BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Petition of	**)**	
Alma Telephone Company	**)**	
for Arbitration of Unresolved	**)**	**Case No. IO-2005-0468, et al.**
Issues Pertaining to a Section 251(b)(5)	**)**	**(consolidated)**
Agreement with T-Mobile USA, Inc.	**)**	

Petitioners' Post Hearing Brief

Issues 1-5: Pre Negotiation Traffic Compensation

Issue 1: Coordinated Resolution of Past Compensation Issues with Prospective Termination Agreement

1a. Is the coordinated resolution of uncompensated T-Mobile traffic terminating to Petitioners prior to the commencement of negotiations an unresolved issue properly within the scope of these arbitrations?

1b. If the decision with respect to 1a is in the negative, TTA Section 5.5 should be ordered deleted, and Issues 2, 3, 4, and 5 need not be addressed in this proceeding.

1c. If the decision with respect to 1a is in the affirmative, should TTA Section 5.5 be ordered included as written.

Issue 2: Past Traffic Volumes

2a. What dates should be utilized for computing the past uncompensated traffic volumes?

2b. What traffic volumes have terminated without compensation to Petitioners between the dates determined in 2a?

Issue 3: Past Traffic Jurisdiction

3a. Of the past traffic volumes determined in 2a, what amounts of such traffic are intraMTA?

3b. Of the past traffic volumes determined in 2a, what amounts of such traffic are interMTA?

3c. Of the interMTA traffic determined in 3b, what amounts are terminating interstate traffic?

3d. Of the interMTA traffic determined in 3b, what amounts are terminating intrastate traffic?

Issue 4: Rates for Past Traffic Volumes

4a. What rate should be applied to the intraMTA traffic volume determined in 3a?

4b. What rate should be applied to the interMTA interstate traffic volumes determined in 3c?

4c. What rate should be applied to the interMTA intrastate traffic volumes determined in 3d?

Issue 5: Compensation for Past Traffic Volumes

5a. Taking the volumes of traffic determined in 3a times the rate determined in 4a, the volumes of traffic determined in 3c times the rate determined in 4b, the volumes of traffic determined in 3c times the rate determined in 4c, and adding those products together, what is the total compensation owed for past traffic?

Petitioners' Brief for Issues 1-5:

The reciprocal compensation agreement provisions of the 1996 Telecommunications Act do not envision uncompensated traffic terminating prior to the date of an interconnection request. The Act envisions the terms of the arbitrated interconnection agreement are made effective as of the date of an interconnection request that results in an approved or arbitrated agreement. This is done via interim rates which are "trued up" after final rates are established.

The situation in Missouri is different. T-Mobile has sent traffic to SBC, and SBC has transited it to Petitioners, in violation of tariffs, interconnection agreements, and Commission Orders. Utilizing a January 13, 2005 date of interconnection request as a cutoff date for uncompensated traffic terminating does not suffice to address traffic that terminated prior to January 13, 2005.

Petitioners have included coordinated resolution of pre-negotiation traffic issues in Traffic Termination Agreements approved for Cingular, Sprint PCS, Alltel, and US Cellular. Petitioners had an obligation under 47 USC 252 (i) to make the same TTA available to T-Mobile. Petitioners did so. T-Mobile agreed to a TTA with such provisions with MoKan Dial Inc. and Choctaw Telephone Company. Traffic Termination Agreements containing such provisions have been approved. See TK-2005-

0461 and TK-2005-0462. This has resulted in dismissals of all complaints in TC-2002-57 except those pending against T-Mobile.

Petitioners disagree that additional complaint proceedings would be a better or more efficient vehicle for resolving past compensation issues. TC-2002-57, the complaint case, has been pending for approximately 4 years. There have been two separate evidentiary hearings. A separate complaint by Mid-Missouri against T-Mobile will have to be added. The pending complaints of the other Petitioners will have to be updated to address 2001-2005 traffic.

Compensation for traffic terminating to Petitioners prior to January 13 was the subject of negotiations between Petitioners and Respondent. It was listed as an open issue in the Petition for Arbitration. It is a proper subject matter for arbitration. 47 USC 252 (b)(1) provides that open issues in the negotiation, as identified in the petition for arbitration and response, are properly within the scope of an arbitration. 47 USC 252 (b)(4) provides the Commission shall limit its consideration ... "to the issues set forth in the petition and in the response".

TTA Section 5.5 contains the language used in previous TTAs. It states:

> "5.5 At the same time that the Parties execute this Agreement, they are entering into a confidential agreement to settle all claims related to traffic exchanged between the Parties prior to the effective date of this Agreement. Each Party represents that this settlement agreement completely and finally resolves all such past claims.

Petitioners do recognize that it is awkward to impose such voluntary settlement language into an arbitrated agreement. Petitioners will relent on issues 1-5.

Issue 6: Prospective interMTA/Interstate Factors

6a. Have Alma and T-Mobile agreed that all T-Mobile traffic terminating to Alma is intraMTA?

6b. Which traffic studies does the Arbitrator believe to be the more accurate?

6c. What proportions of T-Mobile Traffic Terminating to Chariton Valley are interMTA and intraMTA?

6d. What proportions of T-Mobile Traffic Terminating to Chariton Valley are interMTA and intraMTA?

6e. What proportions of T-Mobile Traffic Terminating to Chariton Valley are interMTA and intraMTA?

6f. The proportions determined in 6a, 6c, 6d, and 6e should be ordered inserted into the respective TTA Appendix 2

Petitioners' Brief for Issue 6:

Alma has proposed a 0.0% interMTA factor, which T-Mobile has agreed to. There is no need for interstate/intrastate proportions of interMTA access traffic necessary for the Alma TTA. Access traffic factors are not an issue between Alma and T-Mobile.

Following is a summary of the factors Petitioners Chariton Valley, Mid-Missouri, and Northeasts' traffic studies establish. These include the interMTA traffic factor, and the factor for determining what proportions of interMTA access traffic that is interestate and intrastate. This summary also sets forth the lower--much lower--factors Petitioners have included in their final offers. T-Mobile offered interMTA factors that were one-half of the factors Petitioners offered but T-Mobile did not accept[1]. T-Mobile also proposed

[1] Ms. Deitrich's cross examination of T-Mobile witness Pruitt established that these proposals were not based upon any traffic analysis, they were just arbitrarily calculated at one-half of Petitioners' offers:

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8        Q.   On Issue No. 6 -- and let's just take a look at 6A.
 9        A.   Okay.
10        Q.   Under T-Mobile position -- or T-Mobile -- T-Mobile
11   language is 13 percent interMTA and 87 percent intraMTA.  And
12   then under T-Mobile's position the last sentence says, rather
13   than request zero percent interest in the absence of such
14   supporting data, T-Mobile believes 13 percent is a reasonable
15   percentage.
16             How was that 13 percent calculated?
17        A.   It's simply half of the 26 percent proposed by the
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factors that assigned more of the interMTA traffic to the interstate jurisdiction. The factors T-Mobile offered are included in parenthesis for comparison purposes:

Company	**Traffic Study InterMTA Factor**	**InterMTAFactor Factor Co. offered in Negotiations**	**Interstate Proportion of InterMTA Traffic**
Ch. Valley	73.0%	26.0% (13.0%)	20% (50.0%)
Mid-Missouri	16.7%	16.0% (8.0%)	20% (50.0%)
Northeast	100.0%	22.5% (11.25%)	20% (50.0%)

Petitioners Chariton Valley, Mid-Missouri, and Northeast have introduced traffic studies into evidence to support their respective interMTA factors of 73%, 16.7%, and 100%, and also the 20%/80% interstate/intrastate proportions of interMTA traffic. These studies document higher interMTA factors than these Petitioners have offered. Chariton Valley, Mid-Missouri, and Northeast performed these traffic studies for the T-Mobile wireless-to-landline traffic terminating to them over the SBC trunks. These studies measured the proportions of SBC transited wireless-to-landline traffic that are interMTA or intraMTA in jurisdiction. These studies further indicate the proportions of interMTA traffic that are interstate and intrastate.

