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September 24, 2009

**VIA OVERNIGHT MAIL**

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

**RECEIVED**

SEP 25 2009

**PUBLIC SERVICE  
COMMISSION**

Re: Petition of Windstream Kentucky East, LLC, for Arbitration of an  
Interconnection Agreement With New Cingular Wireless PCS, d/b/a AT&T  
Mobility  
KPSC 2009-00246

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and five (5) copies of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility's ("AT&T Mobility") Responses to Windstream's First Data Requests dated September 11, 2009.

A portion of AT&T Mobility's responses is confidential commercial information and AT&T Mobility files herewith its Petition for Confidentiality, pursuant to 807 KAR 5:001, Section 7, seeking protection of that material. Specifically, AT&T Mobility requests the Commission to grant confidentiality to the attachment referenced in AT&T Mobility's response to Item No. 9 which is attached to AT&T Mobility's response to Item No. 29. Certain information in a portion of that attachment has been redacted since that particular information is not relevant to any of the issues in this proceeding and the information is highly confidential. One copy of the proprietary version of the filing is provided to the Commission and a copy also is served on Windstream. Edited copies of the filing are provided for the public file.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

cc: Party of Record  
743560

**EDITED**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE PETITION OF WINDSTREAM	)	
KENTUCKY EAST, LLC FOR ARBITRATION	)	CASE NO.
OF AN INTERCONNECTION AGREEMENT	)	2009-00246
WITH NEW CINGULAR WIRELESS PCS, LLC	)	
D/B/A/ AT&T MOBILITY PURSUANT TO	)	
SECTION 252 OF THE TELECOMMUNICATIONS	)	
ACT OF 1996	)	

NEW CINGULAR WIRELESS, PCS, LLC D/B/A AT&T MOBILITY'S  
PETITION FOR CONFIDENTIALITY

New Cingular Wireless, PCS, LLC d/b/a AT&T Mobility ("AT&T Mobility"), by counsel, hereby petitions the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to KRS 61.878 and 807 KAR 5:001, § 7, to classify as confidential the attachment referenced in AT&T Mobility's Response to Item No. 9 and attached to Item No. 29 of Windstream Kentucky East, LLC's First Data Requests. The information for which AT&T Mobility seeks confidentiality is confidential commercial information and is filed on yellow paper.

The Kentucky Open Records Act exempts certain information from the public disclosure requirements of the Act, including certain commercial information. KRS 61.878(1)(c)1. To qualify for the commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors and the parties seeking confidentiality if openly discussed. KRS 61.878(1)(c)1; 807 KAR 5:001 § 7. The Commission has taken the position that the statute and rules require the party to

demonstrate actual competition and the likelihood of competitive injury if the information is disclosed.

The information for which AT&T Mobility seeks confidentiality is AT&T Mobility's agreement with a provider for the provision of long distance service to AT&T Mobility. While AT&T Mobility has redacted pricing and other specialized terms that are not relevant to any of the issues in this proceeding, public disclosure of the remaining terms of the agreement would adversely affect AT&T Mobility's ability to negotiate more favorable terms in the future from other providers. Such agreements are privately negotiated at arms length and entered into voluntarily by the parties. The agreement contains confidential business information that is considered proprietary by and to AT&T Mobility and its provider. Disclosure of the agreement would provide AT&T Mobility's and its provider's competitors with an advantage. The data is valuable to competitors and potential competitors in formulating strategic plans for entry, pricing, marketing, contracting and overall business strategies. The agreement relates to the competitive interests of AT&T Mobility and its provider and disclosure would impair the competitive business of both parties.

There are numerous competitors in the wireless telecommunications market. The information would be extremely valuable to competitors in developing competitive business strategies, networks and operations, in designing their service offerings and in marketing plans for those services. In addition, AT&T Mobility is not able to obtain any agreements that its competitors have with their providers. Therefore, it is inequitable and unfair for AT&T Mobility's competitors to have access to this kind of information. AT&T Mobility's present and potential competitors for its telecommunications services

include interexchange carriers, competitive local exchange carriers, cable television companies, cellular service providers, personal communications service providers and others.

Public disclosure of the agreement and any of the proprietary confidential information contained in the agreement would be harmful to AT&T Mobility and its provider by adversely affecting the market, revenue potential and competitive position of their services.

As further grounds for its Petition, AT&T Mobility states and understands based on information and belief as follows:

(1) The information for which AT&T Mobility is requesting confidential treatment is not known outside of its provider and outside of AT&T Mobility other than those AT&T Mobility employees involved in the negotiations of the agreement which is the subject of this Petition;

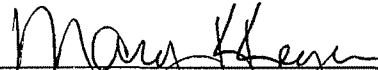
(2) The information is not widely disseminated within AT&T Mobility and is known only by those AT&T Mobility employees who have a legitimate business need to know and act upon the information;

(3) AT&T Mobility seeks to preserve the confidentiality of this information through appropriate means, including the maintenance of appropriate security at its offices; and

(4) By granting AT&T Mobility's petition, there would be no damage to any public interest.

For the reasons stated herein, AT&T Mobility respectfully requests that the Commission grant AT&T Mobility's request for confidential treatment of the information described herein.

Respectfully submitted,



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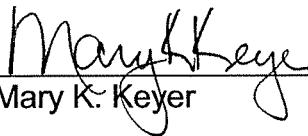
COUNSEL FOR NEW CINGULAR  
WIRELESS, PCS, LLC D/B/A AT&T MOBILITY

743330

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof, via overnight mail, this 24th day of September 2009.

Honorable Robert C. Moore  
Attorney At Law  
Hazelrigg & Cox, LLP  
415 West Main Street  
P.O. Box 676  
Frankfort, KY 40602

  
Mary K. Keyer

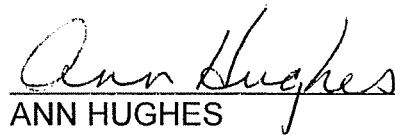
**CERTIFICATION**

STATE OF KANSAS

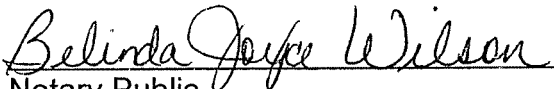
COUNTY OF SHAWNEE

Before me, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Ann Hughes, who, being by me first duly sworn, deposed and said that:

On behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, she supervised the preparation of AT&T Mobility's Responses to the First Set of Data Requests of Windstream Kentucky East, LLC dated September 11, 2009, in Kentucky Public Service Commission Case No. 2009-00246, *In the Matter of: The Petition of Windstream Kentucky East, LLC for Arbitration of an Interconnection Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility Pursuant to Section 252 of the Telecommunications Act of 1996*. She certifies that the Responses are true and accurate to the best of her knowledge, information, and belief formed after a reasonable inquiry.

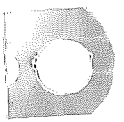
  
ANN HUGHES

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 22nd DAY OF September, 2009

  
Notary Public

My Commission Expires: January 26, 2011







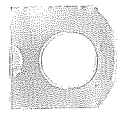
REQUEST: Please identify the specific rate of return that you or your affiliates have utilized in the three most recent cost studies for your services, including return on equity and cost of capital percents.

RESPONSE: As a Commercial Mobile Radio Service provider, AT&T Mobility is not rate regulated on either the state or federal level; therefore, neither "rate of return," "return on equity" nor a "cost of capital" has ever been established by a regulatory agency for AT&T Mobility. Additionally, AT&T Mobility objects on the grounds of relevance and burdensomeness to gathering this information for AT&T Mobility's ILEC affiliates.



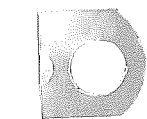
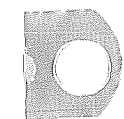
REQUEST: Please explain in detail how you or your affiliates allocate end office and tandem switched costs to originating and terminating traffic in the preparation of TELRIC studies.

RESPONSE: Pursuant to 47 C.F.R. § 51.711(a)(1), AT&T Mobility, because it is not an incumbent local exchange carrier ("ILEC"), is entitled to assess upon an ILEC a reciprocal compensation rate equal to the ILEC's rate without preparing TELRIC studies. Therefore, AT&T Mobility does not prepare TELRIC studies. Additionally, AT&T Mobility objects on the grounds of relevance and burdensomeness to collecting its ILEC affiliates' methods, if any, to "allocate end office and tandem switched costs to originating and terminating traffic in the preparation of TELRIC studies."



