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January 4, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17101

Re: Consolidated Communications Enterprise Services, Inc. v. Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile, Voice Stream Pittsburgh LP d/b/a T-Mobile, or such other affiliated entities as are involved in the provision of CMRS service and the delivery of intrastate traffic to CCES; Docket No. C-2010-2210014

Dear Secretary Chiavetta:

Enclosed for filing please find the original and three copies of the Answer of Consolidated Communications Enterprise Solutions, Inc. to the New Matter of Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile, Voice Stream Pittsburgh LP d/b/a T-Mobile, or such other affiliated entities as are involved in the provision of CMRS service and the delivery of intrastate traffic to CCES, as filed electronically this date.

Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard

NJK:tlt

cc: Per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSOLIDATED COMMUNICATIONS :
ENTERPRISE SOLUTIONS, INC., :
Complainant :

v. :

Docket No. C-2010-2210014

OMNIPOINT COMMUNICATIONS INC. :
d/b/a T-MOBILE, OMNIPOINT :
COMMUNICATIONS ENTERPRISES LP :
d/b/a T-MOBILE, and VOICE STREAM :
PITTSBURGH LP d/b/a T-MOBILE or such :
other affiliated entities as are involved in the :
provision of CMRS service and the delivery :
of intrastate traffic to CCES, :
Respondents :

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ANSWER AND REPLY OF CONSOLIDATED COMMUNICATIONS ENTERPRISE SOLUTIONS, INC. TO THE NEW MATTER OF OMNIPOINT COMMUNICATIONS INC. D/B/A T-MOBILE, OMNIPOINT COMMUNICATIONS ENTERPRISES LP D/B/A T-MOBILE, AND VOICE STREAM PITTSBURGH LP D/B/A T-MOBILE OR SUCH OTHER AFFILIATED ENTITIES AS ARE INVOLVED IN THE PROVISION OF CMRS SERVICE AND THE DELIVERY OF INTRASTATE TRAFFIC TO CCES

NOW COMES Consolidated Communications Enterprise Solutions, Inc. ("CCES"), pursuant to 52 Pa. Code § 5.63, and files this Answer and Reply to the New Matter submitted by Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LP d/b/a T-Mobile, and Voice Stream Pittsburgh LP d/b/a T-Mobile or such other affiliated entities as are involved in the provision of CMRS service and the delivery of intrastate traffic to CCES ("T-Mobile"), as filed under cover letter dated December 6, 2010, as follows:

34. Admitted. LECs have an obligation under 47 U.S.C. § 251(b)(5) to enter into reciprocal compensation arrangements with CMRS providers.

35. Denied. It is denied that a CMRS service provider has no corresponding obligation. To the contrary, the FCC has determined that CMRS carriers must also pay reciprocal compensation arrangements for termination of traffic on LEC networks.¹

36. Denied as stated. 47 U.S.C. § 252(d)(2)(B)(i) provides that the pricing standards set forth at § 252(d) do not preclude “arrangements that waive mutual recovery (such as bill-and-keep arrangements)...” However, CCES has not “waived” the right to mutual recovery. T-Mobile’s attempt to unilaterally impose bill-and-keep arrangements is inappropriate and contrary to FCC precedent. Generally, bill-and-keep is employed only where the traffic is “in balance,” which is not the case here.²

37. Admitted in part; denied in part. The first sentence, as stated, is incomplete. Any carrier serving a customer “possesses a monopoly over call termination,” including incoming calls to T-Mobile’s retail customers. As stated previously, bill-and-keep is not mandatory. The quotation recited in this paragraph is simply a discussion of the relative merits of bill-and-keep and is not a ruling of law.

38. Admitted. It is admitted that 47 C.F.R. § 20.11 addresses CMRS-LEC call termination.

39. Admitted in part. This is why CCES has filed the instant Complaint, inasmuch as T-Mobile refuses to enter into such an agreement or even to agree to a rate.

¹ 47 C.F.R. § 20.11(b).

² 47 C.F.R. § 51.711.

40. Denied. FCC rules require compensation, as requested in the Complaint, for CLEC termination of CMRS traffic.³

41. Denied as stated. Rule 20.11(b)(2) requires compensation, and the FCC has expressly held that it is the state commissions' provenance to set the compensation rates for CLEC termination of CMRS traffic.⁴

42. Admitted in part, denied in part. The FCC did not rule that the interconnection provisions of 47 U.S.C. §§ 251 and 252 do not apply to agreements between CMRS providers and CLECs. It did hold that the provisions apply to ILECs and CMRS providers, but it has never excluded CLECs.⁵

43. Denied. The FCC did not rule that the interconnection provisions of 47 U.S.C. §§ 251 and 252 do not apply to agreements between CMRS providers and CLECs. It did hold that the provisions apply to ILECs and CMRS providers, but it has never excluded CLECs.⁶

44. Admitted in part; denied in part. FCC Rule 20.11(d) proscribes the use of tariffs for non-exchange access traffic. The 2005 *T-Mobile Order* indicates this applies to ILECs only, since they are the ones given § 252 rights, but this is not reflected in the regulation.⁷ Nor is that so stated in the *North County* cases.

