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January 10, 2011

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

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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 Motion of T-Mobile for Oral Argument on Preliminary Objections.

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

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 OF CONSOLIDATED COMMUNICATIONS
ENTERPRISE SOLUTIONS, INC. TO THE
MOTION OF T-MOBILE FOR ORAL ARGUMENT**

NOW COMES Consolidated Communications Enterprise Solutions, Inc. ("CCES"), pursuant to the Commission's regulations, and files this Answer to the Motion of T-Mobile for Oral Argument, as follows:

1. Admitted. It is admitted that the matter is currently pending ruling on the Preliminary Objections, which pleading cycle is complete.

2. Admitted in part; denied in part. It is admitted that the Commission's regulations allow, but do not require, oral argument. The factors to be considered are listed at 52 Pa. Code § 55.532. It is denied that the cited *Borough of Frackville* case is germane, inasmuch as argument was held to determine whether there were factual issues in dispute, a matter that was not clear

from the pleadings. Here, there is no factual dispute. The only relevant facts needed to address T-Mobile's Preliminary Objections are these: T-Mobile, a wireless carrier ("CMRS"), delivers intrastate traffic to Consolidated, a competitive local exchange carrier ("CLEC"), for termination, but then refuses to agree to compensate CCES. These facts are admitted by both parties and not at all in dispute. Rather, the issues presented are purely those of law.

3. Denied. It is denied that the issues presented in the Preliminary Objections raise "complex" legal questions. It is agreed that T-Mobile has attempted to present the issues as complex. As set forth in CCES' Answer, however, the rules have been clearly defined by the FCC and matters involving compensation between a CLEC and a CMRS carrier have been clearly delegated to the state commissions by the Federal Communications Commission ("FCC"). The law is clear and not complex.

It is denied that the law is "rapidly evolving." The FCC's *North County Orders*,¹ as recited in CCES' Answer to T-Mobile's Preliminary Objection, sets forth a long history of cases holding that the state is the proper forum to determine intrastate termination rates. Indeed, the language and history of Rule 2011(b)² and the FCC precedent,³ make it clear that the FCC has never displaced the states' power to set rates for termination of intrastate CMRS traffic. The FCC in the *CMRS Second R&O* stated that "[w]ith regard to the issue of LEC intrastate interconnection rates, we continue to believe that LEC costs associated with the provision of interstate and intrastate cellular services are segregable and, therefore, we will not preempt state

¹ Copies of the *North County Merits Order* and the *North County Review Order* were attached to CCES' Answer to T-Mobile's Preliminary Objections.

² See CCES' Answer to T-Mobile Preliminary Objections at 4 (including footnotes 9, 10 and 11).

³ *Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, para 227(1994) ("*CMRS Second Order*") and the order in *AirTouch Cellular v Pacific Bell*, 16 FCC Rcd 13502, para 14 (2001). See CCES' Answer to T-Mobile Preliminary Objections at 4 and footnote 10.

regulation of LEC intrastate interconnection rates applicable to cellular carriers at this time.”⁴ Indeed, the FCC has not preempted the states as T-Mobile contends.⁵ Rather as the Communications Act provides: states retain authority to set rates for intrastate communications, so long as no FCC rule or requirement is violated.⁶

CCES is unaware of decisions by “state commissions across the nation.” The status of matters in California was addressed in CCES’ Answer to T-Mobile’s Preliminary Objections.⁷ As noted therein, California declined to accept the case as a matter of administrative discretion. The decision of an ALJ in California now cited by T-Mobile in its Motion for Oral Argument has only been issued for comment and, even if final, would not be precedent for Pennsylvania.

The only state of which CCES is aware that has ruled on the substance of the matters contained in T-Mobile’s Preliminary Objections is New York, which commission acknowledged its jurisdiction and is processing the CLEC’s complaint according to its procedures.⁸

4. Admitted. It is admitted that T-Mobile and CCES have “sharply conflicting interpretations of the law.” This does not mean, however, that oral argument is required. Both parties have fully set forth their views of the law in their pleadings, in a manner which clearly defines the basis for their arguments.

5. Admitted. It is admitted that the pleadings are closed as to T-Mobile’s Preliminary Objections.

⁴ *CMRS Second Order* at ¶ 231.

⁵ See, e.g., *T-Mobile Ruling* at ¶ 10 (n.41) (noting that the Commission has “specifically declined to preempt state regulation of LEC intrastate interconnection rates applicable to CMRS providers”); *AirTouch Order*, paras. 12, 14 (Rule 20.11(b) mandates mutual compensation for termination of traffic but does not preempt state regulation of the actual rate paid by CMRS carriers for intrastate interconnection); *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, para. 109 (1996) (stating that the Commission’s LEC-CMRS mutual compensation rules do not preempt the states from setting intrastate interconnection rates). A copy of the *T-Mobile Ruling* was attached to CCES’ Answer to T-Mobile’s Preliminary Objections.

⁶ See CCES’ Answer to T-Mobile Preliminary Objections *passim*.

⁷ See CCES’ Answer to T-Mobile Preliminary Objections at 8 and 22-23 (¶¶ 36-43).

⁸ See CCES’ Answer to T-Mobile Preliminary Objections at 8-9 and 18-19 (¶ 11). A copy of the *NYPSC XChange Order* was attached to CCES’ Answer to T-Mobile’s Preliminary Objections.

6. Denied. It is denied that “further identification” of areas of either agreement or disagreement is necessary. The parties have fully set forth their views and their differences are completely illuminated.

7. Denied. It is denied that there is any need to “delve more deeply into differences” between the legal views set forth in T-Mobile’s Preliminary Objections and in CCES’ Answer. The pleading circle is closed and no reason is given why more discussion is needed.

8. Denied. Again, the legal issues presented are not particularly complex, inasmuch as the FCC has already ruled in the *North Country* cases, consistent with a long series of precedent, that the state commissions are “the more appropriate forum” to determine intrastate compensations for CMRS traffic terminating to a CLEC.⁹ T-Mobile cites to no further legal authority that it believes should be brought to the attention of the Commission.

9. Admitted. It is admitted that CCES opposes the Motion for Oral Argument. The parties have submitted pleadings upon which the issues of jurisdiction and authority can and should be decided. No justification has been shown for the added time and costs of an oral argument on issues that have been fully addressed in pleadings.

10. Denied. It is denied that oral argument needs to be held.

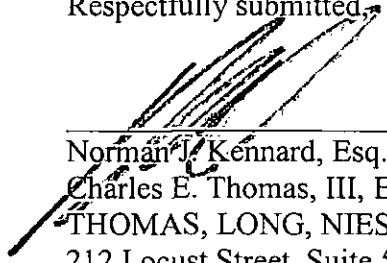
11. Admitted.

12. Admitted. CCES herewith voluntarily files this response within five (5) days, as requested by T-Mobile.

⁹ See CCES’ Answer at 6-8, 12-13 (¶ 4), 14-15 (¶5) and 18-19 (¶11).

WHEREFORE, for the foregoing reasons, CCES respectfully requests that the Commission deny T-Mobile's Motion for Oral; Argument and Preliminary Objections.

Respectfully submitted,



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*Attorneys for Consolidated Communications
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DATE: January 10, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I have on the 10th 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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