These studies were performed on actual call data for traffic actually terminating to Chariton Valley, Mid-Missouri, and Northeast. The studies assigned the Major Trading Areas (MTAs) associated with the originating caller's NPA-NXX and the terminating party's NPA-NXX. If the originating and terminating MTAs were different, the calls were categorized as interMTA calls. If the originating and terminating MTAs were the

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18   rural LECs.
19        Q.   And is that the same for each one of them?  It
20   would be just half of the rural ILECs proposal?
21        A.   Yes.
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same, the calls were categorized as intraMTA calls. See Direct Testimonies of James Simon, Denise Day, and Gary Godfrey, Exhibits 3, 5, 1, Attachment 1 HC to each. See also Tr. 70-71, 75-78). Mr. Godfrey described this methodology at TR. 75-78.[2]

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18 REDIRECT EXAMINATION BY MR. CRAIG JOHNSON:
19 Q. Mr. Godfrey, let's turn to that traffic study
20 that's attached to your testimony. And I -- I want to -- I
21 want you to tell us what it is and what it's not.
22 First of all, does that traffic study encompass any
23 IXC provision traffic?
24 A. No, it does not.
25 Q. Does it -- does that traffic study encompass any
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1 traffic that originated from a Northeast exchange?
2 A. No.
3 Q. Can you describe, again, what traffic that study
4 specifically studied?
5 A. This specific T-Mobile study studied any call that
6 we identified that was in a NPA/NXX controlled or owned by
7 T-Mobile that terminated to our company over the Southwestern
8 Bell trunk group.
9 Q. And using some of the characterizations of the
10 past, that would be SBC transited traffic?
11 A. That's correct.
12 Q. It wouldn't be any IXC traffic that was terminated
13 to Northeast?
14 A. No, it would not.
15 Q. Was this study submitted in the pending complaint
16 case, TC-2002-57?
17 A. I believe it was, yes.
18 Q. And as I understand it, the traffic study shows
19 100 percent of the T-Mobile traffic terminating over the Bell
20 trunk as being interMTA?
21 A. That's correct.
22 Q. Could you explain to the Arbitrator and the
23 Advisory Staff what happened in the complaint case that
24 resulted in proposing a lower factor for the T-Mobile traffic?
25 A. As I understand it, there were other options of --
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1 of identifying how much interMTA traffic there was. There was
2 a tower count methodology that was presented. It showed
3 somewhat less -- it showed less than 100.
4 I don't remember the exact percentage, but it
5 showed a lower percentage when you looked at towers in
6 Missouri.
7 So this was basically a negotiated number, an
8 arrived-at number as something acceptable to our company, to
9 PSC Staff, who I believe provided the tower count methodology.
10 And we just agreed to it, thinking that would be a very
11 reasonable offer.

The interMTA traffic identified in the studies was further studied to produce the intrastate/interstate proportions of interMTA traffic so the appropriate access jurisdiction can be applied. As interstate access rates are lower than intrastate, the higher the interstate factor the less cost T-Mobile will incur. Northeast's study showed 22.5 % of interMTA traffic to be interstate. Mid-Missouri's study showed 19.259% of interMTA traffic to be interstate. Chariton Valley's study showed 15.9% of the interMTA traffic to

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Q. Did T-Mobile agree to it in that case?
A. It was my understanding they did verbally. They did not -- it was my understanding there was some verbal agreement, but there was nothing ever signed on it. But I wa-- could be wrong on that.
Q. Looking at the Schedule 1 to your testimony, could you describe which of the calls are identified as interMTA calls and which ones are identified as intraMTA?
Well, I guess you have no intra.
A. Zero intra.
Q. Can you describe how you prepared the -- or you -- or measured the proportions of the interMTA traffic that were interstate in jurisdiction versus intrastate in jurisdiction?
A. There is a column on this study that just

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identified the state of that NPA/NXX. So we went through and identified the quantities, the seconds, in this case. You could convert them to minutes if you chose.
But we looked at any state, other than Missouri, added up those seconds and looked at it as a relationship to the total seconds. And it came out to be 22.5 percent of the calls came to us from outside the State of Missouri.
Q. For example, if I look at the third and fourth columns over on the first very first row, it shows the originating city is Wichita, Kansas, and the terminating MTA is St. Louis?
A. That's correct.
Q. And that would be interstate?
A. That's correct.
Q. And can you go down and point out another row that would be inter-- intrastate traffic?
A. I think the -- the first one I come to is Sedalia, Missouri is intrastate, and that would be on line 9. On line 9 there's a group of calls that came from Sedalia, a total of 101 calls. And those would be considered an intrastate call.

be interstate. (Ex. 1, Godfrey Direct, page 6; Ex. 3, Day Direct, page 6; and Ex 5, Simon Direct, page 6; Tr. 77-78, 97-98, 111-113, 123).

The Commission has previously accepted the validity of the method utilized by the Chariton Valley, Mid-Missouri, and Northeast traffic studies. In a complaint that involved the same type of traffic—T-Mobile to landline (Mark Twain) traffic transited by SBC—the Commission's January 27, 2005 Report and Order in TC-2002-1077, at pages 25-26, adopted the factors established by Mark Twain's study:

> "A month-long traffic study for Complainant Mark Twain, based on originating NXXs, suggested that 70% of the traffic is interMTA traffic. Complainant Mark Twain and the Wireless Respondents nonetheless agreed on the 53% factor after negotiation. Based on the traffic stud, the Commission finds that 70% of this traffic is interMTA traffic."

The *Mark Twain* decision is precedent for accepting the validity of the studies submitted by Chariton Valley, Mid-Missouri, and Northeast. The Commission accepted the methodology of an NPA-NXX study to ascertain traffic jurisdiction. The Commission accepted the traffic study factor notwithstanding that Mark Twain and T-Mobile had stipulated to a lower factor. The Commission accepted the validity of a one-month study. Here, Mid-Missouri's study is one month, Chariton Valley's is two months, and Northeast's is a three month study.

In its testimony, T-Mobile stated the Commission should reject any traffic factors <u>not substantiated by empirical studies and appropriate surrogates</u>. See the Direct Testimony of Mr. Pruitt, Ex 16, page 14, lines 13-14. In contrast to Petitioners, T-Mobile placed no evidence into the record to support ***any*** the following traffic factors T-Mobile proposes to be adopted:

a. the Chariton Valley wireless-to-landline SBC transited traffic interMTA factor of 13%;

b. the Mid-Missouri wireless-to-landline SBC transited traffic interMTA factor of 8.0 %;

c. the Northeast wireless-to-landline SBC transited traffic interMTA factor of 11.25%;

d. to assign 50% of the wireless-to-landline SBC transited interMTA traffic to interstate access, and 50% to intrastate access (for Chariton Valley, Mid-Missouri, and Northeast);

e. to divide the total wireless-to-landline SBC transited traffic by 65% to determine the total traffic flowing both ways (via SBC or via IXCs[3]);

f. to multiply the derived total arrived at in (e) above by 65% to ascertain the total traffic terminating to Petitioners;

g. to multiply the derived total arrived at in (e) above by 35% to ascertain the total traffic terminating to T-Mobile:

h. to then "net bill" by subtracting the total arrived at in (g) from the total arrived at in (f) to determine the net traffic volumes Petitioners would bill T-Mobile.

T-Mobile's own standard requires that factors must be supported by empirical evidence or evidence of "appropriate surrogates". Under that standard, all of these T-Mobile proposals must be rejected for lack of any evidentiary support. None of these factors is supported by empirical evidence or appropriate surrogates. Not only did T-Mobile fail to support its proposed factors, it objected to producing data requested by Petitioners that may have enabled other studies to have been performed and introduced into evidence.

[3] T-Mobile's "net billing" proposal is not supported by any evidence. There is no balance of SBC transited traffic. It is one-way only, as SBC only terminates T-Mobile to landline traffic. There is no evidence of the balance of landline-to-mobile and mobile-to-landline IXC traffic. There is no evidence supporting T-Mobile's proposal to assume the total of both IXC and SBC traffic can be calculated by dividing the mobile-to-landline SBC traffic volumes by 65%. There is no evidence to support the proposal to take that total times 65% to determine total mobile-to-landline traffic, or by 35% to determine total landline-to-mobile traffic.

T-Mobile acknowledged that it is the only entity that captures the mobile customer's tower location at the time a call is made. T-Mobile chose not to produce that data to Petitioners. See Ex. 11, T-Mobile's objections to Petitioners' requests for this traffic data. T-Mobile acknowledged that the studies performed by Chariton Valley, Mid-Missouri, and Northeast were performed upon the only call information available to them. The transcript from the cross-examination of Mr. Pruitt, Tr. 250-262, contains these admissions.[4]

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24 Q. Okay. Do you understand that the studies that
25 out -- that Mid-Missouri, Northeast and Chariton Valley
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1 performed were based upon actual call data they received on
2 the Southwestern Bell trunks?
3 A. Yes, but I also understand that the data was based
4 on study methodology developed by those companies. And as I
5 understand it, dated -- data, meaning that it was not based on
6 current call patterns. Excuse me.
7 Q. Well, is -- do you agree with me that in order to
8 come up with a prospective factor, you have to study traffic
9 terminated prior to the agreement becoming effective?
10 A. If I understand your -- your question, that
11 normally would you have data before a factor is developed
12 that's agreed to in a negotiation, I think the answer to that
13 is yes.
14 Q. Basically in a perfect situation, the parties would
15 negotiate a factor based upon historical traffic that they
16 thought was a fair approximation of what the future would be?
17 A. Yes. And generally in that scenario, the parties
18 would agree to, you know, the methodology used if you know
19 what the standards were for the study.
.....

4 Q. And -- and let me put that -- spit that back to you
5 in my words to see if we're connecting here.
6 You understand that they performed their cost study
7 based on an assumption as to where the NPA/NXX associated with
8 the wireless caller, that that actually came from his home
9 MTA?
10 A. Yes.
11 Q. But you -- what you also as part of your answer you
12 indicated that the FCC, the feds -- the FCC has stated that
13 for purposes of determining what's intraMTA you look at the
14 originating cell tower location at the time the call is
15 initiated?
16 A. That's correct.

Q. Do you understand that in the traff-- traffic information stream that we receive over the Bell trunk group, we do not get any information that identifies the cell tower that the wireless customer was at, at the time the call was initiated?
A. Yes, I understand that.
Q. And would you agree with me that it's common in the industry for the wireless carriers not to provide that information to the intercarrier billing system?