45. Admitted. It is admitted that intraMTA traffic exchanged between a LEC and a CMRS carrier is subject to "reciprocal compensation." This is the relief sought by CCES' Complaint.

³ 47 C.F.R. § 20.11. See also *North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order 24 F.C.C.R. 3807 (Enf. Bur. 2009) ("*North County Merits Order*") and *North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, 24 F.C.C.R. 14036 (2009) ("*North County Review Order*").

⁴ *North County Merits Order*, *supra*; *North County Review Order*, *supra*; *In the Matter of Developing a Unified Intercarrier Compensation Regime T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination*, Declaratory Ruling and Report and Order, 20 F.C.C.R. 4855 (2005) ("*T-Mobile Order*").

⁵ *T-Mobile Order*, *supra*.

⁶ *Id.*

⁷ *Id.*

46. Admitted in part; denied in part. It is admitted that 47 C.F.R. § 51.711(b) so states. It is denied that this provision is applicable, however, since, as T-Mobile has repeatedly asserted and CCES agreed, § 252 interconnection rules do not apply. This would include the underlying FCC regulations that relate to interconnection agreements and compensation. The FCC has indicated that rules will apply as defined by a state commission and are not subject to FCC reversal.⁸

47. Denied. See reply to Paragraph 46.

48. Denied. See reply to Paragraph 46. In the *Virginia Arbitration Cost Order* case, the FCC was acting in the stead of the Virginia State Corporation Commission, which had declined to act. The FCC was not ruling in its role as a federal agency with federal powers. It was not implementing the Telecommunications Act of 1996 for other than the Virginia intrastate jurisdiction, and its ruling has no binding, precedential or preemptive effect in Pennsylvania. The only federal appeal court ruling cited (*Ace Telephone v. Koppendrayer*, 432 F.3d 876 (8th Cir. 2005)), on its face, is based upon facts presented in that particular case (“...in the absence of additional cost evidence...”). The facts of this case will be determined at the hearing stage.

49. Admitted. However, there is no attempt by CCES to impose state rate or entry regulation upon T-Mobile.

50. Admitted. It is admitted that the Pennsylvania Public Utility Commission (“Commission”) is a “legislative creation.”

51. Denied. It is denied that *Process Gas Consumers Group v. Pa. P.U.C.*, 511 A.2d 1315 (Pa. 1986), is a full and complete statement of the powers granted to the Commission or the

⁸ *North County Review Order*, 24 F.C.C.R. at 14045 ¶ 24.

interpretation of those powers. Clearly, implied powers have been found to exist in other cases,⁹ including the obligation of wireless carriers to pay into the Pennsylvania Universal Service Fund.

52. Admitted. While only a partial statement, it is true that one purpose of the Pennsylvania Public Utility Code is to supervise “public utilities,” including the regulation of just, reasonable and non-discriminatory rates, charges and fees.¹⁰

53. Denied as stated. This is only a partial statement of the law. Clearly, the Commission does much more than adjudicate complaints against public utilities.

54. Admitted. It is admitted that the term “public utility,” as defined under the Section 102 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 102, excludes, *inter alia*, “[a]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service.”

55. Admitted in part. It is admitted that T-Mobile is not a “public utility” under the Pennsylvania Public Utility Code. Further, the Public Utility Code and the court decisions speak for themselves (but are irrelevant to the matter in the instant case), and, to the extent T-Mobile infers conclusions of law, they are incorrect, but no response is required.

56. Denied. To the extent that T-Mobile is stating that its exemption from regulation as a “public utility” extends to a complete exemption from any authority or power of the Commission, it is denied. The citations provided are neither accurate nor complete. Clearly, the Commission has found the authority to require wireless carriers contribute to the Pennsylvania

⁹ See, e.g., *South River Power Partners L.P. v. Pa. P.U.C.*, 673 A2d 422, 427 (Pa. Cmwlth. 1996) (“Although South River is not itself a public utility, the PUC clearly has jurisdiction to order parties which appear before it to perform those acts which are necessary for the PUC to fulfill its obligations under PURPA.” (citing *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162 (Pa. 1985) (the Commission enjoys power both expressly conferred and *necessarily implied* by the legislature) and Section 501 of the Public Utility Code, 66 Pa.C.S. § 501 (the Commission has broad authority to carry out those powers expressly delegated to it)).

¹⁰ 66 Pa. C.S. §§ 1301 and 1304.

Universal Service Fund¹¹ and to decide petitions for eligible telecommunications carrier status filed by wireless carriers.¹² It also adjudicates complaints brought by wireless carriers under state law,¹³ allows wireless carriers to intervene and participate in state proceedings involving intercarrier compensation¹⁴ and to arbitrate interconnection agreements with wireless carriers.

