

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

| | | |
|--------------------------------|---|----------------|
| T-MOBILE USA, INC., |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | Case No. _____ |
| |) | |
| GREEN HILLS TELECOMMUNICATIONS |) | |
| SERVICES and MARK TWAIN |) | |
| COMMUNICATIONS COMPANY, |) | |
| |) | |
| Respondents. |) | |

**T-MOBILE FORMAL COMPLAINT AND
MOTION FOR EXPEDITED TREATMENT**

T-Mobile USA, Inc. ("T-Mobile"), pursuant to Commission Rules 240-2.070, 240-2.080(16) and 240-29.130(9), files this formal complaint against the two above-named competitive local exchange carriers ("CLECs"). T-Mobile requests expedited resolution of this complaint pursuant to 240-29.130(9) and 240-2.080(16).

1. The CLECs have advised T-Mobile that, beginning on July 21, 2006, they intend to begin blocking calls made by T-Mobile's customers and thereby prevent their own customers from receiving these desired communications. Commission Rule 240-29.130(10) specifies that once a complaint such as this is filed, "the terminating carrier and originating tandem carrier shall cease blocking preparations, pending the commission's decision." T-Mobile expects that the CLECs and AT&T-Missouri, the tandem carrier that the CLECs seek to have implement their blocking request, will comply with the requirements of this Rule, including the cessation of blocking preparations pending resolution of this Complaint.

2. T-Mobile files this complaint so that by operation of 4 CSR 240-29.130(10) the terminating and originating tandem carriers will cease blocking preparations, pending the

Commission's decision. This complaint will prevent the possible disruption of wireless service to T-Mobile's customers and will benefit customers since there will be no negative effect on customers (T-Mobile's or the CLEC's customers) or the general public by the Commission's hearing of this complaint. To the contrary, the public interest is promoted when consumers can make and receive desired communications. In addition, T-Mobile customers benefit due to the redundancy of the current method of traffic delivery. This redundancy will be lost if AT&T Missouri implements blocking. T-Mobile filed this complaint soon after receiving a letter dated June 28, 2006 from AT&T Missouri (See Exhibit B) indicating that it would soon begin the work necessary to implement blocking.

Compliance with Commission Rule 240-2.070(5)

3. T-Mobile states as follows in compliance with 4 CSR 240-2.070(5):

(a) T-Mobile files this Complaint and relevant contact information includes:

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(b) The Respondents are the following CLECs:

Green Hills Telecommunication Services
7926 N.E. State Rd M.
P.O. Box 227
Breckinridge, MO 64625

Mark Twain Communications Company
P.O. Box 128
Hurland, MO 63547

- (c) Counsel for the CLECs, by letter dated June 12, 2006 (*see* Exhibit A), notified T-Mobile that beginning on July 21, 2006, the CLECs intend to block calls made by T-Mobile customers who attempt to call customers served by any of the CLECs. The CLECs state they are taking this drastic action because T-Mobile has not paid amounts they claim are due under their wireless termination tariffs that became void under federal law over a year ago. The CLECs are pursuing this action even though the very lawfulness of similar tariffs is currently pending in *VoiceStream PCS v. BPS Telephone Co, et al.*, No. 05-4377 (8th Cir.). If the Eighth Circuit case results in the invalidation of the similar tariffs, the amounts owed under the CLEC's tariffs would likewise not be valid and as a result, there would be no basis for call blocking.
- (d) T-Mobile seeks a Commission ruling that the CLECs may not block traffic originated by T-Mobile's customers. The public interest is certainly not served when customers cannot call each other because one or more carriers engages in call blocking. There is no reason for call blocking: the CLECs do not allege that T-Mobile does not have the financial resources to pay the amounts they claim T-Mobile owes; and, as the CLECs are well aware, T-Mobile is challenging the very lawfulness under federal law of the tariffs upon which they proposing to block customer traffic.

- (e) T-Mobile has not contacted counsel for the CLECs regarding this blocking notice since receipt. The parties have repeatedly attempted to negotiate a settlement to their differences, but without success. The CLECs' notice of blocking makes a settlement of past disputes even more difficult.
- (f) If this Commission has jurisdiction over the matter, it is pursuant to 4 CSR 240-29.130(9), which provides in relevant part: "If an originating carrier . . . wishes to dispute a proposal whereby some or all of its CLEC-LEC traffic would be blocked . . . , the originating carrier . . . should immediately seek action by the commission through the filing of a formal complaint. . . . Such a complaint shall include a request for expedited resolution."¹
- (g) T-Mobile is not an association.

