Exhibit No.:
Issue: Traffic Termination
Witness: Billy H. Pruitt
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Case No.: TO-2006-0147
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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

REBUTTAL TESTIMONY

OF

BILLY H. PRUITT

ON BEHALF OF T-MOBILE USA, INC.

Filed January 20, 2006

Q. Please state your name and address.

A. My name is Billy H. Pruitt. My business address is 59 Lincord Drive, St. Louis, MO 63128-1209.

Q. By whom are you employed and in what capacity?

A. I am President and Principal Consultant for Pruitt Telecommunications Consulting Resources, Inc.

Q. Have you previously appeared as a witness in this regulatory proceeding?

A. Yes. My Direct Testimony was filed in this proceeding on January 6, 2006.

Q. What is the purpose of your testimony?

A. The purpose of this rebuttal testimony is to respond to Direct Testimony filed in this proceeding by Robert Schoonmaker on behalf of the Petitioners. (I will sometimes refer to these companies collectively as "LECs".)

COMPENSATION FOR TRAFFIC EXCHANGED PRIOR TO THE REQUEST FOR NEGOTIATIONS (PETITIONERS' ISSUES A AND B)

Q. What is involved in these claims, and how does Issue A differ from Issue B?

A. The overall issue is compensation for traffic the parties exchanged prior to April 28, 2005, the date when the Petitioners first asked T-Mobile to negotiate an interconnection agreement.

Issues A and B involve different time periods because the basis for the Petitioners' legal claim differs over those two periods. Specifically, Issue A involves the three-year period from 1998 to 2001 for which the Petitioners' seek compensation pursuant to their intrastate access tariffs. Issue B involves the four-year period from

2001 through April 28, 2005 for which the Petitioners seek compensation pursuant to their intrastate wireless termination tariffs.

Q. What do the Petitioners want the Commission to do relative to these claims for compensation for traffic exchanged in the past?

A. It appears the Petitioners want the Commission to do two things. First, they want the Commission either to include language in the agreement reflecting settlement between the parties or enter an order that would purport to require T-Mobile "to settle all claims related to traffic exchanged between the Parties prior to the effective date of this Agreement." This is apparent from Paragraph 5.4 of their Proposed Agreement, which provides:

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

It further appears that the Petitioners want the Commission not only to order T-Mobile to "settle" these past disputes, but also to order T-Mobile to settle these claims based upon an amount that the Petitioners have selected – namely, $0.035 per minute. *See* Arbitration Petition at 6 and 8.

Second, the Petitioners want the Commission to authorize them to block T-Mobile's mobile-to-land traffic until it pays the "past due amounts in full." This request is apparent from the Petitioners' Arbitration Petition, where they state:

Until these past due amounts are paid in full, Respondent should not get the benefit of any agreement and Petitioners and any transit carriers (such as SBC) should be authorized to take the necessary steps to block Respondent's traffic from terminating to Petitioners exchanges over the LEC-to-LEC network. Petition at 6. *See also id.* at 7-8 (same).

Q. What is T-Mobile's position relative to these Petitioners' claims and requests?

A. First, the parties have not reached agreement on past compensation, and therefore the Petitioners' proposed language stating the parties have settled these issues is simply incorrect. Second, T-Mobile's position is that the Commission does not have the delegated authority under federal law to resolve past compensation issues in this arbitration proceeding. The Petitioners' claims for past compensation relate to traffic exchanged before the date interconnection negotiations were requested. The federal rules setting forth the arbitration procedures indicate that a Section 252 arbitration focuses on the relationship between the parties starting on the date one party requests interconnection negotiations. For example, FCC Rule 20.11(f) specifies that "[o]nce a request for interconnection is made" by a rural LEC, "the interim transport and termination pricing described in § 51.715 shall apply." FCC Rule 51.715(a)(2), in turn, states that a carrier "may take advantage of such an interim arrangement only after it has requested negotiation." FCC rules make clear that arbitration decisions are to address compensation issues only for the period after a request for negotiations is made.

Furthermore, the FCC has recognized that parties, as part of a voluntary, negotiated agreement, "could mutually agree to link section 252 negotiations to negotiations on a separate matter." *Local Competition Order,* 11 FCC Rcd 15499, 15576 ¶ 153

(1996). Indeed, the Petitioners have noted that several rural LECs and wireless carriers have settled past claims as part of their non-arbitrated, negotiated Section 252 agreements. But the Petitioners neglect to recognize that the FCC has further held that an incumbent LEC may not demand that a competitive carrier settle other disputes as a condition to executing a Section 252 agreement and that an incumbent LEC engages in bad faith in even making such a unilateral demand:

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

This prohibited action is just what the Petitioners seek here, and what they ask the Commission to order. The Petitioners improperly demand that T-Mobile settle past claims as a condition to their executing a Section 252 agreement with T-Mobile. The Petitioners' demand that T-Mobile settle past claims in a negotiation for a going-forward agreement violates FCC rules, and the Petitioners cannot convert this violation into a legitimate action by asking the Commission to do what the Petitioners are prohibited from doing directly.

