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December 1, 2003

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tn. 37238

Re: Docket Nos. 00-00523, 03-00585, 03-00586, 03-00587, 03-00588, and 03-00589

Dear Chairman Tate:

Enclosed please find an original and fourteen copies of the "RESPONSE OF THE RURAL COALITION OF SMALL LECs AND COOPERATIVES" to be filed in each of the above-referenced proceedings. The related matters were initially considered under Docket No. 00-00523, Generic Docket Addressing Rural Universal Service. In that proceeding, the Pre-Hearing Officer issued an Order on May 5, 2003 which directed collective negotiations among parties regarding interconnection issues. As a result of that directive and the resulting negotiations, Petitions for Arbitration were filed individually by parties in each of the other above-referenced proceedings.

A Joint Motion to Consolidate Docket Nos. 03-00585 through 03-00589 is pending before the Authority. The issues raised by the Petitions filed therein are similar and, accordingly, the Response to each of those Petitions, filed in accordance with the statutory requirements of the federal Communications Act, is the same. The undersigned has previously been admitted to appear in Docket No. 00-00523. Should the Authority deem it necessary, additional permission will be requested with respect to each of the other above-referenced proceedings which have been initiated pursuant to the Order issued in Docket No. 00-00523.

Copies of the "RESPONSE OF THE RURAL COALITION OF SMALL LECs AND COOPERATIVES" are being provided to each of the parties, as indicated on the attached Certificate of Service. Please direct any questions regarding this filing to me at your convenience.

Sincerely yours,

Stephen G. Kraskin

Stephen G. Kraskin

CERTIFICATE OF SERVICE

I , the undersigned, hereby certify that a true and correct copy of the foregoing has been served on the parties of record indicated below via U.S. Mail and via electronic mail.

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BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:		
Generic Docket Addressing Rural Universal Service	)	Docket No. 00-00523
	)	
Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act	)	Docket No. 03-00585
	)	
Petition of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, for Arbitration under the Telecommunications Act	)	Docket No. 03-00586
	)	
Petition of AT&T Wireless PCS, LLC d/b/a AT&T Wireless for Arbitration under the Telecommunications Act	)	Docket No. 03-00587
	)	
Petition of T-Mobile USA, Inc. for Arbitration under the Telecommunications Act	)	Docket No. 03-00588
	)	
Petition of Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration under the Telecommunications Act	)	Docket No. 03-00589

RESPONSE OF THE RURAL COALITION OF SMALL LECs AND COOPERATIVES
on behalf of

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
Dekalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

November 28, 2003

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to as the "Coalition" or "ICOs") submits this Response to the Petitions for Arbitration filed by five Commercial Mobile Radio Service providers ("CMRS providers")[1] with the Tennessee Regulatory Authority ("TRA") on or around November 6, 2003 (hereafter referred to as "Petitions").[2] The CMRS providers seek arbitration pursuant to §252 of the Communications Act of 1934, as amended ("Act"), of those issues which they have identified as "unresolved" in the course of the negotiations that have taken place with the ICOs.[3]

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[1] Petitions for Arbitration were filed by: (1) Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"); (2) T-Mobile USA, Inc. ("T-Mobile"); (3) BellSouth Mobility LLC, BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; d/b/a Cingular Wireless ("Cingular"); (4) Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless"); and (5) AT&T Wireless PCS, LLC d/b/a AT&T Wireless ("AWS"). A Motion to Consolidate these proceedings is pending before the Authority. Accordingly, the Coalition files this Response in each of the pending proceedings related to these matters.

[2] It is a duty under the Act for an arbitration petitioner to "provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition." 47 U.S.C. § 252(b)(2). Not each of theThe CMRS providersdid not comply complied with this statutory requirement. While the Coalition will not focus on this particular procedural deficiency in this response, we respectfully bring it to the attention of the TRA. The Coalition notes that the failure to abide by proper and established processes pervades the entirety of the matters of interconnection before the TRA. The rush to an "end" without proper following of the means has left the ICOs in the improper and untenable position of providing ongoing interconnection services in the absence of enforcement of standing Orders of the TRA. By their participation in this arbitration process and this Response, the members of the Coalition have not waived any of the rights that have arisen as the result of the actions of BellSouth Telecommunications, Inc. ("BellSouth") and the CMRS providers which have individually and in concert harmed each of the members of the Coalition.

[3] A non-petitioning carrier is entitled to file a response to arbitration requests. 47 U.S.C. § 252(b)(3).

I. INTRODUCTION: Pending alternative direction from the TRA, each of the Parties should abide by all law, rules and regulations associated with the arbitrations. Each of the Parties, however, should demonstrate candor and address the realistic impracticalities of resolving "indirect interconnection" issues through an arbitration process when fundamental issues remain pending before the Federal Communications Commission ("FCC").

The Coalition Members will respond herein to the Petitions filed by the CMRS providers in the manner prescribed by the Act. Prior to providing the Coalition response to each issue raised, identifying additional unresolved issues, and offering additional information related to the arbitrations, the Coalition respectfully urges the TRA to consider the totality of the circumstances that have resulted in the arbitration petitions, and proposes that the TRA and all parties should, under these circumstances, consider the utilization of alternative dispute resolution to address and resolve these matters in the most efficient and pragmatic manner available.