Background and Executive Summary

- 4. For the past year, since their wireless termination tariffs became *per se* void under federal law,² the CLECs and T-Mobile have been exchanging traffic on a bill-and-keep basis.³
- 5. At issue here in this complaint is alleged T-Mobile traffic that the CLECs terminated from October 21, 2001 to April 28, 2005. T-Mobile is currently in litigation with the CLECs'

¹ T-Mobile does not believe that the Enhanced Record Exchange Rules apply to wireless carriers. Nevertheless, because the CLECs have invoked these Rules, it appears that T-Mobile has no choice but to follow the procedures contained in the Rules in order to prevent T-Mobile's customers from being affected by the blocking. In submitting this complaint under these circumstances, T-Mobile is not conceding the Commission's jurisdiction over the subject matter, but finds itself with no other available option.

² See 47 C.F.R. § 20.11(d) ("Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.") This rule took effect on April 29, 2005. See *Inter-carrier Compensation*, 70 Fed. Reg. 16141 (March 30, 2005).

³ As the FCC has explained, "[u]nder a bill-and-keep approach, neither of the interconnecting networks charges the other network for terminating traffic that originates on the other carrier's network. Rather, each network recovers from its own end users the cost of both originating traffic delivered to the other network, and terminating traffic received from the other network." *Unified Inter-carrier Compensation Further NPRM*, 20 FCC Rcd 4685, 4703 ¶ 37 (2005).

owners (Mark Twain Rural Telephone Company and Green Hills Telephone Corporation) over the lawfulness of their wireless termination tariffs for this period of time. While the CLECs are not parties to this litigation, their tariffs are nearly identical in all material respects to their owners' tariffs that T-Mobile is challenging.

6. Rather than wait for this litigation to conclude or seek other redress since the CLECs know T-Mobile disputes these tariff charges as being unlawful, by letter dated June 12, 2006, the CLECs notified T-Mobile that, beginning July 21, 2006, they intend to block calls made by T-Mobile customers placed to customers served by the CLECs "unless T-Mobile pays in full the amounts" they claim T-Mobile owes them under their now void wireless termination tariffs. *See* Exhibit A. The CLECs invoked the Commission's Enhanced Record Exchange Rules for the drastic action they want to pursue.

7. The CLECs have not explained why they are pursuing this call blocking proposal at this time. Given the significant impact the pending federal court litigation will have on the disputes between T-Mobile and the CLECs, the most sensible course would be to wait for the conclusion of the litigation. The CLECs obviously are not pressed to obtain the amounts in dispute since they waited for over four and one half years before attempting to recover for traffic they claim T-Mobile sent to them in 2001 and over nine months to invoke the Enhanced Record Exchange Rules.

8. It is important to note that the CLECs have a remedy if they are interested in pursuing claims for past traffic at this point in time. They could do what their owners have done - file a complaint against T-Mobile, where they would have the burden of demonstrating that their tariffs are consistent with federal law requirements and that T-Mobile actually sent the claimed traffic.

9. There are many flaws with the CLECs' blocking proposal:

- The CLECs propose to block T-Mobile's interstate traffic in addition to its intrastate traffic. However, the Commission does not have any regulatory authority over interstate traffic. Thus, the CLECs cannot block any of T-Mobile's interstate traffic until they first secure prior approval from the FCC, and absent a showing that they can accurately segregate interstate traffic from intrastate traffic, they cannot block any traffic without violating federal law.
- In any event, neither the Commission nor the CLECs have the legal authority to block any mobile-to-land traffic because such action would constitute entry regulation that Section 332(c)(3) of the Communications Act flatly forbids.
- The Enhanced Record Exchange Rules that the CLECs have invoked do not justify the proposed blocking because those rules do not apply to mobile-to-land traffic nor do they apply to traffic at issue before the effective date of the rules.
- The CLECs' assumption – that they can impose access charges pursuant to their access tariffs for T-Mobile's "IXC" traffic – is wrong. The FCC has repeatedly ruled that CLECs may not impose access charges on intraMTA wireless traffic. Furthermore, FCC rules explicitly forbid the CLECs from assessing any charge for intraMTA mobile-to-land traffic, based on a tariff, including access tariffs.
- The CLECs' claims are partially barred by the statute of limitations.

10. T-Mobile requests that the Commission enter an order prohibiting the CLECs from implementing their call blocking proposal. The Commission should instruct the CLECs to let the legal process take its course.

Argument

I. THE CLECS MAY NOT BLOCK T-MOBILE'S TRAFFIC WITHOUT FIRST SECURING FCC APPROVAL OF THEIR BLOCKING PROPOSAL

11. A Commission order holding that the CLECs may not block T-Mobile's mobile-to-land traffic would prevent them from blocking this traffic. But even if the Commission permits the CLECs to block T-Mobile's traffic, they may not begin blocking until they first secure prior approval from the Federal Communications Commission ("FCC").