It bears noting that two state commissions have rejected the very argument made by the Petitioners here. Both state commission decisions have been affirmed by federal courts. First, in an arbitration with a wireless carrier, a Nebraska rural LEC argued that it was entitled to compensation back to 1998 even though the request for negotiation was not made until 2002. The Nebraska Public Service Commission rejected the rural LEC argument and "disagree[d] with the Arbitrator's utilization of

the March 1998 commencement date" because the bona fide request for negotiation was not made until August 2002. *See Petition of Great Plains Communications for Arbitration to Resolve Issues Relating to an Interconnection Agreement with WWC License,* Application No. C-2872 (Sept. 23, 2003). A federal district court affirmed this portion of the Nebraska Commission's order. *See WWC License* v. *Boyle,* No. 4:03CV3393, 2005 U.S. Dist. LEXIS 17201 *10-11 (D. Neb., Jan. 20, 2005).

Similarly, an Oklahoma rural LEC sought to include in an arbitration proceeding with a wireless carrier the issue of compensation for the period prior to the request for negotiations. The Oklahoma arbitrator struck this request from the arbitration proceeding, stating, "It does not belong in an arbitration, it's a separate cause before the Commission and the Commission does not have the power to make that determination." Once again, a federal district court rejected the rural LEC appeal of this issue. *Atlas Telephone* v. *Oklahoma Corporation Comm'n,* 309 F. Supp. 2d 1299, 1312 n.22 (W.D. Ok. 2004).

Finally, the petitioners in the Alma/T-Mobile arbitration sought to include the same type of claims for traffic exchanged prior to the request for negotiations, and the arbitrator dismissed these claims from the case. *See Order Regarding Motions in Limine,* IO-2005-0468 (Aug. 3, 2005).

Q. Are there other problems with the Petitioners claims and requests?

A. Yes, there are several additional problems. First, in my many years in the telecommunications industry, I do not recall a single instance in which a regulator has required a CMRS provider and an RLEC to settle a past dispute and has specified the terms of such settlement.

Moreover, I am told that T-Mobile has taken this dispute over past traffic to the federal courts. Are the Petitioners, in asking the Commission to order T-Mobile to settle these past claims, further asking the Commission to order T-Mobile to abandon or withdraw its pending federal claims? It would appear that a State commission does not have the authority to direct a federal licensee to abandon legal rights provided in federal law.

In addition, the Petitioners want the Commission to order T-Mobile to agree to a non-reciprocal arrangement for a seven-year period through April 28, 2005. Under the Petitioners' proposal, T-Mobile would pay the Petitioners for terminating mobile-to-land traffic during that time, but the Petitioners would not pay T-Mobile for terminating their land-to-mobile traffic. The Commission does not possess the delegated federal authority to grant such one-sided relief.

Section 252(c)(1) is very clear in specifying that in resolving by arbitration "any open issues, . . . a State commission *shall ensure* that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the [FCC]" (emphasis added). Section 251(b)(5), in turn, imposes on

each Petition the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Congress has defined reciprocal compensation as an arrangement whereby "each carrier" recovers its cost of providing transport and termination of "calls that originate on the network facilities of the other carrier." 47 U.S.C. § 252(d)(2)(A)(i). Thus, if claims for past traffic are an "open issue" as the Petitioners assert, then the Commission has no choice under Section 252(c)(1) but to "ensure" that its order "meet[s] the requirements of" Section 251(b)(5). In other words, the Commission does not have the authority in this arbitration proceeding to grant the relief the Petitioners seek, which is to compel T-Mobile to enter into a non-reciprocal arrangement for past traffic.

Q. Are there yet more problems with the Petitioners' position?

A. Yes. The Petitioners' claim for compensation under their Issue A (1998-2001) is based on their intrastate access tariffs. The Missouri Supreme Court held just last week that that the Commission was "correct in holding that the proposed [Petitioners'] access tariffs are unlawful" under federal law as applied to wireless intraMTA traffic. *State ex rel. Alma Telephone* v. *Missouri Public Service Comm'n*, 2006 Mo. LEXIS 13 (Jan. 10, 2005).

Q. What about the Petitioners' statement that even without their access tariffs, they "will accept $0.035 per minute of use for all intraMTA 1998-2001 traffic"? Arbitration Petition at 6.

A. T-Mobile has no obligation to settle a dispute if the Petitioners do not have a valid claim for compensation. Federal law governs the exchange of traffic between the Petitioners and T-Mobile and the compensation for that traffic. The FCC has held that under federal law, there are "three ways in which a carrier seeking to impose charges on another carrier can establish a duty to pay such charges: pursuant to (1) Commission rule; (2) tariff; or (3) contract." *Wireless Access Charge Declaratory Order*, 17 FCC Rcd 13192, 13196 ¶ 8 (2002). There is no contract between the parties which governs the exchange of traffic for the period 1998-2001. There are no FCC rules that permit a LEC to assess charges on wireless carriers in the absence of a contract or tariff. And, the Missouri Supreme Court has held that the Petitioners' intrastate access tariffs are "unlawful" under federal law. Thus, as a matter of federal law, the Petitioners have no valid legal claim for compensation for the three-year period encompassed in their Issue A.

PROSPECTIVE INTRAMTA RATE

Q. Will you be responding to Mr. Schoonmaker's direct testimony regarding his defense of the Petitioners' proposed rate of $0.035 per minute?

