

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

In the Matter of the Petition for Arbitration of	)	<b><u>Case No. TO-2006-0147</u></b>
Unresolved Issues in a Section 251(b)(5)	)	consolidated with
Agreement with T-Mobile USA, Inc.	)	Case No. TO-2004-0151

**PRELIMINARY ARBITRATION REPORT**

Date Issued: February 16, 2006

**APPEARANCES**

**W.R. England, Brian T. McCartney and Melissa Manda**, Brydon, Swearengen & England, PC, 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102. Attorneys for Petitioners.

**Mark Johnson**, Sonnenchein, Nath & Rosenthal, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111. Attorney for T-Mobile USA, Inc.

**Paul Walters, Jr.**, The Walters Law Firm, 15 E. 1<sup>st</sup> Street, Edmond, Oklahoma 73034. Attorney for Cingular Wireless.

**Arbitrator:** Kennard L. Jones, Administrative Law Judge

**Arbitration Advisory Staff:**

**Natelle Dietrich**, Regulatory Economist III, Utility Operations Division, Missouri Public Service Commission.

**Walter Cecil**, Regulatory Economist II, Utility Operations Division, Missouri Public Service Commission.

**Bill Voight**, Rate and Tariff Examiner Supervisor, Missouri Public Service Commission.

**Marc Poston**, Senior Counsel, General Counsel Division, Missouri Public Service Commission.

## **PROCEDURAL HISTORY**

On October 4, 2005, a number of small rural telephone carriers<sup>1</sup> filed petitions for arbitration with the Commission pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110, Stat. 56, codified at various sections of Title 47, United States Code (“the Act”), and Commission rule 4 CSR 240-36.040. The Petitioners in Case No. TO-2006-0147 ask the Commission to resolve issues pertaining to the negotiation of interconnection agreements between Petitioners and T-Mobile USA, Inc. The Petitioners in Case No. TO-2006-0151 ask the Commission to resolve issues pertaining to the negotiation of interconnection agreements between Petitioners and Cingular Wireless. Because the petitions contained common questions of law and fact and many of the same Petitioners, the Arbitrator consolidated these cases, making Case No. TO-2006-0147 the lead case.

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<sup>1</sup> The carriers filing under Case No. **TO-2006-0147** are 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, New Florence Telephone Company, Oregon Farmers Mutual Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, and Steelville Telephone Exchange, Inc.

The carriers filing under Case No. **TO-2006-0151** BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, *Goodman Telephone Company*, 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, *Ozark Telephone Company*, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, *Seneca Telephone Company* and Steelville Telephone Exchange, Inc.

## **Motion for Summary Judgment**

During the course of the proceedings, T-Mobile filed a motion for summary determination of one of the contested issues; whether Petitioners have an “obligation to pay reciprocal compensation on landline (intraMTA) traffic terminated to [T-Mobile] by third-party carriers (such as IXCs) when that traffic is neither originated by, nor the responsibility of Petitioners.” T-Mobile pointed out that the Commission, on October 6, 2005, in Case No. IO-2005-0468, rejected Petitioners’ position on this issue. Petitioners opposed the motion, stating that there were genuine issues of material fact and that discovery was being conducted with regard to facts that were relevant to this issue.

Commission rule 4 CSR 240-2.117 requires that the pleadings show there is no genuine issue of material fact. Because all of the pleadings did not show there were no genuine issues of material fact, the Arbitrator denied this motion reserving consideration of this issue for this report.

## **Motion to Dismiss Issues Having to do with Compensation for Past Traffic**

T-Mobile and Cingular filed motions to dismiss issues presented by Petitioners having to do with the delivery of past traffic and the related compensation. The Arbitrator initially granted the motions. However, upon reconsideration he set the ruling aside recognizing the state Commission’s federally mandated obligation to consider all issues presented.<sup>2</sup>

## **Commission rule 4 CSR 240-36.040(19)**

This rule states that “[u]nless the results would be clearly unreasonable or contrary to public interest, for each issue, the arbitrator shall select the position of one of the parties

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<sup>2</sup> 47 U.S.C Section 252(b)(4)(C).

as the arbitrator's decision on that issue." The arbitrator finds that several issues cannot be resolved in favor of one party or the other because the results are clearly unreasonable. The Arbitrator will, therefore, adopt a reasonable position.