A. The CLECs Must Secure FCC Approval Before Blocking Any T-Mobile Traffic

12. Some of the intraMTA mobile-to-land traffic that T-Mobile sends to the CLECs is interstate traffic – that is, the caller is located in a State other than the State of Missouri. The CLECs cannot distinguish between T-Mobile’s interstate calls from its intrastate calls.⁴ Thus, if the CLECs were to begin blocking T-Mobile’s traffic, they necessarily would block T-Mobile’s interstate traffic as well.

13. This Commission, however, has no jurisdiction over interstate traffic, including the authority to permit carriers to block interstate traffic.⁵ Under State law, the Commission’s authority is limited to intrastate telecommunications service, and does not extend to interstate telecommunications services.⁶ In addition, with certain exceptions not relevant here, the federal Communications Act recognizes State authority over intrastate communications only.⁷ Congress has determined instead to give the FCC exclusive authority over interstate communications.⁸ As courts have uniformly held, “as to interstate and foreign communications, [FCC] jurisdiction is exclusive of state regulation commissions.”⁹

⁴ Because wireless service is mobile, the CLECs cannot ascertain whether a T-Mobile call is interstate or intrastate based on the telephone number assigned to the wireless customer. For example, a wireless customer might be assigned a Kansas City number containing the 816 area code. But the CLECs do not know at the time of the call whether this customer is originating the call from Kansas City, Missouri, Kansas City, Kansas, New York City, San Francisco, or from some other location across the county.

⁵ By the same token, the CLECs’ State wireless termination tariffs necessarily are limited in scope to intrastate traffic. Thus, these tariffs cannot be used to justify blocking of interstate traffic.

⁶ See Sections 386.030 and 386.250(2), RSMo.

⁷ See 47 U.S.C. § 152(b).

⁸ See *id.* at § 152(a).

⁹ *MCI v. AT&T*, 462 F. Supp. 1072, 1095 (N.D. Ill. 1978). See also *Crockett Telephone v. FCC*, 963 F.2d 1564, 1566 (D.C. Cir. 1992)(“The FCC has exclusive jurisdiction to regulate interstate common carrier services.”); *Qwest v. Scott*, 2003 U.S. Dist. LEXIS 818 at *16 (D. Minn., Jan. 8, 2003)(“§ 152 of the Act vests in the FCC the exclusive authority to regulate interstate communications.”); *id.* at * 30 (“The FCC’s exclusive jurisdiction over interstate communications is established.”); *AT&T v. PAB*, 935 F. Supp. 584, 590 (E.D. Pa. 1996)(“The FCC retains exclusive jurisdiction over interstate communication

14. Section 214(a) of the Communications Act, which applies to common carriers like the CLECs, provides in relevant part:

No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the [FCC] a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the [FCC] may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section.¹⁰

15. The call blocking that the CLECs want to implement would constitute a “partial discontinuance, reduction, or impairment of service,” because their customers may no longer receive interstate calls from T-Mobile customers. Accordingly, the CLECs cannot implement their call blocking proposal without first following the procedures specified in Section 214(a) of the Communications Act – that is, they must secure FCC prior approval before blocking any of T-Mobile’s traffic.

B. In Any Event, The FCC Has Preempted States from Regulating How Wireless Carriers Route Their Mobile-to-Land Traffic

16. The CLECs will no doubt respond to the above argument by claiming they do not require FCC prior approval because they are not proposing any discontinuance, reduction, or impairment of service – even though their May 12, 2006 letter is explicitly labeled: “**Discontinuance of Service.**” Exhibit A at 1 (bold in original). Specifically, the CLECs will likely assert that they do not propose to block T-Mobile traffic altogether, but rather require T-Mobile to send its intraMTA traffic to an “interexchange carrier” (like AT&T) rather than to a local exchange

by wire or interstate transmission of energy by radio.”); *AT&T v. People’s Network*, 1993 U.S. Dist. LEXIS 21248 at *14 (D.N.J., March 31, 1993)(“The FCC retains exclusive jurisdiction over interstate communications.”); *GTE Sprint v. Downey*, 628 F. Supp. 193, 194 (D. Conn. 1986)(“Congress charged the FCC with exclusive federal jurisdiction to uniformly regulate interstate transmissions or communications.”); *AT&T v. Public Service Comm’n*, 625 F. Supp. 1204, 1208 (D. Wy. 1985)(“Exclusive FCC jurisdiction over interstate matters is well-established).