A. I will address three statements made by Mr. Schoonmaker. Mr. Craig Conwell, T-Mobile's cost expert, will respond to Mr. Schoonmaker's other statements regarding this subject.

Q. At page 6, lines 18-20 of his direct testimony, Mr. Schoonmaker states that the Petitioners' proposed intraMTA rate is the same rate "agreed to via

negotiations between many of the Petitioners (and other small telephone companies in Missouri) and several different wireless carriers." Please respond.

A. Mr. Schoonmaker's statement is accurate, but it is not relevant to this arbitration proceeding. As I explained at pages 11-12 of my direct testimony, in negotiating an agreement voluntarily, parties can agree to rates and terms without regard to the requirements of the Act, and State commissions in approving negotiated agreements do not ensure that the negotiated rates comply with the FCC's TELRIC rules. As Mr. Eric Pue stated at page 11 of his direct testimony, there are many reasons why a carrier may agree to a rate even if it is not TELRIC-compliant. But as I further explained in my direct testimony, Sections 252(c) and 252(e)(2)(B) are very clear that any rate the Commission adopts in an arbitration proceeding must be TELRIC compliant. As discussed above, under Section 252(c), the Commission in this arbitration proceeding may only approve of rates that comply with the TELRIC rules.

Q. At page 6, lines 20-22 of his direct testimony, Mr. Schoonmaker states that the Petitioners' proposed intraMTA rate is "lower than the rates approved by the Commission in the wireless terminating tariffs filed by the Petitioners." Please respond.

A. This statement by Mr. Schoonmaker is also irrelevant to this arbitration proceeding. In its order approving the Petitioners' wireless termination tariffs, the Commission held that "the pricing standards at Section 252(d) simply do not apply to the

proposed Wireless Termination tariffs" but that the proposed rates are "just and reasonable" under Missouri law because the rates are "not so high as to be facially outrageous." *Mark Twain Rural Telephone*, TT-2001-139 (Feb. 8, 2001). The fact that the Petitioners' proposed rates here are below rates that were approved under a "facially outrageous" standard does not mean that the proposed rates here are TELRIC compliant.

Q. At page 6, lines 22-23 of his direct testimony, Mr. Schoonmaker states that the Petitioners' proposed intraMTA rate is "lower than the average, forward-looking cost for the small Missouri companies in general." Please respond.

A. There is no basis for me or anyone else, including the Commission, to evaluate whether this statement is accurate or not because forward-looking cost data for "small Missouri companies in general" is not in the record. I therefore believe that that the Commission cannot rely on this completely unsupported assertion by Mr. Schoonmaker. Besides, the costs other companies may incur in call termination are irrelevant to this proceeding because, as Mr. Conwell demonstrates, different carriers can and do have vastly different forward-looking economic costs.

PROSPECTIVE INTERMTA/INTERSTATE FACTORS

Q. What does the interMTA factor agreed upon between the Petitioners and T-Mobile identify?

A. It is important to understand that the interMTA factor included in a traffic termination agreement is not a statement of how much total InterMTA traffic is

exchanged between the parties. Rather, the interMTA factor in an agreement reflects the percentage of traffic delivered over local trunks that the parties will consider interMTA traffic for compensation purposes. Use of an interMTA factor is industry standard because carriers generally lack the capability to measure how much of the traffic delivered in this manner is interMTA traffic. The interMTA factor does not encompass all interMTA traffic exchanged between the parties because it does not include, and is not intended to include, traffic sent to long-distance carriers (IXCs) and delivered to the terminating carrier over access trunks.

Q. In light of the context you just described, what do you think about Mr. Schoonmaker's direct testimony, page 56, lines 3-6, that T-Mobile is taking a position that its customers in the Kansas City MTA never call the Petitioners' customers in the St. Louis MTA?

A. This seems to be a gross mischaracterization of T-Mobile's position. Again, the interMTA factor in the agreement does not represent the total amount of interMTA traffic originated by T-Mobile and terminated to the Petitioners. The factor merely recognizes that, in some cases, some traffic exchanged between the parties over local trunks may be considered, for intercarrier compensation purposes, as interMTA traffic.

Q. The InterMTA factor itself is not an issue in this proceeding, is that correct?

A. Yes, that is correct. The parties have agreed upon the interMTA factors between them. Between T-Mobile and most of the Petitioners, this percentage is zero. For

those Petitioners, that means this issue is resolved. For three Petitioners, the parties have agreed upon carrier-specific interMTA factors greater than zero.

Q. Does that mean the unresolved issue is limited to those Petitioners with whom T-Mobile has agreed to an interMTA factor of greater than zero?

A. Yes. For that small group of Petitioners, there is an open question as to what interMTA rate, the interstate or intrastate access charge, should apply to the traffic that is deemed in the agreement to be interMTA traffic.

Q. Who has the burden of proving an interstate/intrastate traffic jurisdiction split?

A. The Petitioners have the burden of identifying issues and supporting their position. In their Petition and accompanying proposed agreement, the Petitioners did not identify the need to resolve the inter-/intra-state jurisdictional split of interMTA traffic. Since the Petitioners were silent on this item, T-Mobile could only assume that this split must be the most favorable to T-Mobile: 100% interstate and 0% intrastate. T-Mobile has also indicated its willingness to compromise even in the absence of any Petitioner data on this issue and include a 80% interstate, 20% intrastate jurisdiction allocation.