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A. Yes, I believe that's true.
Q. So you can't fault us, if you will, for what you don't give us; is that fair? Can't fault --
A. It --
Q. -- us for not having what you don't give us?
A. It -- it -- it's somewhat -- somewhat fair. I would -- I would just add that certainly there's a way to come to agreement on what -- on -- on how you deal with that in any given study.
Q. Do you agree with me that T-Mobile knows from its switch reportings where those wireless call -- what -- what cell tower or what tower those calls originate upon?
A. I believe on a current basis that there is probably some information maintained for some short period of time that tells them cell sites. From a historical perspective, I don't believe that that data is maintained.
Q. I know it's not maintained. But for purposes of billing your end-user, sometimes you need to know that in order to know whether that call was placed within their local calling area or whether it was a roaming call; is that correct?
A. Yes, I believe so.
Q. In your -- your testimony when you refer to empirical evidence, when you say the word "empirical," what are you talking about? Is that actual call information or is

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that statistical information? What is that?
A. It -- it could be both. But generally that would mean actual call databased on some specific period of time that's mutually agreed to that you could look at.
Q. And appropriate surrogates, what do you mean by the word "appropriate surrogates"?
A. That it's -- that parties can sit down and look at -- look at local service boundaries, look at MTA boundaries, look at where switches are, look at any number of different things to -- to take a good guess at what an actual factor might be.
Q. Okay. Has T-Mobile put into the record in this case any traffic studies for the wireless to landline traffic terminating to these four Petitioners?
A. Not to my knowledge.
Q. So you haven't put any empirical evidence into the record?
A. Not to my knowledge.
Q. In this case, as I understand it, you're suggesting

that we're responsible to compensate you for landline to T-Mobile intraMTA calls that are carried by interexchange carriers; is that right?
A. That's correct.
Q. Have you placed into evidence in this case any empirical information as to how much of that traffic is

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interMTA versus intraMTA?
A. Not to my knowledge.
Q. Okay. Of the landline to mobile IXC provision traffic, have you placed into evidence any empirical information as to how much of the interMTA traffic is interstate or intrastate?
A. Not to my knowledge.
Q. And let me go -- did you have the position statements or the DPL, the decision point list?
A. Yes, I do.
Q. Whatever we're calling this thing. Position statement.
On page 5 of 7, I'm on issue No. 10, sir. I guess to be fair the -- the box starts on page 10. And --
A. You mean we're looking at item -- Issue No. 10?
Q. Yes, sir.
A. Okay.
Q. Again, don't let me put words in your mouth if they're not accurate.
But as I understand your position -- or T-Mobile's position, they are proposing that we take the amount of traffic that comes down the Bell trunks, the CTSR traffic, divide that by 65 percent to come up with the total traffic that's going both ways, whether it's carried by Bell or whether it's carried by an IXC; is that right?

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A. I think that's correct.
Q. And then of that total number, you're proposing that we bill you for 65 percent of it, and that you bill us for 35 percent of it; is that correct?
A. Yes, or -- or either have the LEC doing that bill. But the answer is yes.
Q. So, yeah -- yeah, the net billing might result in us billing you for 30 percent of the total?
A. Right.
Q. All right. Can you tell me where you came up with the idea that it was -- well -- well, strike that. Let me start over again.
How do you determine what relationship the total volume of T-Mobile traffic coming down the Bell trunk has to the traffic that's being exchanged through an IXC?
A. Since that traffic doesn't terminate over that same trunk or it -- it really isn't all the traffic that's on that trunk group.
Q. Is there any evidence in the record to support the conclusion that the total amount of traffic is accurately estimated by dividing the Bell terminating traffic by 65 percent?

A. There is no empirical evidence; however, that's a standard that's commonly used throughout the industry. And -- and certainly wireless carriers and rural LECs in other

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states have agreed to factors in that range.

Q. Well, whenever I say I want company-specific information, you tell me about industry standards; when I say I want to use an industry standard, you say, oh, we've got to have company-specific costs.

I'm -- do you have to support that 6 -- that 65 percent with empirical evidence under your own standard you'd apply to us?

A. Yes.

Q. And you failed to do that; is that right?

A. Yes, we failed to provide any empirical data. But again, that could be an item that's subject to negotiation between the parties.

Q. Did you help T-Mobile prepare answers to my Data Requests in this case?

A. I reviewed them, but I did not actually provide any input to the responses.

Q. Did you see the Data Requests where we asked for your information with respect to the traffic coming over the Bell trunks to us, as well as the traffic being carried by the IXCs?

A. Yes, I -- I remember reviewing that.

Q. And is it correct that T-Mobile objected to providing us that data?

A. I believe that's the case, yes.

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Q. So to the extent our call studies that looked at the actual calls coming down the Bell trunks, you would agree that that meets your test of using empirical evidence?

A. No, I don't agree with that. I -- I don't think those -- again, those calls aren't based on current call patterns. And -- and then, again, they're based on something other than the south side standard.

Q. Okay. Let me ask you some questions. Do you understand that Northeast's traffic study showed 100 percent of the traffic being interMTA?

A. Yes.

Q. Now, I'm not asking you to accept the validity of that.

But you also understand that as a result of the negotiations that took place in prior complaints, as well as this interconnection negotiation, Northeast has offered a 20 -- 22.5 percent factor?

A. Yes, I'm aware that that's what they've offered.

Q. Are you wanting the Commission to -- if the Commission feels like the 100 percent is the only factor supported by a traffic study, do you think they have the authority to accept the 22.5 percent that was offered?

A. I'm not an attorney. I don't know what authority they -- they would have.

Q. I understand that in -- in -- in going back to the

The factors awarded in this arbitration must be supported by the record. The only evidence in the record to support the factors are the traffic studies of Chariton Valley, Mid-Missouri, and Northeast. The final offer interMTA percentages from Chariton Valley, Mid-Missouri, and Northeast are substantially less than what the traffic studies support. Awarding the final offers of Petitioners will provide a significant financial benefit to T-Mobile in making T-Mobile pay less in access charges than the actual traffic studies would dictate.

Petitioners' final offer factors supported by competent evidence in the record, and which should be adopted, are the following:

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DPL that T-Mobile's position with respect to Northeast is that they -- that they would acc-- T-Mobile would accept 11.25 percent?
A. Yes, I believe that's correct.
Q. And can you tell me how you came up with that number?
A. Half of the number proposed by that LEC.
Q. So, again, it's -- it's not supported by empirical data, it's just half of what the company offered?
A. Yeah, and -- and we believe that it's reasonable based on interMTA factors, you know, that we've agreed to in other states.
Q. Would you agree with me that traffic patterns or the jurisdictions of traffic between a small rural ILEC and T-Mobile -- I'm sorry. Let me start that again.
That the traffic patterns are going to be different between T-Mobile and different ILECs?
A. They may or not -- may not be. I think it depends on the circumstances.
.....

Q. Do you know, Mr. Pruitt, has T-Mobile ever -- T-Mobile ever performed a traffic study of the traffic that they send to Northeast, Chariton Valley, Mid-Missouri or Alma?
A. Not to my knowledge.
Q. Okay. Have you asked, and told it's never been done?
A. No, I have not.
Q. You just haven't asked?
A. (Witness shaking head.)

Company	InterMTA Factor	Interstate Proportion of InterMTA Traffic
Alma	0.0	N/A
Ch. Valley	26.0%	20%
Mid-Missouri	16.0%	20%
Northeast	22.5%	20%

Issue 7: Prospective IntraMTA Rate

7a. What intraMTA rate should be adopted for intraMTA T-Mobile traffic terminating to Alma?

7b. What intraMTA rate should be adopted for intraMTA T-Mobile traffic terminating to Chariton Valley?

7c. What intraMTA rate should be adopted for intraMTA T-Mobile traffic terminating to Mid-Missouri?

7d. What intraMTA rate should be adopted for intraMTA T-Mobile traffic terminating to Northeast?

7e. The rates determined in 7a, 7b, 7c, and 7d should be ordered inserted in the respective TTA Appendix 1.

Petitioners' Brief for Issue 7:

The intraMTA rate is the one issue which is factual in nature. This issue is subject to conflicting testimony of which the Commission must decide which is more appropriate. Petitioners have submitted the HAI forward looking cost analysis of Mr. Robert C. Schoonmaker of GVNW. T-Mobile has submitted the *ad hoc* forward looking cost analysis of Mr. Craig Conwell. The following summarizes the cost result each witness has placed into evidence[5]:

Company	HAI Cost	Conwell Cost
Alma	$0.912	$0.0074
Chariton Valley	$0.532	$0.0074
Mid-Missouri	$0.685	$0.0074
Northeast	$0.571	$0.0074

[5] See Exhibit 8, Direct Testimony Schoonmaker, Schedule RCS-1, Page 1. See Exhibit 13, Direct Testimony Conwell, Page 33.

Petitioners have each offered a 3.5 cent rate for intraMTA traffic in the TTA. This 3.5 cent rate is between 1.82 to 5.72 cents less than the rate produced by their cost studies. Petitioners had agreed to a 3.5 cent rate in their approved TTAs for Cingular, Sprint PCS, Alltel, and US Cellular. Petitioners have offered that same rate to T-Mobile. In its final offers, T-Mobile proposed a rate of 1.5 cents. This rate is more that the rate produced in its witness' cost study.