¹⁰ 47 U.S.C. § 214(a).

carrier (like AT&T-Missouri) that provides transit services.¹¹ This argument fails even if the Commission accepts the CLECs' characterization of the facts. Neither the CLECs nor this Commission possess the authority to tell a wireless carrier holding a federal radio license how it must route its traffic.

17. At the outset, Congress has determined that wireless carriers may connect with terminating carriers either directly or indirectly.¹² Under FCC rules, it is the competitive wireless carrier, not a LEC, that determines whether to connect directly or indirectly.¹³ Implicit within this right is the right to select one's preferred transit carrier. After all, as this Commission has recognized, it is the originating carrier that pays for transit services,¹⁴ and the originating carrier therefore has the right to choose its preferred transit carrier based on its "most efficient technical and economic choices."¹⁵

18. What the CLECs characterize as an "interexchange carrier" is not, in fact, an interexchange carrier for mobile-to-land traffic. With T-Mobile's "one-rate" plans, customers are charged the same rate whether a customer calls across the street or across the country. For these customers, T-Mobile does not provide a toll, or interexchange, service.¹⁶ Thus, although T-Mobile may choose as a transit provider a carrier the CLECs ordinarily classify as an

¹¹ T-Mobile suspects that few, if any, IXC's are connected directly to the CLECs' networks. Thus, the traffic T-Mobile sends to an IXC, just like the traffic T-Mobile sends directly to AT&T-Missouri, is routed through AT&T-Missouri's tandem switches before it is sent to the CLECs. The CLECs want AT&T-Missouri to block the mobile-to-land traffic that T-Mobile sends directly to AT&T-Missouri, but not the same mobile-to-land traffic that T-Mobile sends indirectly to AT&T-Missouri. As a practical matter, the Rural ILECs want to force T-Mobile to interconnect with AT&T-Missouri indirectly (*via* IXC) rather than directly.

¹² See 47 U.S.C. § 251(a)(1).

¹³ See 47 C.F.R. § 20.11(a). See also *Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996).

¹⁴ See *Alma/T-Mobile Arbitration Order*, Case No. IO-2005-0468, at 22-24 (Oct. 6, 2005).

¹⁵ *Local Competition Order*, 11 FCC Rcd at 15991 ¶ 997.

¹⁶ See 47 U.S.C. § 153(48).

“interexchange carrier,” that carrier is actually providing a transit service, not an “interexchange service.”

19. In fact, the FCC has already preempted States from regulating wireless carrier interconnection with other carriers, including when the interconnection is used for intrastate wireless services. Specifically, the FCC has declared that “separate interconnection arrangements for interstate and intrastate commercial mobile radio services are not feasible (*i.e.*, intrastate and interstate interconnection in this context is inseverable) and that state regulation of the right and type of interconnection would negate the important federal purpose of ensuring CMRS interconnection to the interstate network”:

Therefore, we preempt state and local regulations of the kind of interconnection to which CMRS providers are entitled.”¹⁷

Notably, Congress specifically empowered the FCC to establish how wireless carriers should interconnect with other carriers, including for intrastate traffic, because it recognized that “the right to interconnect [is] an important one which the [FCC] shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.”¹⁸

Congress explicitly found:

[B]ecause commercial mobile services require a Federal license and the Federal Government is attempting to promote competition for such services, and because providers of such services do not exercise market power *vis-à-vis* telephone exchange service carriers and State regulation can be a barrier to the development of competition in this market, uniform national policy is necessary and in the public interest.¹⁹

¹⁷ *Second CMRS Order*, 9 FCC Rcd 1411, 1498 ¶ 230 (1994).

¹⁸ H.R. REP. NO. 103-111 at 261 (1993). *See also Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9640 ¶ 84 (2001)(“The 1993 Budget Act significantly changed the regulatory framework for CMRS. In place of traditional public utility regulation, the 1993 Budget Act sought to establish a competitive *nationwide* market for commercial mobile radio services with limited regulation. CMRS interconnection was a significant element of this framework.”)(emphasis added); 47 U.S.C. §§ 152(b), 332(c)(1).

¹⁹ H.R. CONF. REP. NO. 103-213 at 481 (incorporating by reference findings made in the Senate bill).