### **STATEMENT OF FINDINGS AND CONCLUSIONS**

#### **Issue No. 1 – Must each Petitioner establish its own separate transport and termination rate based upon its own separate costs?**

**Petitioners** - Each Petitioner has performed a cost study using the HAI Forward-looking costs model and developed a proposed rate based on its forward-looking costs. These costs average \$0.0871 for T-Mobile and \$0.0843 for Cingular. However, Petitioners have agreed to a lower rate of \$0.035 with other wireless carriers in Missouri. Therefore, Petitioners have proposed the use of this \$0.035 rate in this arbitration. FCC rules do not prohibit a uniform rate for all Petitioners where, as here, it is no greater than their forward-looking costs.

**T-Mobile/Cingular** – Each Petitioner must establish its own transport and termination rate based upon specific forward-looking economic costs. The Act and FCC Rules do not allow a blanket rate to apply to all Petitioners.

**Arbitrator's Decision** – No. Each Petitioner need not establish separate transport and termination rates. However, each Petitioner must establish separate costs. The rates must then be based on such costs.<sup>3</sup>

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<sup>3</sup> 47 C.F.R. §51.505(e).

**Issue No. 2 – What is the appropriate transport and termination rate for each petitioner?**

The Arbitrator's resolution of this issue is dependent upon the results of the revised cost studies the parties are directed to run.

**Issue No. 3 – What are Petitioners' forward-looking costs to purchase and install new switches?**

**Petitioners** – Although the default input for this value is \$416.11 per line, Petitioners recommend that the value be increased to \$520.14 per line based on review of this factor in the past and the resulting investment compared to actual investments. Petitioners further argue that even at this level, the HAI results for small Missouri Companies are about 28% less than current actual investment.<sup>4</sup>

**T-Mobile/Cingular** – Petitioners have used an inflated value for this cost by first increasing by 25% the HAI default value, which is based on switch costs from 1995. It is generally recognized that switch prices have declined since 1995. Additionally, the \$520.14 per line, suggested by Petitioners, was based on embedded investment in switches, while publicly available information shows significantly lower costs. Respondents suggest \$76.56 per line plus adjustments to fill factors and removal of power plant investments.<sup>5</sup>

**Arbitrator's Decision:** The Arbitrator adopts the T-Mobile/Cingular position. HAI uses 1995 costs, which Schoonmaker doesn't accept. Instead, he makes an arbitrary adjustment to bring the HAI costs in line with the actual investment or embedded costs for switches.

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<sup>4</sup> Schoonmaker Direct, page 24, Lines 11-15.

<sup>5</sup> Conwell Direct, Page 31, Lines 3-14 – Page 46, 9.

**Issue No. 4 – What is the appropriate value for the usage-sensitive portion of Petitioners’ forward-looking end office switching cost?**

**Petitioners** – The HAI Model’s input value assigns 70% of switch costs to usage sensitive costs. This is consistent with the FCC’s Tenth Report and Order in CC Docket 96-45 and the FCC’s “MAG Order.”<sup>6</sup>

**T-Mobile/Cingular** – Because of changes in technology and vendor pricing for switches, usage-sensitive costs for switches have fallen dramatically. The current version of HAI uses a 0% end office, non-port fraction. A Virginia arbitration order says 0% usage sensitive costs are appropriate. No additional costs resulting from use of switch are appropriate except interoffice trunk equipment, which is effected by traffic amount offices. No more than \$18.33 per line is usage sensitive.<sup>7</sup>

**Arbitrator’s Decision:** The Arbitrator adopts T-Mobile/Cingular’s position. To avoid each LEC having to run costs studies, the “MAG Order” allows an input value of 70% to be assigned to usage sensitive costs of switches, but does not require this treatment. The FCC made that decision because it was developing a nationwide mechanism and wanted to avoid the numerous costs studies that would have had to have been performed. The values assigned in the MAG are overly-broad.

**Issue No. 5 - What is the appropriate floor space attributable to switching?**

**Petitioners** – The HAI Model’s input for floor space should be adopted because it reflects an appropriate amount of building and land investment.<sup>8</sup>

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<sup>6</sup> Schoonmaker Rebuttal page 17 – 18.

<sup>7</sup> Conwell Direct, page 47.

<sup>8</sup> Schoonmaker Rebuttal Page 22-23.

