

Exhibit No: _____
Issues: All
Witness: Eric Pue
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Cingular
Case No: TO-2006-0147, et al.
(consolidated)
Date: January 20, 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)

FILED⁴

JAN 31 2006

Missouri Public
Service Commission

REBUTTAL TESTIMONY

OF

ERIC PUE

Jefferson City, Missouri
January 20, 2006

Exhibit No. 20
Case No(s) TO-2006-0147/0151
Date 1-26-06 Rptr KF

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BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of the Petition)
for Arbitration of Unresolved)
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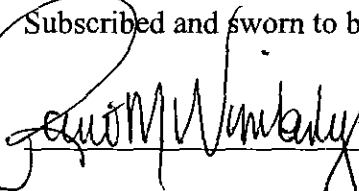
AFFIDAVIT OF ERIC PUE

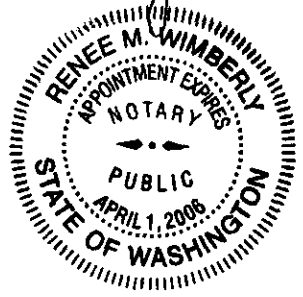
Eric Pue, of lawful age, being duly sworn, deposes and states:

- 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 rebuttal testimony.
- 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.


Eric Pue

Subscribed and sworn to before me this 17th day of January, 2006.

 Notary Public
My Commission expires: 4/1/06



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1
2 **Rebuttal Testimony of Eric Pue**
3 **on Behalf of Cingular Wireless**
4
5

6 **Question: State your name, address and occupation.**
7

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

10 **Question: Are you the same Eric Pue who filed Direct Testimony on behalf**
11 **of Cingular Wireless in these consolidated cases?**

12 Answer: Yes.

13 **Question: What is the purpose of your rebuttal testimony?**

14 Answer: My rebuttal testimony will respond to certain assertions contained in the
15 testimony of Petitioners' witness Mr. Robert Schoonmaker. I will also discuss a new
16 issue (Petitioners' claims for past compensation) that has been brought back into the case
17 since the filing of direct testimony.

18 **Question: How is your testimony organized?**

19 Answer: I will use the same issue statements and numbers that I used in my
20 Direct Testimony.
21

22 **Issue 1: Upon what basis should Petitioners and Cingular compensate each other**
23 **for traffic exchanged between February of 1998 and the 2001 effective date of**
24 **Petitioners' wireless termination service tariffs?**
25

26 **Question: Did you address the merits of this issue in your direct testimony?**
27

28 Answer: No. At the time of filing direct testimony, the Commission had ruled
29 that this issue would not be considered in these consolidated cases. Since the filing of

1 direct testimony, the Commission has reversed itself and held that this issue should be
2 considered.

3 **Question: Describe the nature of this issue?**

4 Answer: Petitioners are asserting a claim against Cingular for compensation for
5 traffic exchanged between the parties prior to the filing of Petitioners' wireless
6 termination tariffs in 2001.

7 **Question: What contract language have Petitioners' proposed for this issue?**

8 Answer: Petitioners have proposed the following language in Section 5.4 of the
9 Interconnection Agreement:

10 At the same time that the Parties execute this Agreement, they are entering
11 into a confidential agreement to settle all claims related to traffic
12 exchanged between the Parties prior to the Effective Date of this
13 Agreement. Each Party represents that this settlement agreement
14 completely and finally resolve all such past claims.

15
16 **Question: Does the proposed language correctly state the facts?**

17
18 Answer: No. Although Cingular and Petitioners have discussed the issue of past
19 compensation, no such agreement is in the process of being reach nor has been reached.
20 Petitioners' claim for past compensation has not been resolved.

21 **Question: Should the Commission approve the proposed language in Section**
22 **5.4?**

23 Answer: No. Since the parties have not reached agreement and are not even
24 attempting to do so, the proposed language is incorrect and should not be included in the
25 agreement.