T-Mobile has previously agreed to a 3.5 cent rate with other Missouri rural ILECs with similar forward looking costs as developed by Mr. Schoonmaker. TTAs with this 3.5 cent rate have been agreed to by T-Mobile and approved with Ozark Telephone Company, Seneca Telephone Company, and Goodman Telephone Company in TK-2004-0166, TK-2004-0167, and TK-2004-0165.

This 3.5 cent intraMTA rate has been negotiated and approved in 70 or so agreements between rural Missouri ILECs and wireless carriers. See the attached list of TTAs approved in Missouri. Each of these agreements with a 3.5 cent rate traces its origins back to the February 8, 2001 Report and Order in TT-2001-139, *in the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce its Wireless Termination Service*.

Mark Twain was not a reciprocal compensation agreement case. The decision is not an express approval of the Schoonmaker HAI study for purposes of reciprocal compensation. However, in its *Mark Twain* decision the Commission indicated acceptance of the validity of the HAI study performed by Mr. Schoonmaker. The Commission indicated acceptance of the use of the HAI model, and accepted the validity

of the type of rural-specific default input modifications Mr. Schoonmaker makes in this arbitration. The Commission rejected wireless carriers proposals for lesser forward looking rates such as T-Mobile proposes here. The following excerpts from that decision, with underscoring, demonstrate:

> "The rates were developed using a forward-looking cost study generated by the HAI Model, Version 5.0a, which has been sponsored by AT&T in numerous proceedings in this state and elsewhere. The model has been extensively documented. The model provides outputs in the form of the cost of access. The model has over 1,000 user-definable inputs, some of which were modified by the Filing Companies' expert consultant, Schoonmaker, from the default values in order to better "fit" the model to the Missouri small, rural ILECs. In particular, the model was modified to reflect the significantly larger percentage of buried plant in rural Missouri; to reduce the overall rate of return to 11.25 percent; to reduce the level of total interoffice minutes to a level more representative of the small LECs; to increase central office switching equipment investment; to increase customer operations expense; to eliminate the network operations expense projected reduction; to reflect the small LECs' actual ratio of central office switching expense to investment; to reflect Staff's guideline depreciation rates for Missouri small companies; and to more realistically reflect the sharing of outside plant structures with other utilities.
>
> The HAI Model was run for each of the Rural ILECs and the result compared to each company's filed access rates. *See* Schedule RCS-2. The HAI Model resulted in per-minute rates ranging from $0.0454 to $0.4369, with an average of $0.1149. Because the HAI-developed rates were higher, in most cases, than the current filed, traffic-sensitive switched access rates, the latter were used to develop the proposed wireless termination tariff rates. The forward-looking rates produced by the HAI Model, including the adder, average $0.1149...
>
> The expert witnesses sponsored by the CMRS carriers uniformly take the position that the HAI-generated rates are too high and that the rates contained in the proposed tariffs are too high. SWBW's expert witness testified, for example, that most of the CMRS-to-small-LEC termination rates in this country are close to $0.0100 per minute, while the proposed tariffs herein at issue set per-minute rates ranging from $0.0506 to $0.0744 per minute of use, with an average of $0.0605. The Filing Companies' expert witness testified that, in his opinion, the experts sponsored by the CMRS carriers were generally unfamiliar with the cost characteristics of small ILECs.
>
> Switching costs, based on software costs and central processor costs, are significantly less for large ILECs such as SWBT, Sprint and GTE (now Verizon), than for small ILECs such as the Filing Companies. The cost of switching per call rises as the size of the switch gets smaller. The same applies to the cost of transport capacity. Small exchanges with low traffic volumes have very high

per-call transport costs. Large LECs are able to spread their costs over much greater traffic volumes, resulting in substantially lower costs per call."

In its testimony, T-Mobile calculates a single average cost of $0.0074, less than eight-tenths of a cent per minute. T-Mobile states individual Petitioner rates should not be allowed to exceed this figure, although T-Mobile offered to accept a $0.015 rate. The cost T-Mobile calculates for Petitioners appears to be *less than* the rates T-Mobile pays for traffic exchanged with SBC. T-Mobile, via its corporate predecessors, has had three interconnection agreements with SBC approved in Missouri. Petitioners have found no approved agreements with SBC in the name of T-Mobile. In TO-98-12 the agreement between Western Wireless and SBC provided a $0.01 rate. In TO-99-322, the agreement between Aerial and SBC provided a $0.009 rate. In TO-2001-489, the agreement between Voicestream and T-Mobile provided a $0.01 rate. Each of these rates is higher than the $0.0074 cost T-Mobile calculated for Petitioners.

It is counter-intuitive to conclude that the forward looking costs of Alma, Chariton Valley, Mid-Missouri, and Northeast would be less than those of SBC. Alma serves 350 customers in a very rural exchange. Chariton Valley serves about 8,600 customers in 18 rural exchanges. Mid-Missouri serves about 4,200 in 12 rural exchanges. Northeast serves about 8,800 customers in 14 rural exchanges. On a combined basis Petitioners serve about 22,000 customers in 45 exchanges, an average of about 2000 per exchange. SBC serves about 2,200,000 customers in 160 exchanges, an average of about 13,750 per exchange.

Mr. Schoonmaker's study was based upon the most widely accepted model for calculating forward looking costs. The HAI model has evolved and been subjected to a

vast amount of peer review and refinement. Mr. Conwell stated that the T-Mobile methodology was his own set of assumptions and interpretations of forward looking costs.[6]

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[6] See Tr. Pages 217-219:

CROSS-EXAMINATION BY MR. CRAIG JOHNSON:
Q. Good afternoon, Mr. Conwell.
A. Good afternoon.
Q. The -- what do you call -- what is your name for your set of assumptions that you've used to generate the forward-looking rates that you propose in this case? Does it have a name like HAI or something like that?
A. The assumptions and the input data or input to a forward-looking economic cost analysis of transport and termination.
Q. But you -- it doesn't have a con-- a name associated with it like HAI?
A. No, there's not a -- a published model name per se.

Q. And who prepared this forward-looking cost analysis for transport termination?
A. I did.
Q. So this is your -- for lack of a better word, it's your own model?
A. I wouldn't -- I -- I would characterize it as my model or my work. But -- but I think it's important to point out that what I did was to take the cost studies, as presented by the four ILECs, analyze those, and then to make corrections to those.
The spreadsheets that I used to do that were spreadsheets that embodied those corrections. So it was not an independent piece of work -- independent of the ILEC cost study. It built upon those studies, making corrections as necessary.
Q. Making corrections according to what?
A. According to the FCC's rules with regard to forward-looking economic costs, publicly available cost information.
Q. Accor-- and do the assumptions that you made with respect to those adjustments, do they follow the HAI Model or do they follow your interpretation of the FCC rules?
A. Well, the FCC rules require or -- or provide a definition of forward-looking economic costs. There is additional information about what can and cannot be included

in forward-looking economic cost. For example, imbedded costs would not be included.
So then with the framework of those definitions, I then analyzed the results of the cost studies produced by the HAI Model and made an assessment of where either the assumptions or data or results of that HAI -- HAI Model were

The FCC's selection of a "forward looking" cost (or price) requirement assures this Commission of a fertile area for dispute. Sometimes T-Mobile insists that forward looking costs must be based upon company-specific actual cost information. Other times T-Mobile insists that actual cost information is too high, and therefore T-Mobile opts for a hypothetical company cost structure. T-Mobile simply plays this game with only one thing in mind—the lowest forward looking cost possible. Where advantageous, T-Mobile bases its analysis upon a hypothetical cost structure it thinks should be in place, and upon a hypothetical system design it thinks should be in place. Often T-Mobile uses large ILEC (RBOC) data as hypothetical company substitutes for the actual data pertaining to Petitioner rural ILECs. This allows T-Mobile the freedom, if T-Mobile dislikes a company-specific assumption underlying Schoonmaker's analysis, to argue for hypothetical company assumptions.

Petitioners believe the record demonstrates Mr. Schoonmaker is intimately familiar with rural ILEC operations, and the inputs and modifications he made in his study are appropriate for Petitioners. The modification made to accurately reflect Petitioners' circumstances are set forth as Attachment RCS 2 to his direct testimony, Ex 8. In Exhibit 9, Schoonmaker rebuttal, pages 14-27, Mr. Schoonmaker proffers uncontroverted evidence as to why his cost assumptions are more appropriate for rural ILECs such as Petitioners, and Mr. Conwell's assumptions are better suited for RBOCs.

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inconsistent with the FCC rules or were not reflective of what would be the forward-looking costs of the -- of the ILECs.
And I base that on publicly available information.
Q. This assessment of where you believed the results were inconsistent with the FCC rules, that was your personal assessment; is that correct?
A. Yes.

The significant cost-driving issues concerned end office switching plant costs, ISUP signaling costs, and common transport costs.

This Commission has previously determined that the assumptions Mr. Schoonmaker makes are suited for rural ILECs. In the *Mark Twain* case cited before, the Commission accepted the proposition that:

> "switching costs, based on software costs and central processor costs, are significantly less for large ILECs such as SWBT, Sprint and GTE (now Verizon), than for small ILECs such as the Filing Companies. The cost of switching per call rises as the size of the switch gets smaller. The same applies to the cost of transport capacity. Small exchanges with low traffic volumes have very high per-call transport costs. Large LECs are able to spread their costs over much greater traffic volumes, resulting in substantially lower costs per call."