**T-Mobile/Cingular** – Absent a determination of the floor space required for stand-alone/host switches and remote switches with current technologies, floor space should be derived from the response to data request for Cass County Telephone, which is 200 sq. ft for stand-alone/host switches (four bays) and 100 sq. ft for remotes (two bays).<sup>9</sup>

**Arbitrator's Decision:** The Arbitrator adopts T-Mobile/Cingular's position. When compared to Petitioners' response to data requests, Petitioners' position is clearly unreasonable. Further, Respondent increases the floor space information provided by Petitioner, Cass County.

**Issue No. 6. – What is the appropriate Minutes of Use (MOU) forward-looking and office switching cost for all Petitioners?**

**Petitioners** - \$.0092 for T-Mobile Petitioners and \$.0010 for Cingular Petitioners.

**T-Mobile/Cingular** - \$.0012 per minute.

**Arbitrator's Decision** – Depends on cost studies being re-run.

**Issue No. 7 – What are Petitioners' appropriate, forward-looking interoffice cable lengths?**

**Petitioners** – Interoffice cable lengths are based on HAI forward-looking model assumptions that assume, in a forward-looking network, that the RBOC would not build facilities to Petitioners' exchanges, as had been the case historically.<sup>10</sup>

**T-Mobile/Cingular** –Petitioners' switches should be assumed to remain in current locations and the existing interoffice cable distances among these switches should be used

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<sup>9</sup> Conwell Direct, pg 53.

<sup>10</sup> Schoonmaker Rebuttal pg 24-29.

to compute transport costs. The distance between Petitioners' switches and the meet points should reflect actual distance.<sup>11</sup>

**Arbitrator's Decision:** The Arbitrator adopts T-Mobile's position. However, under Commission rule 4 CSR 240-36.040(19), this decision is conditioned on cables going to the nearest switch; not necessarily the nearest SBC switch, but the nearest large LEC tandem switch.

**Issue No. 8. What are the appropriate cable sizes?**

**Petitioners –** The HAI input of 24 fiber cable to connect offices should be used. The HAI model assumes a hypothetical, forward-looking network, and it would not be cost effective or forward-looking to place smaller cables.

**T-Mobile/Cingular –** Petitioners incorrectly assume that they all employ 24-fiber cable for all interoffice cable. Fiber cable sizes should be determined for each Petitioner's network based on their total demand for fibers per FCC rule 51.505, with smaller cable sizes used as appropriate. Absent additional Petitioner-specific cost data, a mix of 8, 12 and 24-fiber cables should be used in the cost studies.

**Arbitrator's Decision:** The Arbitrator adopts Petitioners' position. It is reasonable to assume that in a forward-looking network traffic will increase. In light of this assumption, it is reasonable to assume that larger cable will be needed. If the forward-looking cable sizes are underestimated, then it will cost more to correct.

**Issue No. 9. What is the appropriate amount of sharing of Petitioners' interoffice cabling in order to reflect sharing with services other than transport and termination?**

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<sup>11</sup> Conwell Direct, p 59.



**Petitioners** – The HAI Model assigns the entire cost of interoffice fiber cable to transport, with a portion of the cost assigned to structures.<sup>12</sup>

**T-Mobile/Cingular** – FCC Rule 51.511 requires unit costs to reflect total costs of a network element divided by (shared among) total demand for the element. Petitioners' cost studies allocate the entire cost of the 24-fiber interoffice cable to the transport system, rather than sharing the cable cost among loops, leased fibers and others. Petitioners' cost studies should be corrected to assume six fibers for interoffice transport systems – two working and four spare, based on the experience of Cass County Telephone.<sup>13</sup>

**Arbitrator's Decision:** The Arbitrator adopts Petitioners' position. Although Respondents point out faults in the Petitioners' position, using Cass County as an example, they have not offered their methodology for their position.

**Issue No. 10. What is the appropriate sizing of Petitioner's forward-looking, interoffice transmission equipment?**

**Petitioners** – HAI input values for transmission equipment.<sup>14</sup>

**T-Mobile/Cingular** – Petitioners incorrectly assume that they all employ an OC48 add/drop multiplexer, an OC3 terminal multiplexer and a digital cross connect system, and that optical regenerators are employed every 40 miles of interoffice cable routes. T-Mobile/Cingular contend that the lengths of these routes are overstated due to the assumed interoffice cable lengths in Issue 7. Transport transmission equipment should be sized to serve the total demand for DSI equivalent circuits at each Petitioners' switch and reflect either fiber ring or point-to-point transport, depending on the Petitioner's network

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<sup>12</sup> Schoonmaker direct, p 24-25.

