outside of these Commission-defined “local” areas are “toll” calls which by the FCC’s presubscription rules must be carried by the customer’s chosen IXC. The Petitioners’ end users are not customers of the LEC for long distance toll

services. Rather, these rural customers choose an IXC to be their “toll” carrier and carry “1+” calls through the FCC’s mandated presubscription process. The Petitioners’ customers purchase “toll services” from their IXC of choice and pay the toll carrier for those services under the IXC’s toll tariffs or price schedules. IXCs purchase the use of the LEC’s facilities to “access” end users and provision their toll services to their presubscribed customers in the LEC’s exchange. The IXCs have the business relationship with the end user customer placing the long distance call. The IXC receives compensation (i.e. toll) from the calling party and the obligation to compensate other carriers whose facilities the IXC uses to originate and terminate the call.

6. Thus, as demonstrated in the examples above, a call dialed “1+” and carried by an IXC is a call from an IXC end user to the wireless carrier customer, and responsibility for compensation is between the IXC and the wireless carrier. The call does not fall under the FCC’s rules for reciprocal compensation between LECs and wireless carriers.⁹ The Petitioners did not ask the Arbitrator to create “a new exception” to the reciprocal compensation regime or ignore FCC rules. On the contrary, Petitioners simply sought for IXC-carried traffic outside of a LEC calling scope to continue to be exempted from traffic for which the LEC has an obligation to pay reciprocal compensation. The rural LEC Petitioners’ final offer was consistent with FCC rules and decisions, past Missouri Commission precedent, standard industry practice in Missouri, and more than seventy (70) agreements that have been approved by the Missouri Commission.

⁹ See Schoonmaker Testimony, pp. 33-35.

FCC Rules

7. Under FCC rules and industry practice, reciprocal compensation rules apply to agreements for intraMTA calls “exchanged” between an LEC and a wireless carrier. (See Example A above.) But the Arbitration Report erroneously extends this requirement to IXC traffic. (See Example B above.) The Arbitration Report misreads and misapplies the FCC’s rules and decisions. The FCC’s reciprocal compensation rules apply to traffic that is “exchanged” between LECs and wireless carriers, but this rule only addresses the situation where a LEC is actually carrying the traffic to the wireless carrier. Reciprocal compensation rules simply do not apply in this case because the small rural LECs do not carry the traffic to the wireless carriers. Rather, under the FCC’s presubscription rules these calls are dialed on a “1+” basis and handed off to the customer’s IXC. As a result, the call is exchanged between the IXC and the wireless carrier.

8. FCC decisions acknowledge that IXC traffic is not presently subject to the Act’s reciprocal compensation provisions. For example, earlier this year the FCC issued a *Notice of Proposed Rulemaking* (“NPRM”) questioning whether it should retain the intraMTA rule for wireless traffic.¹⁰ In its March 3, 2005 NPRM, **the FCC observed that IXCs, and not small rural LECs, remain financially responsible for IXC traffic.** The FCC specifically identified the same issues related “transit” traffic and wireless carriers that are present in this case and recognized that its present rules require that intraMTA calls dialed on a

¹⁰ *Further Notice of Proposed Rulemaking in the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, issued March 3, 2005.

1+ basis be routed through IXC's and remain subject to the access compensation regime. The FCC invited comment on whether its existing rules and industry practices could be **changed** to allow traffic to be routed to wireless carriers and made subject to reciprocal compensation, but the FCC recognized that this is simply not the case today:

For instance, we recognize that the current Commission rules may require that intraMTA calls dialed on a 1+ basis be routed through IXC's. **Specifically, section 51.209 of the Commission's rules requires LECs to implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically. Should this rule be changed?** We ask parties to explain what technical or network changes would be needed if all intraMTA CMRS traffic were routed to CMRS providers. **We also seek comment on whether, in the alternative, all intraMTA calls can be made subject to reciprocal compensation without requiring LECs to alter the routing of their originated traffic.** We ask parties supporting a particular approach to address any other Commission rules that may be implicated."¹¹

Here, the FCC clearly envisions that it would require a future **change** to its access and reciprocal compensation regimes to make IXC traffic subject to reciprocal compensation. This language confirms that IXC traffic is currently not subject to reciprocal compensation.

9. Additional language in Paragraph 17 of the *NPRM* the FCC also clarifies that IXC's, not LEC's, are responsible for IXC-carried calls:

¹¹ *Id.* at ¶138.

