

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**

ORDER DENYING MOTION TO SHORTEN TIME FOR RESPONSE

Issue Date: November 28, 2005

Effective Date: November 28, 2005

Background

On October 4, 2005, a number of small rural carriers¹ filed a petition for arbitration with the Missouri Public Service Commission pursuant to the Telecommunications Act of 1996, requesting that the Commission arbitrate unresolved issues with T-Mobile USA, Inc. Initially, the Commission would had to have issued its final order by January of 2006. By request of the parties, the Commission has extended that date to March 24, 2006.

On November 16, 2005, T-Mobile filed several motions, including: a motion to dismiss two of Petitioners' proposed issues; a motion to dismiss as parties four of the telephone companies listed as Petitioners; and a motion for summary determination of one of the issues. With the latter motion, T-Mobile requests that the Commission shorten the time period in which Petitioners are allowed to respond.

¹ The small rural carriers include: 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 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; McDonald County Telephone Company; Miller Telephone Company; New Florence Telephone Company; Oregon Farmers Mutual Telephone Company; Peace Valley Telephone Company, Inc; Rock Port Telephone Company; and Steelville Telephone Exchange.

T-Mobile's Argument

In support of its motion, T-Mobile states that because this exact issue was at issue in a recent arbitration case² to which Petitioners were a party, Petitioners are familiar with the issue. Hence, Petitioners do not need 30 days to respond. T-Mobile also argues that in order for a summary determination to be of value to the parties, it should be issued before the parties begin to file prefiled testimony. Lastly, T-Mobile argues that the Commission has shortened the time for response in a separate matter.³

Petitioners' Argument

Petitioners filed their response on November 18. Petitioners note that the Petition for Arbitration was filed on October 4, 2005, arguing that since that time, T-Mobile has had 40 days to file its motion. Petitioners also note that T-Mobile has filed two other motions to which responses are due by November 28, arguing that given this and the Thanksgiving holiday would create an unreasonable burden. Further, Petitioners state that Commission rule 4 CSR 240-2.117(D) allows the Commission to continue a motion for summary judgment to permit the opposing party reasonable time to conduct discovery and that Petitioners are currently in the process of conducting discovery with T-Mobile on the contested issue. Lastly, Petitioners distinguish this matter from the FullTel case, cited by T-Mobile, by arguing that in FullTel the Commission was operating under a limited amount of time because the matter involved acting on an interconnection agreement which requires the Commission to act within 90 days.

² *In the Matter of the Petition of Alma Telephone Company for Arbitration of Unresolved Issues Pertaining to a Section 251 Agreement with T-Mobile USA, Inc.* Commission Case No. IO-2005-0468.

³ *Petition of FullTel, Inc. for Approval of an Interconnection Agreement.* Commission Case No. TK-2005-0079.

Discussion

The Commission has reviewed the arguments of the parties and finds Petitioners' positions persuasive. T-Mobile argues that the time should be shortened because Petitioners are familiar with this issue and don't need a full 30 days. Familiarity with an issue is not sufficient to shorten Petitioners' response time. Further, Petitioners state that it is in the process of conducting discovery relevant to the issue on which T-Mobile seeks summary determination. In this instant, Commission rule 4 CSR 240-2.117(D) allows for an expansion of the 30-day response time to motions for summary disposition. To shorten the time period would contravene the intent of the rule.

Secondly, T-Mobile argues that shortening the response time might obviate direct testimony on this issue. This is not necessarily true. Even if the time period were shortened, the motion for summary determination may not be granted. Direct testimony would still need to be prepared and filed. Additionally, T-Mobile's position is weakened by its argument that Petitioners are familiar with the issue and do not need the full 30 days to respond. T-Mobile, through the same means as Petitioners, is familiar with the issue, which lessens the burden of having to file direct testimony.

Lastly, T-Mobile points to a recent Commission decision wherein the Commission shortened the response time to a motion for summary determination. As pointed out by Petitioners, the cited case is distinguishable. A shorter time period necessitated shortening the time for response. The Commission will therefore deny T-Mobile's request to shorten the time in which Petitioners must respond to the motion for summary determination.

IT IS THEREFORE ORDERED:

1. That T-Mobile USA, Inc.'s motion to shorten the time in which Petitioners must respond to T-Mobile's motion of summary determination is denied.
2. That this order shall become effective on November 28, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Kennard L. Jones, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 28th day of November, 2005.