26 **Question: Do you think this issue should be decided in this arbitration?**

1 Answer: No. The traffic in question was all exchanged prior to the Petitioners'
2 request to Cingular for negotiation. My understanding is that arbitrations under the
3 Telecommunications Act only involve matters occurring after the request for
4 negotiations.

5 I also understand that Petitioners are not allowed to condition interconnection
6 negotiations under the Act to extraneous demands such as the settlement of claims
7 occurring prior to the request for negotiations.

8 We believe that requesting carriers have certain rights under sections 251
9 and 252, and those rights may not be derogated by an incumbent LEC
10 demanding *quid pro quo* concessions in another proceeding.¹
11
12 Petitioners are trying to condition section 251 and 252 interconnection negotiations upon
13 future settlement of alleged claims dating to the period 1998-2001. This is inappropriate,
14 and the Commission should not allow it.

15 **Question: Are you suggesting that Petitioners should not be allowed to**
16 **pursue their claim for past compensation?**

17 Answer: No. I'm merely suggesting that Petitioners not be allowed to pursue
18 their claim in this arbitration. During the period in question, Cingular and Petitioners had
19 not entered into interconnection agreements; therefore, there is no contractual obligation
20 arising from an interconnection agreement. I understand that the Missouri Supreme
21 Court has recently ruled that Petitioners access tariffs cannot form the basis of
22 compensation for the period in question. Thus, for the period from 1998 to 2001,
23 compensation between Cingular and the Petitioners appears to be governed by 47 C.F.R.
24 § 20.11, which requires the parties to pay each other "reasonable compensation" for the
25 termination of each other's traffic.

¹ *Local Competition Order*, 11 FCC Rcd 15499, 15576 ¶ 153 (1996).

1 The Missouri Commission does not have jurisdiction (in this arbitration or in any
2 other proceeding) to hear a claim asserted under section 20.11. I believe that such a
3 claim could be brought before the FCC.

4 **Question: Under 47 C.F.R. § 20.11, what would have been “reasonable**
5 **compensation” for the period in question?**

6 Answer: In my opinion, since Petitioners’ had established no reciprocal
7 compensation rate for the period in question, and since Petitioners’ access tariffs cannot
8 form the basis of compensation, the appropriate compensation would have been “bill and
9 keep.”

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

11 Answer: The Commission should rule that this issue is not an appropriate part of
12 this arbitration and require Petitioners to file their claim before the proper regulatory
13 agency. If the Commission felt compelled to enter a substantive ruling on this issue, I
14 would suggest that the Commission rule that bill and keep was the appropriate method of
15 compensation for traffic exchanged during the period in question. However, as I’ve
16 testified, I don’t believe this is an issue properly before the Commission.

17

18 **Issue 2: What are the appropriate reciprocal compensation rates to be**
19 **paid by Petitioners and Cingular for the termination of**
20 **each other’s intraMTA traffic?**

21

22 **Question: Do you have any comments on the testimony of witness**

23 **Schoonmaker on this issue?**

24 Answer: Yes. T-Mobile and Cingular witness Mr. Craig Conwell discusses Mr.
25 Schoonmaker’s Direct Testimony in depth – on the issues of appropriate cost studies and

1 rates. I would simply like to point out that Mr. Schoonmaker's testimony might have
2 been written for another proceeding. He discusses few of the issues important to the rate
3 question in this case.

4 For example, as I discussed in my Direct Testimony, the proposed blanket rate of
5 3.5 cents per minute is much higher than the rates recently established by Cingular in
6 negotiations and arbitrations in other states. If Cingular were forced to pay 3.5 cents per
7 minute to terminate traffic to all wireline carriers in Missouri, Cingular would operate at
8 a substantial loss in this state. Paying 3.5 cents per minute to the Petitioners would
9 virtually ensure that Cingular would place fewer wireless facilities in rural areas. The
10 cost of doing business in rural areas simply would not justify the inflated expense.