[U]nder the existing regimes, the calling party's carrier, whether LEC, IXC, or CMRS provider, compensates the called party's carrier for terminating the call.¹²

For IXC-carried traffic, the IXC is the calling party's carrier, and it is the IXC that is responsible for compensating "the called party's carrier" (i.e. the wireless carrier) for the call. The Arbitration Report errs by placing this burden on small rural LECs and thereby contradicts the FCC's existing compensation regimes.

10. The Arbitration Report recites the wording of FCC Rule 51.701, but the Arbitration Report misreads and misapplies that rule. Subpart (2) of the rule defines telecommunications traffic as that **exchanged between a LEC and a CMRS provider** that, at the beginning of the call, originates and terminates within the same Major Trading Area. The Arbitration Report erroneously concludes that IXC traffic is the same as traffic "exchanged" between a LEC and a wireless carrier. Reciprocal compensation was intended for two interconnected competitors who compete for local customers. The term "exchanged" refers to a swapping of local traffic originated by either the LEC or the CMRS provider, and that each reciprocally delivers to the other to terminate. This rule does not apply to situations involving IXCs.

Prior Commission Decisions

11. The fact that wireless carriers are compensated by IXCs for this traffic has also been recognized in prior cases before the Commission, including prior cross-examination of Respondent T-Mobile's own expert witness Mr. Billy Pruitt. Pursuant to Commission Rule 4 CSR 240-2.130, the Commission should

¹² *Id.* at ¶17.

take official notice of these prior admissions by wireless carriers that they are already being compensated for intraMTA traffic by IXCs. For example, in Case No. TT-2001-139, Mr. Pruitt expressly acknowledged that Sprint PCS (his employer at the time) receives access payments on intra-MTA wireless traffic that is delivered by IXCs:

Q. Thank you, sir. In these data requests, I believe we asked a series of questions regarding Sprint [PCS]'s relationship with IXCs that deliver traffic to it from land-line customers. And if I may paraphrase, my understanding is that with the notable exception of AT&T, **Sprint [PCS] is currently being compensated by IXCs for traffic that is terminated to it from land-line customers?**

A. **That is correct.**¹³

Thus, **wireless carriers are already receiving compensation from the IXCs,** and the Arbitration Report errs in that it would effectively allow the wireless carriers to be compensated twice for the same call: once from the IXC and a second time from the small rural LEC. Again, in 2001, the Commission held that **“if the traffic is carried by an IXC, the IXC must compensate the CMRS carrier for the termination of the call.”**¹⁴

Industry Practice

12. To the best of the STCG's information and belief, the Arbitration Report is the first time in Missouri where it has been suggested that reciprocal

¹³ *In the Matter of Mark Twain Rural Telephone Company's Wireless Termination Service Tariff*, Case No. TT-2001-139, Tr. 342-43 (emphasis added).

compensation applies to traffic that is carried by IXCs to wireless carriers. Indeed, at the arbitration hearing in this case, T-Mobile admitted that **SBC, the largest LEC in Missouri, does not pay reciprocal compensation for landline-to-mobile traffic that is carried by an IXC.**

Q. Do you know if Southwestern Bell is paying T-Mobile for landline to wireless IXC traffic?

A. They are not.¹⁵

Thus, the Arbitration Report contradicts statewide industry practice in addition to FCC rules and prior Commission decisions.

Missouri's Approved Interconnection Agreements

13. The Arbitration Report contradicts the terms and conditions of over seventy (70) approved agreements between small rural LECs and wireless carriers, including T-Mobile. In all of these agreements, traffic carried by IXCs is expressly excluded for purposes of reciprocal compensation. For example, the Agreement between Ozark Telephone Company and T-Mobile, which was approved by the Commission in Case No. TK-2004-0166, expressly excludes traffic carried by an IXC:

This Agreement shall cover traffic originated by, and under the responsibility of, one of the Parties . . . "Traffic originated by and under the responsibility of," a Party means traffic that is originated by a party pursuant to that Party's rate schedules, tariffs, or contract with the end-user customer. This Agreement does not cover traffic for which the originating party has contracted with an

¹⁴ *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce its Wireless Termination Service Tariff*, Case No. TT-2001-139, *Report and Order*, issued Feb. 8, 2001 (emphasis added).

¹⁵ Tr. 263.

Interexchange Carrier (“IXC”) to assume the responsibility for terminating the traffic or traffic originated by an IXC pursuant to the IXC’s rate schedules, tariffs, end-users contracts, or presubscription rules.¹⁶

This is the same language proposed by Petitioners in this case and the same language that T-Mobile has accepted in other Missouri agreements. The Arbitration Report erroneously departs from longstanding Missouri practice and precedent by subjecting IXC traffic to reciprocal compensation rules.

