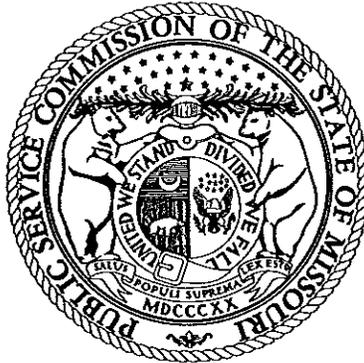


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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of Missouri RSA No. 7)
Limited Partnership d/b/a Mid-Missouri)
Cellular's Petition for Arbitration) Case No. TO-99-279
Pursuant to 47 U.S.C. Section 252 to)
Establish an Interconnection Agreement)
with Southwestern Bell Telephone Company.)

ARBITRATION ORDER

Issue Date: April 8, 1999

Effective Date: April 14, 1999

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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Limited Partnership d/b/a Mid-Missouri)
Cellular's Petition for Arbitration) Case No. TO-99-279
Pursuant to 47 U.S.C. Section 252 to)
Establish an Interconnection Agreement)
with Southwestern Bell Telephone Company.)

APPEARANCES

W.R. England, III, and Brian T. McCartney, Brydon, Swearingen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for Missouri RSA No. 7 Limited Partnership, doing business as Mid-Missouri Cellular.

Leo J. Bub, Senior Counsel, and Keith Davis, Attorney, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

REGULATORY LAW JUDGE: Kevin A. Thompson, Deputy Chief.

ARBITRATION ORDER

Procedural History

On December 21, 1998, Missouri RSA No. 7 Limited Partnership, doing business as Mid-Missouri Cellular (MMC), filed its petition seeking arbitration by this Commission of an interconnection agreement with Southwestern Bell Telephone Company (SWBT) under the Telecommunications Act of 1996. MMC requested the entry of a protective order on December 22, 1998, and the same was entered by the Commission on December 28, 1998. On January 15, 1999, SWB responded to MMC's petition.

The parties jointly filed a proposed procedural schedule on February 4, 1999, which the Commission adopted by order on February 17,

1999. Thereafter, the parties simultaneously prefiled direct and rebuttal testimony, as well as a joint memorandum setting out the issues for arbitration. MMC filed its direct testimony late; its Motion for Leave to File Out-of-Time was granted at the hearing, without objection.

The Commission held an evidentiary hearing on March 17 and 18, 1999, at the Commission's offices in Jefferson City, Missouri. All parties were represented at the evidentiary hearing. Thereafter, the Commission granted an extension of the filing dates for briefs and a late-filed exhibit at the joint request of the parties. On March 29, 1999, the parties timely filed their post-hearing briefs. On March 30 and 31, 1999, the parties filed several documents in response to a specific request by the Commission. Exhibit number 15 was reserved for this late-filed exhibit.

The three documents filed by the parties on March 30 and 31, 1999, designated Exhibit 15.1, Exhibit 15.2, and MMC's Response to Exhibit 15.1, are received and made a part of the record of this matter.

Discussion

MMC is a provider of wireless or cellular telecommunications services, operating in Missouri Rural Service Area No. 7, an area formed by six counties in west-central Missouri.¹ MMC's service area, subdivided into eight cellular exchanges, encompasses approximately 60 landline exchanges. SWBT is an incumbent local exchange carrier (ILEC) which provides basic local exchange telecommunications services to some, but

¹ Lafayette, Johnson, Saline, Pettis, Howard, and Cooper.

not all, of the landline telecommunications exchanges in MMC's service area. When MMC began operations, it interconnected to the landline telephone network by a Type 2A trunk connection to the tandem switch at Warrensburg, Missouri, operated by United Telephone Company doing business as Sprint (Sprint).

The parties have offered evidence relative to three types of interconnection in the course of this matter. A Type 1 connection is a line-side connection to a landline end office. While the use of a Type 1 connection permits carriers to share numbers within the NXX code assigned to the end-office of interconnection, it would not permit MMC to offer various advanced features to its subscribers. A Type 2A connection is a trunk connection directly to a tandem switch. The connecting entity essentially acts as an end-office served by that tandem. A Type 2B connection is a trunk connection between two end offices and its purpose is to carry traffic between the two connected end offices.