11 Mr. Schoonmaker's testimony fails to consider the impact of his clients' inflated
12 costs on consumers in rural Missouri. He simply asserts that a rate of 3.5 cents per
13 minute complies with the FCC's TELRIC rules, then spends many pages explaining why
14 the HAI 5.0a cost model does an appropriate job of modeling Petitioners' costs. On the
15 issue of resulting rates, Mr. Schoonmaker's testimony is divorced from reality. I urge the
16 Missouri Commission to consider the effect that such an inflated rate (3.5 cents per
17 minute) will have on rural wireless service in the state.

18

19 **Issue 2A: Must each Petitioner establish its own separate transport and termination**
20 **rate based upon its own separate costs?**

21

22 **Question: Does Mr. Schoonmaker discuss this issue in his Direct Testimony?**

23

24 Answer: No. He assumes that a single rate may be established for all Petitioners,
25 but he cites no authority in support of that claim.

26 **Question: Is a single rate for all Petitioners appropriate?**

1 Answer: No. As I discussed in my Direct Testimony, FCC regulations require
2 each Petitioner to establish its own transport and termination rate based upon its own
3 costs.

4 **Question: Mr. Schoonmaker claims that the proposed rate of 3.5 cents per**
5 **minutes is lower than all of the Petitioners' costs. Does that make sense?**

6 Answer: No, it is counter-intuitive to believe that any company would willingly
7 accept less than its costs to provide a service. Any company that did so would soon go
8 out of business. Mr. Schoonmaker's claim demonstrates that the "costs" generated by the
9 HAI 5.0a model are actually well above the actual costs to each Petitioner to transport
10 and terminate Cingular's traffic. That is why each Petitioner is willing to accept a rate
11 lower than its alleged costs. Petitioners are not proposing a rate below costs at all.
12 Instead, as witness Conwell demonstrates, the proposed rate of 3.5 cents per minute is
13 substantially above the costs of all Petitioners.

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

15 Answer: The Commission should rule that each Petitioner must establish its own
16 rate based upon its own costs to transport and terminate Cingular's traffic.

17

18 **Issue 4: Should the Commission establish an IntraMTA Traffic Ratio for use by**
19 **Cingular in billing Petitioners for the termination of Petitioners'**
20 **traffic?**

21 **Question: What is Mr. Schoonmaker's proposal regarding an IntraMTA**
22 **traffic ratio?**

23 Answer: Mr. Schoonmaker agrees that a traffic ratio should be established.

24 However, only eleven of the Petitioners measured traffic with Cingular. Based upon that

1 incomplete sample, Mr. Schoonmaker recommends that the Commission establish a
2 uniform traffic ratio of 83/17 for all traffic exchanged with Cingular. (Schoonmaker
3 Direct, pp. 52-53.)

4 **Question: Do you agree with Mr. Schoonmaker's proposal?**

5 Answer: No. An average traffic ratio is improper for the same reason that an
6 average transport and termination rate is improper. Each Petitioner should establish its
7 own traffic ratio based upon its own traffic. In addition, Mr. Schoonmaker's average is
8 based upon an incomplete sample. Only 11 Petitioners measured traffic with Cingular.
9 My Direct Testimony, on the other hand, contains the results of a traffic study in which
10 Cingular measured its traffic with each Petitioner – 26 in all. (Confidential Schedule B to
11 Pue Direct Testimony.)

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

13 Answer: There is no need to create an average ratio based upon an incomplete
14 sample. The Commission should adopt the separate traffic ratios for each Petitioner as
15 required by federal law and as listed in Confidential Schedule B to my Direct Testimony.

16

17 **Issue 5: Should the contract allow for modification of the intraMTA**
18 **traffic ratio?**

19 **Question: Does Mr. Schoonmaker present testimony on this issue?**

20 Answer: No.

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

22 Answer: The Commission should adopt Cingular's proposal, which would allow
23 either Party to the contract the right to seek to modify the intraMTA traffic ratio based
24 upon an appropriate traffic study.