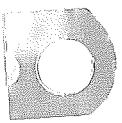
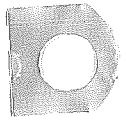
REQUEST: Please identify in detail any long distance service plans that you offer to your subscribers.

RESPONSE: AT&T Mobility's domestic service does not distinguish between local and long distance. AT&T Mobility does offer international long distance plans to its customers in Kentucky. AT&T objects on the grounds of relevance to identifying in detail its international long distance plans. Without waiving this objection, AT&T Mobility states that its international long distance plans are publicly available.



REQUEST: Please explain in detail if your subscribers send and/or receive calls from within your Metropolitan Trading Area ("MTA").

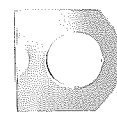
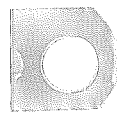
RESPONSE: See response to Item No. 6.





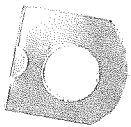
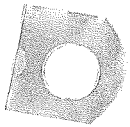
REQUEST: Please explain in detail if your subscribers send and/or receive calls from outside your MTA.

RESPONSE: See response to Item No. 6.



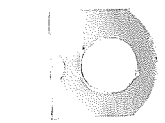
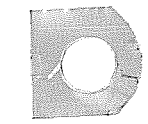
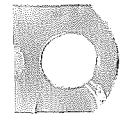
REQUEST: Please explain in detail if your subscribers send and/or receive calls both from within and from outside your MTA.

RESPONSE: As written, the question concerning "from within and from outside your MTA" cannot be answered, because neither AT&T Mobility nor AT&T Mobility's landline affiliates own, possess or provide service exclusively within a single MTA. Without waiving the objection, AT&T Mobility states that AT&T Mobility and AT&T Mobility's landline affiliates provide service to customers who both send and receive calls both within and outside the MTAs where the customers are located at the beginning of the call.



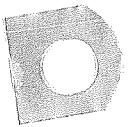
REQUEST: Please describe in detail if your retail packages offered to subscribers are based on minutes originated by subscribers, terminated by subscribers, or both originated and terminated by subscribers.

RESPONSE: AT&T Mobility retail packages offer varying amounts of minutes to Kentucky subscribers. These minutes are used for both incoming and outgoing calls sent to and from the wireless device.



REQUEST: Please identify in detail all agreements and arrangements, whether written or verbal, formal or informal, between you and any other carrier (including any of your Affiliates) to provide for the provision or receipt of incumbent local exchange carrier ("ILEC") interMTA traffic.

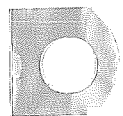
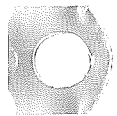
RESPONSE: ILEC interMTA traffic is routed to AT&T Mobility through either local interconnection trunks or interexchange carriers, depending upon the called party number. Thousands, if not hundreds of thousands, of interconnection trunk arrangements exist throughout the country and constitute a significant portion of the public switched telephone network. Attempting to determine the nature of all such interconnection arrangements ("written or verbal, formal or informal") is virtually impossible.





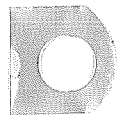
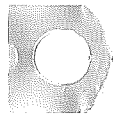
REQUEST: Please identify in detail all agreements and arrangements, whether written or verbal, formal or informal, between you and any other carrier (including any of your Affiliates) to provide for the provision of AT&T-originated interMTA traffic.

RESPONSE: AT&T Mobility's network routes all AT&T Mobility-originated, interMTA traffic through AT&T's interexchange carrier. A copy of the applicable agreement will be provided pursuant to Item No. 29 of Windstream's First Data Request, subject to the non-disclosure agreement executed by the parties on January 6, 2009. AT&T Mobility considers this agreement to be proprietary and confidential and is filing a Petition for Confidentiality pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, so that the Kentucky Public Service Commission may enter an appropriate order to protect the confidential and proprietary information.



REQUEST: Please describe in detail any agreement or arrangement, whether written or verbal, formal or informal, between you and any other carrier (including any of your Affiliates) you have in Kentucky which require the other carrier to pay access charges for AT&T-originated MTA traffic.

RESPONSE: AT&T Mobility has no such agreement or arrangement for AT&T Mobility originated inter or intraMTA traffic.



REQUEST: Please describe in detail how the routing of your traffic pursuant to the agreement(s) or arrangement(s) referenced in Interrogatory No. 10 would differ from the routing of your traffic to Windstream.

RESPONSE: Not applicable.

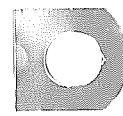
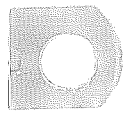
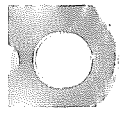


REQUEST: Please describe in detail how telephone calls originating from a Windstream ILEC customer with a Lexington, KY telephone number are routed to your customers in the Lexington, KY MTA.

RESPONSE: MTA 26 is the "Louisville-Lexington-Evansville" MTA. The detailed routing will vary somewhat depending on whether the called wireless customer in Lexington has Global Systems for Mobile (GSM) or Universal Mobile Telecommunications Systems (UMTS) service.

In the case of called GSM customers, the wireline-originated call is delivered from the Windstream tandem in Lexington to the GSM Mobile Switching Center (MSC) located in Winchester, KY that serves Lexington and the surrounding area. The Winchester MSC performs a query of the Home Location Register (HLR) to determine if the called party is currently registered on a GSM network anywhere in the world, and if so, the routing instructions to the MSC currently serving the called party. Assuming that the called party is currently registered on the same MSC and MTA, the MSC then sends a paging message to the cell sites in the area which will trigger the called party's wireless phone to ring. When the called party answers, the connection is completed to the wireline calling party.

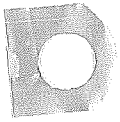
If the called customer has UMTS service, the call is delivered from the Windstream tandem in Lexington to the GSM switch serving the called NPA-NXX. The GSM MSC performs the HLR query and determines the location of the called party. If the called party has 3G service and is located on the local UMTS switch a MSRN (Mobile Station Roaming Number) will be returned from the HLR designating the serving switch for call routing completion. The GSM MSC routes the call, utilizing the MSRN, over leased facilities to the AT&T Mobility UMTS MSC located in Louisville, KY. If the called customer is in the Lexington area (MTA 26), paging takes place and the connection to the serving cell site is established from the UMTS MSC, again utilizing the leased facilities.





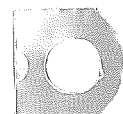
REQUEST: Please describe in detail how telephone calls originating from a Windstream ILEC customer with a Lexington, KY telephone number are routed to your customers outside the Lexington, KY MTA.

RESPONSE: If the called AT&T Mobility customer's telephone number is outside the local calling area of the calling party, Windstream routes the call via the calling party's long distance provider. If the telephone number of the called AT&T Mobility customer is within the local calling area of the calling party, Windstream routes the call over local interconnection trunks. Specific routings by long distance carriers and by AT&T Mobility can be as varied as the locations of a called party.



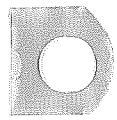
REQUEST: Would Windstream be required to pay reciprocal compensation for a call originated by a Windstream customer that is terminated to your customers roaming outside your MTA? If your answer is yes, please identify in detail your reasoning for expecting reciprocal compensation in this situation.

RESPONSE: As written, the question concerning "outside your MTA" cannot be answered, because neither AT&T Mobility nor AT&T Mobility's landline affiliates own, possess or provide service exclusively within a single MTA. Without waiving the objection, AT&T Mobility interprets this question to ask whether Windstream would be required to pay reciprocal compensation for a call originated by a Windstream customer and terminated to an AT&T Mobility customer roaming outside the MTA where the Windstream customer is located. The FCC defines "roaming" to occur when a wireless customer receives a call on a "foreign" wireless network. Thus, in the question asked, the AT&T Mobility customer would receive the call on a network other than AT&T Mobility's. AT&T Mobility cannot answer whether a third-party wireless carrier would require Windstream to pay reciprocal compensation for such a call.



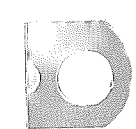
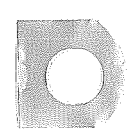
REQUEST: Has AT&T performed its own TELRIC study to determine the reasonableness of Windstream's proposed rates based on its own TELRIC study? If the answer is yes, please provide that cost study or work papers supporting your response. Please provide such study or work papers in their original electronic form, and (if not in Excel format) an electronic Excel copy of the same, with all formulae intact.