Pursuant to the Telecommunications Act of 1996 (the Act), the Commission is authorized to serve as arbitrator where telecommunications service providers are unable to negotiate an interconnection agreement. MMC and SWBT bring several issues to the Commission for arbitration. The issues are set out herein exactly as the parties framed them in their issues memorandum, using the same language and numbering.

**ISSUE 1: LOCAL CALLING SCOPE—RATES TO BE CHARGED END-USERS —
LANDLINE TO MOBILE**

- A. Are the calling scope and the rates to be charged to landline customers when they place a call to customers of a wireless carrier appropriate issues for negotiation and arbitration under the Telecommunications Act of 1996?**
- B. If so, should SWBT be required to provide local calling to MMC exchanges where such exchanges have V&H coordinates within the defined Local Calling Area for a SWBT end office?**

MMC permits its subscribers, under the majority of its subscription plans, to make local calls throughout the United States. However, SWBT subscribers must pay long distance charges to call MMC's subscribers, even when both numbers are located in the same community. MMC contends that this situation impermissibly burdens its ability to effectively compete in the cellular telecommunications marketplace. MMC contends that the local dialing parity requirements of the Act, at Section 251(b)(3), mandate local call rating, even in the absence of a local interconnection.

SWBT, on the other hand, argues that its charges to its own subscribers, for calls placed to MMC subscribers, are a matter of state law under SWBT's tariffs approved by this Commission and necessarily outside the permissible scope of this arbitration. SWBT also states that, upon further study of its tariffs, 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 vertical and horizontal (V&H) coordinates of the cellular exchange lie within the local calling area of the landline

exchange. Otherwise, in SWBT's view, calls from SWBT subscribers to MMC subscribers are necessarily toll calls, just like landline interexchange calls.

The Commission agrees with SWBT that the charges it makes to its subscribers are a matter of state law under its tariffs approved by this Commission. However, the Commission concludes that the issue of call rating, that is, whether a particular call shall be rated as a local call or a toll call in an interconnection environment, is an appropriate matter for arbitration under the Act. 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 evidence received at hearing indicates that call rating is controlled by the software that drives the switches operated by the ILECs and that the call rating change sought by MMC could be achieved by modifying this software. However, MMC's expert, Michael Kurtis, was able to name one place in the nation where local calling between landline and cellular exchanges exists without local interconnections. The Commission agrees with SWBT that local call 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. MMC has not addressed the compensation issues necessarily raised by its proposal.

**ISSUE 2: TYPE 2B INTERCONNECTION—TRAFFIC TO BE EXCHANGED—
CONTRACTUALLY EXCLUDING CERTAIN TRAFFIC TYPES FROM THE
OBLIGATION TO PAY RECIPROCAL COMPENSATION**

- A. Settled.²
- B. Is it appropriate to include in the Agreement a provision excluding the following types of traffic from the reciprocal compensation obligation where a Type 2B interconnection order has been established?
- (1) InterMTA traffic?
 - (2) Transiting traffic?
 - (3) Traffic which neither originates nor terminates on MMC's cellular network?
 - (4) Non-local traffic associated with optional calling plans (except as to subscribers to such plans)?
 - (5) Paging traffic?
 - (6) Internet service provider (ISP) traffic?
- C. If it is appropriate to exclude any or all of the foregoing types of traffic, how is such excluded traffic to be measured or accounted for?

MMC has ordered, and SWBT has established, a Type 2B trunk connection between SWBT's Sedalia exchange and MMC's Walnut Hill exchange. If necessary to obtain local calling, MMC contemplates additional Type 2B trunk connections linking other MMC exchanges to SWBT exchanges. The parties agree that these connections should only carry traffic that originates in one of the two exchanges linked by the connection and terminates in the other.

² The parties are in agreement as to the nature of the traffic that the Type 2B connection should carry.