A. The genesis of these proceedings cannot be ignored. The matters were raised and considered properly by the Authority within the Generic Universal Service Docket. The "indirect interconnection" arrangements requested by the CMRS Providers are currently in use subject to existing terms and conditions. Participation by all Parties, including BellSouth, is required to change the terms and conditions.

1. The CMRS Providers currently receive the "indirect" interconnection of their traffic on the ICO networks through BellSouth. The Coalition Members have no objection to maintaining the existing interconnection arrangement subject to equitable terms and conditions.

The framework of these arbitration proceedings is far from traditional. The subject interconnection arrangement is not a new arrangement - calls go through the existing interconnection arrangement every day, as they have for a long time. The CMRS providers have an established arrangement with BellSouth whereby the CMRS providers deliver calls destined to the ICO networks to BellSouth which transports the calls to the ICO networks for termination. Terms and conditions have already been established that are applicable to this existing interconnection. Arbitration is not needed either to establish interconnection or to establish

terms and conditions that govern the interconnection. The arbitrations are the result of the fact that BellSouth and the CMRS providers wanted to impose new interconnection terms and conditions on the existing arrangement. When BellSouth attempted arbitrarily to alter the existing arrangement and practice regarding the existing arrangements, the Coalition members refused to be bullied and initiated formal processes before the TRA in order to, at minimum, ensure that all parties followed both existing requirements and lawful processes.

Notwithstanding the existing unresolved issues addressed herein, the ICOs have been and remain amenable to the establishment of reasonable, competitively equitable, and mutually agreeable arrangements outside the scope of the established interconnection standards. In fact, the existing interconnection terms and conditions provided this framework until BellSouth decided to alter them unilaterally in conjunction with their agreements with the CMRS providers that excluded the ICOs. Under the existing arrangement between BellSouth and the ICOs, BellSouth is supposed to compensate the ICO when it carries the traffic of a third party carrier to the ICO network for termination. The arrangement is equitable: the CMRS provider contracts with BellSouth to carry the traffic to the ICO networks and BellSouth undertakes the responsibility to compensate the ICO for the termination.

2. The ICOs do not object to the proper establishment of new terms and conditions applicable to the existing interconnection arrangement. New terms and conditions, however, should be established by proper proceedings and not in the hostile bullying context of unilateral disregard for existing terms and conditions.

Under any circumstances where any party desires to change the arrangement, the framework of established interconnection standards is available upon request to be used within the proper established processes. That, however, is not the process that brought the parties to the current situation. Once the existing interconnection arrangement was long in place, BellSouth decided to change the rules on its own. Indirect interconnection arrangements and associated

terms and conditions, however, exist: the CMRS providers contract with BellSouth to carry their traffic to the ICOs; and BellSouth pays the ICOs for the CMRS traffic it carries to the ICO network for termination. When BellSouth wanted to change this arrangement, it simply stopped paying the ICO despite the established terms and practices. The interconnection arrangement already exists and the ICOs have been deprived of the opportunity to negotiate a new arrangement in the manner contemplated by the Act. The Act anticipates that parties, upon request to establish interconnection, will bargain in good faith to establish terms and conditions consistent with established requirements and standards.

In the instances before the Authority in these arbitration proceedings, the ICOs have been deprived of this opportunity. Instead, the actions of BellSouth and the CMRS providers have resulted in an attempt to impose terms and conditions on the ICOs that have not been adopted through appropriate interconnection proceedings. BellSouth and the CMRS providers apparently believe that they can, without recrimination, withhold the payments due from BellSouth under existing arrangements and force the ICOs to continue to provide the requested transport and termination services either without any payment or bully the ICOs into submitting to unfavorable terms and conditions.[4] The Coalition respectfully urges the TRA to ensure that neither BellSouth nor the CMRS providers can attempt to utilize the outcome of these proceedings as a false shroud to cover improper conduct.

3. The Parties should not ignore the fact that these proceedings take place within the context of pending matters before the TRA involving the existing interconnection arrangement and pending proceeding in the generic docket addressing rural Universal Service.

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[4] No ICO has waived any rights that have arisen as a result of the conduct of any other party. The ICOs may individually or collectively pursue other actions regarding the conduct of other parties which is beyond the Authority's jurisdiction in these proceedings. The ICOs note that their participation these proceedings does not constitute a waiver of any right that has arisen.

The ICOs' concerns regarding BellSouth's actions related to these matters are pending before the TRA as a result of a "Petition for Emergency Relief" filed by the Coalition on April 3, 2003. In the Petition for Emergency Relief, the Coalition explained that the ICOs participate in the provision of an intraLATA telecommunications services arrangement provided over network facilities interconnected with BellSouth. The interconnection arrangements, terms, and conditions between each ICO and BellSouth are governed by arrangements and contracts which have been implemented under the authority of, and subject to the supervision and oversight of the TRA and its predecessor.

With respect to the provision of intraLATA switched interexchange services, each ICO has implemented intraLATA equal access. When an end user customer is provided basic local service by an ICO, that customer may elect to utilize an intraLATA toll provider of his or her choice, including BellSouth. When the customer originates an intraLATA toll call, the ICO provides the intraLATA toll carrier (*i.e.*, BellSouth or an alternative carrier chosen by the customer) with originating access service and charges the toll carrier for the originating access service. When BellSouth or any other intraLATA toll provider terminates a call to an end user customer served by an ICO, that ICO provides the toll carrier with terminating access service and assesses charges in accordance with its effective arrangements.