20. The FCC's recent *Vonage Preemption Order* is instructive.²⁰ In that proceeding, States argued that the Communications Act "requires the [FCC] to recognize state jurisdiction over [VoIP] to the extent it enables 'intrastate' communications to occur."²¹ The FCC rejected this argument and preempted states from asserting regulatory authority over VoIP services, holding the VoIP providers have "no means of directly or indirectly identifying the geographic location of a [VoIP] subscriber" and "no service-driven reason to know user' locations":

Furthermore, to require Vonage to attempt to incorporate geographic "end-point" identification capabilities into its service solely to facilitate the use of an end-to-end approach *would serve no legitimate policy purpose*. Rather than encouraging and promoting the development of innovative, competitive advanced service offerings, we would be taking the opposite course, molding this new service into the same old familiar shape.²²

It is noteworthy that in preempting States from regulating VoIP services, the FCC observed that VoIP is "similar to CMRS, which provides mobility, is offered as an all-distance service, and needs uniform treatment on many issues."²³

21. In summary, because the CLECs cannot separate at the time of call termination interstate from intrastate mobile-to-land traffic, wireless traffic is jurisdictionally mixed, and the routing of mobile-to-land traffic is subject to the FCC's exclusive jurisdiction. Accordingly, neither this Commission nor the CLECs may tell T-Mobile what transit carriers it may, or may not, use in the provision of its federally licensed services.

²⁰ See *Vonage Preemption Order*, 19 FCC Rcd 22404 (2004).

²¹ *Id.* at 22418 ¶ 22.

²² *Id.* at 22418-19 ¶ 23 and 22430-21 ¶ 25 (emphasis added). See also *id.* at 22422-23 ¶ 29.

²³ *Id.* at 22418 ¶ 22.

II. CALL BLOCKING WOULD CONSTITUTE IMPERMISSIBLE STATE ENTRY REGULATION

22. Congress has been clear in specifying that “no State . . . shall have any authority to regulate the entry of . . . any commercial mobile service.”²⁴ Federal courts have ruled that there can be “no doubt that Congress intended complete preemption”:

This clause completely preempted the regulation of rates and market entry. . . . Cases that involve the “entry of or the rates charged by any commercial mobile service or any private mobile service” are the province of federal regulators and courts.²⁵

The FCC has similarly observed that Section 332(c)(3) “completely preempts state entry regulation of CMRS.”²⁶ Importantly, Section 332(c)(3) bars any state regulation affecting wireless entry, even if the state action does not have the effect of prohibiting entry.²⁷

23. A Commission order authorizing the CLECs to block T-Mobile’s intrastate mobile-to-land traffic would constitute entry regulation that Section 332(c)(3) flatly prohibits. By blocking T-Mobile’s calls, the CLECs would be determining unilaterally the types of services that T-Mobile would be able to provide and the types of carriers it may utilize in the provision of its federally licensed services.

III. THE COMMISSION’S ENHANCED RECORD EXCHANGE RULES DO NOT APPLY TO MOBILE-TO-LAND TRAFFIC

24. The CLECs have invoked the Enhanced Record Exchange (“ERE”) rules for their proposed blocking:

²⁴ 47 U.S.C. § 332(c)(3)(A)(emphasis added).

²⁵ *Bastien v. AT&T Wireless*, 205 F.3d 983, 986-87 (7th Cir. 2000).

²⁶ *Ohio CMRS Regulation Petition Denial Order*, 10 FCC Rcd 12427, 12432 ¶ 10 (1995).

²⁷ The entry regulation prohibition in Section 332(c)(3) is far more expansive than the entry prohibition contained in Section 253. Section 253 prohibits state rules that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). In stark contrast, Section 332(c)(3) prohibits “any” regulation involving entry – whether or not it has the effect of prohibiting the provision of any service.

This request to block traffic is being made pursuant to Missouri Public Service Commission Enhanced Record Exchange rule, 4 CSR 240-29.130 of Missouri's Code of State Regulations.²⁸

In fact, the ERE rules do not authorize the call blocking that the CLECs want to implement.

25. The ERE rules permit “terminating carriers” to ask an “originating tandem carrier” to block an originating carrier’s CLEC-to-CLEC traffic, “if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic.”²⁹ An “originating carrier” is defined as a “telecommunications company that is responsible for originating telecommunication traffic that traverses the CLEC-to-CLEC network.”³⁰ A “telecommunications company” is defined in the ERE rules as “those companies set forth by section 386.020(51), RSMo. Supp. 2004.”³¹ However, Section 386.020 of the Missouri Revised Statutes specifically excludes from the definition of a “telecommunications company” those companies offering “radio communications and services and facilities when such services and facilities are provided under a license granted by the [FCC] under the commercial mobile radio services rules and regulations.”³² In other words, mobile-to-land traffic of the sort T-Mobile sends to the CLECs is not encompassed within the ERE rules.

26. In summary, the CLECs’ invocation of the ERE rules is unavailing because those rules, on their face, do not apply to mobile-to-land traffic, including the T-Mobile traffic they seek to block.

²⁸ Exhibit A at 2.

²⁹ 4 CSR 240-29.130(2). The ERE rules raise substantial issues of constitutional due process, since the rules appear to authorize call blocking without any proof that the carrier whose traffic would be blocked sent the traffic claimed to support the blocking. This Commission can avoid this constitutional issue by holding that the CLECs cannot block T-Mobile’s traffic.

³⁰ 4 CSR 240-29.020(29).

³¹ 4 CSR 240-29.020(34).

³² Section 286.020, RSMo.

IV. THE COMMISSION CANNOT APPROVE THE CLECS' BLOCKING PROPOSAL BECAUSE THE CLECS CANNOT IMPOSE ACCESS CHARGES FOR INTRAMTA MOBILE-TO-LAND TRAFFIC

27. As discussed above, the CLECs will almost certainly claim that they do not propose to block T-Mobile's intraMTA mobile-to-land traffic, but only require T-Mobile to route these calls to an "interexchange carrier." The CLECs undoubtedly expect to impose access charges on these IXC's for terminating this intraMTA mobile-to-land traffic pursuant to their access tariffs.

28. However, the FCC has ruled, again and again, that LECs may not assess access charges for intraMTA mobile-to-land traffic:

- "[W]e will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5). . . . [W]e conclude that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5). . . . Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges."³³
- "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges."³⁴
- "The Commission also held that reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA)."³⁵
- "LEC-CMRS interconnection for calls that originate and terminate in the same MTA (as of the start of a call) are governed by section 251, and are subject to reciprocal compensation."³⁶
- "The term 'non-access traffic' means any telecommunications traffic that is . . . exchanged between a LEC and a CMRS provider that, at the beginning of

³³ *Local Competition Order*, 11 FCC Rcd 15499, 16014 ¶ 1036 (1996).

³⁴ *Id.* at 16016 ¶ 1043.

³⁵ *ISP Remand Order*, 16 FCC Rcd 9151, 9173 ¶ 47 (2001).

³⁶ *Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9642-43 ¶ 91 (2001).

the call, originates and terminates within the same Major Trading Area (MTA).”³⁷

The Missouri Supreme Court has agreed: LECs may not impose access charges for terminating intraMTA mobile-to-land traffic.³⁸ Thus, the CLECs may not impose access charges on this intraMTA traffic even though it is handled by a carrier that they would ordinarily classify as an “IXC.”

29. Furthermore, the CLECs are prohibited by governing FCC rules from assessing any charges for intraMTA traffic pursuant to any tariff. FCC Rule 20.11(d) provides unequivocally:

Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio services providers pursuant to tariffs.³⁹

As discussed above, T-Mobile’s intraMTA traffic is not subject to access charges. Traffic that T-Mobile may route to a carrier the CLECs ordinarily classify as an “IXC” is not interexchange traffic, but rather intraMTA traffic subject to reciprocal compensation. While the CLECs do not propose to block intraMTA traffic that T-Mobile routes through an IXC, they may not charge for terminating this traffic since their access tariffs are void as applied to this intraMTA traffic and since they have no interconnection agreement with T-Mobile.

V. THE COMMISSION’S ENHANCED RECORD EXCHANGE RULES ONLY APPLY PROSPECTIVELY.

30. The Commission’s ERE rules were effective July 30, 2005. The traffic at issue in this complaint (March 2001 through April 2005) predates the effective date of the rules. The general rule of construction in Missouri is that rules are deemed to operate prospectively only. See St.

³⁷ *Small Entity Compliance Guide: Reciprocal Compensation Arrangements Between CLECs and CMRS Providers*, 20 FCC Rcd 12158 (July 14, 2005).

³⁸ *See State ex rel. Alma Telephone v. Missouri Public Service Comm’n*, 183 S.W.2d 575, 578 (Mo. Sup. Ct., 2006).

³⁹ 47 C.F.R. § 20.11(d).

Louis Police Officers' Association v. Sayad, 685 S.W.2d 913, 917 (Mo. App. 1984). By contrast, procedural rules operate retrospectively, unless a contrary intent is evidenced in the rule. Id. 4 C.S.R. 240-29.130 is not a procedural rule. It establishes a new right for certain carriers to request the blocking of traffic. Because the ERE rules are not procedural rules, they operate prospectively only and cannot apply to traffic at issue before the effective date of the ERE rules.

VI. SOME OF THE RURAL CLECS' CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

31. Mark Twain Communications seeks recovery for traffic that T-Mobile allegedly sent to it as early as October 23, 2001, over 4.5 years ago.⁴⁰ Green Hills Telecommunications seeks recovery for traffic T-Mobile allegedly sent to it as early as March 13, 2002, over four years ago.⁴¹ Many of these claims are barred by the statute of limitations.