Q. Have the Petitioners admitted that they have not performed any traffic study addressing the interstate/intrastate traffic jurisdiction percentage?

A. Yes, Mr. Schoonmaker states in his direct testimony that "the two Petitioners who have a significant amount of interMTA traffic (i.e., Mark Twain and BPS) have not completed a detailed traffic study of their interMTA traffic. . .". Schoonmaker Direct page 56, lines 6-8.

Q. Have the Petitioners provided any data to support their jurisdictional split proposal?

A. No. The Petitioners merely recite the fact that some carriers have, in negotiated agreements, agreed to the percentage split proposed by the Petitioners. What may have been agreed to in negotiated agreements and, indeed, even what other LECs may have been able to establish by introducing evidence in other proceedings, is simply not relevant to this proceeding between the three Petitioners for which there is an identified interMTA factor of greater than zero. The only information the Petitioners point to in "support" of their proposal is "a quick review of calling data", which they claim "reveals" a "significant amount" of intrastate interMTA traffic. Significantly, the Petitioners have not provided or identified any information behind their vague assertions about this revelation. Such unsupported statements do not meet the Petitioners' burden of proof on this issue.

SCOPE OF THE PETITIONERS' RECIPROCAL COMPENSATION OBLIGATION

Q. Has the Commission already decided the issue of whether the Petitioners can be relieved of their statutory reciprocal compensation obligation for intraMTA calls they send to an interexchange carrier ("IXC")?

A. It has. In its October 6, 2006 *Alma/T-Mobile Arbitration Report*, the Commission rejected the identical legal argument that the Petitioners here repeat, stating at pages 16-17:

> Although federal appellate courts have held that the "mandate expressed in these [FCC rule] provisions is clear, unambiguous, and on its face admits of no exceptions," Petitioners nonetheless ask the Commission to create a new exception. Specifically, the[y] claim that they should be excused from paying reciprocal compensation for intraMTA traffic they deliver to interexchange carriers ("IXCs"). But the Commission may not rewrite or ignore FCC rules. . . . *The MTA's geographic boundary, and nothing else, determines whether reciprocal compensation applies* (emphasis in original) (supporting citations omitted).

Q. What is the position taken by the Petitioners' witness, Mr. Schoonmaker, concerning this decision?

A. He states the decision is "incorrect." Schoonmaker Direct at 51, line 26.

Q. Does Mr. Schoonmaker identify any error, factual or legal, in the decision itself?

A. He does not.

Q. Has the Commission already considered the arguments that Petitioners make in this proceeding?

A. Yes. The Petitioners and their attorneys made the same arguments they repeat here, yet the Commission rejected those arguments. *See* The Small Telephone Company Group's Comments on the Arbitrator's Draft Report, IO-2005-0468 (Sept. 19, 2005); The Small Telephone Company Group's *Amicus Curiae* Comments on the Arbitrator's Final Report, IO-2005-0468 (Sept. 27, 2005). *See also* The Small Telephone Company Group's Application for Rehearing, IO-2005-0468 (Oct. 7, 2005);

Q. What arguments does Mr. Schoonmaker make in support of Petitioners' position?

A. He makes several arguments. He begins his testimony with an extended discussion of the development of local calling areas, toll calling and who – a LEC or an IXC – has the business service relationship with the person originating an intraMTA call. *See* Schoonmaker Direct at 36-39.

Q. Is this business service relationship with the person originating an intraMTA call relevant to a LEC's reciprocal compensation obligation to another carrier?

A. It is not. As I pointed out in my direct testimony, both the Act, 47 U.S.C. § 252(d)(2)(A)(i), and FCC Rules, 47 C.F.R. §§ 20.11(b)(1), 51.701(e), refer to "network facilities." Thus, under both the Act and FCC rules, what is important is whether an intraMTA call originates on a LEC's "network facilities" – not whether

the LEC has a business, or retail service, relationship with the person originating the call.

The FCC has been clear that an originating carrier's retail service relationship with calling parties is unrelated to its reciprocal compensation duty to terminating carriers. Indeed, in the very order and paragraph cited by Mr. Schoonmaker, Direct Testimony at 40, lines 18-25, the FCC stated:

> Section 51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. *It does not address the charges that carriers may impose upon their end users*. Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated . . . . Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA. *TSR Wireless* v. *U S WEST*, 16 FCC Rcd 1166, 11184 ¶ 31 (2000)(emphasis added), *aff'd Qwest* v. *FCC*, 252 F.3d 462 (D.C. Cir. 2001).