RESPONSE: No.



REQUEST: Please refer to page 4 of your Response to Windstream's Petition for Arbitration, Issue 1. Please identify in detail your basis for your claim that AT&T does not owe originating access charges to Windstream for traffic that Windstream originates and that is terminated to AT&T customers roaming outside AT&T's MTA.

RESPONSE: As written, the question concerning "outside AT&T's MTA" cannot be answered, because AT&T Mobility does not own, possess or provide service exclusively within a single MTA. Also, this question calls for a legal discussion outside the scope of data requests.





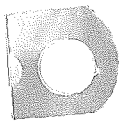
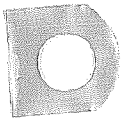
REQUEST: Please refer to page 5 of your Response to Windstream's Petition for Arbitration, Issue 3. Please identify in detail your basis for your claim that the percentage of interMTA traffic exchanged is irrelevant to determining whether at least 10% of total traffic on a facility is interstate in jurisdiction.

RESPONSE: MTA boundaries do not correspond to state boundaries.



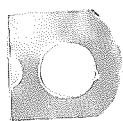
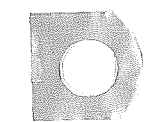
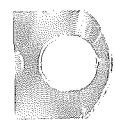
REQUEST: Please refer to page 6 of your Response to Windstream's Petition for Arbitration, Issue 4. Please identify in detail your basis for your claim that the appropriate reciprocal compensation rate for Windstream should be no higher than \$0.002 per minute of use.

RESPONSE: This claim was based upon AT&T Mobility's initial analysis of the cost support provided by Windstream during negotiations - more specifically, Windstream's acknowledgment that its proposed reciprocal compensation rate is based upon the assumption that virtually all local switching costs are usage-sensitive. The claim was also based upon the following issues: (1) inappropriate fill factors, (2) inappropriate cost of capital, (3) failure to include landline minutes of use in the cost analysis, (4) failure to use forward-looking costs, (5) inappropriate inclusion of joint and common costs, (6) failure to allocate costs of interoffice cable among transport and non-transport uses, (7) failure to accurately reflect total demand and utilization of transport network, and (8) failure to include an appropriate mix of interoffice cable sizes. AT&T Mobility is now reviewing the cost study recently produced by Windstream, conducting discovery and likely will have additional issues to add to the above list, and may have a refinement of the existing issues in the above list.



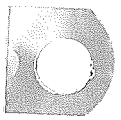
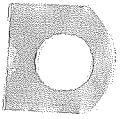
REQUEST: Please refer to page 7 of your Response to Windstream's Petition for Arbitration, Issue 5. Please identify in detail your basis for your claim that the traffic-sensitive percentage of Windstream's end office and tandem switching investment should not be greater than 10%.

RESPONSE: As stated in AT&T Mobility's response, under applicable federal law, the usage sensitive portion of a modern digital circuit switch is very small. See, e.g., *Virginia Arbitration Cost Order*, 18 FCC Rcd 17722, ¶ 463 (2003).



REQUEST: Please refer to pages 7 and 8 of your Response to Windstream's Petition for Arbitration, Issue 6. Please identify in detail your basis for your claim that Windstream's fill factors used in its cost study are not compliant with the "efficient network" requirement of 47 C.F.R. §51.505(b)(1).

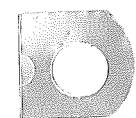
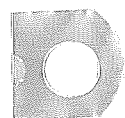
RESPONSE: As stated in AT&T Mobility's response, "until it has conducted discovery, AT&T Mobility cannot determine appropriate fill factors for Windstream." Such discovery is now proceeding. However, on their face, the fill factors used in Windstream's cost study are not consistent with an "efficient network," as required by FCC rules.





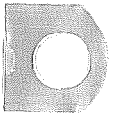
REQUEST: Please refer to page 8 of your Response to Windstream's Petition for Arbitration, Issue 7. Please identify in detail your basis for your claim that the cost of capital in Windstream's cost study should be no higher than 9%.

RESPONSE: As stated in AT&T Mobility's response, "AT&T Mobility cannot calculate Windstream's actual, forward-looking cost of capital until it has conducted appropriate discovery." Such discovery is now proceeding. However, on its face, a claimed cost of capital of 11.25% is not forward-looking, especially in a recessionary economy.



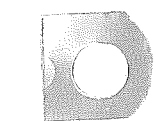
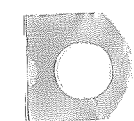
REQUEST: Please refer to pages 8 and 9 of your Response to Windstream's Petition for Arbitration, Issue 8. Please identify in detail your basis for your claim that Windstream's cost study should include no less than 750,000,000 annual minutes of landline-originated use.

RESPONSE: As stated in AT&T Mobility's response, "AT&T Mobility cannot determine the appropriate amount of landline-originated minutes of use until it has conducted appropriate discovery." Such discovery is now proceeding. However, on its face, an assumption of zero Windstream-originated minutes of use per year is implausible.



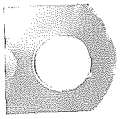
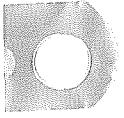
REQUEST: Please refer to page 9 of your Response to Windstream's Petition for Arbitration, Issue 9. Please identify in detail your basis for your claim that Windstream's switching, transport and other costs in Windstream's cost study should be reduced by at least 25% to comply with FCC regulations.

RESPONSE: As stated in AT&T Mobility's response, "Until AT&T Mobility has conducted discovery, it cannot identify specific forward-looking prices applicable to Windstream." Such discovery is now proceeding. However, on its face, Windstream's cost study does not appear to employ forward-looking costs, particularly, regarding current switch and transport costs, but rather appears to be unreasonably based upon Windstream's embedded (historical) costs.



REQUEST: Please refer to pages 9 and 10 of your Response to Windstream's Petition for Arbitration, Issue 10. Please identify in detail your basis for your claim that Windstream must remove the common costs attributable to switching and transport from its cost study and reciprocal compensation rate.

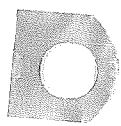
RESPONSE: AT&T Mobility's response states the basis for AT&T Mobility's claim that Windstream should remove common costs from its study. Such costs are not usage-sensitive (*i.e.*, costs do not vary with usage) and thus may not be recovered in transport and termination rates. See 47 U.S.C. § 252(d)(2)(A)(ii).





REQUEST: Please refer to page 10 of your Response to Windstream's Petition for Arbitration, Issue 11. Please identify in detail your basis for your claim that Windstream should not attribute more than 50% of the pro-rata share of interoffice cable costs to transport and termination in its cost study.

RESPONSE: Windstream's cost study does not appear to apportion interoffice cable costs between transport and non-transport uses. As stated in AT&T Mobility's response, "AT&T Mobility cannot determine the actual amount of such pro-rata share until the completion of discovery." Such discovery is now proceeding. The proposal of 50% pro-rata sharing is based upon a recent ruling of the Missouri Public Service Commission in *Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA*, Case No. TO-2006-0147, at 7, 2006 Mo. PSC LEXIS 352 \*9 (March 23, 2006).



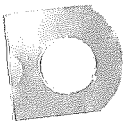
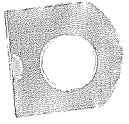
REQUEST: Please refer to pages 10 and 11 of your Response to Windstream's Petition for Arbitration, Issue 12. Please identify in detail your basis for your claim that Windstream's cost study should be required to use current quantities of DSO equivalent circuits to determine total demand.

RESPONSE: As stated in AT&T Mobility's response, 47 C.F.R. § 51.511 requires that forward-looking economic costs per unit reflect total demand. It is standard within the industry that total demand be reflected in terms of total trunks or DS-0 equivalents.



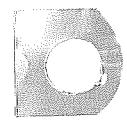
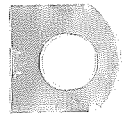
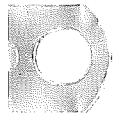
REQUEST: Please refer to page 11 of your Response to Windstream's Petition for Arbitration, Issue 13. Please identify in detail your basis for your claim that Windstream's cost study does not use the lowest cost cable mix necessary to serve projected total demand and should not be allowed to assume more than 10% underground cable.