The Commission should adopt the 3.5 cent rate proposed by Petitioners. This rate is less than the forward looking costs of each Petitioner. This is the same rate T-Mobile has agreed to with Seneca, Goodman, and Ozark. This is the same rate that rural ILECs and other wireless carriers have agreed to in the overwhelming majority of approved traffic termination agreements in Missouri.

Issues 8-10: Obligation of Petitioners to Compensate T-Mobile for Landline to Mobile IXC Provisioned Traffic

Issue 8: Obligation of Petitioners to Compensate T-Mobile for Landline to Mobile 1+ IXC Traffic

8a. Is landline to mobile 1+ dialed IXC carried traffic reciprocal compensation traffic for which Petitioners are responsible to compensate T-Mobile?

8b. If the answer to 8a is in the negative, the appropriate language should be ordered incorporated into TTA Section 1.1.

8c. If the answer to 8a is in the negative, there is no need to consider issues 9, 10, and 12.

8d. If the answer to 8b is in the affirmative, Issues 9, 10, and 12 should be addressed.

Issue 9: Obligation of Petitioners to Compensate T-Mobile for Landline to Mobile 1+ IXC Traffic Terminating to a Ported Number

9a. Do Petitioners have suspensions or modifications from the obligation to perform intermodal local number porting?
9b. Does this issue need to be resolved now in order to address the possibility that intermodal LNP suspensions or exemptions are eliminated or removed?
9c. If or when Petitioners' suspensions or modifications are eliminated, is it appropriate for calls to a ported number to be included within the scope of the TTA?
9d. The appropriate language should be ordered inserted in TTA Section 1.1.

Issue 10: Should Bill and Keep with Net Billing Be Ordered?

10a. Assuming Petitioners are responsible to compensate T-Mobile for intraMTA landline to mobile 1+ IXC calls, what portions of such traffic are intraMTA?
10b. As Petitioners and T-Mobile do not directly interconnect, is bill and keep appropriate under 47 CFR 51.713(a)?
10c. Of the intraMTA landline to mobile 1+ IXC calls, are the volumes of such traffic compared to the mobile to landline T-Mobile traffic "roughly balanced" as set forth in 47 CFR 51.713(b)?
10d. How will such landline to mobile traffic be measured?
10e. How will such landline to mobile traffic be recorded?
10f. What billing records will be used for such landline to mobile traffic?
10g. Should references to CTUSRs in the TTA be included?
10h. If the parties are unable to measure such traffic, should the formula T-Mobile proposes for determining such landline to mobile traffic, which takes the volume of mobile to landline traffic, divides it by 60%, and then multiplies that result by 40%, be used to determine the amount of landline to mobile IXC traffic?
10i. The appropriate language should be ordered with respect to TTA Sections 1.1, 2.4, 5.1.1, and 5.1.2.

Petitioners' Brief for Issues 8-10:

Petitioners' presentation of this issue is very straightforward. IXC traffic is not subject to reciprocal compensation. It is only subject to access compensation. It is not appropriate for both access compensation and reciprocal compensation to be paid on the same call.

T-Mobile's presentation of this issue is a mess. T-Mobile asks that Petitioners pay it for reciprocal compensation for intraMTA landline-to-wireless IXC carried traffic. But for the reverse traffic T-Mobile says it should not have to pay reciprocal compensation to Petitioners. In both cases T-Mobile says access compensation should

remain in place. In other words T-Mobile requests two compensation regimes to apply. But T-Mobile does not propose that reciprocal compensation between Petitioners and T-Mobile be reciprocal.

T-Mobile recognized it is requesting reciprocal compensation for landline-to-wireless IXC calls.[7] T-Mobile recognized that, under FCC precedent, it was entitled to access compensation *from the IXC* for this traffic. However, because it was not getting paid by the IXCs, T-Mobile wants Petitioners to pay.[8]

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[7] Transcript pages 269-270:

17 Q. Is it your position in this case that for that
18 landline to mobile intraMTA IXC call that Petitioners should
19 receive originating access and pay you terminating reciprocal
20 compensation?
21 A. It's -- it's not -- it's -- it's not the T-Mobile
22 position that that's what should happen. That is what's
23 happening. And if -- if, in fact, the -- the -- the LEC is
24 going to continue to hand off the traffic on a 1-plus basis,
25 and that doesn't change, we are still owed reciprocal
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1 compensation for that traffic, because that is an
2 intraMTA call and subject to reciprocal compensation, you
3 know, pursuant to 51.701(b)(2).

.....

[8] Transcript pages 271:

3 Q. So you pay access compensation on an intraMTA call?
4 A. Yes.
5 Q. Carried by an IXC?
6 A. Yes.
7 Q. With respect to the landline to T-Mobile
8 IXC carried call, do you agree that the FCC has ruled that
9 T-Mobile is entitled to recover compensation from the
10 interexchange carrier, the Sprint PSC versus AT&T declaratory
11 judgment ruling?
12 A. That's a qualified yes.
13 Q. Yeah. I mean --
14 A. Because the FCC basically said that, in theory,
15 there's a right to bill for that traffic, but there had to be
16 a contract between the parties.
17 Q. Welcome to our world. We say you're entitled to
18 compensation, but you've got to go get into a contract after
19 the fact with the person that's sending the traffic. It's not
20 an easy situation, is it?
21 A. Well, in that particular case, it wasn't.

T-Mobile says that Petitioners' receipt of originating access from the IXC for landline-to-wireless traffic should not destroy T-Mobile's right to receive reciprocal compensation from Petitioners. But for wireless-to-landline traffic, T-Mobile testifies it contracts to pay access rates to IXCs to terminate these calls. The IXCs pay Petitioners terminating access. According to T-Mobile, Petitioners' receipt of access compensation from the IXC means Petitioners should *not* receive reciprocal compensation from T-Mobile[9].

In other words, Petitioners' receipt of access *justifies* making Petitioners pay T-Mobile reciprocal compensation. However, T-Mobile's payment of access compensation for wireless to landline IXC traffic *excuses* T-Mobile from having to pay Petitioners reciprocal compensation.

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[9] Transcript pages 270-271:

Q. Okay. Let's talk about the reverse just -- for just a discreet second here.
Does T-Mobile give some of its intraMTA calls to IXCs for termination in Petitioners' exchanges?
A. Yes.
Q. Is it true that T-Mobile, in order to do that, contracts with the interexchange carrier to carry that traffic for them?
A. Yes, normally they enter into wholesale services agreement for the transport of that traffic. And generally that includes language which requires T-Mobile to pay the terminating acc-- terminating access billed to the IXC by the LEC.
Q. You pay it to the IXC?
A. Yes.
Q. But you're not today paying us reciprocal compensation in addition to the access that the IXC is paying us?
A. Not for calls delivered to an IXC. But -- but

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again, we are paying for the terminating access, and it wouldn't be appropriate for us to pay for that twice.

But in its position statement, T-Mobile makes a "net billing" proposal[10] that is inconsistent with its testimony. The "net billing" proposal assumes *both* Petitioners and T-Mobile should pay each other reciprocal compensation for IXC traffic. In its position on issue 8a T-Mobile says the obligation to pay for IXC intraMTA traffic "runs in both directions", yet its testimony suggests a one-way payment.

The Commission should reject any attempt by any party to subject IXC traffic to reciprocal compensation agreements. IXCs are not entitled to be parties to reciprocal compensation agreements, only ILECs, CLECs, and wireless carriers. IXC traffic is subject to access compensation. Reciprocal compensation was never intended for IXC traffic.

T-Mobile pursues two faulty premises upon which its position is based. First, T-Mobile suggests that because the MTA is "local" for intercarrier reciprocal compensation purposes, Petitioners must offer to their subscribers the entire MTA as part of their local calling scope. Second, T-Mobile suggests it is permissible to ignore the regulatory fact that it is the IXC who is responsible for provisioning the landline to mobile IXC call. Both of these suggestions are incorrect.

With respect to the significance of MTA boundaries, the FCC has adopted the MTA as "local" for purposes of applying reciprocal *intercompany* compensation for traffic exchanged between a LEC and CMRS provider under the terms of an approved interconnection agreement.

[10] As Petitioners understand this proposal under issue 10, the quantity of mobile to landline traffic transited by SBC is the starting point for performing mathematical computation designed to compute the "universe" of landline to mobile traffic as well as wireless to landline traffic, whether transited by SBC as a LEC or provisioned by an IXC.

47 USC 251 (b) (5) creates the duty of telecommunications carriers to establish reciprocal compensation arrangements. 47 CFR 51.701 sets forth the scope of the reciprocal compensation rules. Subpart (e) of that rule is very clear that reciprocal compensation applies to intercompany compensation:

> "(e) Reciprocal compensation. For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier." (underlining supplied)

The rule establishing the MTAs, 47 CFR 51.701 (b) (2), establishes the MTA as "local" only for purposes of reciprocal compensation. This rule has nothing to do with what calling scope Petitioners afford their local customers. This rule has nothing to do with what calling scopes T-Mobile affords its local customers.