1
2 **Issue 6: Should the parties employ bill-and-keep for compensation purposes if the**
3 **traffic exchanged between Cingular and any Petitioner does not exceed a specific *de***
4 ***minimis* level (5,000 MOUs)?**
5

6 **Question: What is Mr. Schoonmaker's position on this issue?**

7 Answer: Mr. Schoonmaker claims that Cingular's proposal "would allow
8 Cingular to terminate calls for free to some of the Petitioners." (Schoonmaker Direct, p.
9 65.) He then goes on to claim that Petitioners' proposal -- to issue bills only when a
10 minimum threshold of 5,000 MOUs is reached -- "reduces billing administration costs."

11 **Question: Do you agree with Mr. Schoonmaker?**

12 Answer: No. He is wrong on both counts. Cingular is not seeking to terminate
13 calls for free. Rather, Cingular is suggesting that when traffic volumes are exceedingly
14 low -- less than 5,000 MOUs per month -- it is cheaper for all parties not to bill than to
15 issue bills. As I pointed out in my direct testimony, at an inflated rate of 3.5 cents per
16 MOU and a traffic ratio of 70/30, a Petitioner would collect only \$70.00 per month when
17 5,000 MOUs are exchanged. That is not a material amount to any party -- Petitioners or
18 Cingular -- and it makes no economic sense to issue intercarrier bills on that basis.

19 Mr. Schoonmaker is also incorrect to claim that Petitioners' proposal "reduces
20 billing administration costs." On the contrary, since it may take several months for 5,000
21 MOUs to accumulate, bills would be generated on a random basis under Petitioners'
22 proposal. Bills might be issued twice a year, three times a year, or some other number of
23 months. Issuing a bill only when 5,000 MOUs have accumulated would require manual
24 intervention, which would increase billing costs, not reduce them.

1 Cingular has established *de minimis* billing provisions with many carriers through
2 the country. In addition, the Tennessee Regulatory Authority recently ruled, in an
3 arbitration involving Cingular, that “the parties should exchange de minimis amount of
4 traffic on a bill-and-keep basis.”²

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

6 Answer: The Commission should adopt Cingular’s proposed language, requiring
7 that no billing take place until it is established that the parties are exchanging a minimum
8 of 5,000 MOUs per month.

9

10 **Issue 7: Should Petitioners be required to provide local dialing for calls to a**
11 **Cingular NPA/NXX rate centered in Petitioners’ EAS calling**
12 **scopes?**

13 **Question: What is Mr. Schoonmaker’s position on this issue?**

14 Answer: Mr. Schoonmaker claims that this issue has already been decided by the
15 Missouri Commission. (Schoonmaker Direct, pp. 60-62).

16 **Question: Do you agree with him?**

17 Answer: No. Mr. Schoonmaker claims that a previous decision of this
18 Commission in Case No. TO-99-279 allows wireless customers to be dialed locally in
19 EAS calling areas only if (1) Cingular has established a direct interconnection trunk
20 within the ILEC’s exchange, and (2) the vertical and horizontal coordinates of Cingular’s
21 exchange lie with the ILEC’s local calling area. Cingular believes this order is
22 misguided. As I pointed out in my direct testimony, Cingular does not have “exchanges.”

² *In re Petition for Arbitration of Cellco Partnership D/B/A Verizon Wireless*, Docket No. 03-00585, Order of Arbitration Award, Jan. 12, 2006, p. 44.

1 Therefore, the second requirement literally makes no sense. And the first requirement is
2 contrary to the FCC regulation implementing dialing parity:

3 A LEC shall permit a telephone exchange service customer within a local
4 calling area to dial the same number of digits to make a local telephone
5 call notwithstanding the identity of the customer's or the called party's
6 telecommunications service provider.³

7
8 That regulation does not condition dialing parity upon the establishment of a direct
9 interconnection trunk. Nor does Mr. Schoonmaker claim that the establishment of such a
10 direct trunk is necessary to provide dialing parity, because direct trunking is not
11 necessary.