<sup>13</sup> Conwell Direct p 69.

<sup>14</sup> Schoonmaker Rebuttal, pgs 35-36.

design. Because Petitioners have not provided requested data, the Commission should assume OC3 sized systems and no need for optical regenerators.

**Arbitrator's Decision:** The Arbitrator adopts Petitioners' position of the HAI default of OC48 because Petitioners' position is forward looking. To the extent that the transmission equipment is mileage dependent, the parties shall use the mileage determined in Issue No. 7.

**Issue No. 11. What are the appropriate, forward-looking common transport costs for each Petitioner?**

**Petitioners** – Schedules RCS-4 and 5 and are the sum of the Common Transport and Dedicated Transport elements.

**T-Mobile/Cingular** – 20 Petitioners have produced enough information to allow appropriate common transport costs to be computed. Exhibit WCC-1 to Direct Testimony of Conwell. As to the 7 that have not produced data, See, Issue 2.

**Arbitrator's Decision** – Will be based on results of rerunning costs studies with recommendations.

**Issue No. 12. Should any of the costs identified in HAI as dedicated transport be included in Petitioners' transport and termination rates?**

**Petitioners** – Yes. The dedicated transport costs in the HAI model should be included in the Petitioners' transport and termination rates as part of the common transport cost.<sup>15</sup>

**T-Mobile/Cingular** – No. Including dedicated transport costs is duplicative of common transport costs. The corrections for common transport, described in

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<sup>15</sup> Schoonmaker Direct p 32-33.

Schedule WCC attached to the direct testimony of Conwell, accurately measure transport costs and it is unnecessary to add additional costs.<sup>16</sup>

**Arbitrator's Decision:** Both parties agree traffic is allocated to common transport. Only costs attributed to common transport should be included in the cost calculation. Schoonmaker, the Petitioners' witness, states that the HAI calculates the total cost of the facility and then allocates the cost to various types of transport facilities such as special access, local interoffice, operator service, common trunks and dedicated trunks. However, Schoonmaker adjusts the assumptions to include dedicated transport, but does not add back in special access, local interoffice, operator service, etc. No explanation was given for only limiting the adjustments to dedicated transport. Therefore, the Arbitrator finds that only common transport should be included.

**Issue No 13. What is the appropriate value of Petitioners' forward-looking signaling link costs?**

**Petitioners** – For companies similar to the Petitioners, HAI uses a simplified investment input that it based on an amount per line per wire center so signaling investment is totally unrelated to distance, cable sizes, cable sharing, etc.<sup>17</sup> Cost are displayed in RCS-4 and 5.

**T-Mobile/Cingular** – HAI assumes there is a pair of signaling links for every Petitioners' switch, which is not the case in reality. HAI assumes the signaling links run over the same fictitious interoffice cable routes as common transport (i.e. a cable route from each petitioner switch to the nearest BOC switch). To correct that assumption,

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<sup>16</sup> Conwell Direct p 84-85.

<sup>17</sup> Schoonmaker Rebuttal p 38.

Respondents used the actual current costs Petitioners are paying for SS& interconnection links divided by the HAI estimates of number of messages.<sup>18</sup>

**Arbitrator's Decision** – Because it is forward looking, the Arbitrator adopts Petitioners' position, using however, the distances established in Issue No. 7.

**Issue No. 14. Upon what basis should Petitioners and Cingular and T-Mobile compensate each other for traffic exchanged between February of 1998 and the 2001 effective date of Petitioners' wireless termination service tariffs?**

Commission will not address this issue. It is not relevant to the contemplated interconnection agreement. This issue is better addressed in the context of a complaint case.

**Issue No. 15 Must Petitioners pay Cingular and T-Mobile reciprocal compensation for intraMTA, wireline to wireless traffic that they hand off to interexchange carriers?**

**Petitioners** – Petitioners have no obligation to pay reciprocal compensation on landline traffic terminated to Respondents by third-party carriers (such as IXC's) where that traffic is neither originated by, nor the responsibility of Petitioners. This is consistent with the Act, FCC rules, industry practice and numerous Commission-approved agreements between small rural ILECs and Wireless Carriers.

