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** consolidated with Case No. TO-2004-0151

FINAL ARBITRATION REPORT

Date Issued: March 3, 2006 Date Effective: March 3, 2006

APPEARANCES

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Mark Johnson, Sonnenschein, 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 East 1st 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[1] 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.

Dismissal of CLECs

On December 20, 2005, the Commission dismissed four CLEC petitioners from this arbitration: Fidelity Communications Services I, Inc.; Fidelity Communications Services II,

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[1] 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, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company**,** Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone 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.

Inc.; Green Hills Telecommunications Services; and Mark Twain Communications Company.

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 before a Motion for Summary Judgment may be granted, the pleadings must 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, set the ruling aside recognizing the state Commission's federally mandated obligation to consider all issues presented. [2]

[2] 47 U.S.C Section 252(b)(4)(C).

Commission rule 4 CSR 240-36.040(19)

This rule states that "[u]nless the results would be clearly unreasonable or contrary to pubic interest, for each issue, the arbitrator shall select the position of one of the parties 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 on such issues.

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: Each Petitioner need not establish separate transport and termination rates. However, each Petitioner must establish separate costs.[3]

[3] 47 C.F.R. §51.505(e).

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

The appropriate rate for each Petitioner will be the rate that results from the second re-run cost studies to be ordered in this matter. Petitioners can not force Respondents to pay any single or uniform rate that is higher than the cost for the individual Petitioner, but the parties may agree to any uniform rate applicable to all Petitioners.

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.[4]

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. [5]

Arbitrator's Decision: The Arbitrator adopts the T-Mobile/Cingular position. The Arbitrator notes that Schoonmaker properly re-ran the cost studies for the switch investment in accordance with the Preliminary Arbitration Report, in that he included the

[4] Schoonmaker Direct, pg. 24, lines 11-15.

[5] Conwell Direct, pg. 31, lines 3-14 – pgs. 46 - 49.

fixed switch investments of $428,296 for hosts and $161,800 for remotes. Although Respondents further argue that this switch investment is too high for those that serve fewer than 700 lines, there is not sufficient evidence in the record, and Schoonmaker's re-run costs, relating to switch investment, are within the bounds of reasonableness

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."[6]

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. No additional costs resulting from the use of switches are appropriate except interoffice trunk equipment, which is affected by traffic among offices. No more than $18.33 per line should be used as a flat, monthly rate.[7]

Arbitrator's Decision: The Arbitrator adopts T-Mobile/Cingular's position. To avoid each LEC having to run costs studies, the "MAG Order" allows, but does not require, an input value of 70% to be assigned to usage sensitive costs of switches. Because a 70% usage-sensitive assigned by the HAI model is not required, nothing precludes a 0% switching cost. The Arbitrator agrees with the position put forth by T-Mobile and Cingular, that switching costs are no longer traffic sensitive.

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[6] Schoonmaker Rebuttal pgs. 17 – 18.

[7] Conwell Direct, pg. 47.

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.[8]

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).[9]

Arbitrator's Decision: The Arbitrator adopts T-Mobile/Cingular's position. When compared to Petitioners' response to data requests, Petitioners' position of 500 square feet for switches with up to 100 lines and 1000 square feet for switches with up to 5000 lines, is clearly unreasonable. Furthermore, the wireless carriers used the space provided by Southwestern Bell in Missouri for a single bay of equipment in its Caged Collocation tariff as the basis of its calculation.[10] Moreover, the FCC requires that space increments for collocation be in single bays, which included space for the equipment rack, access to the back of the rack and saving room for rack doors in front.[11]

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.

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[8] Schoonmaker Rebuttal pgs. 22-23.

[9] Conwell Direct, pg. 53.

[10] Conwell Direct, pg. 52.

[11] FCC's Advanced Services First Report and Order, CC Docket 98-147 (Issued March 18, 1999).

Arbitrator's Decision: The numbers proposed by each party are average numbers. The actual numbers are the re-run, end-office switching element of costs filed by Schoonmaker.

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.[12]

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 to compute transport costs. The distance between Petitioners' switches and the meet points should reflect actual distance. [13]

Arbitrator's Decision: The Arbitrator adopts the T-Mobile/Cingular position. For interoffice cable lengths the parties shall adopt the current meet point arrangements, subject to renegotiation if those arrangements change, because the current arrangement most closely aligns with principles of forward-looking, efficient costs. Moreover, the Arbitrator finds that the HAI model's algorithm, in calculating the quantity of digital cross-connect systems ports (at the DS3 level) by dividing DS1s by 2 instead of 24, overstates DS3 requirements. Therefore, the model should be modified accordingly. Finally, interoffice cable lengths shall be limited to the most practicable actual route between offices. Petitioner shall provide, as part of the underlying documentation in support of its second re-run costs studies, a chart showing the actual interoffice cable distances.

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[12] Schoonmaker Rebuttal pgs. 24-29.

[13] Conwell Direct, pg. 59.

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. In addition, the costs associated with underestimating demand far outweigh the costs of overestimating demand.

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?

Petitioners – The HAI Model assigns the entire cost of interoffice fiber cable to transport, with a portion of the cost assigned to structures.[14]

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

[14] Schoonmaker direct, pg. 24-25.

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.[15]

Arbitrator's Decision: Because assigning 100% of the cost of interoffice fiber cable to transport is extreme and unreasonable, the Arbitrator will require the Petitioners to determine exactly what portion of interoffice fiber cable *is* assigned to transport. Until this determination is made and the cost studies are re-run accordingly, 50% shall be used.