RESPONSE: As stated in AT&T Mobility's response, "AT&T Mobility cannot determine what constitutes such a lowest cost cable mix until the completion of discovery. Windstream's cost study, however, appears not to use the lowest cost mix, and may, in fact, overestimate the amount of underground cable necessary in a forward-looking network." Such discovery is now proceeding. Because the use of underground cable in a forward-looking network is rarely justified outside of urban areas, AT&T Mobility has suggested that a cable mix assuming more than 10% underground cable should not be allowed in Windstream's cost study unless supported by specific testimony that such a mix is necessary.



REQUEST: Please identify in detail how you determined the cost of equity used in your review of Windstream's cost study.

RESPONSE: AT&T Mobility has not completed its analysis of Windstream's claimed cost of capital. AT&T Mobility will supplement this response when the analysis is completed.





REQUEST: Please produce copies of all documents referenced in the foregoing Data Requests and your responses thereto or otherwise relied upon by you to formulate your responses to the Interrogatories, including but in no way limited to transit traffic agreements, your cost study analyses and work papers. Please provide any cost study analyses in their original electronic form and (if not in Excel format) an electronic Excel copy of the same, with all formulae intact.

RESPONSE: A copy of the documents referenced in Item Nos. 9 and 25 will be produced. AT&T Mobility considers the documents provided in its Response to Item No. 9 to be proprietary and confidential and is filing a Petition for Confidentiality pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, so that the Kentucky Public Service Commission may enter an appropriate order to protect the confidential and proprietary information. AT&T Mobility has not completed its analysis of Windstream's filed cost study. AT&T Mobility will supplement this response when the analysis is completed.

**ATTACHMENT TO ITEM #29  
WINDSTREAM'S 1<sup>ST</sup> DATA REQUEST**

**REFERENCED IN RESPONSE TO ITEM #9**

**THE ENTIRE ATTACHMENT IS CONFIDENTIAL.  
THERE IS NO EDITED VERSION.**

**ATTACHMENT TO ITEM #29  
WINDSTREAM'S 1<sup>ST</sup> DATA REQUEST  
(TOTAL OF 16 PAGES)**

**REFERENCED IN RESPONSE TO ITEM #25**

2006 Mo. PSC LEXIS 342, \*

In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc.

Case No. TO-**2006-0147** consolidated with Case No. TO-2004-0151

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

2006 Mo. PSC LEXIS 342

March 24, 2006; March 23, 2006, Issued

**CORE TERMS:** traffic, transport, arbitrator, interconnection, cable, switch, interoffice, reciprocal, carrier, forward-looking, termination, billing, input, arbitration, pgs, re-run, fiber, parties agree, rural, space, uniform rate, wireless, ratio, trunk, switching, telephone, calculation, distance, assigned, network

**[\*1]** APPEARANCES: W.R. England, Brian T. McCartney and Melissa Manda, Brydon, Swearngen & England, PC, 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102. Attorneys for Petitioners; Mark Johnson, Sonnenschein, Nath & Rosenthal, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111. Attorney for T-Mobile USA, Inc.; Paul Walters, Jr., The Walters Law Firm, 15 East 1<st> Street, Edmond, Oklahoma 73034. Attorney for Cingular Wireless.

**PANEL:** Kennard L. Jones, Administrative Law Judge; Davis, Chm.; Murray, and Appling, CC., concur; Gaw and Clayton, CC., dissent, with separate dissenting opinions to follow.

**OPINION: ARBITRATION ORDER**

**Effective Date: March 24, 2006**

**Arbitrator: Kennard L. Jones, Administrative Law Judge**

**Arbitration Advisory Staff:**

**Natelle Dietrich**, Regulatory Economist III, Utility Operations Division, Missouri Public Service Commission.

**Walter Cecil**, Regulatory Economist II, Utility Operations Division, Missouri Public Service Commission.

**Bill Voight**, Rate and Tariff Examiner Supervisor, Missouri Public Service Commission.

**Marc Poston**, Senior Counsel, General Counsel Division, Missouri Public Service [\*2] Commission.

**ARBITRATION ORDER**

**PROCEDURAL HISTORY**

On October 4, 2005, a number of small rural telephone carriers n1 filed petitions for arbitration with the Commission pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110, Stat. 56, codified at various sections of Title 47, United

States Code ("the Act"), and Commission rule 4 CSR 240-36.040. The Petitioners in Case No. TO-2006-0147 ask the Commission to resolve issues pertaining to the negotiation of interconnection agreements between Petitioners and T-Mobile USA, Inc. The Petitioners in Case No. TO-2006-0151 ask the Commission to resolve issues pertaining to the negotiation of interconnection agreements between Petitioners and Cingular Wireless. Because the petitions contained common questions of law and fact and many of the same Petitioners, the Arbitrator consolidated these cases, making Case No. TO-2006-0147 the lead case.

----- Footnotes -----

n1 The carriers filing under Case No. **TO-2006-0147** are BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, New Florence Telephone Company, Oregon Farmers Mutual Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, and Steelville Telephone Exchange, Inc.

The carriers filing under Case No. **TO-2006-0151** are BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Green Hills Telecommunications Services, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, Mark Twain Communications Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, Seneca Telephone Company and Steelville Telephone Exchange, Inc.

----- End Footnotes----- **[\*3] Dismissal of CLECs**

On December 20, 2005, the Commission dismissed four CLEC petitioners from this arbitration: Fidelity Communications Services I, Inc.; Fidelity Communications Services II, Inc.; Green Hills Telecommunications Services; and Mark Twain Communications Company.

**Motion for Summary Judgment**

During the course of the proceedings, T-Mobile filed a motion for summary determination of one of the contested issues; whether Petitioners have an "obligation to pay reciprocal compensation on landline (intraMTA) traffic terminated to [T-Mobile] by third-party carriers (such as IXCs) when that traffic is neither originated by, nor the responsibility of Petitioners." T-Mobile pointed out that the Commission, on October 6, 2005, in Case No. IO-2005-0468, rejected Petitioners' position on this issue. Petitioners opposed the motion, stating that there were genuine issues of material fact and that discovery was being conducted with regard to facts that were relevant to this issue.

Commission rule 4 CSR 240-2.117 requires that before a Motion for Summary Judgment may be granted, the pleadings must show there is no genuine issue of **[\*4]** material fact. Because all of the pleadings did not show there were no genuine issues of material fact, the Arbitrator denied this motion, reserving consideration of this issue for this report.

**Motion to Dismiss Issues having to do with Compensation for Past Traffic**

T-Mobile and Cingular filed motions to dismiss issues presented by Petitioners having to do with the delivery of past traffic and the related compensation. The Arbitrator initially granted the motions; however, upon reconsideration, set the ruling aside recognizing the state Commission's federally mandated obligation to consider all issues presented. n2

----- Footnotes -----

n2 47 U.S.C Section 252(b)(4)(C).

----- End Footnotes----- **Oral Arguments**

The parties presented oral arguments on March 7, 2006. Petitioners made specific reference to the following issues: 4, 7, 9, 11, 12, 14, 15 and 25. With regard to Issue No. 9, Petitioners argued that the Arbitrator misstated Petitioners' position. Petitioners' position is corrected in this order. With regard [\*5] to Issue No. 11, Petitioners emphasize that all of the Petitioners, including the seven Petitioners discussed in the order, have submitted cost data. The Arbitrator resolved that issue by concluding that a bill-and-keep method for forward-looking common transport costs shall be used for the seven Petitioners until cost data is provided. If the cost data has been provided, then the re-run costs filed by Mr. Schoonmaker shall be used. Respondents discussed issues 8, 9, 13 and 14. Respondents' arguments were not persuasive and the conclusions reached by the Arbitrator have not been changed.

**Commission rule 4 CSR 240-36.040(19)**

This rule states that "unless the results would be clearly unreasonable or contrary to public interest, for each issue, the arbitrator shall select the position of one of the parties as the arbitrator's decision on that issue." For issues that cannot be resolved in favor of one party or the other because the results are clearly unreasonable, the Commission will adopt a reasonable position.

**STATEMENT OF FINDINGS AND CONCLUSIONS**

**Issue No. 1 -- Must each Petitioner establish its own separate transport and [\*6] termination rate based upon its own separate costs?**

**Petitioners** -- Each Petitioner performed a cost study using the HAI forward-looking costs model and developed costs averaging \$ 0.0871 for T-Mobile and \$ 0.0843 for Cingular. However, Petitioners proposed to use a rate of \$ 0.035 in this arbitration. FCC rules do not prohibit a uniform rate for all Petitioners where, as here, it is no greater than their forward-looking costs.