With respect to the existing "indirect interconnection" between the ICOs and the CMRS Providers, BellSouth has utilized the existing intraLATA interexchange network together with termination services it receives on ICO networks. By BellSouth's provision of this service, the CMRS providers are able to connect indirectly with the ICOs through the use of BellSouth's network and services.

This arrangement initially rendered it unnecessary for the CMRS providers to request interconnection terms and conditions directly with the ICOs with respect to the termination of

their CMRS traffic. BellSouth effectively provided the CMRS carriers with indirect interconnection to the ICOs on a bilateral basis negotiated between BellSouth and the CMRS providers. BellSouth apparently did not identify any need to inform or involve the ICOs the establishment of the CMRS interconnection. BellSouth knew that it had available interconnection under its existing arrangements with each ICO that gave BellSouth the ability to terminate the CMRS traffic on the ICO networks without any new agreement or the establishment of an arrangement directly between the ICOs and the CMRS providers.

As the ICOs indicated in the Petition for Emergency Relief, they were surprised to learn at a March 10, 2003 meeting with BellSouth representatives that BellSouth intended to discontinue payments to the ICOs for the compensation for the termination of traffic that BellSouth designates as "CMRS traffic." Because BellSouth's unilateral pronouncement was contrary to the existing arrangements between the ICOs and BellSouth, the good faith undertaking of then ongoing settlement discussions, and a standing TRA Order issued on December 29, 2000, the Coalition filed the Petition for Emergency Relief.

BellSouth insisted to the ICOs that the unilateral changes regarding the compensation for the traffic were required because BellSouth had entered into so-called "meet-point billing" arrangements with the CMRS providers. BellSouth apparently also indicated to the CMRS providers that BellSouth also had a "meet point billing" arrangement in place with the ICOs with respect to the transport of CMRS traffic. No such arrangement, however, exists, and no such arrangement can exist in the absence of the participation of all parties.

Subsequent to a status conference held to discuss the Petition for Emergency Relief on April 22, 2003, BellSouth and the ICOs reached an interim agreement regarding the terms and

conditions pursuant to which BellSouth transports CMRS traffic to the ICO networks.[5] The Pre-hearing Officer issued an Order on May 5, 2003 adopting the interim arrangement pursuant to Joint Motion of BellSouth and the ICOs to stay the consideration of the Petition for Emergency Relief. The parties indicated in the Joint Motion their agreement "to engage in good faith negotiations with CMRS providers . . ." In effect, the ICOs agreed to enter into a good-faith process in which they expected all parties, including BellSouth, to participate to resolve the issues associated with so-called "meet point billing arrangements" in the manner anticipated by industry guidelines: voluntary discussion and agreement among all the parties to a meet-point billing arrangement.

The Pre-Hearing Officer clearly expected that the issuance of the May 5, 2003 Order would result in discussions among all the participating parties including the ICOs, BellSouth and the CMRS Providers.[6] As the history of the ensuing negotiation demonstrates, however, BellSouth removed itself from participation in the discussions, leaving many of the identified open issues unresolved because, in fact, these issues cannot be resolved in the absence of BellSouth's participation. The Pre-Hearing Officer could not have anticipated this eventuality when, in good-faith, he called upon all parties to negotiate resolution of the issues. The Pre-Hearing Officer did, however, anticipate in the May 5, 2003 Order that the negotiations may not result in a new agreement and that the "Authority may be called upon to arbitrate disputed issues

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[5] The terms of compensation addressed only a 90 day period which has subsequently run out. The ICOs have not been compensated for any of the subject traffic terminated on their networks from June 1, 2003 forward.

[6] The Pre-Hearing Officer, in fact, expressed concern that the issues could not be resolved by discussions between only the ICOs and BellSouth: "It is doubtful that this issue can be fully settled without the participation of CMRS providers that have entered into or intend on entering into meet point billing arrangements with BellSouth." Accordingly, the Pre-Hearing Officer required that the CMRS Providers also be afforded an opportunity to participate in the negotiations.

pursuant to Section 252 of the Telecommunications Act of 1996."

B. The failure of the negotiation process is attributable to two primary factors: 1) The CMRS provider have pursued positions that are not consistent with established interconnection standards and related rules and regulations; and 2) BellSouth has failed to address required aspects of newthe terms and conditions pursuant to which it carries the CMRS traffic to the existing interconnection it has established with the ICO.

Although the ICOs and the CMRS providers have met to negotiate the terms of interconnection, the discussions have not produced a resolution of all the outstanding issues. The Parties did not fail, however, to exercise good faith in their attempt to identify and address the issues that remain unresolved.[7] The fact that good faith negotiations between the ICOs and the CMRS carriers have not resulted in resolution of the open issues is attributable to two primary factors.

1) The CMRS providers have attempted to impose their positions irrespective of the fact that these positions are not supported by established interconnection standards and applicable rules and regulations. The Coalition will address this fact with specificity in the issue-specific responses provided herein. At the outset of the Authority's consideration, however, it is significant to note that matters related to "transit traffic" and the rating and routing of wireline/wireless traffic have been placed before the FCC by BellSouth and the CMRS Providers, and that each is fully aware that these matters are pending and unresolved. Many of the issues have been raised by the other parties before the FCC, but these issues remain unresolved.[8] Accordingly, the Coalition respectfully submits that all parties should

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[7] *See*, Attachment A, "Tennessee Coalition/CMRS Provider Issues Matrix," dated 6/19/03. This document reflects the joint efforts of the parties to identify open issues and to provide each other with their respective positions on each issue.