The FCC further explained with an example its point that different rules govern intercarrier compensation arrangements and the LEC-customer relationship, and that this difference "may result in the same call being viewed as a local call by the carriers and a toll call by the end-user":

> For example, to the extent the Yuma-Flagstaff T-1 is situated entirely within an MTA, does not cross a LATA boundary, and is used solely to carry U S West-originated traffic, U S West must deliver the traffic to TSR's network without charge. However, nothing prevents U S West from charging its end users for toll calls completed over the Yuma-Flagstaff T-1. *Id.*

I made this identical point in response to Mr. Schoonmaker's testimony in the Alma Arbitration. *See* Pruitt Rebuttal Testimony, IO-2005-0468, at 7-8 (July 28, 2005). I find noteworthy that Mr. Schoonmaker ignored entirely my rebuttal in the Alma proceeding in his recent direct testimony.

Q. Mr. Schoonmaker refers to the word "local" in his testimony as interchangeable with intraMTA, and he appears to use this reference to support the retail service distinction he is attempting to make. What is the source of Mr. Schoonmaker's reference to "local?"

A. He cites and quotes from the FCC's reciprocal compensation Rule 51.701(a) that the FCC adopted in 1996. *See* Schoonmaker Direct at 44, lines 6-8. Mr. Schoonmaker then states immediately following this quotation:

> This [rule] clearly limits the application of the subpart to calls between LECs and other telecommunications and not to calls between IXCs and such carriers. *Id.* at 44, lines 10-11.

Q. Is there a problem with this citation/quotation and the resulting conclusion that Mr. Schoonmaker draws?

A. Yes. Mr. Schoonmaker neglects to mention and advise the Commission that in 2001, the FCC amended its reciprocal compensation Rule 51.701 to delete all references to the word, "local." As I pointed out in my direct testimony, the FCC explained that it took this action because its "use of the phrase 'local traffic' created

unnecessary ambiguities, and we correct that mistake here." *Intercarrier Compensation Remand Order,* 16 FCC Rcd 9151, 9173 ¶ 46 (2001).

Q. Is Mr. Schoonmaker's failure to mention this 2001 rule amendment simply an oversight on his part?

A. This is highly unlikely. Mr. Schoonmaker made the identical argument in the Alma arbitration. *See* Schoonmaker Direct, IO-2005-0468, at 39, lines 5-28 and 40, lines 1-11 (July 21, 2005). I pointed out the following in response:

> Witness Schoonmaker neglects to advise the Commission that the FCC deleted the word "local" from 47 C.F.R. § 51.701(a) in 2001. And in this order the FCC restated Rule 51.7021(b)(2) to provide that a LEC's reciprocal compensation obligation applies to "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." Witness Schoonmaker's position collapses once this misstatement of governing FCC rules is corrected. Pruitt Rebuttal Testimony, IO-2005-0468, at 14, lines 1-6 (July 28, 2005).

Mr. Schoonmaker understandably does not challenge in his recent direct testimony the rule amendment the FCC made in 2001. It is notable that, as in the Alma arbitration, Mr. Schoonmaker continues to base his argument on rules that the FCC has amended and clarified, without recognizing the 2001 rule amendment.

Q. Does Mr. Schoonmaker make other arguments in support of the Petitioners' position?

A. Yes, he focuses on the phrase in FCC Rule 51.701(b)(2) – "traffic between a LEC and CMRS provider" – and argues that traffic handled by an IXC is not "between a LEC and CMRS provider." *See* Schoonmaker Direct at 38, 39, 44 and 47.

Q. Are there problems with this argument?

A. Yes. First, the argument makes no sense. As the Commission has recognized, "[h]istorically, wireless carriers and rural LECs have found it more efficient to interconnect indirectly with each other. *Alma/T-Mobile Arbitration Report* at 22. If, as Mr. Schoonmaker says, an intraMTA call is not "between a LEC and CMRS provider" when there is an intermediary carrier between them, then rural LECs and wireless carriers would never pay each other reciprocal compensation.

Second, Mr. Schoonmaker neglects to read Rule 51.701(b)(2) in its entirety. This Rule provides in full:

> Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and *terminates* within the same Major Trading Area, as defined in § 24.202(a) of this chapter (emphasis added).

This rule makes clear that one's reciprocal compensation obligation is triggered if a call "originates and terminates in the same" MTA – not whether the intraMTA call happens to be carried by a third, intermediary carrier. Indeed, as the Commission has already determined, "[T]he MTA's geographic boundary, and nothing else, determines whether reciprocal compensation applies." *Alma/T-Mobile Arbitration Report* at 17 (emphasis omitted).

Q. At page 45 of his direct testimony, Mr. Schoonmaker also cites Section 251(g) of the Act for the proposition that the FCC "inten[ded] to preserve the interstate access regime for such calls to CMRS providers." What is your response?

A. As I have previously explained in my Alma rebuttal testimony (at pages 12-13), it does "not appear that Witness Schoonmaker has considered the entirety of the language found in § 251(g) following":

> On and after February 8, 1996, each local exchange carrier, to the extent it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligation (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order or policy of the Commission, ***until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996.*** During the period beginning on February 8, 1996 and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission (emphasis added).