**T-Mobile/Cingular** -- Each Petitioner must establish its own transport and termination rate based upon specific forward-looking economic costs. The Act and FCC Rules do not allow a blanket rate to apply to all Petitioners.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, each Petitioner need not establish separate transport and termination rates. However, each Petitioner must establish separate costs. n3

----- Footnotes -----

n3 47 C.F.R. § 51.505(e).

----- End Footnotes-----

**Issue No. 2 -- What is the appropriate transport and termination rate for each Petitioner? [\*7]**

**Petitioners** -- A uniform rate of \$ 0.035 per minute of use should be used.

**T-Mobile/Cingular** -- Each Petitioner should use different rates, ranging from a low of \$ 0.0025/MOU for Granby to a high of \$ 0.0147.MOU for Le-Ru.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the appropriate rate for each Petitioner shall be the rate that results from the second re-run cost studies, identified as "Final Arbitration-Uncorrected Direct Trunks" filed on March 10, 2006, and attached to Petitioners' Response to Final Arbitration Report. Petitioners can not force Respondents to pay any single or uniform rate that is higher than the cost for the individual Petitioner, but the parties may agree to any uniform rate applicable to all Petitioners.

**Issue No. 3 -- What are Petitioners' forward-looking costs to purchase and install new switches?**

**Petitioners** -- Petitioners recommend that the value be \$ 520.14 per line, based on review of this factor in the past and the resulting investment compared to actual investments. n4

----- Footnotes-----

n4 Schoonmaker Direct, pg. 24, lines 11-15.

----- End Footnotes----- [\*8]

**T-Mobile/Cingular** -- Respondents suggest \$ 76.56 per line plus adjustments to fill factors and removal of power plant investments. n5

----- Footnotes-----

n5 Conwell Direct, pg. 31, lines 3-14 -- pgs. 46 - 49.

----- End Footnotes-----

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts the T-Mobile/Cingular position. Mr. Schoonmaker properly re-ran the cost studies for the switch investment. Although Respondents further argue that this switch investment is too high for those that serve fewer than 700 lines, there is not sufficient evidence in the record, and Schoonmaker's re-run costs, relating to switch investment, are within the bounds of reasonableness.

**Issue No. 4 -- What is the appropriate value for the usage-sensitive portion of Petitioners' forward-looking end office switching cost?**

**Petitioners** -- The HAI Model's input value assigns 70% of switch costs to usage sensitive costs. This is consistent with the FCC's Tenth Report and Order in CC Docket 96-45 and the FCC's "MAG Order." n6

----- Footnotes -----

n6 Schoonmaker Rebuttal pgs. 17 - 18.

----- End Footnotes----- **[\*9]**

**T-Mobile/Cingular** -- Usage-sensitive costs for switches have fallen dramatically. The current version of HAI uses a 0% end office, non-port fraction. No additional costs are appropriate except interoffice trunk equipment. No more than \$ 18.33 per line should be used as a flat, monthly rate. n7

----- Footnotes -----

n7 Conwell Direct, pg. 47.

----- End Footnotes-----

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts T-Mobile/Cingular's position. The "MAG Order" allows, but does not require, an input value of 70%, but also does not preclude a 0% input value. The Commission agrees that switching costs are no longer traffic sensitive.

**Issue No. 5 -- What is the appropriate floor space attributable to switching?**

**Petitioners** -- The HAI Model's input for floor space should be adopted because it reflects an appropriate amount of building and land investment. n8

----- Footnotes -----

n8 Schoonmaker Rebuttal pgs. 22-23.

----- End Footnotes----- **[\*10]**

**T-Mobile/Cingular** -- Absent a determination of the floor space required for stand-alone/host switches and remote switches with current technologies, floor space should be derived from the response to data request for Cass County Telephone, which is 200 sq. ft for stand-alone/host switches (four bays) and 100 sq. ft for remotes (two bays). n9

----- Footnotes -----

n9 Conwell Direct, pg. 53.

----- End Footnotes-----

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts T-Mobile/Cingular's position. Petitioners' position of 500 and 1000 square feet is clearly unreasonable. The wireless carriers based their calculations on the Southwestern Bell Missouri space requirements in its Caged Collocation tariff. n10 Moreover, the FCC requires that space increments for collocation be in single bays, which included space for the equipment rack, access to the back of the rack and swing room for rack doors in front. n11



----- Footnotes -----

n10 Conwell Direct, pg. 52 [**\*11**]

n11 FCC's Advanced Services First Report and Order, CC Docket 98-147 (Issued March 18, 1999).

----- End Footnotes-----

**Issue No. 6 -- What is the appropriate Minutes of Use (MOU) forward-looking end office switching cost for all Petitioners?**

**Petitioners** -- \$ .0092 for T-Mobile Petitioners and \$ .0010 for Cingular Petitioners.

**T-Mobile/Cingular** -- \$ .0012 per minute.

**Commission Decision:** The numbers proposed by each party are average numbers. Consistent with the Arbitrator's Final Decision, the actual numbers are the re-run, end-office switching element of costs in the second re-run cost studies, identified as "Final Arbitration-Uncorrected Direct Trunks" filed on March 10, 2006, and attached to Petitioners' Response to Final Arbitration Report.

**Issue No. 7 -- What are Petitioners' appropriate, forward-looking interoffice cable lengths?**

**Petitioners** -- Interoffice cable lengths are based on HAI assumptions that today, the RBOC would not build facilities to Petitioners' exchanges, as was the case historically. n12

----- Footnotes -----

n12 Schoonmaker Rebuttal pgs. 24-29.

----- End Footnotes----- [**\*12**]

**T-Mobile/Cingular** -- Petitioners' switches should be assumed to remain in current locations and the existing interoffice cable distances among these switches should be used to compute transport costs. The distance between Petitioners' switches and the meet points should reflect actual distance. n13

----- Footnotes -----

n13 Conwell Direct, pg. 59.

----- End Footnotes-----

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts the T-Mobile/Cingular position. For interoffice cable lengths the parties shall adopt the current meet point arrangements, subject to renegotiation if those arrangements change. Moreover, the HAI models algorithm overstates DS3 requirements and shall be modified accordingly. Finally, interoffice cable lengths shall be limited to the most practicable actual route between offices. If not already provided, Petitioners shall provide, as part of the underlying documentation in support of its second re-run costs studies, a chart showing the actual interoffice cable distances.

**Issue No. 8 -- What are [\*13] the appropriate cable sizes?**

**Petitioners** -- The HAI input of 24 fiber cable to connect offices should be used.

**T-Mobile/Cingular** -- Fiber cable sizes should be determined for each Petitioner's network based on their total demand for fibers per FCC rule 51.505, with smaller cable sizes used as appropriate.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts Petitioners' position. It is reasonable to assume that traffic will increase, necessitating use of larger cable. In addition, the costs associated with underestimating demand far outweigh the costs of overestimating demand.

**Issue No. 9 -- What is the appropriate amount of sharing of Petitioners' interoffice cabling in order to reflect sharing with services other than transport and termination?**

**Petitioners** -- The HAI Model assigns the cost of fiber cable to nine different types of trunks. While a significant portion of these trunks are tandem trunks, which are assigned to the common transport cost element, another significant portion is assigned to the dedicated transport element, and smaller amounts are assigned to local tandem and local direct trunks. n14

----- Footnotes -----

n14 Schoonmaker rebuttal, pgs. 32-33.

----- End Footnotes----- [\*14]

**T-Mobile/Cingular** -- FCC Rule 51.511 requires unit costs to reflect total costs of a network element divided by (shared among) total demand for the element. Petitioners' cost studies allocate the entire cost of the 24-fiber interoffice cable to the transport system, rather than sharing the cable cost among loops, leased fibers and others.

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

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

**Petitioners** -- HAI input values for transmission equipment. n15

----- Footnotes -----

n15 Schoonmaker Rebuttal, pgs. 35-36.

----- End Footnotes-----

**T-Mobile/Cingular** -- Petitioners incorrectly assume an OC-48 add/drop multiplexer, an OC-3 terminal multiplexer, [\*15] a digital cross-connect system and optical regenerators every 40 miles of interoffice cable routes. These lengths are overstated as discussed in Issue 7.