MMC contends that all traffic carried by this connection should be subject to local reciprocal compensation. SWBT argues, however, that certain types of traffic should be explicitly excluded from local reciprocal compensation. SWBT insists that the exclusions are necessary because, under the Act, this provision is subject to adoption by other telecommunications providers in circumstances detrimental to SWBT's interests. See 47 C.F.R. § 51.809 (1997), the "pick and choose" rule.

The Commission agrees with SWBT that all six of these types of traffic should be explicitly excluded from local reciprocal compensation in the parties' Agreement for Type 2B connections. In addition, the parties shall jointly develop and set out in their Agreement an exclusion factor to account for such traffic. The exclusion factor may be developed from estimates, from traffic sampling, or by any other means generally used in the industry for such purposes. This exclusion factor shall be used to exclude from local reciprocal compensation a proportion of the total traffic carried by the Type 2B connection each month. The parties shall develop, and set forth in their Agreement, a reasonable rate or mechanism of compensation to be applied to such excluded traffic. All minutes of traffic carried by the connection should be compensated in some manner under the parties' Agreement. However, the Commission recognizes that ISP traffic is a special case, in that the Federal Communications Commission (FCC) has not yet issued its final rulemaking with respect to the treatment of such traffic. ISP traffic is discussed in more detail below.

D. How is InterMTA traffic to be defined (landline to mobile and mobile to landline)?

InterMTA traffic is traffic that crosses from one Major Trading Area (MTA) to another. Missouri is divided into two MTAs and one of the six counties in MMC's service area is in the eastern MTA, while the other five are in the western MTA. The Commission has determined that this traffic is to be excluded from local reciprocal compensation under the parties' Agreement.

The parties also disagree on the definition of such calls. SWBT contends that the origination point of a cellular-to-landline call must be determined by the location of the originating cell at the start of the call. SWBT characterizes this as the measurement method preferred by the FCC. MMC favors an alternative method, also approved by the FCC, in which the origination point of a cellular-to-landline call is determined by the location of the point of interconnection (POI) of the cellular and landline networks. See First Report & Order, CC Docket No. 96-98, released August 8, 1996, at ¶ 1044. SWBT responds that MMC is thereby attempting to define interMTA traffic out of existence; MMC counters that it lacks the technical ability to accurately determine the location of an originating cell in real time at the start of a cellular-to-landline call.

The Commission determines that the location of the originating cell at the start of such a call is to be determined by the location of the POI of the cellular and landline networks at the beginning of the call. This decision is driven by the technological limitations cited by

MMC. SWBT had ample opportunity to present evidence of a technical nature in rebuttal, but apparently elected not to do so.

E. Are calls to an ISP "local" for purposes of reciprocal compensation under this Agreement? If not, what compensation, if any, is due for calls to an ISP?

The Commission has determined that Internet Service Provider (ISP) traffic has been defined as more interstate than local traffic by the FCC in its Declaratory Ruling in CC Docket No. 96-98, issued on February 26, 1999. Such traffic is necessarily inappropriate for local reciprocal compensation under the parties' Agreement. Until such time as the FCC has exercised its primary jurisdiction with respect to ISP traffic, the Commission will not attempt to determine the amount of compensation, if any, that should be paid with respect to such traffic.

The parties' Agreement shall provide that compensation for ISP traffic will be paid as provided by FCC rule and that no compensation shall be paid pending final rulemaking by the FCC. The parties' Agreement shall further provide that the parties will track such traffic, by an exclusion factor or some other means, and that compensation will be paid, from the effective date of the parties' Agreement, when the FCC's final rulemaking is promulgated.

ISSUE 3: APPORTIONMENT/SHARING OF COSTS—TRUE-UP

A. How should the cost of a Type 2B facility be apportioned or shared between the parties and what portion of the facility cost should be shared?

The parties are in agreement that costs will be shared based upon traffic volume percentages. The one remaining area of disagreement

relates to SWBT's end offices at Boonville and Fayette. SWBT states that these end offices are remotes dependent upon its Kirksville end office and that it is not technically feasible for MMC to connect directly to either of these end offices by a Type 2B trunk connection. SWBT maintains that a trunk line must instead be run to Kirksville, over a hundred miles away. SWBT offers to share a proportion of the cost involved in implementing this facility. MMC, in turn, suggests that connecting at the Boonville and Fayette remotes might indeed be technically feasible and, if it is not, then SWBT must bear all of the expense of running a trunk line to Kirksville.

