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) Agreement with T-Mobile USA, Inc.	)))	**Case No. TO-2006-0147**

DISSENTING OPINION OF COMMISSIONERS ROBERT M. CLAYTON III AND STEVE GAW

We respectfully dissent from the majority's approval of the Arbitration Order in this case. The Arbitrator erroneously found that reciprocal compensation is appropriate for intraMTA 1+ dialed calls carried by interexchange carriers. In addition, the Arbitrator improperly awarded forward looking costs which are inappropriate considering the high costs of serving predominately rural areas of Missouri. Because the Order is a significant departure from past Commission decisions, we must disagree with the majority.

Similar to case No. IO-2005-0468 (the *Alma* case), the Arbitrator in this case has concluded that reciprocal compensation applies to exchange access traffic. We disagree for two reasons. First, the evidence in this case indicates that Cingular has taken no position on this issue. The Arbitrator erroneously attempts to apply T-Mobile's position and the *Alma* decision in Cingular's favor and against the Petitioners. Secondly, both this decision and the *Alma* decision are in error by relying on the *Atlas Telephone v. Oklahoma Corporation Commission*, 400 F.3d 1256 (hereinafter referred to as *Atlas II*) case because *Atlas II* did not hold that intraMTA 1+ dialed calls handled by an IXC should be subject to reciprocal compensation. Just as the Texas

Public Utility Commission overruled the Texas Arbitrators in *Fitch Affordable Telecom Petition for Arbitration against SBC Texas under §252 of the Communications Act,* Docket Number 29415, this Commission should have found *Atlas II* not relevant to this proceeding and, consequently, rejected the Arbitration Order. By not overturning the Arbitrator's decision on this issue, this Commission is imposing a compensation scheme that mixes reciprocal compensation with access charges. Such a system is simply not workable. Access charges involve a system of meet-point billing that represent a complex web of rates, traffic recording, invoice creation, and payment obligations, all pursuant to tariff approval of this Commission. The Arbitrators in this case and the *Alma* case offer no explanation as to how their decisions will impact the tariffs, mechanics, and long-established principles of the access charge system.

The Arbitrators in this case and in *Alma* have simply adopted results of the *Atlas II* case without a full examination of the distinguishable characteristics between the cases. In the *Alma* case, the Arbitrator addressed *Atlas II* in an Order Regarding Motions in Limine. There, the Arbitrator concluded that the geographic MTA boundaries, "and nothing else," determine whether reciprocal compensation applies to intraMTA traffic. The *Alma* order provided little support for the conclusion that reciprocal compensation applied to IXC-carried traffic other than to state that the *Atlas II* opinion was persuasive. This Arbitration Order appears to adopt the *Alma* decision simply for the sake of consistency.

By agreeing with the Arbitrators and reaffirming the *Alma* decision, this Commission is imposing a reciprocal compensation scheme onto IXC traffic that is counter to years of policies implemented by this Commission and the FCC. The access charge system may be in need of examination and eventual overhaul, but reform of that system should be undertaken

systematically and methodically – not dismantled indiscriminately on a company-by-company basis or one arbitration case at a time.

Equally disturbing in the Arbitration Order are the decisions involving the costs of transporting and terminating intraMTA wireless-originated telephone calls. The Arbitrator's cost decisions are reflected in Issue Number Two entitled "The appropriate transport and termination rate for each Petitioner." Based on inputs from the HAI forward-looking cost model, the Petitioners initially proposed a uniform rate of $0.035 per minute. Alternatively, the Commission was asked to support the T-Mobile/Cingular proposal, which ranged from a low of $0.0025 for Grandby Telephone Company to a high of $0.0147 for Le-Ru Telephone Company. The Arbitrator's Final Report suggests rates substantially in line with T-Mobile and Cingular's proposal.

Inputs to the HAI cost model are reflected primarily in Issues 3 through 13. The outcome of those issues determined the eventual cost for switching, transport, and termination of wireless-originated telephone calls. If the Arbitrator and this Commission were seeking consistency, it would have agreed with Petitioners' HAI-supported uniform rate of $0.035 because that rate is consistent with prior Commission findings as well as numerous negotiated rates involving other wireless providers. Instead, the Arbitrator ordered Petitioners to vary the original cost inputs, rerun the cost model, and to report the results by February 24th - an order with which the Petitioners dutifully complied. Apparently not satisfied that those results reflected costs low enough, the Arbitrator, in the Final Arbitration Order, directed Petitioners to again rerun the cost studies which results were submitted on March 10th.

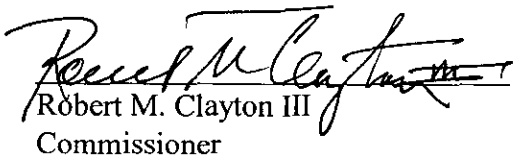
The evidence in this case indicates substantial disagreement among the Parties over the

results of the rerun cost studies. We have concerns about what has been characterized as the "pick and choose" method of identifying forward looking inputs and assumptions on the one hand, and the use of embedded inputs on the other hand. Given the complexity of the task and the short amount of time with which the revised studies were performed, we question whether the revised cost studies have undergone sufficient scrutiny to produce satisfactory results. We are concerned that the final rates are not reflective of the higher costs associated with providing service in predominately rural areas by carriers predominately rural in nature. Our worry is that the final cost study is too reflective of the costs of larger carriers operating primarily in urban areas, where costs are much lower. In our opinion, the final cost study may impermissibly and inappropriately shift transport and termination costs to end users and permit Respondents' use of rural networks at below cost rates.

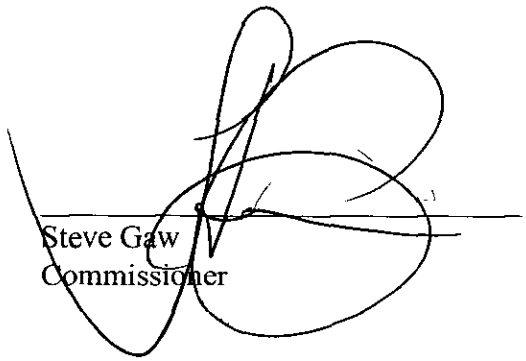
A more reasoned approach would have been for the Commission to set interim rates subject to true-up and allow a more thorough analysis of the revised cost studies. Instead, the Commission continues to insist on resolving even the most difficult cost related issues in the belief that it must conclude all decision making within 90 days. We believe the stakes are simply too high to reach results that are not fully evaluated. As with its decision regarding intraMTA 1+ dialed traffic, the results of the cost aspects of this case represent a significant departure from prior Commission decisions. We believe the evidence in this case supports results more in line with prior decisions regarding the costs to provide telephone service.

For the foregoing reasons, these Commissioners respectfully dissent.

Respectfully submitted,



Robert M. Clayton III
Commissioner



Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 30th day of March, 2006.