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

13 Answer: Notwithstanding the Order Mr. Schoonmaker cites, Petitioners'
14 proposed language is inconsistent with the FCC regulation quoted above. Therefore,
15 Cingular's proposed language should be adopted, and Petitioner's proposal language –
16 attempting to circumscribe the dialing parity obligation – should be rejected.

17

18 **Issue 8: Should Petitioners be required to accept and recognize as local all calls**
19 **from/to Cingular subscribers who have been assigned numbers that are locally**
20 **rated in Petitioners' switches, if Cingular does not have direct interconnection to**
21 **those switches?**

22

23 **Question: What is Mr. Schoonmaker's primary argument regarding this**
24 **issue?**

25 Answer: Mr. Schoonmaker claims that Cingular's proposal "would require the
26 Petitioners to transport calls outside of their service areas; an outcome that would be
27 unduly economically burdensome." (Schoonmaker Direct, pp. 62-63.)

28 **Question: Do you agree with him?**

³ 47 C.F.R. § 51.207.

1 Answer: No. As I stated in my direct testimony, because of the relatively small
2 traffic volumes, Cingular has not established direct interconnection trunks with any of
3 Petitioners. Thus, when a customer of a Petitioner dials a Cingular customer today, the
4 Petitioner transports the call to the point of interconnection with the intermediary carrier
5 (be it a local or long distance carrier). Those points of interconnection are located either
6 within Petitioner's service territories or else on the service territory boundary. Every
7 such call today is transported in exactly the same way, regardless of the location or
8 telephone number of the Cingular subscriber. Today, when a customer of a Petitioner
9 dials a Cingular customer, the Petitioner is not required to transport the call beyond its
10 service territory.

11 Requiring Petitioners to recognize local numbers in their switches when Cingular
12 has not established a direct interconnection trunk will not require Petitioners to establish
13 any new points of interconnection, construct new facilities or make any other changes in
14 their networks. Petitioners will continue to transport the calls to the pre-existing points of
15 interconnection. The only difference will be that Petitioners' customers will not have to
16 pay a toll charge. Thus, rural customers will benefit.

17 **Question: Does Mr. Schoonmaker allege that Cingular's proposal is**
18 **technically infeasible?**

19 Answer: No, because the proposal can easily be implemented.

20 **Question: How should the Commission rule on this issue.**

21 Answer: Cingular's proposal will make wireless service more attractive and
22 affordable in rural areas. The Commission should adopt it.

23

Issue 9: Should this contract contain provisions for both direct and indirect interconnection?

Question: Why does Mr. Schoonmaker claim that provisions for direct interconnection should not be contained in the interconnection agreements with his clients?

Answer: Mr. Schoonmaker makes three arguments. First, he claims that Petitioners are exempt from the obligation to establish direct interconnection trunks with Cingular. (Schoonmaker Direct, pp. 58-59.) Second, he claims that “Cingular does not really want or need direct interconnection with any of the Petitioners.” (Schoonmaker Direct, p. 59.) Third, he claims that “direct interconnection is a very complicated process,” and that “the provisions proposed by Cingular are not adequate enough to cover all of the issues associated with direct interconnection.” (Schoonmaker Direct, p. 59.)

Question: Do you agree that Petitioners are exempt from the obligation to provide direct interconnection?

Answer: No. Section 251(a)(1) of the Act requires all telecommunications providers (including Petitioners) to connect “directly or indirectly” with the networks of all other providers. Section 251(f) of the Act, cited by Mr. Schoonmaker, does not provide an exemption from the subsection (a) obligation to connect directly or indirectly.