32. Federal law governs the exchange of traffic between carriers.⁴² Federal law imposes a two-year statute of limitations.⁴³ Thus, even if the CLECs' June 12, 2006 "Discontinuance of Service" letter could be deemed a complaint that would toll the statute of limitations, it is clear the CLECs' claims for traffic that T-Mobile supposedly sent to them before June 12, 2004 are barred by the statute of limitations.

33. In fact, the CLECs' "Discontinuance of Service" letter does not toll the statute of limitations. The CLECs there seek to block "all T-Mobile traffic . . . unless T-Mobile pays in full the amounts" they claim T-Mobile owes them – without any proof that T-Mobile sent to them the

⁴⁰ See Exhibit A at 1.

⁴¹ See *id.*

⁴² See 47 U.S.C. §§ 251, 252. See also *State ex rel. Alma Telephone v. Missouri Public Service Comm'n*, 183 S.W.3d 575, 577 (Mo. Sup. Ct. 2006) ("This case is controlled by the Federal Telecommunications Act of 1996.").

⁴³ See 47 U.S.C. § 415(a) ("All actions at law by carriers for recovery of their lawful charges or any part thereof, shall begun, within two years from the time the cause of action accrues, and not after.").

traffic claimed. Accordingly, the statute of limitations will not be tolled until the CLECs follow the same procedure utilized by their owners: file a complaint against T-Mobile. In any event, the CLECs cannot block T-Mobile's calls today when they have no legal claim for traffic allegedly sent before the statute of limitations period.

Conclusion

For the foregoing reasons, T-Mobile respectfully asks the Commission to

- (a) On or before July 21, 2006, rule that the CLECs and AT&T Missouri, are prohibited from blocking pending a hearing of the Commission regarding the issues contained herein; and
- (b) Rule that Section 214(a) of the Communications Act prohibits any discontinuance of service and that the FCC has exclusive jurisdiction over blocking of CMRS traffic;
- (c) Grant such other relief as the Commission deems proper.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

/s/ Mark P. Johnson
Mark P. Johnson MO Bar #30740
Roger W. Steiner MO Bar #39586
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Telephone: (816) 460-2400
Facsimile: (816) 531-7545

ATTORNEYS FOR T-MOBILE USA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been mailed electronically this 30th day of June, 2006, to:

W. R. England, III
Brydon, Swearngen & England P.C.
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102-0456

Mr. Leo Bub
Attorneys for Southwestern Bell Telephone, L.P.
d/b/a/ AT&T Missouri
One SBC Center, Suite 3520
St. Louis, MO 63101

Mr. John Van Eschen
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65102-2230

Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230

General Counsel
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102-2230

/s/ Mark P. Johnson
ATTORNEYS FOR T-MOBILE USA, INC.

Exhibit A

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
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JAMIE J. COX

OF COUNSEL
RICHARD T. CIOTTONE

June 12, 2006

VIA CERTIFIED U.S. MAIL

VoiceStream/T-Mobile USA
Director of Regulatory Affairs
12920 SE 38th St.
Bellevue, WA 98006

Re: Discontinuance of Service

To Whom It May Concern:

This office represents the following small rural telephone companies (Small Companies) who provide telecommunications service in the state of Missouri:

Green Hills Telecommunications Services
Mark Twain Communications Company

For the period beginning October 23, 2001 through April, 2005, T-Mobile USA (formerly VoiceStream) terminated wireless originated calls to the exchanges served by Mark Twain Communications Company. For the period beginning March 13, 2002 through April, 2005, T-Mobile USA (formerly VoiceStream) terminated wireless originated calls to the exchanges served by Green Hills Telecommunications Services. These Small Companies issued bills to T-Mobile for this wireless traffic in accordance with their respective Wireless Termination Service Tariffs which were on file with and approved by the Missouri Public Service Commission for this period. However, T-Mobile has repeatedly refused to pay for the tariffed charges associated with this terminating wireless traffic. The amount outstanding as of March 1, 2006, for each of the Small Companies is as follows:

June 12, 2006

Page 2

| <u>Company</u> | <u>Amount Outstanding</u> |
|---|---------------------------|
| Green Hills Telecommunications Services | \$ 28,375.73 |
| Mark Twain Communications Company | 6,702.74 |
| | <hr/> |
| | \$ 35,078.47 |

As a result of T-Mobile's refusal and failure to pay for this traffic, these Small Companies have requested that AT&T Missouri (formerly SBC Missouri) block all T-Mobile traffic destined to the following exchanges and NPA NXXs.