57. Denied. See response to paragraph 46. The charges at issue in the Complaint are governed by state law.¹⁵

58. No admission or denial is required.

59. Denied. The Commission has subject matter jurisdiction to address the dispute alleged in CCES' Complaint.¹⁶

60. No admission or denial is required.

61. Denied. The Complaint states a claim upon which relief may be granted.

62. No admission or denial is required.

¹¹ *Rulemaking to Establish a Universal Service Funding Mechanism; 52 Pa. Code §§ 63.141 et seq.*, Docket No. L-00950105 (Final-Form Rulemaking Order entered June 21, 1996), slip op. at 68-69, *aff'd Bell Atlantic-Pennsylvania v. Pa. P.U.C.*, 763 A.2d 440, 494, 499-500 (Pa. Cmwlth. 2000) *vacated in part on other grounds sub nom. MCI WorldCom, Inc. v. Pa. P.U.C.*, 844 A.2d 1239 (Pa. 2004) (wireless carrier contributions are not mandated under federal law, but rather are "optional with state commissions.").

¹² *Final Policy Statement on Commonwealth of Pennsylvania's Guidelines for Designation and Annual Recertification as an Eligible Telecommunications Carrier (ETC) for purposes of Federal Universal Service Support*, Docket No. M-2010-2164741 (Final Policy Statement Order entered August 2, 2010), slip op. at 6 n.9 ("Pursuant to Secretarial Letter at Docket M-00960799, dated February 26, 2009 the Commission accepts jurisdiction of applications for ETC designation from wireless carriers.").

¹³ See *Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Select Services Inc., Verizon Global Networks, Inc., MCI Metro Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. v. Penn Telecom, Inc.*, Docket No. C-20066987 (Formal Complaint filed October 26, 2006 alleging violation of 66 Pa. C.S. § 3017(c)).

¹⁴ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, and *AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Company - Pennsylvania, et al.*, Docket No. C-2009-2098380 (Pleadings include T-Mobile Notice of Appearance, T-Mobile Prehearing Memorandum, T-Mobile Memorandum of Law Re Scope of proceeding, Wireless Carriers' Motion to Strike OCA Main Brief, Sprint Nextel Briefs and Exceptions).

¹⁵ *North County Merits Order, supra; North County Review Order, supra.*

¹⁶ See *North County Merits Order, supra; North County Review Order, supra.*

63. Denied. The claims asserted are neither barred nor preempted by federal law. To the contrary, the FCC has ruled that state commissions are the appropriate agencies to address issues involving reciprocal compensation rates.¹⁷

64. No admission or denial is required.

65. Denied. The Commission has such authority to grant the relief requested.¹⁸

66. No admission or denial is required.

67. Denied. The Commission may grant the relief requested. Moreover, the allegation is vague inasmuch as T-Mobile completely fails to identify any “federal regulatory requirements” with which CCES has failed to comply.¹⁹

68. No admission or denial is required.

69. Denied. The claims asserted in the Complaint are not barred by the applicable statute of limitations, and no applicable statute of limitations is recited to support the allegation.

70. No admission or denial is required.

71. Claims asserted are not barred by the doctrine of laches, and T-Mobile’s New Matter sets forth no factual or legal basis upon which it claims or could claim that laches has any application here.

72. No admission or denial is required.

73. Denied. The claims asserted by CCES in its Complaint are not barred by the “doctrine of estoppel,” and T-Mobile presents no factual or legal basis upon which it claims or could claim that estoppel applies.

74. No admission or denial is required.

¹⁷ See *North County Merits Order, supra*; *North County Review Order, supra*. See also CCES Answer to T-Mobile’s Preliminary Objections (filed contemporaneously herewith).

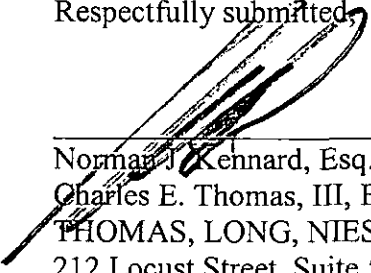
¹⁸ See CCES Answer to T-Mobile’s Preliminary Objections (filed contemporaneously herewith).

¹⁹ See CCES Answer to T-Mobile’s Preliminary Objections (filed contemporaneously herewith).

75. Denied. It is denied that the claims asserted in the Complaint are barred by the doctrine of waiver. T-Mobile presents no factual or legal basis under which it claims or could claim that CCES has waived its legal rights.

WHEREFORE, for the foregoing reasons, CCES respectfully requests that the Commission dismiss T-Mobile's New Matter and grant such other relief as it deems just and proper.

Respectfully submitted,



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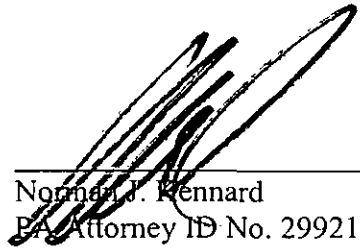
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CERTIFICATE OF SERVICE

I hereby certify that I have on the 4th day of January, 2011, served a true and correct copy of the foregoing document upon the parties listed below via electronic mail and first class mail, postage prepaid:

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