It is ironic that Petitioners claim that they should not have to recognize local numbers in their switches unless Cingular establishes a direct connection, then claim that they are exempt from having to provide direct interconnection and complain when Cingular proposes to include direct interconnection provisions in the interconnection agreement.

1 **Question: Do you agree that Cingular does not “want or need” direct**
2 **interconnection with Petitioners?**

3 Answer: No. Virtually every interconnection agreement Cingular negotiates
4 contains provisions for direct interconnection. When traffic volumes warrant, direct
5 interconnection is cheaper, because Cingular is not required to pay a transiting fee to the
6 intermediary carrier. Cingular wants the interconnection agreements with Petitioners to
7 contain provisions for direct interconnection so that when traffic volumes warrant (and
8 wireless traffic continues to grow), Cingular can order direct interconnection trunks
9 without the need of additional, protracted and expensive negotiations.

10 **Question: Are the provisions proposed by Cingular inadequate?**

11 Answer: The direct interconnection provisions proposed by Cingular are taken
12 from Cingular’s template agreement that Cingular offers generally to wireline carriers
13 such as Petitioners. Far from being inadequate, the provisions are standard in the
14 industry.

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

16 Answer: Prior to these negotiations, no telecommunications provider that I am
17 aware of has ever refused to negotiate with Cingular provisions for direct
18 interconnection. Clearly, direct interconnection is required by the Act, and Petitioners
19 are not exempt from the obligation. Cingular’s proposed language should be adopted.

20

21 **Issue 10: Should Petitioners be entitled to claim the Rural**
22 **Exemption?**

23 **Question: Why does Mr. Schoonmaker claim that Petitioners are entitled to**
24 **the “rural exemption”?**

1 Answer: Mr. Schoonmaker claims that no section 251(c) services are included in
2 the agreements being negotiated. He then argues that "it is therefore appropriate for the
3 agreement to explicitly state that a rural exemption for such [subsection C] services, as
4 allowed by Section 251(f), still applies." (Schoonmaker Direct, pp. 66-67.)

5 **Question: Do you agree with that analysis?**

6 Answer: No. Mr. Schoonmaker fails to point that section 251(f)(2) of the Act
7 allows a rural carrier to seek exemption from not only the 251(c) obligations, but also
8 certain of the 251(b) obligations. Mr. Schoonmaker correctly points out that the
9 reciprocal compensation obligation is established by section 251(b)(5). Thus, in theory, a
10 rural carrier could claim exemption from that obligation, or from the FCC's TELRIC
11 pricing standards that establish appropriate compensation levels. Cingular is currently
12 involved in a proceeding in North Carolina in which certain rural LECs are, in fact,
13 claiming that they are exempt from the FCC's TELRIC pricing standards pursuant to
14 section 251(f)(2).

15 I believe it is inappropriate for a rural LEC to file a petition for arbitration and
16 then seek to include language in the interconnection agreement maintaining that the rural
17 carrier shall keep its right to a "rural exemption" from certain provisions of the Act. If a
18 rural carrier wants to arbitrate, then it should be required to abide by all the provisions of
19 the Act, not just those provisions that the rural carrier finds useful.

20 On the other hand, if the rural carrier wishes to maintain any exemptions, then it
21 should not be filing petitions to arbitrate. Petitioners cannot have it both ways.

22

1 **Issue 11: Can CLECs properly seek arbitration of**
2 **interconnection agreements with Cingular?**

3
4 **Question: Does Mr. Schoonmaker discuss this issue in his testimony?**

5
6 Answer: No.

7 **Question: Do you wish to make any additional comments on this issue?**

8 Answer: Yes. In responding to Cingular's Motion to Dismiss on this issue,

9 Petitioners claimed that Cingular should be required to state whether Cingular is willing

10 to arbitrate with the CLEC Petitioners under state law. Cingular is not willing to arbitrate

11 with Petitioners under state law.

12 **Question: Does this conclude your testimony.**

13 Answer: Yes.