[8] The FCC has an open proceeding considering various aspects of interconnection and intercarrier compensation, CC Docket 01-92. The CMRS carriers and BellSouth have participated actively in these proceedings to advance their positions on many of the negotiation

(continued...)

acknowledge candidly the fact that these issues remain unresolved and that any attempt by the TRA to resolve these matters in the course of an arbitration may result in needlessly expended resources. Irrespective of how the TRA may resolve these open issues, the resolution will be subject to challenge until the FCC properly addresses these issues. The Coalition suggests that it is because of this very fact that in other States, the Parties have reached interim agreements with the assistance of mediation efforts by the state regulatory authority in lieu of full arbitration.

2) The resolution of many of the open issues requires the participation of BellSouth. These issues will be discussed in detail herein; they include, and are not limited to, how the ICO will obtain auditable and verifiable data regarding the amount of traffic terminated and how the ICO will exercise its rights in the instance of nonpayment. These issues do not arise under the existing terms and conditions pursuant to which BellSouth carries CMRS traffic to the ICO networks. BellSouth utilizes a common trunk group for transporting traffic to the ICO; under existing arrangements and practices, BellSouth is supposed to compensate the ICO irrespective of whether the traffic originated on a CMRS network.[9] Under this arrangement, the ICO is not concerned with how much traffic came from any specific carrier because BellSouth has elected

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[8](...continued)
issues including the proper role of BellSouth in the provision of transit services on behalf of CMRS carriers. Within this same FCC proceeding, Sprint has sought - but, not received - a declaratory ruling regarding the responsibilities of LECs regarding the rating and routing of wireline to wireless traffic. No law, regulation, or rule exists to support the position Sprint has advocated before the FCC, nor can any such position be properly adopted in the absence of rulemaking. Nonetheless, Sprint and the other CMRS carriers attempt to utilize the resources of the TRA in these arbitration proceedings to impose policies and requirements which, as the CMRS carriers fully know, have not been adopted.

[9] The Coalition emphasizes that BellSouth is "supposed to" compensate the ICOs under existing arrangements. As previously discussed, the ICOs have not been compensated for any of the CMRS traffic carried to their networks after May 31, 2003.

to utilize its common trunk group to transport the traffic and theoretically took payment from the third party carriers for doing so, and agreed to take responsibility for payment to the ICO. The present circumstances arose, however, because BellSouth seeks to alleviate itself of that payment responsibility.

In good-faith, the ICOs have attempted to propose new terms and conditions for the indirect interconnection of CMRS traffic to the ICO through BellSouth. As the subsequent discussion herein demonstrates, the ICOs offered proposed terms and conditions to address the issues of all other parties including BellSouth's desire to remove itself from payment obligations to the ICOs with respect to the CMRS traffic. The ICOs, however, respectfully insist that the rational straight-forward concerns that have been raised must be addressed. If BellSouth is alleviated of financial responsibility for the traffic it delivers to an ICO through a common trunk group, how will the ICO be able to audit and verify the traffic that the CMRS carrier, and not BellSouth, must pay? And, what recourse will the ICO have in the event of nonpayment by a CMRS carrier?

Although the Coalition offered a set of terms and conditions to address the requirements of all parties, both the CMRS Providers and BellSouth insisted that the "meet point billing" arrangement, as BellSouth calls it, could not be documented in a three-way agreement, as proposed by the Coalition. Instead, the CMRS Providers insisted that the negotiation of indirect interconnection through BellSouth should be exclusively conducted with the ICOs. Similarly, BellSouth insisted that the establishment of the requisite terms and conditions governing the physical interconnection between BellSouth and the ICOs should be a bilateral agreement. The ICOs suggested that the expectation of the Pre-Hearing Officer expressed in the May 5, 2003 Order was collective negotiations among all the parties. Nonetheless, and in good faith response to the insistence of the CMRS Providers and BellSouth, the ICOs reluctantly agreed to pursue

individual negotiations with BellSouth and the CMRS providers. Unfortunately, BellSouth has not offered a counterproposal to the terms and conditions drafted by the ICOs which address these matters.

The Coalition is concerned that the actions of BellSouth in failing to address the open issues, together with the attempt of the CMRS providers to impose interconnection terms and conditions that are not reflective of standards established by rules and regulations, constitute an attempt to place the ICOs in a competitively inferior and discriminatory position in terms of:

(1) the ICO's opportunity to establish equitable business arrangements with the CMRS providers and other carriers;

(2) the ability of the ICOs to identify, measure, and bill for terminating traffic;

(3) the provision of a meaningful opportunity to receive compensation for their services; and

(4) an opportunity to exercise their rights to negotiate interconnection, as opposed to "after the fact" negotiation where the ICOs already provide interconnection under existing terms and conditions that have been ignored.

This course of events, if not remedied, will effectively deprive each of the ICOs of its individual rights to design and deploy its own network, switching hierarchy, and service offerings as well as to establish interconnection with other carriers without interference from, or discrimination by, any other carrier.