Transport transmission equipment should be sized to serve the total demand for DS1-equivalent circuits at each Petitioners' switch and reflect either fiber ring or point-to-point transport, The Commission should assume OC-3 sized systems and no need for optical regenerators.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, an OC-12 system shall be used for costing purposes.

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

**Petitioners** -- Schedules RCS-4 and 5 are the sum of the Common Transport and Dedicated Transport elements.

**T-Mobile/Cingular** -- 20 Petitioners have produced enough information to allow appropriate common transport costs to be computed. Exhibit WCC-1 to Direct Testimony of Conwell.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the appropriate forward-looking common transport costs for each Petitioner are the re-run costs in the second re-run cost studies, identified as "Final Arbitration-Uncorrected [\*16] Direct Trunks" filed on March 10, 2006, and attached to Petitioner's Response to Final Arbitration Report. For the seven Petitioners that did not provide requisite cost data, a bill-and-keep methodology shall be used until appropriate cost data is produced.

**Issue No. 12 -- Should any of the costs identified in HAI as dedicated transport be included in Petitioners' transport and termination rates?**

**Petitioners** -- The dedicated transport costs in the HAI model should be included in the Petitioners' transport and termination rates as part of the common transport cost. n16

----- Footnotes -----

n16 Schoonmaker Direct pgs. 32-33.

----- End Footnotes-----

**T-Mobile/Cingular** -- Including dedicated transport costs is duplicative of common transport costs. The corrections for common transport accurately measure transport costs and it is unnecessary to add additional costs. n17

----- Footnotes -----

n17 Conwell Direct pgs. 84-85.

----- End Footnotes----- [\*17]

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission finds that only common transport costs shall be included with no additional adjustments to this calculation or to any other calculation in which common transport is a component or is derived from such calculation.

**Issue No 13 -- What is the appropriate value of Petitioners' forward-looking signaling link costs?**

**Petitioners** -- For companies similar to the Petitioners, HAI uses a simplified investment input based on an amount per line, per wire center. n18 Costs are displayed in RCS-4 and 5.

----- Footnotes -----

n18 Schoonmaker Rebuttal pg. 38.

----- End Footnotes-----

**T-Mobile/Cingular** -- HAI assumes a pair of signaling links for every switch, which is not the case. HAI assumes the signaling links run over the same fictitious interoffice cable routes as common transport. To correct that assumption, Respondents used Petitioners' actual current costs for SS7 interconnection links divided by the HAI estimated number of messages. n19

----- Footnotes -----

n19 Conwell Direct, pgs. 87-89.

----- End Footnotes----- **[\*18]**

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts Petitioners' position, modified by using the distances established in Issue No. 7.

**Issue No. 14 -- Upon what basis should Petitioners and Cingular and T-Mobile compensate each other for traffic exchanged between February of 1998 and the 2001 effective date of Petitioners' wireless termination service tariffs?**

The Commission will not address this issue in this matter, as it is does not relate to future interaction between the parties under the contemplated interconnection agreement.

**Issue No. 15 -- Must Petitioners pay Cingular and T-Mobile reciprocal compensation for intraMTA, wireline to wireless traffic that they hand off to interexchange carriers?**

**Petitioners** -- Petitioners have no obligation to pay reciprocal compensation on landline traffic terminated to Respondents by third-party carriers (such as IXCs) where that traffic is neither originated by, nor the responsibility of, Petitioners.

**T-Mobile n20** -- The reciprocal compensation obligation applies to all intraMTA traffic regardless of the type of intermediate carrier used to deliver the traffic for termination.

----- Footnotes -----

n20 Cingular takes no position on this issue.

----- End Footnotes----- **[\*19]**

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts T-Mobile's position. As the Commission held in the recent Alma/T-Mobile Arbitration, 47 C.F.R. § 51.703 requires reciprocal compensation arrangements. Treatment of this issue will be consistent between T-Mobile and Cingular, as described in the Arbitrator's Final Report.

**Issue No. 16 -- Should the Commission establish an IntraMTA Traffic Ratio for use by the parties in billing the termination of traffic?**

**Petitioners** -- The appropriate traffic factor should be reflective of actual traffic flows as calculated by Petitioners.

**T-Mobile/Cingular** -- Cingular and T-Mobile lack the capability to measure all ICO traffic. Standard industry practice is to establish a traffic ratio that they can apply to the ICO-billed traffic to determine the amount of traffic for which the ICO owes reciprocal compensation.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission shall establish an IntraMTA Traffic Ratio.

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

**Petitioners** -- Schedule [\*20] RCS shows 84/16 for T-Mobile and 83/17 for Cingular. n21 This is based on the average of the actual Missouri traffic studies performed by Petitioners.

----- Footnotes -----

n21 Schoonmaker Direct, pgs. 52-53.

----- End Footnotes-----

**T-Mobile** -- T-Mobile's studies, as reasonably adjusted for the traffic that could not be measured, establishes an average traffic ratio of 65% mobile-to-land and 35% land-to-mobile.

**Cingular** -- The appropriate intraMTA traffic ratios for Cingular are listed on Confidential Schedule B to the Direct Testimony of Eric Pue.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, with regard to **T-Mobile**, the Commission adopts Petitioners' position.

With regard to **Cingular**, the Commission, the Arbitrator adopts Cingular's position.

**Issue No. 18 -- Should the agreement allow for modification of the intraMTA traffic ratio?**

The parties agree on this issue.

**Issue No. 19 -- Should Cingular and Petitioners employ bill-and-keep for compensation purposes if the traffic exchanged between them does not exceed [\*21] 5000 minutes of use?**

**Petitioners** -- Petitioners should be compensated for all of the traffic they transport and terminate for wireless carriers. Petitioners agree to accept quarterly billing.

**Cingular** -- Requiring the parties to bill for amounts under 5,000 MOUs per month is not cost-effective. When exchange traffic amounts are below 5,000 MOUs per month, the parties should exchange traffic on a bill-and-keep basis. n22

----- Footnotes -----

n22 Pue direct p 20.

- - - - - End Footnotes- - - - -

**Commission Decision:** Consistent with the Arbitrator's Final Decision, and the resolution of Issue No. 33, the Commission will balance Petitioners' desire to be compensated for calls terminated to them and Cingular's position concerning cost effectiveness. No bills under 5,000 MOU may be issued by Petitioners unless at least three months have passed without compensation.

**Issue No. 20 -- Should Petitioners be required to provide local dialing for calls to a Cingular NPA/NXX rate centered in Petitioners' EAS calling scopes?**

As the parties offered no proposed language [\*22] to be included in the interconnection agreement, no language concerning this issue is required to be included in it.

**Issue No. 21 -- Should Petitioners be required to accept and recognize as local all calls from/to Cingular subscribers who have been assigned numbers that are locally rated in Petitioners' switches, if Cingular does not have direct interconnection to those switches?**

As the parties offered no proposed language to be included in the interconnection agreement, no language concerning this issue is required to be included in it.

**Issue No. 22 -- Should the Cingular contract contain provisions for both direct and indirect interconnection?**

As the parties offered no proposed language to be included in the interconnection agreement, no language concerning this issue is required to be included in it.

**Issue No. 23 -- Should Petitioners be entitled to claim the Rural Exemption?**

**Petitioners** -- Yes. Petitioners currently have a rural exemption under Section 251(f) of the Act.

**Cingular** -- This arbitration is limited to Petitioners' obligation arising under Section 251(a) and (b) of the Act. The rural exemption of Section 251(f)(1) applies only to obligations imposed [\*23] by section 251(c) of the Act. Thus, the rural exemption is irrelevant to this proceeding.

**Commission Decision:** Consistent with Arbitrator's Final Decision, the Commission agrees with Cingular that this issue is irrelevant, but also with Petitioners that they have a rural exemption.

**Issue No. 24 -- Can CLECs seek arbitration of interconnection agreements with Cingular?**

The Commission has dismissed the CLECs from this arbitration. This issue is moot.

**Issue No. 25 -- Upon what basis should Petitioners and T-Mobile compensate each other for traffic exchanged between 2001 and the BFR date?**

This issue is not relevant to the formation of the contemplated interconnection agreement and is better addressed in the context of a complaint case.

**Issue No. 26 -- Should the Arbitrator authorize the Petitioners and all transit providers to block T-Mobile's traffic until the past compensation issue are resolved?**

This issue is not relevant to the formation of the contemplated interconnection agreement and is better addressed in the context of a complaint case.