Neither Petitioners nor T-Mobile is obligated to offer the MTA as the local calling scope of their end-user customers. Petitioners' local calling scopes are established by state tariffs. T-Mobile's local calling scopes are established by the terms of its service offerings. At hearing Mr. Godfrey so testified, Tr. 78-80[11].

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22        Q.   Mr. Godfrey, one other thing.  I believe Mr. Mark
23   Johnson asked you early on about the significance of the major
24   trading area or MTA, and I believe your answer was that that
25   was the area the FCC has designated as being local; is that
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 1   correct?
 2        A.   For wireless traffic, yes.
 3        Q.   Is that the area that's designated by the FCC as
 4   being local for intercompany compensation purposes or for
 5   purposes of deciding what local offerings are made to the
 6   end-user customers of the wireless carriers or the landline
 7   carriers?
 8             MR. MARK JOHNSON:  I have to object.  That calls
 9   for a legal conclusion from the witness.
10             JUDGE PRIDGIN:  Could you ask your question again,
11   Mr. Johnson?
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Chariton Valley and Mid-Missouri have exchanges lying in both the Kansas City and St. Louis MTAs. Northeast has exchanges lying in three different MTAs, Kansas City, St. Louis, and Des Moines (Tr. 48-49, 65-66). Mid-Missouri and Chariton Valley both have exchanges in both the Kansas City and St. Louis MTAs (Tr. 82-84, 105-106). The Kansas City MTA covers the western half of Missouri and the eastern half of Kansas. The St. Louis MTA covers the eastern half of Missouri and the western half of Illinois. The Des Moines MTA covers most of Iowa, and a tiny portion of northeast Missouri.

It is ridiculous to suggest that the 30 Northeast customers in the Linn County portion of the KC MTA can make local calls throughout western Missouri and eastern Kansas, but cannot make a local call to neighboring Northeast exchanges which are in the St. Louis and Des Moines MTAs. Mid-Missouri's Fortuna exchange is evenly divided between the St. Louis and Kansas City MTA boundary. It is ridiculous to suggest that Fortuna exchange residents in the west side of Fortuna can make local calls to the eastern

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BY MR. CRAIG JOHNSON:
Q. To your knowledge, Mr. Godfrey, does the MTA apply to intercompany compensation or reciprocal compensation, as opposed to determining that T-Mobile has to offer its customers the entire MTA as part of their local service offering, or do you -- does Northeast have to offer the entire MTA as part of its customers' local service operator?
JUDGE PRIDGIN: I'll overrule the objection.
THE WITNESS: We and any tariffs or any directives from FCC or PSC do not have to offer that as a local call for our customers.
BY MR. CRAIG JOHNSON:
Q. Do you have whether or not T-Mobile offers its customers the entire MTA -- if that -- if the MTA boundaries

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are defined for the local calling scope for a T-Mobile customer-originated call?
A. I -- I really don't know.

half of Kansas, but cannot make a local call to Fortuna customers in the east side of Fortuna.

T-Mobile is not required to offer the entire MTA as part of its local calling scope. Wireless carriers are not regulated. It would be inconsistent with competition to have mandated calling scopes. It is common knowledge that wireless carriers offer a diversity of calling plans. These plans differ on the amount and type of calling permitted within the pricing package selected.

The FCC has made it clear that 51.703(b) concerns only intercarrier charges, not the charges carriers assess to their end users. In paragraph 31 of its May 31, 2000 Memorandum Opinion and Order in the *Matters of TSR Wireless, LLC, et al v. US West*, et al., FCC 00-194, the FCC stated:

> "Section 51.703 (b) concerns how carriers must compensate each other for the transport and termination of calls. It does not address the charges that carriers may impose upon their end users....MTAs typically are large areas that may encompass multiple LATAs, and often cross state boundaries. Pursuant to section 51.703 (b), a LEC may not charge CMRS providers for facilities use to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under reciprocal compensation if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier. This may result in the same call being viewed as local by the carriers and a toll call by the end-user."

The "IXC traffic issues" should be ruled in favor of Petitioners. IXC traffic is access traffic, not reciprocal compensation traffic. The following is Petitioners' suggested TTA language pertinent to the IXC traffic issue. This language is found in the introductory paragraph, and in Section 1.1. This is the language that has been submitted and approved in many TTAs between rural ILECs and CMRS providers, including T-Mobile. The language reads:

> "ILEC may terminate traffic originated by its end user customers and terminating to TMUSA through the facilities of another local exchange carrier in Missouri."
>
> "1.1 This Agreement shall cover traffic originated by, and under the responsibility of, one of the Parties and terminated to the other Party without the direct interconnection of the Parties' networks, and which terminates to the other Party through the facilities of another local exchange carrier in Missouri. "Traffic originated by and under the responsibility of," a Party means traffic that is originated by a Party pursuant to that Party's rate schedules, tariffs, or contract with the end-user customer. This Agreement does not cover traffic for which the originating party has contracted with an Interexchange Carrier ("IXC") to assume responsibility for terminating the traffic, or traffic originated by an IXC pursuant to the IXC's rate schedules, tariffs, end-users contracts, or presubscription rules. This Agreement shall cover both Local and Non-local Traffic as those terms are defined in Section 2 of this Agreement."

This language recognizes the right of T-Mobile to choose to interconnect indirectly through SBC, as it has done, and the corresponding right of Petitioners to likewise do so. Before Petitioners can lawfully do so, they would have to obtain interexchange service authority, amend their tariffs to make such calls local, and address the financial ramifications of doing so. If these things are done, the TTA would permit reciprocal compensation to apply to landline to mobile traffic, dialed on a local basis, and carried by SBC *in its LEC capacity*. T-Mobile's witness admitted that only LEC transiting is proper for reciprocal compensation, not IXC transport. [12]

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[12] Tr. Pages 268-269:

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15        Q.   And do you agree with me that when Bell does that,
16   they provide that transit function in their rule as a local
17   exchange company?
18        A.   Yes, I believe that to be the case.
19        Q.   Now, do you also agree with me that we don't
20   negotiate reciprocal compensation arrangements with
21   interexchange carriers such as AT&T, MCI, Sprint long
22   distance?
23        A.   Could you define for me we?  I'm --
24        Q.   Under the act --
25        A.   Certainly you can talk to an IXC and, you know, do
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 1   a wholesale agreement to transport traffic that's -- that's,
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This language recognizes that traffic which is originated by an IXC pursuant to its rate schedules, tariffs, end-user contracts, or presubscription rules, is not reciprocal compensation traffic subject to the TTA. FCC rulings make it clear that IXC carried traffic has been, and after the '96 Act continues to be, access traffic. It is not now subject to reciprocal compensation.

In Missouri there have been approximately 70 agreements between small rural ILECs and CMRS providers. A list is attached. All of these agreements exclude landline to wireless IXC traffic from reciprocal compensation. T-Mobile has entered into five (5) such agreements, *none* of which include an obligation for the LEC to compensate T-Mobile for landline to wireless IXC traffic.[13]

T-Mobile admits SBC is not paying reciprocal compensation on landline to wireless IXC provisioned traffic.[14]

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you know, not traditional IXC traffic.
Q. Have you ever seen an interexchange carrier in Missouri submit to the Missouri Commission for approval a Section 251(b)(5) reciprocal compensation agreement in which it was a party?
A. No, I have not.
Q. So I guess my question to you is, do you think that when an IXC provides a transport function, it's the same thing as when a LEC provides a transit function?
A. No, I don't believe it's the -- the -- the same thing.
Q. Okay.
.....

[13] See the T-Mobile Agreements approved for Ozark, Seneca, and Goodman in TK-2004-0166, TK-2004-0167, and TK-2004-0165. Also see the T-Mobile Agreements approved for Choctaw and MoKan Dial in TK-2005-0461 and TK-2005-0462.

[14] Tr. 263:
Q. Do you know if Southwestern Bell is paying T-Mobile for landline to wireless IXC traffic?
A. They are not.
Q. To your knowledge, is any ILEC in Missouri paying T-Mobile reciprocal compensation for 1-plus landline to IXC traffic?

T-Mobile relies on the Oklahoma *Atlas* decision to support the notion that Petitioners should pay T-Mobile for landline-to-mobile IXC carried calls. The *Atlas* decision fails to adequately address the statutory and regulatory authorities indicating that IXC carried traffic was never intended to be subject to reciprocal compensation.

The language of 47 CFR 51.701, which states that the local calling area for LEC/CMRS traffic is the MTA, only applies for the purpose of *developing* reciprocal compensation arrangements between a LEC and a CMRS provider. It is inappropriate to use this rule as a springboard from which to jump to the conclusion that intraMTA traffic provisioned by an IXC is reciprocal compensation traffic. Such a conclusion ignores the appropriate context of the rule. The rule does not answer the question of whether IXC traffic is subject to reciprocal compensation. Federal precedent demonstrates.

Prior to the 1996 Act landline to mobile IXC traffic was access traffic. It is Petitioners' belief that now, nine years after, no Missouri ILEC is paying reciprocal compensation for landline to mobile IXC traffic. There is good reason for this. Section 251(g) of the 1996 Act preserved the access regime for IXC traffic unless and until explicitly superseded by FCC prescribed regulations. The FCC Interconnection Order[15] was the FCC prescription of reciprocal compensation regulations. The FCC's Interconnection Order specifically retained the access regime for IXC traffic. Access was not superseded by reciprocal compensation for IXC traffic. The Interconnection Order did not include intraMTA IXC traffic within the scope of reciprocal compensation rules.