The Coalition members are not reluctant to negotiate new terms and conditions in good faith, or to resolve open issues through arbitration and formal processes, if necessary. The ICOs, in fact, have already demonstrated their good faith willingness to negotiate new terms and conditions related to the amount of compensation due for the termination of CMRS traffic that

BellSouth carriers to the ICO networks.[10] Moreover, the ICO good-faith efforts have continued as reflected by the negotiation efforts with both the CMRS Providers and BellSouth.

The Coalition respectfully submits, however, that the existing process cannot result in mutually acceptable and sustainable new terms and conditions among all the Parties in the absence of recognition by all parties that: 1) the positions advanced by the CMRS Providers are not based on established interconnection standards and, in fact, are in several instances the subject of open FCC proceedings; and 2) the establishment of new terms and conditions addressing indirect interconnection of CMRS providers through BellSouth must fully resolve the logical concerns and opens issues that, by necessity, require BellSouth's cooperation and participation.[11]

C. The Coalition proposes the utilization of alternative dispute resolution similar to that which has been used in other states.

As discussed above, the CMRS Providers and the ICOs have devoted considerable effort in an attempt to negotiate interconnection terms and conditions regarding the "indirect interconnection" of traffic, as directed by the Pre-Hearing Officer's May 5, 2003 Order. As the CMRS Providers and BellSouth are fully aware, similar issues have arisen in other States where BellSouth operates. Tennessee, however, is the only State where an attempt has been made to bring all of the Parties together under the formal framework of an attempted Section 252 formal interconnection negotiation to resolve the issues. While the Coalition fully supported this

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[10] The good faith willingness is reflected by the ICO agreement to reduce the compensation amount to 3 cents per minute as part of an interim arrangement that resulted in the interconnection negotiations among the Parties. *See* May 5, 2003 Order of the Pre-Hearing Office in Generic Docket Addressing Rural Universal Service, Docket No. 00-00523.

[11] The Coalition will incorporate into a separate procedural Motion its request that BellSouth be directed to participate as a Party in these arbitration proceedings in order to address and resolve all open issues in the manner contemplated by the Pre-Hearing Officer's Order dated May 5, 2003.

attempt and, together with several other Parties, invested considerable resources in this effort, the process has not achieved the objective. The Coalition has suggested above the reasons that the negotiation process has not reached fruition.

In addition, however, the Coalition respectfully observes that the nature of a Section 252 negotiation involves a properly defined and limited negotiation time frame prior to the opportunity to utilize arbitration to resolve open issues. The arbitration process, however, is not a process to establish interconnection standards and policies; it is a process that enables the state regulatory authority to apply established standards and policies in order to resolve open issues. In other States where the very same issues have arisen, the CMRS providers and BellSouth have engaged, to varying degrees, in a mediation-like process with the state regulatory authority and the ICOs in those states similarly situated to the Coalition members.

In each of these other States, the parties either already have completed agreements or have neared completion of agreements that address the open issues on temporary basis extending at least through December 31, 2004. The agreements reached among all of the Parties are subject to the approval of the state regulatory authority. The Coalition notes that each of these agreements that has been made public incorporates an interim arrangement regarding compensation and preserves the rights of each party to advocate any position in any subsequent proceeding.[12] The Coalition suggests that implicit in this preservation of rights is an understanding that, as discussed above, the issues raised involve matters of interconnection standards and policies that have not yet been established or resolved. Accordingly, the interests of all of the parties to these temporary arrangements are served by compromise that provides certainty and stability during a period of time during which it is anticipated that the FCC will

[12] For the convenience of the Authority, the Coalition includes as Attachment B an agreement reached in Mississippi regarding these matters as an example.

address and resolve many of the pending matters. The Coalition, without waiving any rights with with respect to the positions undertaken herein, respectfully urges all parties and the TRA to consider whether the pursuit of alternative dispute resolution undertaken in other states to address similar matters may best serve the interests of all parties and the public given the reality of the existing circumstances and associated unresolved federal regulatory issues. Notwithstanding this suggestion for consideration by all parties, the Coalition will address herein all aspects of the pending arbitrations including the response of the ICOs to each issue identified by the CMRS providers, the identification of additional unresolved issues and the provision of additional information necessary to address the open issues.

II. Additional Background Information and Deficiencies in the Arbitration Petitions filed by the CMRS Providers.

The Act places the explicit duty on the petitioner for arbitration to provide the state commission with:

> all relevant documentation concerning ----
> (i) the unresolved issues;
> (ii) the position of each of the parties with respect to these issues; and
> (iii) any other issue discussed and resolved by the parties.[13]

The CMRS provider petitioners have failed to fulfill this duty. Their failure acts to distort the activity and discussions that took place between the parties, fails to document the proper positions of the ICOs as reflected in documents not provided, leaves the issues confused, and acts to shift the burden of this duty of the petitioner to the non-petitioning parties. The CMRS providers' list of issues is incomplete. The CMRS providers have also failed to provide the documentation setting forth a long list of issues developed by the parties during the negotiations, the various drafts and language proposals set forth by the parties, and all of the

[13] *See* 47 U.S.C. § 252(b)(2) (regarding "Agreements Arrived At Through Compulsory Arbitration," and "Duty of Petitioner")

other issues that were discussed and resolved in the course of negotiations.