The FCC adopted its reciprocal compensation rules in August 1996. These rules preserved access charges for traffic between two LECs and preserved access charges for interMTA calls between LECs and wireless carriers. But as applied to intraMTA calls between LECs and wireless carriers, these new rules "explicitly superseded" prior arrangements. As I again explained in the Alma arbitration, it is "clear that the FCC carved out the MTA as the geographic area under which traffic exchanged between a wireless carrier and a wireline carrier would be subject to reciprocal compensation":

Witness Schoonmaker and the Rural LECs simply do not seem to understand that merely changing the identity of the carrier that delivers the traffic does not change the jurisdiction of that traffic. An intraMTA call exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA at the beginning of the call is still an intraMTA call even if the LEC has handed the call off to an IXC for delivery to a wireless carrier. Pruitt Rebuttal Testimony, IO-2005-0468, at 13, lines 2-10.

Q. At page 48 of his direct testimony, Mr. Schoonmaker states that T-Mobile's position "ignore[s] the limitations placed on the LECs by the certificates they are issued by the Missouri Public Service Commission." Do you agree with this position?

A. I do not. While I have not seen the certificates held by the Petitioners, such certificates ordinarily authorize a LEC to provide retail telecommunications services to end users within a specified area. The issue here, though, is a LEC's interconnection and compensation obligations with other carriers, a matter that is governed by federal law. It is thus not apparent at all how the Petitioners' certificates have any relevance to this arbitration proceeding.

Q. At page 48 of his direct testimony, Mr. Schoonmaker further claims that T-Mobile's position "ignore[s] the requirements placed on a LEC by the Commission approved local tariffs to distinguish between local and toll calls." Do you agree with this position?

A. Mr. Schoonmaker continues to ignore the fact that whether a LEC treats a given intraMTA call as local or toll has no relevance to the LEC's reciprocal compensation obligations. As the FCC stated in the very paragraph Mr.

Schoonmaker quotes in his own direct testimony (Direct Testimony at 40, lines 18-25:

> Section 51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. ***It does not address the charges that carriers may impose upon their end users***. Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated . . . . Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA. *TSR Wireless* v. *U S WEST*, 16 FCC Rcd 1166, 11184 ¶ 31 (2000)(emphasis added), *aff'd Qwest* v. *FCC*, 252 F.3d 462 (D.C. Cir. 2001).

Q. At page 49, lines 4-13 of his direct testimony, Mr. Schoonmaker states his opinion that wireless carriers are inconsistent in their position "that traffic between wireless carriers and LECs is solely the responsibility of those carriers regardless of whether an interexchange carrier handles the call" because wireless carriers also deliver traffic to the Petitioners using IXCs. What is your response?

A. Mr. Schoonmaker made the same argument in his Alma testimony, so I will repeat my rebuttal here:

> Witness Schoonmaker does not understand how the wireless carriers commonly utilize IXCs to terminate traffic to LECs. Typically, a wireless carrier will enter into a wholesale services arrangement with an IXC or other service provider to transport its long distance traffic. Typically, under these contracts the IXC is compensated by the wireless carrier for its switching and transport costs as well as for any charges billed by the terminating LEC. While Mr. Schoonmaker is correct that "T-Mobile does not expect to pay terminating reciprocal compensation to the LECs" he apparently does not realize that T-Mobile is already compensating the IXC for its costs of transporting the calls from T-

> Mobile's network to the Rural LEC network plus the terminating access costs the LEC will bill to the IXC. The IXC typically just passes those terminating access charges on to the wireless carrier for payment. It is not apparent how Rural LECs are harmed by this practice because their rates for intrastate access are often much higher than their rate for reciprocal compensation. Pruitt Rebuttal Testimony, IO-2005-0468 at 14-15.

The point is that the Petitioners are being compensated for terminating intraMTA mobile to-land traffic. Whether that compensation is paid directly or indirectly (via an IXC) is not important. Indeed, one would think that the Petitioners would prefer the current, indirect payment method because they can then charge a higher, access charge rate for call termination.

If the Commission were to require T-Mobile to pay the Petitioners directly for all intraMTA mobile-to-land traffic, then the Petitioners would have to stop assessing access charges on these calls – because clearly, the Petitioners cannot be paid twice (from T-Mobile and an IXC) for terminating the same call. I suspect, however, that the systems utilized by the Petitioners are incapable of distinguishing mobile-to-land intraMTA IXC calls from other IXC calls.

Q. Is the scenario the same for land-to-mobile traffic?

A. No. Unlike T-Mobile who compensates the IXC for transporting its mobile-originated traffic and for terminating that traffic to the called landline party, Rural LECs like the Petitioners do not compensate any other carrier for costs associated with intraMTA traffic originating on their network. Rather, they receive originating

access charge payments from the IXCs in addition to the basic service revenues they receive from their end user customers. .

Q. At pages 49-50 of his direct testimony, Mr. Schoonmaker claims that T-Mobile's position could result in T-Mobile receiving "three different forms of terminating compensation for the same call." Is this accurate?

A. No, it is not. First of all, Mr. Schoonmaker continues to suggest that T-Mobile receives compensation from IXCs in terminating land-to-mobile calls handled by IXCs. However, as I pointed out in my direct testimony and earlier in my Alma testimony, T-Mobile does not receive access charges or any other compensation from IXCs for terminating Missouri RLEC traffic.