A. Could you re-- ask the question again, please?
Q. In Missouri -- any Missouri ILEC paying T-Mobile recip comp on a landline to wireless intraMTA IXC call?
A. I don't -- I don't know.

[15] August 8, 1996, CC Docket No. 96-98.

In paragraph 176 of the Interconnection Order the FCC concluded that the term "interconnection" referred to the physical linking of two networks for the mutual exchange of traffic. That paragraph also concluded that because interconnection refers to the physical linking of two networks, and not the transport and termination of traffic, "access charges are not affected by our rules implementing section 251(c) (2)".

Paragraph 1034 concluded that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic.

Paragraph 1036 of the Interconnection Order sets forth that the access regime was designed for situations where three carriers, with an IXC in the middle, collaborate to complete a call. The FCC contrasted the access regime with that intended for the reciprocal compensation regime. The FCC ruled that reciprocal compensation is intended for situations were two carriers, the LEC and the CMRS provider, collaborate to complete a local call. Where an IXC originates a call from an ILEC exchange, and carries it to the terminating CMRS providers, three carriers are involved in completing the call. The FCC Interconnection Order indicates that access, not reciprocal compensation, was intended for IXC provisioned traffic.

Paragraph 1043 of the Interconnection Order stated:

> "Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC..."

This indicates the FCC recognized that traffic carried by an IXC was subject to access. Based on its Section 254 (g) authority to preserve the access charge regime, in paragraph 1043 the FCC concluded IXC traffic would ***continue*** to be subject to the access regime, but not the reciprocal compensation regime:

> "Based on our authority under section 251(g) to preserve the current interstate access regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and <u>are assessed such charges for traffic that is currently subject to access charges</u>."

The underscored language means that IXC traffic, which the FCC recognized was currently subject to access charges, was to continue to be subject to access charges.

The Interconnection Order adopted rule §51.701(a), which defines the scope of the rules for reciprocal compensation for the transport and termination of local telecommunications traffic as follows:

> (a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

This rule limits the application of the reciprocal compensation to calls between LECs and other telecommunications carriers, and not to calls between <u>IXCs</u> and such carriers. A 1+ call is the IXCs call. This distinction from Paragraph 1036 is also made clear in the specific FCC definition of telecommunications traffic, found in §51.701(b) of the FCC's rules which states:

> (b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:
>
> > (1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, <u>except for telecommunications traffic that is interstate or intrastate exchange access</u>, information access, or exchange services for such access (*see* FCC 01–131, paras. 34, 36, 39, 42–43); or
> >
> > (2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

In a 2000 decision[16] the FCC stated that traffic carried by an IXC fell under access rules:

> Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under the reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.

There is no mistaking this underscored language. The FCC, four years after establishing reciprocal compensation rules, stated that access charge rules apply to IXC traffic.

The conclusion that IXC traffic is not reciprocal compensation traffic is further supported by a common sense analysis of carrier responsibilities. Simply put, IXC traffic does not belong to Petitioners. T-Mobile's characterizations that Petitioners have "chosen" to route this traffic to IXCs is incorrect. Mr. Schoonmaker's direct testimony, Exhibit 8 at pages 31-48, and his rebuttal testimony, Exhibit 9 at pages 27-32, comprehensively evaluates and reviews this issue.

Petitioners are not certificated to provide interexchange service. They do not offer toll service. They are not IXCs offering to transmit interexchange calls. Petitioners are certificated to provide exchange access to interexchange carriers (IXCs). See § 386.020(17), which defines Petitioners' exchange access as a service provided to carriers which enables those carriers to enter and exit Petitioners' networks. IXCs pay Petitioners for the use of Petitioners' originating and terminating services. The traffic for which originating and terminating access is paid by the IXC is the IXC's traffic. The IXC is the "calling party's network" provider responsible for paying compensation. T-

[16] *TSR Wireless, LLC v. U S West Communications, Inc.*, Memorandum Opinion and Order, Released June 21, 2000 FCC 00-194 (*"TSR Wireless Order"*), paragraph 31.

Mobile witness Pruitt recognized that IXCs and transiting LECs do not provide the same function, and that as a consequence IXCs do not participate in reciprocal compensation arrangements.

Petitioners are required by federal and state rules to deliver IXC traffic to the IXC chosen by the end user.[17] (Tr. 67-69, 72-73, 90, 96) These same federal and state rules unequivocally state that this traffic belongs to the IXC. The end user customer for purposes of IXC call is considered the customer of the IXC, not Petitioners. Petitioners are considered the access customers of the IXC, and are obligated to deliver the call to the chosen IXC. Petitioners are subject to slamming penalties for not directing this traffic to the appropriate IXC.[18] It is the IXC's responsibility to pay both originating and terminating compensation for these calls.

The FCC has ruled that IXCs are responsible to pay CMRS providers compensation for IXC provisioned traffic[19]. This was a dispute wherein Sprint PCS, a CMRS provider, requested a declaration that AT&T, an IXC, was responsible to pay

[17] T-Mobile witness Pruitt agrees, Tr. 265:

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0265
 1        Q.   Would you agree with me that if I am an ILEC
 2   customer and if I dial a call with a 1, that the ILEC has to
 3   give that call to the interexchange carrier I have chosen to
 4   carry that call for me?
 5        A.   I believe that's -- that that's the case.
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[18] The FCC slamming rules are found at 47 CFR 64.1120-1150. The Missouri slamming rule is 4 CSR 240-240-33.150. These rules make it clear that the choice of IXC belongs to the customer, and that the IXC traffic belongs to the IXC chosen by the customer.

[19] See *In the Matter of Sprint PCS and AT&T's Petitions for Declaratory Ruling on CMRS Access Charge Issues*, WT Docket No. 01-316, Declaratory Ruling, 2002 FCC LEXIS 3262, released July 3, 2002. (Sprint PCS not prohibited from billing ATT access, but ATT only had to pay pursuant to contract. § 69.5b of the FCC rules enables a LEC to impose access on IXCs. CMRS never operated under Calling Party Network Pays ("CPNP"). CMRS providers charge their end users for this. Because both IXCs and CMRS charge their customer for their services, it does not necessarily follow that IXCs receive a windfall when no compensation is paid to a CMRS carrier.

Sprint PCS terminating access compensation for IXC carried traffic. At paragraph 1 of that decision the FCC stated:

> "Based on the rules in effect during the period in dispute—from 1998 to present—we find that Sprint PCS was not prohibited from charging AT&T access charges..."

A reading of the entirety of the Sprint PCS decision confirms that the FCC considers access to be the appropriate regime for IXC traffic. The decision continually refers to the rights of both LECs and CMRS providers to charge access compensation for IXC traffic.

Petitioners disagree with the notion there can be both access compensation and reciprocal compensation owed on the same call. This makes little sense. A call is either subject to access or reciprocal compensation, but not both. Doubling intercarrier compensation on a single call is not good public policy.

Decisions of the Missouri Commission indicate understands that reciprocal compensation does not apply to IXC traffic. In a 1999 ruling in an arbitration between SBC and Mid-Missouri Cellular, the Commission ruled that landline to mobile traffic is properly a local reciprocal compensation call only if the ILEC and CMRS provider were locally interconnected, and the vertical and horizontal coordinates of the CMRS provider lie within the local calling area of the landline exchange:

> "The Commission agrees with SWBT that a call from a SWBT landline subscriber to an MMC cellular subscriber is properly rated as a local call only where: (1) the landline and cellular exchanges are locally interconnected; and (2) the V&H coordinates of the cellular exchange lie within the local calling area of the landline exchange. ... The Commission agrees with SWBT that local rating without local interconnection is inappropriate because the interexchange facilities of SWBT and of Sprint, a stranger to this action, would necessarily be employed in completing such calls." [20]

[20] *In the Matter of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular's Petition for Arbitration Pursuant to 47 U.S.C. Section 252 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. TO-99-279, Arbitration Order, p. 5 (Apr. 8, 1999).

T-Mobile and Petitioners are not locally interconnected for purposes of IXC traffic.

In 2001 the Commission approved wireless termination tariffs for most small rural ILECs. The wireless carriers opposed the tariffs as not complying with federal reciprocal compensation statutes and rules. These wireless carriers argued that the rural carriers had been compensated by "defacto bill and keep" for landline to mobile IXC carried traffic. The Commission approved the tariffs, and rejected the wireless carrier argument. It held the rural carriers were not obligated to compensate wireless carriers for such IXC traffic:

> "At present, with the termination of the PTC Plan, it is the norm that traffic between the small LECs and CMRS carriers is one-way traffic. This is because traffic to CMRS subscribers from the small LECs' subscribers is transported by IXCs and treated as toll traffic. ... [I]f the traffic is being carried by an IXC, the IXC must compensate the CMRS carrier for the termination of the call."[21]

T-Mobile challenged the Missouri Commission's approval of these tariffs before the FCC. The arguments T-Mobile makes in this arbitration were also made to the FCC. The FCC denied T-Mobiles challenge.[22] T-Mobile again argued that LECs had been compensated by defacto bill and keep for the landline to mobile IXC traffic. The FCC did not accept this argument, and approved the use of state tariffs.