Moreover, the CMRS providers attach a single version of a one-sided draft agreement (an agreement not previously provided to the ICOs) apparently intended as a substitute for the actual documentation requirements. The ICOs have not agreed to utilize the terms of the CMRS providers' Exhibit 2 draft agreement, and the draft agreement does not reflect the actual course of the negotiations or the status of the issues between the parties which the CMRS providers have failed to document. Furthermore, arbitration of the 18 issues presented by the Petitioners will not resolve an interconnection agreement between and among the parties, because as any comparison between the ICOs' drafts and the CMRS providers' draft will demonstrate, there are many additional incompatible provisions between the approaches of the two documents. Finally, there are many other issues which were discussed but not resolved that the CMRS providers have failed to mention.

It is not the duty of the ICOs to fulfill those requirements established by the Act that are the responsibility of the petitioner in an arbitration. The ICOs have already been burdened by the scope of the multiple company negotiations. The ICOs respectfully submit that they should not be required to shoulder additional burdens that are the statutory responsibility of the petitioners.

Without waiving the rights of the ICOs with respect to the inadequacy of the petitions of the CMRS providers, the ICOs attach to this Response as Exhibit 1 and Exhibit 2, the draft agreements which the ICOs prepared for discussion purposes during the negotiations. Exhibit 1 is a draft agreement intended to be used for a three-party transit arrangement which, as discussed previously and herein, necessarily includes BellSouth, and is the preferred approach of the ICOs to resolve comprehensively the issues discussed in the negotiations. This approach is, additionally, consistent with three-party agreements that BellSouth and the CMRS providers

have entered into with small incumbent LECs in other Southern States, as addressed above. Exhibit 2, prepared by the ICOs at the request of the CMRS providers, breaks the contractual terms and conditions into separate bilateral agreements, thereby requiring three separate, but related agreements (CMRS-BellSouth, BellSouth-ICO, and ICO-CMRS). These draft agreements, on their face (and including internal notes and open issues as set forth in the drafts), demonstrate that complete resolution of the issues is largely dependent on the addressing matters that require participation by BellSouth. Agreements with the CMRS providers cannot be finalized prior to the resolution of the necessary terms and conditions with BellSouth that arise as a result of the indirect interconnection terms and conditions sought by the CMRS providers. A preliminary review of these two exhibits of draft agreements offered by the ICOs compared with the CMRS providers' Exhibit 2 draft will underscore major differences in positions on many of the relationships and mechanics of any anticipated arrangement.

III. CMRS ARBITRATION ISSUES

CMRS ISSUE 1

CMRS ISSUE 1: Does an ICO have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?

CMRS Providers' Position: Yes. The FCC's rules expressly require the ICOs to interconnect directly or indirectly with the CMRS provider.

CMRS Claimed ICO Position: During negotiations, the ICOs appeared to agree that they have a duty to interconnect both directly and indirectly. It is not clear, however, whether the ICOs would take this position in the context of an arbitration proceeding. Further, the ICOs' position with respect to compensation arrangements, which is discussed more fully in issues two (2) and eight (8) below would have the effect of requiring a CMRS provider to have a direct connection before receiving reciprocal compensation from the originating ICO.

Corrected ICO Position: The ICOs are already in full compliance with the requirements of Section 251(a) of the Act establishing the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications providers including the CMRS providers. The ICOs are connected with other carriers and are willing to interconnect with any other carrier that may request interconnection. Section 251(a) of the Act sets forth the "general duty" of interconnection and is separate and distinct from the specific Section 251(b)(5) requirements regarding the exchange of traffic. Accordingly, a carrier's choice to interconnect indirectly pursuant to Section 251(a) is distinct from a carrier's choice to seek Section 251(b)(5) which under the FCC's established rules, requires a physical interconnection with the carrier from which a reciprocal compensation arrangement is requested. To the extent that the CMRS providers' Issue 1 position suggests requirements that go beyond the simple requirements of Section 251(a) of the Act, or infer a resolution of other issues to be discussed below, the ICOs' positions on these issues are set forth below.

Further ICO Discussion:

Section 251(a) of the Act only requires that a carrier interconnect with other

carriers.

The CMRS providers' petitions appear to attach some greater meaning and duties to the requirements of Section 251(a) of the Act than actually exist. The obligations established by Section 251(a) of the Act are general and are already fulfilled by the ICOs. Section 251(a) of the Act simply identifies the general duty of carriers to interconnect directly and indirectly with other carriers via the public switched network and to use standard equipment and technical approaches that are compatible with other network participants.[14] This subsection of the Act and the associated implementation rules do not impose any specific standards of interconnection, hierarchical network arrangements (*e.g.*, no requirement to subtend a BellSouth tandem), business arrangements (*e.g.*, billing and payment relationships), compensation arrangements, or service obligations.[15] This section is separate and apart from the Sections 251(b) and (c) requirements; these sections provide specific interconnection obligations available under specific rules that are distinct from the general Section 251(a) general duties.

Factually, the ICOs are already in full compliance with the requirements of Section 251(a); they do not refuse to connect their networks to third parties that utilize another carrier's connection to the ICO networks. The ICOs and other carriers fulfill their duty to be interconnected directly and indirectly by their willingness to establish interconnection with other carriers. The ICOs have such network connections in place. The ICOs are connected with BellSouth and with interexchange carriers. The ICOs are also willing to negotiate interconnection with their networks with any other carrier that requests such connection

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[14] 47 U.S.C. § 251(a) and 47 C.F.R. § 51.100.

