

**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))	Case No. TO-2006-0147
Agreement with T-Mobile USA, Inc.)	

**PETITIONERS' APPLICATION FOR REHEARING
OF ORDER GRANTING MOTION TO DISMISS ISSUES A&B**

COME NOW PETITIONERS in the above captioned matter and for their Application for Rehearing the Arbitrator's Order Granting Motion to Dismiss state to the Commission as follows:

1. The Order is unlawful and made on improper procedure because it was issued and made effective on the same date (December 30, 2005) thereby depriving Petitioners of a reasonable opportunity to prepare an application for rehearing before the effective date of the order as required by §386.500.2, RSMO, thus depriving Petitioners of their due process and statutory right to seek review of the decision. See *State ex rel. St. Louis County v. Public Service Commission*, 360 Mo. 339, 228 S.W.2d 1,2 (1950)(holding that an order or decision of the Commission effective the day after it was issued was unlawful in that it deprived those interested of the reasonable opportunity to prepare and file applications for rehearing).

2. This issue has a substantial financial impact upon many of the Petitioners, and it should be decided by the full Commission, rather than through a delegation order, just as the motion to dismiss the CLEC Petitioners was decided by the full Commission.

3. The Order erroneously suggests that Petitioners had no tariffs in place to govern the wireless traffic T-Mobile delivered in the absence of an agreement.¹ This is simply not true since Petitioners' lawful and Commission-approved intrastate access tariffs were in place during the entire time period in question. Both the Cole County Circuit Court and the Western District Court of Appeals have upheld Petitioners' position on this matter. See *State ex rel. Alma Tel. Co. v. Public Service Comm'n*, Cole County Circuit Case No. 02CV324810, *Judgment*, May 12, 2003; *State ex rel. Alma Tel. Co. v. Public Service Comm'n*, *Opinion*, Missouri Court of Appeals Case No. WD62961, Oct. 5, 2004. The case is now pending before the Missouri Supreme Court in Case No. SC86529, and a decision is expected shortly. The order granting motion to dismiss is therefore based upon an erroneous view of the facts.

4. The order erroneously and unlawfully interprets Section 252(c) of the Act by suggesting that T-Mobile's past due bills are not "open issues" and that the Commission cannot "impose conditions" on T-Mobile such as requiring T-Mobile to settle past due amounts before taking advantage of a new agreement. Specifically, the Commission should decide whether T-Mobile should get the prospective benefit of an agreement to exchange local traffic where it has failed to pay its past due bills.

5. The order erroneously and unlawfully interprets Section 252(c) of the Act by suggesting Issues A and B "are not relevant" in this arbitration and concluding that "[n]either issue A nor B has to do with interconnection

¹ See *Order*, ¶2 ("More specifically, Issue A involves compensation for mobile-to-land traffic that Petitioners may have terminated prior to any [wireless] tariffs being in place to govern such traffic.")

agreements or arbitration under the Telecommunications Act.” (¶3) On the contrary, T-Mobile’s past due amounts are a result of T-Mobile’s decision to send traffic in the absence of an approved interconnection agreement and in violation of specific Commission orders. T-Mobile should not be allowed to ignore Commission orders and unlawfully take service from Petitioners for four years in the absence of compensation.

6. The order erroneously and unlawfully interprets Section 252(c)(3) of the Act by suggesting that the Commission cannot establish a “schedule for implementation of the terms and conditions by the parties to the agreement” by requiring T-Mobile to settle its past due amounts before taking advantage of a new agreement. The Commission has consistently required other carriers to do so a numerous approved agreements. For example, in an *Order Approving Interconnection Agreement* issued September 21, 2005, the Commission approved the following language in an agreement between Sprint Missouri, Inc. and a competitive local exchange carrier (CLEC):

§5 TERM AND TERMINATION

This Agreement shall be deemed effective upon the Effective Date first stated above, and continue for a period of two years until July 18, 2007 (“End Date”), unless earlier terminated in accordance with Section 5, **provided however that if CLEC has any outstanding past due obligations to Sprint, this Agreement will not be**

**effective until such time as any past due obligations with
Sprint are paid in full.**²

Thus, it is standard practice in Missouri for agreements to address the payment of past due obligations, and the Order erred by ruling otherwise. The Commission should reconsider or rehear the Order and expressly rule that any arbitrated agreements resulting from this case are not effective until T-Mobile's past due bills have been paid. See 47 U.S.C. §252(c)(3)(authorizing the Commission to impose conditions and "provide a schedule for the implementation of terms and conditions by the parties to the agreement.").

WHEREFORE, Petitioners respectfully request that the Commission grant rehearing of its Order Granting T-Mobile's Motion to dismiss Issues A&B and grant such other relief as is reasonable in the circumstances.

RESPECTFULLY SUBMITTED,

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² *In Re The Interconnection Agreement by and between Sprint Missouri, Inc. and Missouri Network Alliance, LLC pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, Case No. IK-2006-0054, Order Approving Interconnection Agreement, issued Sept. 21, 2005.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or via electronic mail, or hand-delivered on this 5th day of January, 2006, to the following parties:

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