The fact that T-Mobile charges customers to receive calls is irrelevant to the Petitioners' reciprocal compensation obligations. As I previously explained in response to the same point made by Mr. Schoonmaker in the Alma arbitration:

> The fact that T-Mobile is a viable wireless business with paying subscribers does not change the RLECs' obligation to reciprocally compensate T-Mobile for terminating calls generated by the RLECs' customers. T-Mobile's customers do pay T-Mobile for receiving these land-to-mobile calls; T-Mobile could not stay in business if it is not compensated for services provided. But the retail relationship that T-Mobile has with its own end-user customers is not relevant to the Rural LEC obligation to pay reciprocal compensation – just as the retail relationship that the RLECs have with their end-user customers is not relevant to T-Mobile's obligation to pay reciprocal compensation to the RLECs. Under the logic of the Rural LEC position, T-Mobile would have no obligation to compensate the RLECs for call termination because they could recover their costs from their own end-user customers. Pruitt Rebuttal Testimony, IO-2005-0468 at 5.

Q. At pages 50-51 of his direct testimony, Mr. Schoonmaker cites several older decisions rendered by the Commission. Please respond.

A. The Commission has already addressed this argument in holding that it has "only that authority which the Congress has expressly delegated to it. The obligation to apply federal law applies even if the state law precedent differs from federal law." *Alma/T-Mobile Arbitration Report* at 15.

I find it significant that Mr. Schoonmaker in his direct testimony does not even mention, much less attempt to distinguish, any of the federal court decisions that have consistently rejected the arguments he makes. And, it bears emphasis that it will be a federal court, not a State court, that will hear any appeal of the Commission's decisions in this arbitration proceeding. *See* 47 U.S.C. § 252(e)(6) ("In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section."); *id.* at § 252(e)(4)("No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.").

Q. Please summarize your testimony on this intraMTA issue.

A. Mr. Schoonmaker claims that the Commission's decision in the Alma arbitration case is "incorrect," yet he does not identify a single flaw in the Commission's

analysis and order. Instead, he repeats arguments he made in the Alma case without attempting to respond to my direct and rebuttal testimony in that proceeding, and he repeats the same arguments that the Commission has already rejected in the Alma arbitration.

APPROPRIATE BILLING MECHANISM FOR RECIPROCAL COMPENSATION

Q. Do the traffic studies identified in Schoonmaker's direct testimony reflect all the ILECs in that proceeding?

A. No, they do not. His testimony references traffic studies for only eight of the Petitioners for T-Mobile traffic (although 11 performed traffic studies for Cingular traffic).

Q. Do the traffic studies you discussed in your direct testimony include all the Petitioners?

A. Yes.

Q. Please describe the studies conducted by T-Mobile.

A. T-Mobile analyzed the NPA NXXs contained in the call detail records to determine the associated originating carrier number (OCN) for each call. When the call detail records contain insufficient information to identify the OCN for a land-to-mobile call, that traffic remains unallocated to the originating carrier for billing purposes. For T-Mobile, these unallocated calls generally do not exceed ten percent of all calls.

Q. The Petitioners appear to contest a portion of T-Mobile's net billing proposal. Describe how the proposed net billing approach works.

A. Under T-Mobile's net billing approach, the ILEC first determines the amount of intraMTA traffic exchanged between the parties during the billing period then applies traffic balance percentages to determine how much of the total traffic will be considered mobile-originated and how much will be considered landline-originated.

T-Mobile's proposed language for determining the starting point for this calculation states, "Total Minutes of Use will be calculated based on total IntraMTA MOUs (identified by CTUSR records plus records of intraMTA calls handed off to IXCs or *other mutually acceptable calculation*). . . ." This language provides flexibility, allowing the parties to identify and agree upon the appropriate sources for determining the volume of calls exchanged between the parties.

Moreover, T-Mobile's proposed language expressly recognizes that traffic is delivered differently by each party — T-Mobile delivers intraMTA traffic primarily to a LEC transit carrier while the Petitioners hand all intraMTA traffic terminating to T-Mobile to an IXC. Accordingly, different records may need to be used to capture land-to-mobile traffic than mobile-to-land traffic.

Q. What part of this do the Petitioners dispute?

A. The dispute described by the Petitioners in Mr. Schoonmaker's direct testimony at pages 57-58 is based upon a nonsensical premise. The Petitioners contend that they

would be required to parse through records they receive from IXCs to identify mobile-generated intraMTA calls, so the Petitioners could bill T-Mobile for those calls under the traffic termination agreement. To start with, the Petitioners' reasoning ignores the flexibility built into the proposed net billing language. More importantly, however, the Petitioners' approach would result in their double-billing for those calls. Although the amount of intraMTA traffic T-Mobile hands off to IXCs for delivery to the Petitioners is *de minimis*, T-Mobile objects to the Petitioners' assumption that they are entitled to charge twice for any traffic. The Petitioners bill access charge rates to the IXCs who deliver the traffic to them for termination. As I noted above, the Petitioners should not be permitted to bill a second time for the same calls.

In his direct testimony at page 58, lines 4-7, Mr. Schoonmaker states that the Petitioners wish to limit the billing calculations solely to the tandem company's transiting usage reports, thus excluding reports from IXCs. T-Mobile strenuously objects to this proposal to the extent it constitutes a further attempt to avoid reciprocal compensation obligations. Any IXC records that are required to determine the amount of intraMTA traffic the Petitioners terminate to T-Mobile must be included within the billing calculation.