[15] The FCC has determined that interconnection is separate and apart from any traffic exchange. *See* 47 C.F.R. § 51.5 definition of "Interconnection" ("This term does not include the transport and termination of traffic.")

consistent with the existing regulatory framework. There is no issue to arbitrate here because the ICOs already fulfill their duties under Section 251(a) of the Act. The ICOs have not refused to connect their networks directly or indirectly. In fact, the CMRS providers already utilize indirect interconnection; the real unresolved issues involve the compensation terms and not whether the ICO fulfills its duty to interconnect directly or indirectly.

CMRS ISSUE 2

CMRS ISSUE 2: Do the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation and arbitration process in § 252(b) apply to traffic exchanged indirectly by a CMRS provider and an ICO?

CMRS Providers' Position: Yes. The FCC rules expressly provides for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered.

CMRS Claimed ICO Position: No. The ICOs believe that reciprocal compensation for land-to-mobile traffic is due only when that traffic is delivered via a direct connection.

Corrected ICO Position: The CMRS providers do not understand the position of the ICOs. The three-party transit service arrangement is an arrangement not within the scope of the standards of the FCC's Subpart H rules. Those rules define transport and termination arrangements for which the specific framework of reciprocal compensation applies. The requirements for such framework do not include the situation where an interexchange carrier (BellSouth or any other carrier) commingles third party traffic of CMRS providers with the interexchange carrier's own traffic. The tandem arrangement under which BellSouth switches the CMRS provider traffic onto trunks commingled with BellSouth's interexchange carrier access traffic is not an interconnection arrangement that is within the definitions of the Subpart H rules. Nor is any LEC obligated to accept traffic from a physically connecting interexchange or toll carrier subject to terms and conditions that alleviate that interexchange carrier from payment for the termination of the traffic, irrespective of whether the traffic originates on another carrier's network.

The ICOs understand that the CMRS providers have a separate and clear right to pursue physical connections with the ICOs which may be subject to specific interconnection requirements. Accordingly, and as an alternative to the establishment of physical connections, the ICOs are willing to resolve fair, competitively neutral, non-discriminatory three-party

arrangements under which all of the parties may otherwise avoid burdensome proceedings.

In some instances, the ICOs have no local exchange traffic that they send to the CMRS providers for termination. In such cases, even if the reciprocal compensation rules were to apply, there is no responsibility for terminating compensation since there is no traffic delivered for termination to the CMRS provider's network.

The willingness of the ICOs expressed in the course of negotiations to send local exchange service traffic via a three-party BellSouth tandem arrangement is conditioned on the agreement of the CMRS providers to accept responsibility for the transport on the BellSouth network of the traffic beyond the ICO's network to a point of interconnection with the CMRS provider. The ICOs object to any attempt by the CMRS providers to require an ICO to take financial responsibility for the transport of traffic beyond the ICO's network.

Additional Information and Discussion:

The three-party "transit" traffic arrangement is not an interconnection requirement to which arbitration applies.

The Act provides the opportunity for carriers to negotiate terms and conditions voluntarily without regard to the standards of Section 251 of the Act.[16] In contrast, arbitrations are confined to the resolution of issues exclusively to which the established requirements and obligations of the Act can be applied by the arbitrator.[17] However, the issues that arise with respect to BellSouth's so-called "transit" arrangement involve interconnection arrangements that

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[16] "VOLUNTARY NEGOTIATIONS. --- Upon receiving a request for interconnection, service, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251." 47 U.S.C. § 252(a)(1), underlining added.

[17] " . . . [A] State commission shall -- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission] pursuant to section 251. 47 U.S.C. § 252(c)(1).

go beyond the established standards and necessarily involve voluntary arrangements that must be mutually agreeable between and among all of the parties. Accordingly, and in the absence of established standards, rules and regulations, there is no lawful basis to resolve an issue through Section 252 arbitration.

The "transit" service arrangement which BellSouth decided to provide to CMRS providers under which BellSouth transports traffic to ICO networks in a manner that commingles third-party traffic with BellSouth's intrastate interexchange carrier access traffic is an arrangement that is not addressed by the established interconnection requirements. Accordingly, this arrangement is not reflective of an existing interconnection obligation with respect to either BellSouth or the ICOs. The fact that BellSouth has voluntarily elected to transit traffic on behalf of the CMRS providers does not raise a new obligation for the ICOs or alleviate BellSouth of its existing obligations with respect to payment for traffic it carries to ICO networks. Under no circumstances are the ICOs obligated to undertake an involuntary requirement in a competitive environment that would force the ICO end offices to subtend the BellSouth tandem in this manner. The ICOs abide by Section 251(a) and receive CMRS provider traffic connected to them indirectly by BellSouth. Compliance, however, requires nothing more and most certainly no law, rule or regulation states that an ICO must not hold BellSouth (or any physically connecting carrier) responsible for the traffic BellSouth elects to carry to the ICO end office.

"Transit" arrangements are not part of the interconnection requirements or rules. In over 700 pages of the FCC's original interconnection order and the FCC's implementing interconnection rules, neither the concepts of "transit service," "transit traffic," nor the word "transit" ever appears.[18]

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[18] In the Matter of Implementation of the Local Competition Provisions in the

(continued...)