**Issue No. 27 -- What InterMTA factors should be established for the interconnection agreement?**

The parties agree on this [\*24] issue.

**Issue No. 28 -- Within the traffic deemed InterMTA by applying the agreed InterMTA factor, how should inter-and intra-state InterMTA traffic be addressed?**

**Petitioners** -- Petitioners proposed the same ratio of 80% intrastate and 20% interstate, as they have done with other Missouri wireless carriers.

**T-Mobile** -- A reasonable allocation is 80% interstate, 20% intrastate.

**Commission Decision:** Consistent with Arbitrator's Final Decision, the Commission finds in favor of Petitioners because Petitioners' position is supported by T-Mobile's own data. n23

----- Footnotes -----

n23 Pruitt Direct, Attachment 1.

----- End Footnotes-----

**Issue No. 29 -- Should the interconnection agreement include an explicit statement that the compensation obligation for intraMTA traffic is reciprocal and symmetrical?**

The parties agree on this issue.

**Issue No. 30 -- Should the interconnection agreement clarify which carrier pays for the trunks and associated costs of connecting each party's network with the third-party transit network?**

The parties agree on this [\*25] issue.

**Issue No. 31 -- Should the interconnection agreement require the parties to send all traffic via a third-party LEC when the parties are indirectly interconnected?**

The parties agree on this issue.

**Issue No. 32. What billing mechanism should be used to reflect the IntraMTA traffic balance percentage?**

**Petitioners** -- A net billing arrangement is only appropriate for intraMTA traffic. InterMTA traffic, if any, should be identified and removed from total terminating usage before performing a net billing calculation on the remaining intraMTA minutes of use.

**T-Mobile** -- Applying the traffic balance percentage, T-Mobile may accommodate either net billing or cross-billing, both of which present a practical means to efficiently bill under an interconnection agreement.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, net billing shall include only intraMTA traffic. For calculating that traffic, bills shall be issued by ILECs based solely on the tandem companies' cellular usage reports.

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

**Petitioners** -- Petitioners do not object to deferred billing for [\*26] bills under \$ 250, but accumulation and rendering of one bill for multiple periods when the amount due exceeds \$ 250, provided, that a bill is rendered at least quarterly, even for lesser amounts.

**T-Mobile** -- Requiring parties to bill for amounts under \$ 250 is inefficient for both parties. No late charges or interest should apply to deferred billings.

**Commission Decision:** Consistent with Issue No. 19, if the monthly billing is less than \$ 250, the parties shall continue to accumulate MOUs. However, accumulating MOUs will not be allowed for more than three months at a time.

**Issue No. 34 -- Should the interconnection agreement include call-blocking as a remedy for a dispute between the parties.**

**Petitioners** -- It is standard industry practice for a party to be able to terminate service to the other party for failing to comply with the terms of an agreement, including failure to pay undisputed amounts.

**T-Mobile** -- The parties agree to apply late charge(s) to disputed payments under the agreement. Call blocking is not needed as a remedy and is contrary to the public interest.

**Commission Decision:** Consistent with the Arbitrator's Final Decision, the Commission adopts [\*27] Petitioners' position. Commission rule 4 CSR 29.120 sets out the requirements for call-blocking. Any language in the agreement must be consistent with this rule.

**Issue No. 35 -- What should be the effective date of the agreement?**

The parties agree on April 29, 2005.

**Issue No. 36 -- Is the transit rate issue raised by Citizens a proper subject of this arbitration?**

This issue was not presented in the petition. Furthermore, the record is not sufficiently developed to address whether a \$.01 transiting rate is appropriate. The Commission will not rule on this issue.

**IT IS ORDERED THAT:**

1. The Final Arbitration Report, with amendments to Issues 9 and 11, filed in this case on March 3, 2006, is incorporated into this Order by reference.
2. The parties shall incorporate the Commission's resolution of each issue, as described in this Order, into their interconnection agreements and shall file their interconnection agreements no later than April 22, 2006.
3. The Staff of the Commission shall file a Memorandum and Recommendation advising the Commission that it has reviewed each such proposed interconnection agreement and determined that it complies with this Order and applicable [\*28] statutes no later than May 2, 2006.



4. This order shall become effective on March 24, 2006.

#### **BY THE COMMISSION**

Davis, Chm., Murray, and Appling, CC., concur. Gaw and Clayton, CC., dissent, with separate dissenting opinions to follow.

Dated at Jefferson City, Missouri, on this 23rd day of March, 2006.

#### **DISSENTING OPINION OF COMMISSIONERS**

##### **ROBERT M. CLAYTON III AND STEVE GAW**

We respectfully dissent from the majority's approval of the Arbitration Order in this case. The Arbitrator erroneously found that reciprocal compensation is appropriate for intraMTA 1+ dialed calls carried by interexchange carriers. In addition, the Arbitrator improperly awarded forward looking costs which are inappropriate considering the high costs of serving predominately rural areas of Missouri. Because the Order is a significant departure from past Commission decisions, we must disagree with the majority.

Similar to case No. 10-2005-0468 (the *Alma* case), the Arbitrator in this case has concluded that reciprocal compensation applies to exchange access traffic. We disagree for two reasons. First, the evidence in this case indicates that Cingular has taken no position on this issue. The Arbitrator [\*29] erroneously attempts to apply T-Mobile's position and the *Alma* decision in Cingular's favor and against the Petitioners. Secondly, both this decision and the *Alma* decision are in error by relying on the *Atlas Telephone v. Oklahoma Corporation Commission*, 400 F.3d 1256 (hereinafter referred to as *Atlas II*) case because *Atlas II* did not hold that intraMIA 1+ dialed calls handled by an IXC should be subject to reciprocal compensation. Just as the Texas Public Utility Commission overruled the Texas Arbitrators in *Fitch Affordable Telecom Petition for Arbitration against SBC Texas under § 252 of the Communications Act*, Docket Number 29415, this Commission should have found *Atlas II* not relevant to this proceeding and, consequently, rejected the Arbitration Order. By not overturning the Arbitrator's decision on this issue, this Commission is imposing a compensation scheme that mixes reciprocal compensation with access charges. Such a system is simply not workable. Access charges involve a system of meet-point billing that represent a complex web of rates, traffic recording, invoice creation, and payment obligations- all pursuant to tariff [\*30] approval of this Commission. The Arbitrators in this case and the *Alma* case offer no explanation as to how their decisions will impact the tariffs, mechanics, and long-established principles of the access charge system.

The Arbitrators in this case and in *Alma* have simply adopted results of the *Atlas II* case without a full examination of the distinguishable characteristics between the cases. In the *Alma* case, the Arbitrator addressed *Atlas II* in an Order Regarding Motions in Limine. There, the Arbitrator concluded that the geographic MTA boundaries, "and nothing else," determine whether reciprocal compensation applies to intraMTA traffic. The *Alma* order provided little support for the conclusion that reciprocal compensation applied to IXC-carried traffic other than to state that the *Atlas II* opinion was persuasive. This Arbitration Order appears to adopt the *Alma* decision simply for the sake of consistency.

By agreeing with the Arbitrators and reaffirming the *Alma* decision, this Commission is imposing a reciprocal compensation scheme onto IXC traffic that is counter to years of policies implemented by this Commission and the FCC. The access charge system [\*31] may be in need of examination and eventual overhaul, but reform of that system should be

undertaken systematically and methodically -- not dismantled indiscriminately on a company-by-company basis or one arbitration case at a time.

Equally disturbing in the Arbitration Order are the decisions involving the costs of transporting and terminating intraMTA wireless-originated telephone calls. The Arbitrator's cost decisions are reflected in Issue Number Two entitled "The appropriate transport and termination rate for each Petitioner." Based on inputs from the HAI forward-looking cost model, the Petitioners initially proposed a uniform rate of \$ 00.035 per minute. Alternatively, the Commission was asked to support the T-Mobile/Cingular proposal, which ranged from a low of \$ 00.0025 for Grandby Telephone Company to a high of \$ 00.0147 for Le-Ru Telephone Company. The Arbitrator's Final Report suggests rates substantially in line with T-Mobile and Cingular's proposal.