**T-Mobile<sup>19</sup>** - The PSC has already rejected Petitioner's argument, ruling in its Alma/T-Mobile Arbitration Report that FCC rules do not include such an exemption. The reciprocal compensation obligation applies to all intraMTA traffic regardless of the type of intermediate carrier used to deliver the traffic for termination.

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<sup>18</sup> Conwell Direct, pgs 87-89.

<sup>19</sup> Cingular takes no position on this issue.

**Arbitrator's Decision:** The Arbitrator adopts T-Mobile's position. As the Commission has recently decided in the recent Alma/T-Mobile Arbitration, 47 C.F.R. §51.703 requires reciprocal compensation arrangements.

**Issue No. 16. Should the Commission establish an IntraMTA Traffic Ratio for use by the parties in billing the termination of traffic?**

**Petitioners** – If the Commission finds that Petitioners have an obligation to pay reciprocal compensation on IXC traffic, then the appropriate traffic factor should be reflective of actual traffic flows as calculated by Petitioners.

**T-Mobile/Cingular** – Cingular and T-Mobile lack the capability to measure all ICO traffic. Therefore, it is standard industry practice to establish a traffic ratio that Cingular and T-Mobile can apply to the traffic they are billed for by the ICO – to determine the amount of traffic for which the ICO owes reciprocal compensation to Cingular and T-Mobile.

**Arbitrator's Decision:** Yes, because reciprocal compensation should be established.

**Issue No. 17 – What is the appropriate IntraMTA traffic balance ration/percentage?**

**Petitioners** – Schedule RCS shows 84/16 for T-Mobile and 83/17 for Cingular.<sup>20</sup> This is based on the average of the actual Missouri traffic studies performed by Petitioners of Cingular and T-Mobile traffic.

**T-Mobile** – T-Mobile's studies, as reasonably adjusted for the traffic that could not be measured, establishes an average traffic ratio of 65% mobile-to-land and 35% land-to-mobile.

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<sup>20</sup> Schoonmaker Direct, p. 52-53.

**Cingular** – The appropriate intraMTA traffic ratios for Cingular are listed on Confidential Schedule B to the Direct Testimony of Eric Pue.

**Arbitrator's Decision:** With regard to **T-Mobile**, both T-Mobile and Petitioners want to use averages. However, Petitioners' average is based on actual traffic studies. T-Mobile's is based on actual, reduced traffic. The Arbitrator adopts Petitioners' position

With regard to **Cingular**, both Petitioners and Cingular agree on the ratio, however, Petitioners want to use an average, while Cingular wants to use individual company ratios. Because Cingular's position is more accurate, the Arbitrator adopts Cingular's position.

**Issue No. 18 – Should the agreement allow for modification of the intraMTA traffic ratio?**

**Petitioners** – No objection to this.

**T-Mobile/Cingular** – If the party can demonstrate, through proper traffic study, that the traffic ratio has changed, then the agreement should allow for modification of the ratio.

**Arbitrator's Decision:** The parties agree on this issue.

**Issue No. 19. Should Cingular and Petitioners employ bill-and-keep for compensation purposes if the traffic exchanged between them does not exceed 5000 minutes of use?**

**Petitioners** – Petitioners should be compensated for all of the traffic they transport and terminate for wireless carriers. Cingular's approach would allow it to terminate calls freely to some of the Petitioners. Also because Petitioners remain rate base and rate of return regulated, any amount of their costs of service that is not recovered from Cingular would have to be recovered from other customers. In the direct testimony of Mr. Schoonmaker, Petitioners agree to accept quarterly billing.

**Cingular** – Requiring the parties to bill for amounts under 5000 MOUs per month is not cost-effective. The bills would only be \$10-\$70 per month. When exchange traffic amounts are below 5000 MOUs per month, the parties should exchange traffic on a bill-and-keep basis.<sup>21</sup>

**Arbitrator's Decision** – Balancing Petitioners' argument that it should be compensated for calls terminated by Cingular and Cingular's position that it is not cost effective to compensate Petitioners if the minutes of use is below 5,000, the Arbitrator finds that no bills under 5000 MOU should be issued by Petitioners, unless at least three months have passed and no compensation has been made. The resolution of this issue entails and is consistent with the resolution of Issue No. 33.