In 2001 AT&T Wireless opposed a CLEC's wireless termination tariff in part because it did not recognize the LEC's responsibility to pay reciprocal compensation for landline to mobile IXC calls. The Missouri Commission rejected AT&T's argument,

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[21] *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service*, Report and Order, Case No. TT-2001-139, p. 17-18 (Feb. 8, 2001).

[22] *See the February 17, 2005 Declaratory Ruling and Report and Order regarding T-Mobile, et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, FCC 05-42, CC Docket No. 01-92.*

relying upon the fact that all of the CLEC's landline to wireless traffic was provisioned by an IXC:

> "All of Mark Twain's traffic that is destined for the NXXs of wireless carriers operating in Missouri, including AT&T Wireless and Sprint PCS, is currently dialed: (a) on a 1+ basis and carried by Mark Twain's customers' presubscribed interexchange carrier ("IXC"); or (b) on a 101XXX basis and carried by an IXC."[23]

In a 2005 complaint case T-Mobile contended that it was due compensation for landline to mobile IXC carried traffic because such traffic was "equivalent in volume" to wireless to landline traffic which was the subject of state wireless termination tariffs. The Missouri Commission rejected this contention because the landline to mobile traffic was carried by an IXC:

> "The Wireless Respondents maintain that the intraMTA traffic that they exchange with the Complainants is symmetrical, that is, that equivalent volumes flow in both directions. ... The record shows, and the Commission finds, that the Complainants routed all traffic originating on their networks and intended for subscribers of the Wireless Respondents through an IXC."[24]

The Commission's rulings denying these wireless carrier arguments, make sense because such traffic is the provisioning and compensation responsibility of the IXC, not of the ILECs in whose exchange these toll calls originate. As such traffic is the IXC's compensation responsibility, Petitioners are not responsible to pay compensation.

The Enhanced Record Exchange Rule (4 CSR 240-29.040(4)) imposed a requirement that calling party number (CPN) be included information on wireless to landline traffic placed on the LEC to LEC network. T-Mobile and other wireless carriers opposed this provision. They argued that ILECs such as Petitioners should be required to

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[23] *In the Matter of Mark Twain Communications Company's Proposed Tariff to Introduce its Wireless Termination Service*, Order Approving Tariffs, Case No. TT-2001-646, para 14 (October 16, 2001)
[24] *BPS Telephone Company, et al. v. Voicestream Wireless Corporation, Western Wireless Corp., and Southwestern Bell Telephone Company*, Case No. TC-2002-1077, Report and Order, p. 14 (Jan. 27, 2005).

do the same for landline to mobile IXC traffic. The Commission's May 6, 2005 Order 0f Rulemaking rejected this argument as "frivolous and unsubstantiated" as the wireless carriers failed to establish "any instance where rural carriers transmit compensable calls to wireless carriers."

It is clear from the underlying context of the Commission's decision that it believed such traffic is the provisioning responsibility of the IXC, and ILECs have no compensation responsibilities to the wireless carriers for this traffic.

Based upon the foregoing precedent, Petitioners are not responsible to compensate T-Mobile for landline to wireless IXC provisioned calls. Such calls are not reciprocal compensation calls, and are not within the scope of a reciprocal compensation agreement. As such the Arbitrator, and the Commission, should exclude any and all consideration of such traffic in ruling on the arbitration requests pending in this proceeding.

As Petitioners are not responsible for such landline to wireless IXC traffic, the Arbitrator cannot find that the traffic exchanged is "roughly balanced" justifying the imposition of bill and keep pursuant to 47 CFR 51.713.

Likewise, a "net billing" approach is unavailable. As Petitioners are not responsible for landline to wireless IXC traffic, there is no traffic Petitioners are responsible to pay T-Mobile for that should be netted against the T-Mobile traffic terminating to Petitioners. In addition, as set forth before in Petitioners' brief regarding issue 6, T-Mobile has failed to provide any evidentiary support that it would be an accurate surrogate to divide wireless to landline SBC transited traffic by 65% to arrive at the total LEC and IXC traffic going both directions, then to multiply that total by 65% to

arrive at the total wireless to landline IXC and SBC traffic, and to multiply that same total by 35% to arrive at the total landline to wireless IXC and SBC traffic, then to net bill the difference.

If the Arbitrator agrees, the following TTA sections 5.1.1, 5.1.2, and 5.1.3, proposed by T-Mobile, should be rejected:

> "5.1.1 Based on the assumption that the Local Traffic exchanged by the Parties will be roughly balanced (i.e., neither Party is terminating more than sixty (60) percent of the Parties' total terminated minutes for Local Traffic), the Parties shall initially terminate each other's Local Traffic on a Bill and Keep basis."
>
> "5.1.2 If Local Traffic is determined to be out of balance, each Party will pay the other for the Local Traffic it originates and that is terminated on the other Party's network. The Parties agree that, in light of the Parties' inability to measure the amount of interMTA traffic exchanged between the Parties and other traffic, the following traffic percentages will be applied to determine compensation owed for terminating Local Traffic: x% T-Mobile originated and x% ILEC originated. Should either Party believe there has been a material change in the ratio of land-to-mobile and mobile-to-land traffic, the foregoing traffic ratio will be adjusted by mutual agreement of the parties following a valid traffic study."
>
> "5.1.3. ILEC will calculate the amount T-Mobile owes ILEC based on one hundred (100) percent of the traffic originated by T-Mobile and terminated to ILEC. ILEC will calculate the estimated ILEC traffic terminating to T-Mobile based on the following formula: Total Minutes of Use will be calculated based on total IntraMTA MOUs (identified by CTUSR records plus records of intraMTA calls handed off to IXCs or other mutually acceptable calculation), divided by 0.60 (sixty percent). The Total Minutes of Use will then be multiplied by 0.40 (forty percent) to determine the traffic originated by ILEC and terminated to T-Mobile. ILEC will bill T-Mobile based on the total amount T-Mobile owes ILEC minus the amount ILEC owes T-Mobile."

As IXC calls are not subject to reciprocal compensation, it will not be necessary to address Issues 10d, 10e, 10f, or 10h.

With respect to Issue 9, Petitioners have been granted suspensions from and/or modifications to intermodal Local Number Portability requirements. These were approved by Orders of the Commission for Alma (IO-2004-0453), Chariton Valley (CO-

2004-0469), Mid-Missouri (TO-2004-0455), and Northeast (Case No. IO-2004-0468). Petitioners have not ported any landline numbers to T-Mobile subscribers.

Petitioners agree with T-Mobile that the following language proposed for Section 1.1 should not be included in the TTAs:

> "This Agreement shall not apply to traffic or calls completed by either Party in compliance with any obligation to port numbers of the former customers of one Party when that customer takes service from the other Party."

With respect to issue 10g, SBC has for some time discontinued the provision of CTUSRs to Petitioners. The TTA should contain no references to CTUSRs. T-Mobile's requested § 2.4, which reads as follows, should <u>not</u> be included in the TTA:

> CTUSR" - Cellular Transiting Usage Summary Report, provided by Southwestern Bell Telephone Company, tracks the minutes of Transiting Traffic for calls originating from CMRS providers and terminating to LECs.
>
> There should be no references to CTUSRs in Section 5.1, billing records.

<u>Issue 11: Should Future Traffic Studies Use Wireless Telephone Numbers?</u>

11a. Is it appropriate for traffic studies to be conducted utilizing the NPA NXX of a T-Mobile customer?
11b. The appropriate language should be ordered with respect to TTA Section 5.2.

Petitioners' Brief for Issue 11:

Yes it is appropriate for traffic studies to be conducted utilizing the NPA NXX of a T-Mobile customer. This is the only information available to Petitioners upon which to conduct such a study. In the past T-Mobile has failed to retain the mobile customer location information that could make such studies more accurate. This Commission recognized this, and approved the use of traffic studies utilizing NPA NXXs. This was

adopted by the Commission for T-Mobile traffic terminating to Mark Twain Rural Telephone Company in the Commission's January 27, 2005 Report and Order in TC-2002-1077, discussed above with respect to Issue 6. Petitioners' Brief with respect to Issue 6 is incorporated by reference here.

Issue 12: Scope of Compensation for Traffic Exchanged

12a. Depending upon the resolution of Issue 8, should the TTAs include an explicit statement that the compensation obligation for intraMTA traffic is reciprocal and symmetrical?

Petitioners' Brief for Issue 12:

See Petitioners' Brief for issues 8 through 10 above. As IXC traffic is not subject to reciprocal compensation, there is no reciprocal traffic terminating to T-Mobile. The language T-Mobile proposes amounts to nothing more than an abstract statement of law.

Issue 13: Effective Date of Traffic Termination Agreements

13a. Depending in part upon the resolution of Issue 1, what dates should be selected as the effective dates for the respective TTAs, and inserted into the first introductory paragraph of the TTAs.

Petitioners' Brief for Issue 13:

In accordance with Petitioners' Brief regarding Issues 1-5 above, Petitioners believe that the effective date of the agreement should be the date the negotiations began, January 13, 2005.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was emailed this 24th day of August, 2005, to the following representatives of Respondent:

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