Inputs to the HAI cost model are reflected primarily in Issues 3 through 13. The outcome of those issues determined the eventual cost for switching, transport, and termination of wireless-originated telephone calls. If the Arbitrator [\*32] and this Commission were seeking consistency, it would have agreed with Petitioners' HAI-supported uniform rate of \$ 00.035 because that rate is consistent with prior Commission findings as well as numerous negotiated rates involving other wireless providers. Instead, the Arbitrator ordered Petitioners to vary the original cost inputs, rerun the cost model, and to report the results by February 24th - an order with which the Petitioners dutifully complied. Apparently not satisfied that those results reflected costs low enough, the Arbitrator, in the Final Arbitration Order, directed Petitioners to again rerun the cost studies which results were submitted on March 10th.

The evidence in this case indicates substantial disagreement among the Parties over the results of the rerun cost studies. We have concerns about what has been characterized as the "pick and choose" method of identifying forward looking inputs and assumptions on the one hand, and the use of embedded inputs on the other hand. Given the complexity of the task and the short amount of time with which the revised studies were performed, we question whether the revised cost studies have undergone sufficient scrutiny to produce [\*33] satisfactory results. We are concerned that the final rates are not reflective of the higher costs associated with providing service in predominately rural areas by carriers predominately rural in nature. Our worry is that the final cost study is too reflective of the costs of larger carriers operating primarily in urban areas, where costs are much lower. In our opinion, the final cost study may impermissibly and inappropriately shift transport and termination costs to end users and permit Respondents' use of rural networks at below cost rates.

A more reasoned approach would have been for the Commission to set interim rates subject to true-up and allow a more thorough analysis of the revised cost studies. Instead, the Commission continues to insist on resolving even the most difficult cost related issues in the belief that it must conclude all decision making within 90 days. We believe the stakes are simply too high to reach results that are not fully evaluated. As with its decision regarding intraMTA 1+ dialed traffic, the results of the cost aspects of this case represent a significant departure from prior Commission decisions. We believe the evidence in this case supports results [\*34] more in line with prior decisions regarding the costs to provide telephone service.

For the foregoing reasons, these Commissioners respectfully dissent.

Respectfully submitted,

Robert M. Clayton III

Commissioner

Steve Gaw

Commissioner

Dated at Jefferson City, Missouri,

on this [30th] day of [March], 2006.

**Legal Topics:**

For related research and practice materials, see the following legal topics:

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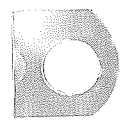
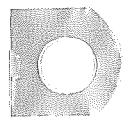
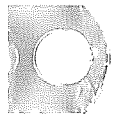
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REQUEST: Please produce the papers or documents that you use to determine the cost of money used in your review of Windstream's cost study. Please provide these calculations in their original electronic form and (if not in Excel format) an electronic Excel copy of the same, with all formulae intact.

RESPONSE: AT&T Mobility has not completed its analysis of Windstream's claimed "cost of money." AT&T Mobility will supplement this response when the analysis is completed.



REQUEST: Please admit that if interMTA traffic can be a mixture of both interstate MTA and intrastate MTA traffic, then the amount of interstate MTA traffic cannot exceed the total amount of interMTA traffic.

1. RESPONSE: AT&T Mobility is uncertain what this request for admission is asking, because the phrases "interstate MTA traffic" and "intrastate MTA traffic" are ambiguous. For purposes of responding to this request, AT&T Mobility will assume that the following is meant:

Please admit that if interMTA traffic can be a mixture of both interstate and intrastate traffic, then the amount of interstate/interMTA traffic cannot exceed the total amount of interMTA traffic.

Phrased this way, the request is admitted.





REQUEST: If you admit Request for Admission No. 1, please admit that the amount of traffic that is interMTA can be equal to or greater than the amount of traffic that is interstate, and therefore if the amount of traffic that is interMTA percentage is 10%, then the amount of traffic that is interstate must be less than ten percent 10%.

RESPONSE: This is actually two requests for admission, which will be responded to separately.

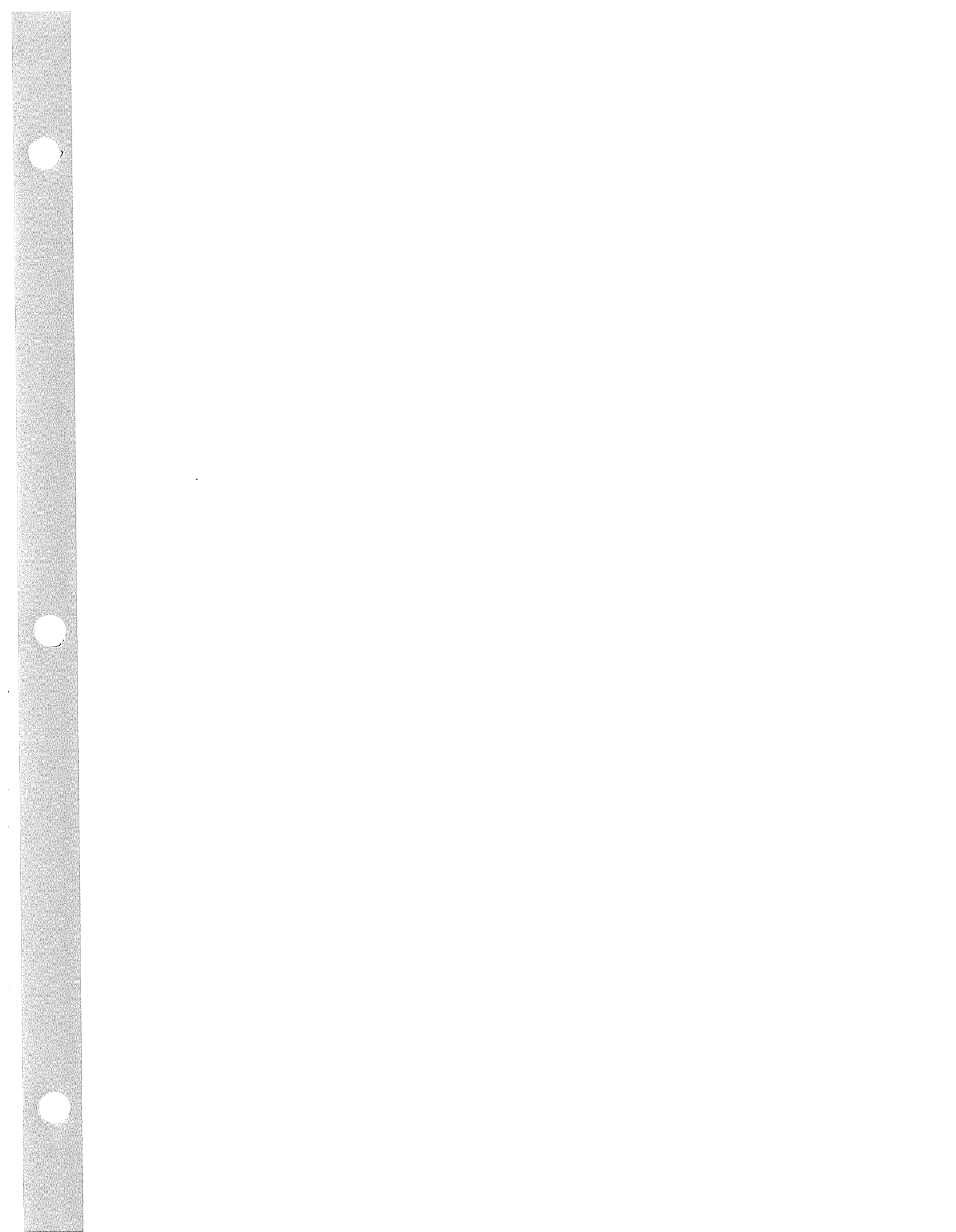
If you admit Request for Admission No. 1, please admit

1. That the amount of traffic that is interMTA can be equal to or greater than the amount of traffic that is interstate.

Based on AT&T Mobility's admission to Request for Admission No. 1 as rephrased by AT&T Mobility, this request is admitted.

2. And therefore, if the amount of traffic that is interMTA percentage is 10%, then the amount of traffic that is interstate must be less than ten percent 10%.

Denied, because while the statement in #1 above can be true, it is not necessarily required to be. The amount of interMTA traffic can also be less than the amount of interstate traffic. If less, then the statement in #2 is incorrect.



REQUEST: Please admit that the amount of traffic that is interMTA is an appropriate proxy for determining the jurisdiction of facilities between the Parties.

RESPONSE: Denied. MTA boundaries are not the same as state boundaries.