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

Petitioners – HAI input values for transmission equipment.[16]

T-Mobile/Cingular – Petitioners incorrectly assume that they all employ an OC-48 add/drop multiplexer, an OC-3 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 DS1-equivalent circuits at each Petitioners' switch and reflect either fiber ring or point-to-point transport, depending on the Petitioner's network design. Because Petitioners have not provided the requested data, the Commission should assume OC-3 sized systems and no need for optical regenerators.

Arbitrator's Decision: The Arbitrator directs that an OC-12 system be used. Petitioners state that "at a minimum [Petitioners' witness' engineering staff] recommends nothing smaller than an OC-12 system." This system is recommended and is not inefficient as is the HAI-assumption of OC-48.

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[15] Conwell Direct pg. 69.

[16] Schoonmaker Rebuttal, pgs. 35-36.

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

Petitioners – Schedules RCS-4 and 5 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.

Arbitrator's Decision: The appropriate forward-looking common transport costs for each Petitioner are the re-run costs filed by Schoonmaker. Seven Petitioners did not provide cost data. The missing data was discussed at the hearing.[17] Even with the allotted time to re-run cost studies, the information has not been produced. The Arbitrator directs that a bill and keep methodology be used until appropriate cost date is produced for these seven Petitioners

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.[18]

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

[17] Tr. Volume 4, pg. 373.

[18] Schoonmaker Direct pgs. 32-33.

Schedule WCC attached to the direct testimony of Conwell, accurately measure transport costs and it is unnecessary to add additional costs.[19]

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, which is to be excluded. The Arbitrator finds that only common transport costs should be included with no additional adjustments to this calculation or to any other calculation in which common transport is a component or is derived from such a calculation.

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.[20] Costs 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,

[19] Conwell Direct pgs. 84-85.

[20] Schoonmaker Rebuttal pg. 38.

Respondents used the actual current costs Petitioners are paying for SS7 interconnection links divided by the HAI estimates of number of messages.[21]

Arbitrator's Decision: Because the HAI model is forward looking, the Arbitrator adopts Petitioners' position, using however, the distances established in Issue No. 7. The Arbitrator specifically rejects Respondents' modification of the forward-looking model with actual (embedded) costs.

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?

The Arbitrator will not address this issue. It is not relevant to the contemplated interconnection agreement, which relates only to future interaction between the parties. 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 IXCs) 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[22] – 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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[21] Conwell Direct, pgs. 87-89.

[22] 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. Cingular's failure to provide specific proposed language is not dispositive of this issue because the resolution of this issue is based on a legal, rather than a factual determination. The Arbitrator's conclusion on this issue will therefore be consistent between T-Mobile and Cingular.

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, The Commission should establish an IntraMTA Traffic Ratio for use by the parties in billing the termination of traffic because reciprocal compensation should be established.

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

Petitioners – Schedule RCS shows 84/16 for T-Mobile and 83/17 for Cingular.[23] This is based on the average of the actual Missouri traffic studies performed by Petitioners of Cingular and T-Mobile traffic.

[23] Schoonmaker Direct, pgs. 52-53.

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.

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, which is unreasonable as nothing in the record supports the 10-percentage-point reduction. The Arbitrator, therefore, adopts Petitioners' position

With regard to **Cingular,** both Petitioners and Cingular agree on the ratio concept, 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 a 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.[24]

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.

[24] Pue direct p 20.

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 – This is 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.[25]

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. A review of the records in this case reveals no filing on this matter despite Cingular's contention to the contrary. Therefore, no language concerning this issue is required to be included in the interconnection agreement Cingular may later file a complaint if it believes the Petitioners are unlawfully discriminating against it.

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 the certificate or tariff authority, to carry traffic beyond their exchanges. This issue is currently an "open" issue before the FCC in CC Docket No. 01-92, and it has been

[25] Schoonmaker Direct, Pgs61-62.

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 (10th Cir. 2005).

Arbitrator's Decision: The parties offer no proposed language to the interconnection agreement. A review of the records in this case reveals no filing on this matter despite Cingular's contention to the contrary. Therefore, no language concerning this issue is required to be included in the interconnection agreement Cingular may later file a complaint if it believes the Petitioners are unlawfully discriminating against it.

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. A review of the records in this case reveals no filing on this matter despite Cingular's contention to the contrary. Therefore, no language concerning this issue is required to be included in the interconnection agreement Cingular may later file a complaint if it believes the Petitioners are unlawfully discriminating against it.

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 Petitioners (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.[26]

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 that 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.

[26] Pruitt Direct, Attachment 1.

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 exchange 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, rather than interMTA, traffic. For calculating the intraMTA traffic, the Arbitrator adopts Petitioners' position that

new bills be issued by ILECs based solely on the tandem companies' cellular usage reports.

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

Petitioners – Petitioners do not object to a deferred billing arrangement whereby they would not render a bill totaling less than $250, but rather accumulate 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, 2005, 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, 2005.

Arbitrator's Decision – April 29, 2005.

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.

IT IS ORDERED THAT:

1. The Petitioners in this matter shall perform a second re-run of their cost studies based on the requirements inputs of this Final Report and submit those second re-run cost studies no later than 4 p.m. on Monday, March 6, 2006.

2. Petitioners shall provide the underlying documentation in the same manner as provided with the first re-run cost studies, with the additional information set forth in Issue #7.

3. This order shall become effective on March 3, 2006.

Respectfully submitted,

Kennard L. Jones
Regulatory Law Judge
Arbitrator

Dated at Jefferson City, Missouri,
on this 3rd day of March, 2006.