Precedent

14. The Arbitration Report erroneously concludes “it is well settled” that land-to-wireless IXC traffic is reciprocal compensation traffic. But this is not the case, and all of the federal cases cited in the Arbitration Report arose from foreign jurisdictions with very different telecommunications networks. The Act requires that state commissions examine state-specific networks and grants state commissions the discretion, in the first instance, to review the facts, interpret FCC rules, and reach their own decisions on the issues presented. In Missouri, the situation is unique in that the traffic at issue is being exchanged on a network operating after the termination of a Primary Toll Carrier (PTC) Plan. This is vastly different than the situation in Iowa, for example, because in Iowa the small rural LECs all participate in their own centralized interexchange network called

¹⁶ Case No. IO-2003-0201, Traffic Termination Agreement between Kingdom Telephone Company and Verizon Wireless, §1.1 – Scope of Agreement.

Iowa Network Services (“INS”).¹⁷ There is no such centralized toll network among all small rural LECs in Missouri.

15. The Arbitration Report relies almost exclusively upon the conclusion from the Tenth Circuit’s “*Atlas*” decision,¹⁸ but more accurate (and binding) precedent is found in the Eighth Circuit. In *Comptel v FCC*, 117 F.3d 1068, 1073 (1997), the Eighth Circuit specifically stated that the FCC’s refusal to subject IXC traffic to the reciprocal compensation regime was lawful:

...it is clear from the Act that Congress did not intend all access charges to move to cost-based pricing, at least not immediately. The Act plainly preserves certain rate regimes already in place. . . . In other words, **the LECs will continue to provide exchange access to IXCs** for long-distance service, and continue to receive payment, under the pre-Act regulations and rates.....Comptel also challenges the FCC’s interpretation of interconnection as having a discriminatory impact, by permitting LECs to charge different rates for the same service based on whether the carrier who is seeking interconnection and other network services is a long-distance provider or a local service provider. **But the two kinds of carriers are not, in fact, seeking the same services. The IXC is seeking to use the incumbent LEC’s network to route long-distance calls and the newcomer LEC seeks use of the incumbent LEC’s network in order to offer a competing local service.**

The *Comptel* case confirms that the FCC’s *Local Competition Order* intended to preserve access for IXC traffic separate and distinct from reciprocal compensation.

¹⁷ *Rural Iowa Ind. Telecom Ass’n v. Iowa Utilities Bd.*, Case No. 4:02-40348 (U.S. District Court – S.D. Iowa)(“In 1987, most of the independent LECs then in existence in Iowa joined together to form Iowa Network Services (‘INS’).”), p. 9.

¹⁸ *Atlas Tel. v. Oklahoma Corporation Comm’n*, 400 F. 3d at 1264.

16. **All three** of the district court cases cited in the Arbitration Report's description of "every federal court" are presently on appeal to the United States Circuit Courts of Appeal, and two of those cases (*Rural Iowa* and *Three Rivers*) have already been reversed and remanded once during the course of their first trips to the Eighth and Ninth Circuits, respectively. See e.g. *Rural Iowa Indep. Tel. Ass'n v. Iowa Utils. Bd.*, 362 F.3d 1027 (8th Cir. 2004). Clearly, the district court decisions cited in the Arbitration Report are neither final nor the solid precedent that the Arbitration Report makes them out to be. More recently, the U.S. District Court for Western District of Missouri stated:

"A call that originates from an MTA that does not correspond with a local telephone carrier's region is considered a "toll call" and a different system of compensation exists."¹⁹

T-Mobile v. BPS Telephone, Case No. 05-4037, Order, issued Aug. 24, 2005 (Laughrey, J.). Earlier this month, T-Mobile requested transfer of this case to the Eighth Circuit.

CONCLUSION

WHEREFORE, for the reasons detailed above, the STCG respectfully requests that the Arbitration Report be reconsidered, reheard, and/or set aside to correct the errors of fact and law identified above.

¹⁹ *T-Mobile* at p. 3, footnote 3 (emphasis added).

Respectfully submitted,

/s/ Brian T. McCartney

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was emailed this 7th day of October, 2005, to the following parties:

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/s/ Brian T. McCartney

ATTACHMENT A

BPS Telephone Company
Citizens Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corp.
Green Hills Telephone Corp.
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
McDonald County Telephone Company
Mark Twain Rural Telephone Company
Miller Telephone Company
New Florence Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Peace Valley Telephone Co., Inc.
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.