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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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MAR 25 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Developing a Unified Intercarrier Compensation)
Regime)
)
T-Mobile *et al.* Petition for Declaratory Ruling)
Regarding Incumbent LEC Wireless Termination)
Tariffs)

DOCKET FILE COPY ORIGINAL

CC Docket No. 01-92

MISSOURI SMALL TELEPHONE COMPANY GROUP
PETITION FOR RECONSIDERTION

I. INTRODUCTION

1. On February 17, 2005, the Federal Communications Commission ("FCC") adopted a *Declaratory Ruling and Report and Order* ("the Order") in this matter which amended its rules on a going-forward basis to prohibit LECs from imposing compensation obligations for non-access traffic pursuant to a tariff. The FCC acknowledged that wireless carriers may lack incentives to negotiate, so the FCC also amended its rules to clarify that incumbent LECs may compel negotiation and arbitration with wireless carriers under §252 of the 1996 Act.

2. The Missouri Small Telephone Company Group ("MoSTCG") respectfully requests that the FCC make clear that small ILECs may also "opt in" to existing reciprocal compensation or traffic termination agreements that wireless carriers have with other rural ILECs so long as those agreements have been approved by the state commission under §252.¹ This clarification/modification is consistent with the FCC's preference for contractual arrangements, and it will facilitate the transition from tariff-based arrangements to contractual agreements.

¹ Some members of the MoSTCG may be pursuing an appeal of the FCC's decision to prohibit the use of wireless tariffs on a going forward basis. This pleading should in no way be read as agreement with that portion of the FCC's decision or a

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II. The FCC's Order

3. The *Order* explains that the Act requires LECs to enter into agreements, but the Act does not explicitly impose the same reciprocal compensation obligations on CMRS providers:

[T]he Commission's rules impose certain obligations on LECs, but not on CMRS providers. Moreover, some commenters observe that CMRS providers may lack incentives to engage in negotiations to establish reciprocal compensation arrangements.²

Therefore, the FCC found it was necessary to ensure that LECs have the ability to compel negotiation and arbitration with CMRS providers, and the FCC clarified that incumbent LECs "may request interconnection from a CMRS provider and invoke the negotiation and arbitration provisions of §252 of the Act."³ The FCC also recognized that the establishment of interconnection arrangements could take more than 160 days, so the FCC established interim compensation mechanisms.⁴

III. Opting In To Existing Agreements

4. The Act and the FCC's rules require that incumbent LECs must make available any interconnection or service provided under an approved agreement to any other requesting telecommunications carrier upon the same terms and conditions. 47 U.S.C. § 252(i); 47 CFR § 51.809(a). Although the FCC's *Order* held that ILECs could invoke the negotiation and arbitration provisions under §252, the *Order* did not specifically address the availability of the Act's "opt in" procedures. The FCC should clarify its order and/or modify 47 CFR §20.11 so that ILECs have the

waiver of any such appeal.

² *Declaratory Ruling and Report and Order*, ¶15.

³ *Id.* at ¶16.

⁴ The FCC's default proxy rates were vacated by the Eighth Circuit. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000).

same right to opt in to state commission approved agreements with wireless carriers in the state. In Missouri, most, if not all, of the major wireless carriers (e.g. ALLTEL Wireless, Cingular, Sprint PCS, T-Mobile, and Verizon Wireless) have negotiated agreements with at least one of the MoSTCG member companies, but not necessarily all of them. This is true for a variety of reasons, especially in cases where a CMRS provider presently has little or no traffic terminating to the rural ILEC. As CMRS traffic begins to increase, however, it makes sense to allow the rural ILEC to opt in to one of the CMRS provider's existing agreements with another rural ILEC. This proposed clarification and/or modification will facilitate the transition from tariff-based interconnection arrangements to contractual agreements under the Act, and it will provide the rural ILECs with equal rights as the CMRS providers.

5. For example, Sprint PCS has negotiated agreements with many of the MoSTCG companies in Missouri that establish the rates, terms, and conditions for the termination of wireless calls. All of these agreements were negotiated in good faith and approved by the Missouri Public Service Commission pursuant to the Act. Missouri's other rural ILECs should be able to adopt Sprint PCS's approved agreements under the same terms and conditions, just as Sprint PCS would be able to adopt one of the rural ILEC's existing agreements with another CMRS provider.⁵ This will provide the small rural ILECs with the same procedures under the Act that are available to CMRS carriers. Under the FCC's "all or nothing" rule, requesting carriers must take all provisions of an interconnection agreement, not just the most favorable ones.

⁵ The FCC's "all-or-nothing" rule "requires a requesting carrier seeking to adopt the terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement." *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, 2004

IV. The FCC's Interim Pricing Rules

6. The FCC's decision and proposed rule provide that "the interim transport and termination pricing described in §51.715 shall apply" once a request for interconnection is made. However, the interim pricing provisions at 47 CFR §51.715 refer to default proxies at §51.707 that were vacated by the Eighth Circuit Court of Appeals decision in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000). Thus, there is uncertainty about what interim rates apply during the transition from wireless tariff arrangements to contractual arrangements, and the FCC should clarify this matter. This uncertainty also makes it especially appropriate to grant rural ILECs the ability to opt in to approved agreements that CMRS providers have with other small rural ILECs as this will minimize (or eliminate) the need for negotiations and interim compensation mechanisms.

V. Amendment to FCC Rules

7. To accomplish the requested clarification, the MoSTCG suggests that the following language be added to section 20.11 of the FCC's rules:

(g) A CMRS provider shall make available without unreasonable delay to any requesting rural ILEC any agreement in its entirety to which the CMRS provider is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. A CMRS provider may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

(h) The obligations of paragraph (g) of this section shall not apply where the CMRS provider proves to the state commission that:

(1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular agreement to the requesting carrier is not technically feasible.

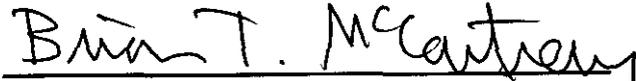
(i) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.

This proposed language is consistent with the FCC's opt in rules for ILECs at 47 CFR §51.809.

VI. Conclusion

The MoSTCG respectfully requests that the FCC clarify and/or modify its February 17, 2005 decision to make clear that rural ILECs may opt in to wireless carrier agreements with another small rural ILEC in the same state.

Respectfully submitted,



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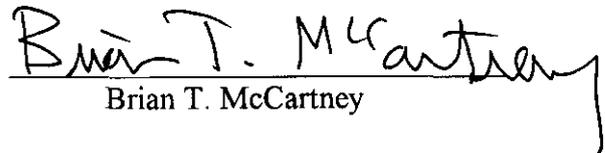
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