| Company Name | Exchange(s) | NPA NXX |
|---|-------------|---------|
| Green Hills Telecommunications Services | Norborne | 660-593 |
| | | |
| Mark Twain Telecommunication Services | Ewing | 573-209 |
| | Lewistown | 573-215 |
| | LaBelle | 660-213 |
| | | |

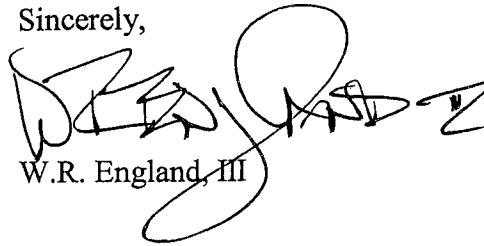
This request to block traffic is being made pursuant to the Missouri Public Service Commission Enhanced Record Exchange Rule, 4 CSR 240-29.130 of Missouri's Code of State Regulations. Specifically, terminating carriers may request the originating tandem carrier to block traffic over the LEC-to-LEC network where the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic. See 4 CSR 240-29.130.

Accordingly, please be advised that unless T-Mobile pays in full the amounts indicated above for each of the Small Companies, wireless originated calls from T-Mobile to the above listed exchanges and NPA/NXXs will be blocked over the LEC-to-LEC network on and after July 21, 2006. Correspondence and/or communication regarding this matter should be directed to me at the above address.

June 12, 2006

Page 3

Sincerely,

A handwritten signature in black ink, appearing to read 'W.R. England, III', with a large, stylized flourish extending from the end of the signature.

W.R. England, III

WRE/da

cc: Mr. Dan Menser (T-Mobile/USA) (via email & U.S. Mail)
Mr. Dan Williams (T-Mobile/USA) (via email & U.S. Mail)
Mr. Mark Johnson (T-Mobile/USA) (via email & U.S. Mail)
Mr. Leo Bub (SWBT)
Mr. John VanEschen (MoPSC)
Clients



Leo J. Bub
General Attorney

AT&T Missouri
One AT&T Center
Room 3518
St. Louis, Missouri 63101

Exhibit B

T: 314.235.2508
F: 314.247.0014
leo.bub@att.com

CERTIFIED U.S. MAIL

June 28, 2006

VoiceStream/T-Mobile USA
General Counsel
12920 SE 38th Street
Bellevue, WA 98006

Re: Blocking Request from Green Hills
Telecommunications Service
Mark Twain Communications Company

Dear Sir/Madam:

We are writing to notify you that we have received and are required to implement a demand from Green Hills Telecommunications Service and Mark Twain Communications Company, which are two competitive telephone companies in Missouri (the "Companies") to block your company's wireless originated traffic that transits AT&T Missouri's network and terminates to the Companies' exchanges.

The Companies have made this request pursuant to the Missouri Public Service Commission's Enhanced Record Exchange Rule which provides that:

A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic, or if the originating carrier has failed to deliver the originating caller identification to the transiting and/or terminating carriers.

4 CSR 240-29.130(2). The rule further provides that following the notification required by the rule and on written request by a terminating carrier:

. . . the originating tandem carrier will be required to block LEC-to-LEC traffic of an originating carrier and/or traffic aggregator to the terminating carrier. Such requests shall be based on the terminating carrier's representation that the originating carrier and/or traffic aggregator has failed to fully compensate the terminating carrier for terminating compensable traffic. . . .

4 CSR 240-29.110(5). The Commission's rules define "LEC-to-LEC" traffic as "that traffic occurring over the LEC-to-LEC network. LEC-to-LEC traffic does not traverse through an interexchange carrier's point of presence." 4 CSR 240-29.020(19).

Thus, unless the Missouri Commission or other authority with competent jurisdiction issues an order specifically staying the blocking of your company's traffic, we believe we are bound to follow the Companies' directives.

The Companies have directed us to block your company's traffic that transits AT&T Missouri's network and terminates in the Companies' exchanges effective July 21, 2006. We will soon begin performing the work necessary to implement this directive.

Please call me with questions or if you need further information.

Very truly yours,



Leo J. Bub

cc: Director-Carrier Management (T-Mobile USA) (Via U.S. Mail)
Mr. Dan Menser (T-Mobile USA) (Via E-Mail and U.S. Mail)
Mr. Dan Williams (T-Mobile USA) (Via E-Mail)

Mr. Mark Johnson (Via E-Mail)
Mr. Roger Steiner (Via E-Mail)
Mr. William R. England, III (Via E-Mail)
Mr. John Van Eschen (Via E-Mail)