PETITIONER CITIZENS' TRANSIT RATE

Q. At pages 67-68 of his direct testimony, Mr. Schoonmaker briefly discusses Citizens' request to recover the costs it incurs in providing transit service for Alma Telephone. Please respond to this issue.

A. The issue is not whether Citizens is entitled to recovery for its transit costs. Instead, the issue for the Commission is whether Citizens is entitled to recover these costs in this arbitration proceeding.

Q. Why is there an issue regarding Citizens' ability to recover transit costs in this arbitration proceeding?

A. Section 252(b)(4)(A) of the Act is very clear that a State commission "shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition." Under the plain requirements of this statute, the Commission cannot consider in its arbitration order any issue that was not raised in the arbitration petition.

A review of the consolidated Arbitration Petition that the Petitioners filed on October 4, 2005 against T-Mobile demonstrates that the Citizens transit issue was not included within the scope of the Petition. In Paragraph 1 of the Petition, the Petitioners seek recovery of costs for "wireless-originated traffic [that] is *terminated to Petitioners* over common trunk groups owned by Southwestern Bell Telephone Company d/b/a SBC, Sprint Missouri, Inc. and/or CenturyTel" (emphasis added). At page 8, the Petitioners proposed a rate of $0.035 per minute for providing "wireless termination service." The Petitioners' proposed agreement

is titled "Traffic Termination Agreement," and it states in § 1.1 that "[t]his Agreement shall cover traffic . . . *terminated to the other Party* without the direct interconnection of the Parties' networks" (emphasis added).

Citizens does not provide "termination" in connection with its transit service. FCC Rule 51.701(d) defines "termination" as "the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." Rather, as Mr. Schoonmaker recognizes, when Citizens provides a transit function for Alma Telephone, it is Alma that terminates the traffic, and Alma is not a party to this arbitration proceeding. Thus, the transit claim Citizens raised in Mr. Schoonmaker's testimony is outside the scope of the Arbitration Petition and, under Section 252(b)(4)(A), the Commission may not consider it in this proceeding.

Q. Are there other problems with Citizens' transit claim?

A. Yes. I believe the Commission would be required to dismiss this transit claim even if it ignores the limitations that Section 252(d)(4)(A) imposes on the Commission.

Citizens asks the Commission to approve a "market rate" for its transit services. However, federal law does not permit a State commission to establish a "market rate" in an arbitration proceeding. Section 252(c) of the Act specifies that in "resolving by arbitration under subsection (b) of this section *any open issues* . . . , the Commission *shall* . . . establish any rates for interconnection, services or

network elements according to subsection (d) of this section." 47 U.S.C. § 252(c) (emphasis added). As I read this statute, the only rate a State commission can adopt in a federal arbitration is a rate that complies with the FCC's TELRIC rules.

In addition, FCC rules are clear that a petitioner has the burden of establishing that its proposed rate complies with the TELRIC rules. FCC Rule 51.505(e) provides:

> An incumbent LEC *must prove* to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, *using a cost study* that complies with the methodology set forth in this section and Sec. 51.511. 47 C.F.R. § 51.505(e)(emphasis added).

Citizens has not submitted any cost study concerning its transit rates – much less a cost study that "complies with" the FCC's forward-looking TELRIC rules. I therefore believe that the Commission must dismiss Citizens' transit claim from this arbitration even if it overlooks Citizens' failure to comply with the plain commands of Section 252(b)(2).

Q. Is Citizens harmed if the Commission does not consider its transit claim in this arbitration proceeding?

A. At the outset, it is not apparent that harm to Citizens is a factor the Commission should even consider. After all, it was Citizens, not T-Mobile, that did not include the transit issue in the Arbitration Petition. And, it was Citizens, not T-Mobile, that has decided to pursue its claim without preparing a TELRIC-compliant cost study.

In any event, the only harm to Citizens by a Commission decision dismissing its claim from this arbitration proceeding is that Citizens and T-Mobile would then begin negotiating the subject. It is very possible that the parties could reach a negotiated agreement, or T-Mobile may choose to opt-in to one of Citizens' existing transit agreements. In these circumstances, there would no longer be a dispute between the parties that would necessitate Commission arbitration of the issue.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

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, et al Consolidated

AFFIDAVIT OF BILLY H. PRUITT

STATE OF Missouri

COUNTY OF St. Louis

Billy H. Pruitt, appearing before me, affirms and states:

1. My name is Billy H. Pruitt. I am President and Principal Consultant for Pruitt Telecommunications Consulting Resources, Inc.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of T-Mobile USA, Inc., having been prepared in written form for introduction into evidence in the above-captioned docket.

3. I have knowledge of the matters set forth therein. I hereby affirm that my answers contained in the attached testimony to the questions propounded, including any attachment thereto, are true and accurate to the best of my knowledge, information and belief.

Billy H. Pruitt

Billy H. Pruitt

Subscribed and sworn to before me in the 18 day of January, 2006.

Debbie S Eckert

Notary Public

My Commission Expires:

9-10-09

Debbie S. Eckert
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
Commission # 05401924 expires 9/10/2009