**Issue No. 20. Should Petitioners be required to provide local dialing for calls to a Cingular NPA/NXX rate centered in Petitioners' EAS calling scopes?**

**Petitioners** – OK as long as Cingular has local interconnection in the wire center or exchange to which Petitioners have EAS. Routing is burdensome like in LNP cases.<sup>22</sup>

**Cingular** – Local dialing parity is required by §251(b)(3) of the Act and by 47 C.F.R. §51.207. Thus, Petitioner must provide local calling for calls to wireless numbers rate-centered in Petitioners' local calling areas, including any EAS areas.

**Arbitrator's Decision:** The parties offer no proposed language to the interconnection agreement. The Commission will not rule on this issue. Cingular may later file a complaint if it believes the Petitioners are unlawfully discriminating against it. Although Cingular's witness Mr. Pue references Cingular proposed language in Section 3.2, it does not appear in the record.

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<sup>21</sup> Pue direct p 20.

<sup>22</sup> Schoonmaker Direct, Pgs61-62.

**Issue No. 21 – Should Petitioners be required to accept and recognize as local all calls from/to Cingular subscribers who have been assigned numbers that are locally rated in Petitioners’ switches, if Cingular does not have direct interconnection to those switches?**

**Petitioners** – Petitioners oppose Cingular’s proposed language because it would require Petitioners to transport calls outside of their service area – an outcome that would be unduly economically burdensome. Calls from Petitioners’ service area to Cingular are currently carried by IXCs. Petitioners do not have facilities outside of their service area nor do they have the certificate or tariff authority to carry traffic beyond their exchanges. This issued is currently an “open” issue before the FCC in CC Docket No. 01-92, and it has been addressed recently by the Missouri Commission in a number of cases involving local number portability.

**Cingular** – The requirement of local dialing parity, established by §251(b)(3) of the Act and 47 C.F.R. §51.207, and the requirement to provide both direct and indirect interconnection, required by §251(a)(1) of the Act, means that Petitioners must recognize local numbers in their switches whether or not a direct interconnection trunk has been established. See *Atlas Telephone Co. v. Okla. Corp. Com’n*, 400 F.3d 1256, 1268 (10<sup>th</sup> Cir. 2005).

**Arbitrator’s Decision:** The parties offer no proposed language to the interconnection agreement. The Commission will not rule on this issue. Cingular may later file a complaint if it believes the Petitioners are unlawfully discriminating against it. Mr. Pue references Cingular proposed language in Section 3.2, however, it does not appear in the record.



**Issue No. 22 – Should the Cingular contract contain provisions for both direct and indirect interconnection?**

**Petitioners** – No. Neither Cingular nor the Petitioners have requested direct connection, so there is no reason for the agreement to address direct connection. Furthermore, direct interconnection is covered by Section 251(c) of the Act, and Petitioners currently have a rural exemption from this obligation under Section 251(f) of the Act. Thus, Cingular is required to issue a bona fide request for termination of Petitioners' rural exemption pursuant to Section 251(f) of the Act, and the Commission must issue such an order before a Petition for Arbitration is filed. 47 U.S.C §251(f); see also 4 CSR 240-36.040(2).

**Cingular** – Yes. Both the Act §252(a)(1), and 47 C.F.R. §20.11 require the ICOs to provide both direct and indirect interconnection. Petitioners may not refuse to include direct interconnection provisions in the contract.

**Arbitrator's Decision:** The parties offer no proposed language to the interconnection agreement. The Commission will not rule on this issue. Cingular may later file a complaint if it believes the Petitioners are unlawfully discriminating against it. Although Mr. Pue, Cingular's witness, references Cingular's proposed language in Section 3.3, 3.4, 3.5, 3.6, 3.7, 21.1, it does not appear in the record.

**Issue No. 23 – Should Petitioners be entitled to claim the Rural Exemption?**

**Petitioners** – Yes. Petitioners currently have a rural exemption under Section 251(f) of the Act. If Cingular wants a direct connection, then it is required to issue a bona fide request for termination of Petitioners' rural exemption pursuant to Section 251(f) of the Act.

Cingular has not yet done so, and the Commission must issue an order before a Petition for Arbitration is filed.