Under the Act, SWBT must permit MMC to interconnect wherever it is technically feasible to do so. 47 U.S.C. § 251(c)(2)(B). Again, only MMC favored the Commission with the testimony of a technical expert and SWBT must bear the consequences of its decision to withhold such testimony. The parties' Agreement shall provide that MMC may interconnect at SWBT's Boonville and Fayette end offices if such is indeed technically feasible. Under the Agreement, SWBT shall provide all necessary assistance to MMC in making that determination, including technical specifications of the remote end offices in question, and an opportunity for on-site inspections.

In the event that interconnection at the Boonville and Fayette remote end offices is not technically feasible, the parties shall share the cost of the trunk line to Kirksville, based on percentages of traffic volume.

ISSUE 5: RECIPROCAL COMPENSATION—EFFECTIVE DATE

- A. Upon what date should the parties' obligation to pay reciprocal compensation begin?
- B. If there is a reciprocal compensation obligation that began on July 14, 1998, when interconnection negotiations were requested, what should that rate be until the agreed upon reciprocal compensation rate becomes effective?

The Commission determines that the effective date for the local reciprocal compensation obligation under the parties' Agreement shall be the effective date of that Agreement. Thus, Issue 5B is moot. As for the Type 2B interconnection between MMC's Walnut Hill exchange and SWBT's Sedalia exchange, ordered by MMC long before the effective date of the parties' Interconnection Agreement, MMC must pay the fee set by SWBT's tariff until the effective date of the parties' Agreement.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of a party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of the issues before the Commission.

SWBT and MMC are duly licensed and certificated telecommunications carriers. MMC operates as a provider of wireless or cellular telecommunications services in six counties of west-central

Missouri, to-wit: Johnson, Lafayette, Saline, Pettis, Howard, and Cooper. SWBT provides telecommunications services as an incumbent local exchange carrier in some of the approximately sixty landline telephone exchanges within MMC's service area.

SWBT received MMC's request for interconnection negotiations on July 14, 1998. Thereafter, on December 21, 1998, the 160th day following July 14, 1998, MMC filed its petition seeking arbitration by this Commission.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

MMC and SWBT are each a "telecommunications company" and a "public utility" within the intendments of Section 386.020(32) and (42), RSMo Supp. 1998, and therefore subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo.

The Commission is authorized by Section 252(b) of the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 *et seq.*, to arbitrate open issues between telecommunications carriers seeking to interconnect to an incumbent local exchange carrier, resolving each such issue by imposing appropriate conditions as required to implement Section 252(c) of the Act. The Commission's arbitration jurisdiction is dependent upon invocation by a party to the negotiations "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation

under this section[.]” 47 U.S.C. § 252(b)(1). The Commission concludes that its arbitration jurisdiction was timely invoked in this case.

The Commission’s duty in an arbitration is to “resolve each issue . . . by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement[.]” 47 U.S.C. § 252(b)(4)(C). The Commission must complete the resolution of any unresolved issue “not later than 9 months after the date on which the local exchange carrier received the request under this section.” *Id.* In this case, the Commission must complete the arbitration by April 14, 1999.

In resolving this matter, the Commission must comply with the arbitration standards set out at Section 252(c) of the Act, and:

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

The Commission has reviewed the Agreement submitted by the parties and concludes that it meets the requirements of Section 251 of the Act.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 15.1, 15.2, and Mid-Missouri Cellular’s Response to late-filed Exhibit 15.1 are received into the record of this matter.

2. That the parties shall jointly draft and incorporate into their Agreement provisions embodying the resolution of each open issue as set out in this Order, filing an executed copy of the completed Agreement with this Commission for approval within twenty days of the effective date of this Order.

3. That the Agreement of the parties shall be implemented immediately upon approval by this Commission.

4. That this Order shall become effective on April 14, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray and Schemenauer, CC.,
concur and certify compliance
with the provisions of
Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 8th day of April, 1999.

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION