

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 20th day  
of December, 2005.

In the Matter of Petition for Arbitration of       )  
Unresolved Issued in a Section 251(b)(5)       )  
Agreement with T-Mobile USA, Inc.               )     **Case No. TO-2006-0147**

**ORDER GRANTING MOTION TO DISMISS CLEC PETITIONERS**

Issue Date: December 20, 2005

Effective Date: December 20, 2005

On November 16, 2005, T-Mobile USA, Inc., filed with the Missouri Public Service Commission a motion to dismiss four<sup>1</sup> competitive local exchange carriers (CLECs) as Petitioners in this arbitration. Petitioners filed their reply on November 28.<sup>2</sup> T-Mobile filed its response to the reply on December 7.

In support of its motion, T-Mobile essentially argues that the state-arbitration regulations, of the Telecommunications Act of 1996,<sup>3</sup> refer to “incumbent local exchange carriers” (ILECs) to the exclusion of “competitive local exchange carriers” (CLECs). Movant reasons that because competitive local exchange carriers are not included in the above regulations, Congress has not granted power to the states to arbitrate agreements between

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<sup>1</sup> The four CLECs are Fidelity Communications Services I, Inc., Fidelity Communications Services II, Inc., Green Hills Telecommunications Services, and Mark Twain Communications Company.

<sup>2</sup> The Commission notes that its rule, 4 CSR 240-2.080(15) required a reply to the motion on November 26 (10 days after the motion). November 26, however, being a Saturday, Missouri Rule of Civil Procedure 44.01 permits filing on Monday, the 28<sup>th</sup>.

<sup>3</sup> 47 U.S.C §252(b).

CLECs and wireless carriers. Hence, Movant concludes, the Commission has no jurisdiction to arbitrate a CLEC's interconnection agreement with a wireless carrier.

The competitive local exchange carriers argue that other sections of the Act empower state commissions to resolve disputes involving CLECs and wireless carriers. Further, the CLECs argue that they have obligations under the Act, and in light of such, have negotiated agreements with other major wireless carriers. The CLECs state that, under the Act, state commissions are empowered to enforce or reject arbitrated agreements. The CLECs also cite Section 261 in support of the argument that states are not precluded from imposing requirements on telecommunications carriers to further competition, as long as those requirements are not inconsistent with 47 C F R Part 20 (which includes the relevant provisions concerning arbitration). Finally, the CLECs argue that T-Mobile's motion is motivated by an attempt to avoid paying for telephone calls terminated to rural carriers.

## **Discussion**

The Telecommunications Act of 1996 states at Section 252:

(a)(1) Upon receiving a request for interconnection, services . . . an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier . . . .

(b)(1) During the period from the 135<sup>th</sup> to the 160<sup>th</sup> day after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, . . . any . . . party to the negotiation may petition a State commission to arbitrate any open issues.

(b)(4)(C) The State Commission shall resolve the issues set forth . . . and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the requests under this section.

(d)(1)(2)(A) For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission . . . .

With the exception of “(b)(4)(C)”, the provisions concerning arbitration all make reference to “incumbent local exchange carriers.” The “local exchange carrier” referred to in “(b)(4)(C)” is the “incumbent local exchange carrier” in “(b)(1)” who receives the request to negotiate. With regard to arbitration, the plain language in the Act leads the Commission to conclude that a CLEC cannot petition a state commission to compel negotiation and **arbitration** of an agreement between the CLEC and a wireless carrier, because the wireless carrier is not an incumbent local exchange carrier.

Federal law is made clearer by the FCC’s amendment of 47 C.F.R. 20.11. Because ILECs could only receive a request to negotiate and be forced into arbitration, wireless carriers were able to deliver traffic to a wireline carrier leaving the wireline carrier unable to force the wireless carrier into arbitration. The FCC addressed this concern by adding subsection (e) to 20.11, which allows an ILEC to request negotiation with a wireless carrier and compel the wireless carrier to arbitrate. Part 20.11 is as follows:

(a) A local exchange carrier must provide the type of interconnection reasonably requested by a [wireless] carrier, within a reasonable time after the request . . . . Complaints against carriers under section 208 of the Communications Act . . . alleging violation of this section shall follow the requirements of . . . this chapter.

(b) Local exchange carriers and [wireless] providers shall comply with the principles of mutual compensation.

(1) A local exchange carrier shall pay reasonable compensation to a [wireless] provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

(2) A [wireless] provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

(c) Local exchange carriers and [wireless] providers shall also comply with applicable provisions of part 51 of this chapter.

(d) Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon [wireless] providers pursuant to tariffs.

(e) An incumbent local exchange carrier may request interconnection from a [wireless] provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A [wireless] provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. . . .

The Commission notes that the FCC refers to “local exchange carrier” in sections (a) through (d) of 20.11. However, subsection (e), concerning who may compel a wireless carrier to negotiate and enter into an agreement, specifically refers only to “incumbent” LECs. The FCC’s intent to allow ILECs to force wireless carriers into state arbitration is clear, and it is equally clear that the FCC did not include CLECs in that provision.

## **Conclusion**

Federal law has at least twice made specific references to ILECs, apparently to the exclusion of CLECs, in codifying rules regarding state arbitration of interconnection agreements. In both instances, LECs are discussed in other portions of the law but not with regard to state arbitration. Under the plain meaning of the Telecommunications Act and the Code of Federal Regulations, the Commission must conclude that; (1) any telecommunications carrier (including CLECs) may compel an ILEC to negotiate and arbitrate, (2) ILECs may likewise compel negotiation and arbitration with wireless carriers, and (3) CLECs cannot compel wireless carriers to negotiate and arbitrate interconnection agreements. However, CLECs do have the remedy of being able to file a complaint with the FCC under section 208 of the act by alleging that a wireless carrier has violated 20.11.

The Commission shall therefore grant T-Mobile’s motion. If Movant’s relief is granted, the CLECs ask that the Commission direct T-Mobile to advise the Commission in

writing whether or not T-Mobile is willing to submit to arbitration under Section 386.230 RSMo 2000. In its reply filed on December 7, T-Mobile clearly states that it is not interested in arbitration under the state statute.

**IT IS THEREFORE ORDERED:**

1. That T-Mobile USA, Inc.'s motion to dismiss Fidelity Communications Services I, Inc., Fidelity Communications Services II, Inc., Green Hills Telecommunications Services, and Mark Twain Communications Company is granted.

2. That Fidelity Communications Services I, Inc., Fidelity Communications Services II, Inc., Green Hills Telecommunications Services, and Mark Twain Communications Company are dismissed as parties from this proceeding.

3. That this order shall become effective on December 20, 2005.

**BY THE COMMISSION**

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

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Jones, Regulatory Law Judge