**Cingular** – This arbitration is limited to Petitioners’ obligation arising under Section 251(a) and (b) of the Act. The rural exemption of Section 251(f)(1) applies only to obligations imposed by section 251(c) of the Act. Thus, the rural exemption is irrelevant to this proceeding.

**Arbitrator’s Decision:** Commission rule 4 CSR 240-36.40(2) states:

If the incumbent local exchange carrier is a “rural carrier” subject to the rural exemption contained in 47 U.S.C Section 251(f), then a commission order terminating the rural exemption must precede any petition for arbitration.

In order for this to have been an issue, Cingular would have had to petition the Commission to terminate the rural exemption Petitioners now have. Cingular has not done so and the Commission has not issued an order terminating the rural exemptions of Petitioners. Although, this issue is irrelevant, as Cingular argues, Petitioners still have a rural exemption.

**Issue No. 24 - Can CLECs seek arbitration of interconnection agreements with Cingular?**

The Commission has dismissed the CLECs from this arbitration. This issue is moot.

**Issue No. 25 – Upon what basis should Petitioners and T-Mobile compensate each other for traffic exchanged between 2001 and the BFR date**

This issue is not relevant to the formation of the contemplated interconnection agreement and is better addressed in the context of a complaint case.

**Issue No. 26 – Should the Arbitrator authorize the Petitioners and all transit providers to block T-Mobile’s traffic until the past compensation issue are resolved?**

This issue is not relevant to the formation of the contemplated interconnection agreement and is better addressed in the context of a complaint case.

**Issue No. 27 – What InterMTA factors should be established for the interconnection agreement?**

**Petitioners** – The parties have reached agreement on InterMTA factors.

**T-Mobile** – T-Mobile has agreed to the ILEC-specific interMTA factors set forth by the Petitioner in Appendix G to the Petition.

**Arbitrator’s Decision** – The parties agree on this issue.

**Issue No. 28 – Within the traffic deemed InterMTA by applying the agreed InterMTA factor, how should inter- and intra-state InterMTA traffic be addressed?**

**Petitioners** – Petitioners proposed the same ratio of 80% intrastate and 20% interstate that Petitioner (and other small rural ILECs in Missouri) have agreed to with Cingular and other Missouri wireless carriers. Because interstate calls are typically routed to IXCs for termination to ILECs, the preponderance of calls routed over the transit facilities of SBC would be intrastate.

**T-Mobile** - The interconnection agreement should include an interstate/intrastate allocation of the InterMTA traffic. A reasonable allocation is 80% interstate, 20% intrastate.

**Arbitrator’s Decision:** The Arbitrator finds in favor of Petitioners because Petitioners’ position is supported by T-Mobile’s own data.<sup>23</sup>

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<sup>23</sup> Pruitt Direct, Attachment 1.

**Issue No. 29 – Should the interconnection agreement include an explicit statement that the compensation obligation for intraMTA traffic is reciprocal and symmetrical?**

**Petitioners –** Petitioners have no objection to including language in the Agreement to the effect that the reciprocal compensation obligation for intraMTA traffic is reciprocal and symmetrical.

**T-Mobile –** By federal law, the obligation to pay compensation for IntraMTA traffic is reciprocal and symmetrical.

**Arbitrator's Decision:** The parties agree on this issue.

**Issue No. 30 – Should the interconnection agreement clarify which carrier pays for the trunks and associated costs of connecting each party's network with the third-party transit network?**

**Petitioners-** Petitioners have no objection to including language in the agreement which clarifies that each originating carrier is responsible for paying for any trunks and associated costs it may incur in connecting its network with a third-party transit carrier's network.

**T-Mobile –** Consistent with the PSC's Alma decision, the agreement should explicitly state that any transport costs for intraMTA traffic are paid for by the originating carrier or its agent – and not by the terminating carrier.

**Arbitrator's Decision:** The parties agree on this issue.

**Issue No. 31 – Should the interconnection agreement require the parties to send all traffic via a third-party LEC when the parties are indirectly interconnected?**

**Petitioners** – No. The Agreement should not require the parties to send all traffic they exchanged via third-party LEC when the parties are indirectly interconnected.

**T-Mobile** – No. The originating carrier (whether LEC or CMRS carrier) has the right to determine what intermediary carrier to use in sending traffic to the terminating carrier.

**Arbitrator's Decision:** The parties agree on this issue.

**Issue No. 32. What billing mechanism should be used to reflect the IntraMTA traffic balance percentage?**

**Petitioners** – If the Commission adopts a traffic factor for intraMTA traffic (#16 and 17), then a net billing arrangement is appropriate. A net billing arrangement is only appropriate, however, for intraMTA traffic. InterMTA traffic, if any, should be identified and removed from total terminating usage before performing a net billing calculation on the remaining intraMTA minutes of use.

**T-Mobile-** Applying the traffic balance percentage, T-Mobile may accommodate either net billing or cross-billing, both of which present a practical means to efficiently bill under an interconnection agreement.

**Arbitrator's Decision:** Both parties agree to net billing. However the Arbitrator emphasizes that net billing should only include intraMTA traffic not interMTA traffic.

**Issue No. 33 - Should billing be deferred until the amount owing equals at least \$250?**

**Petitioners** – Petitioner do not object to a deferred billing arrangement whereby they would not render a bill totaling less than \$250, but rather accumulated billing information

and render one bill for multiple billing periods when the total amount due exceeds \$250; provided, however that the billing party shall render a bill at least once per quarter, even if the bill is for less than \$250.

**T-Mobile** – Requiring parties to bill for amounts under \$250 is inefficient for both parties. No late charges or interest should apply to deferred billings.

**Arbitrator's Decision:** The Arbitrator reaches a conclusion that is consistent with issue No 19 where Petitioners indicate they are willing to accept quarterly billing. If the monthly billing is less than \$250, the parties should continue to accumulate MOUs. However, accumulating MOUs will not be allowed for more than three months at a time.

**Issue No. 34 – Should the interconnection agreement include call-blocking as a remedy for a dispute between the parties.**

**Petitioners** – Yes. It is standard industry practice for a party to be able to terminate service to the other party for failing to comply with the terms of an agreement, including failure to pay undisputed amounts. Blocking provisions have been approved by this Commission for wireless traffic that is delivered without payment. See 4 CSR 240-29.120, Case No. TT-2001-139, 112 S.W.3d 20 (Mo. App. 2003).

**T-Mobile** – No. The parties agree to apply late charge(s) to disputed payments under the agreement. Call blocking is not needed as a remedy and is contrary to the public interest. If allowed, it should be subject to proper regulatory preapproval, the late fees should be deleted, and the call-blocker(s) should pay the costs of blocking and unblocking.

**Arbitrator's Decision:** The Arbitrator adopts Petitioners' position. Commission rule 4 CSR 29.120 sets out the requirements for call-blocking. Any language in the agreement must be consistent with this rule.

**Issue No. 35 What should be the effective date of the agreement?**

**Petitioners** – April 29, 2006, is the effective date for the agreements, but this effective date should not prohibit Petitioners from being compensated for pre and post tariff traffic sent to Petitioner by T-Mobile and it should not relieve T-Mobile from complying with Commission orders and tariffs.

**T-Mobile** – April 29, 2006

**Arbitrator's Decision** – April 29, 2006

**Issue No. 36 – Is the transit rate issue raised by Citizens a proper subject of this arbitration?**

**Petitioners** – Yes, Citizens Telephone performs a transiting function for another small rural carrier, Alma. It is appropriate for Citizens to receive compensation for the transiting functions that it performs on T-Mobile's behalf for calls from T-Mobile to Alma. The \$0.01 per minute rate proposed by Citizens has been agreed to by a number of other wireless carriers, including most recently Cingular and U.S. Cellular. This rate is consistent with the prevailing market rate.

**T-Mobile** – No. Under Section 252(b)(4)(A), the PSC may only consider issues raised in the arbitration petition, and under Section 252(c)(2), the PSC can only adopt rates that are consistent with the TELRIC rules. This issue was not raised in the petition, and Petitioners have not provided any supporting cost data.

**Arbitrator's Decision:** This issue was not presented in the petition. Furthermore, the record is not sufficiently developed to address whether a \$.01 transiting rate is appropriate. The Commission will not rule on this issue.

Respectfully submitted,

Kennard L. Jones  
Regulatory Law Judge  
Arbitrator

Dated at Jefferson City, Missouri,  
on this 16th day of February, 2006.