In fact, there are no rules that require BellSouth to provide so-called "transit" interconnection services. More importantly from the ICO perspective, BellSouth has no fundamental or automatic right to deliver "transit service" traffic to any ICO in the absence of proper agreements authorizing such delivery. In those instances where BellSouth has elected to provide CMRS carriers with a "transit service" to ICO end offices in the absence of the establishment of distinct terms and conditions, BellSouth should be required to comply with the existing terms and conditions that govern its use of the physical connection established with the ICO. Notwithstanding the mere fact that BellSouth may be an intraLATA interexchange carrier that obtains access services from an ICO, BellSouth has no automatic rights to hold itself out as the gateway to an ICO, nor to impose its switching hierarchy or preferred business and compensation terms on the ICOs, nor to require the ICOs to involuntarily accept third-party traffic commingled with BellSouth's interexchange carrier traffic pursuant to arbitrarily imposed terms designed to alleviate BellSouth from the payment of access to the ICO in accordance with the only established arrangement that governs the physical interconnection between BellSouth and the ICO. To the extent that any regulatory body endorsed an opportunity for BellSouth to impose interconnection terms and conditions in this manner, BellSouth would have obtained an unprecedented favorable position over other carriers by its ability to declare itself an exclusive gateway between carriers and to dictate the related terms and conditions of its gateway service.

Consistent with these facts, there is no existing, mandatory interconnection duty that any Bell company, including BellSouth, provide so-called transit service to CMRS providers. In an FCC arbitration of interconnection agreements between Verizon (in its capacity as the incumbent

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[18](...continued)
Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (to be referred to as "*First Report and Order*").

LEC) and three CLECs in Virginia, the FCC arbitrator confirmed this fact by concluding that the FCC "had not had occasion to determine whether incumbent LECs have a duty to provide transit service under the [Section 251(c)(2)] provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty."[19] Accordingly, when BellSouth provides so-called transit services to third-party carriers, it does so voluntarily outside the scope of the interconnection rules and obligations.[20] Moreover, it follows that BellSouth has no unilateral right to impose terms and conditions of such voluntary arrangements on a small and rural ICO. While the ICOs may have the duty to terminate traffic a CMRS provider sends through BellSouth, the ICO has no involuntary obligation to terminate the traffic in accordance with terms and conditions dictated by BellSouth or any other party. Instead, the only typical three-party arrangement recognized by the FCC involves an interexchange carrier as the intermediary, and the arrangement is subject to the framework of access.[21] This, in fact, has been the existing practice in Tennessee. The CMRS providers arranged for BellSouth to carry their traffic to the ICO networks; BellSouth carried the traffic over its trunk connections and paid the ICO access.

The fact that no other standards exist or are imposed with respect to indirect traffic does not mean that the parties may not negotiate a new arrangement under Section 252. Any such new three-party arrangement, however, involving BellSouth, the ICOs, and the CMRS providers would require the establishment of new agreements setting forth the proper terms and conditions between BellSouth and the ICOs for such arrangement, and not dictated or mandated terms and

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[19] *See Memorandum Opinion and Order*, CC Docket Nos. 00-218, 00-249, and 00-251 released July 17, 2002 at para. 117.

[20] BellSouth has also recognized and agreed with these FCC conclusions. BellSouth Ex Parte presentation filed with the FCC on July 31, 2003 in CC Docket No. 01-92 noting the FCC's Virginia arbitration decision.

[21] *First Report and Order* at para. 1034.

conditions that are not defined by existing interconnection requirements.

The Coalition respectfully underscores the fact that there is no interconnection obligation or requirement that end offices of any ICO must subtend a tandem office of BellSouth to receive such traffic.[22] Carriers have the right to design their own network architecture without interference from other carriers. The ICOs have the right to deploy their own tandem office switching hierarchy and some have already done so. For those ICOs that have deployed their own tandem offices, their end offices do not subtend a BellSouth tandem.[23] For those ICOs that do not have their own tandem, they are free to subtend another carrier's tandem other than a

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[22] Over the last few decades, many small and rural LECs, including some of the ICOs, have reconfigured their networks and end office hierarchy and have deployed their own tandem switches for the express purpose of removing themselves from dependence on BellSouth. ICOs are concerned by experiences with inaccurate measurement, unidentified traffic, missing settlements, and other less than acceptable methods with respect to the performance of these functions. Initially in Tennessee, BellSouth failed to identify or acknowledge third-party CMRS provider traffic with the ICOs. In response to these circumstances, some ICOs have configured their networks (*i.e.*, established tandems) so that they can identify and measure traffic for themselves for billing purposes, thereby freeing themselves from reliance on BellSouth. For example, in an access proceeding involving a small LEC and its relationship with BellSouth, the FCC agreed with Public Service Telephone Company ("PSTC") that it was allowed to reconfigure its network: "Further, PSTC is upgrading its permanent network not only to provide equal access and 800 number portability, but to decrease its reliance on the facilities of a potential competitor with which PSTC has already allegedly encountered measurement and reliability problems." *Memorandum Opinion and Order*, In the Matter of Allnet Communications Services, Inc. v. Public Service Telephone Company, File No, E-93-099, released October 8, 1996 ("*PSTC Decision*") at para. 17. PSTC contended "that when it noticed measurement and reliability problems with BellSouth's network, it decided to reconfigure its own network to reduce reliance on BellSouth . . . ." *Id.* at para. 9.

[23] However, BellSouth's recent actions whereby it decided unilaterally to commingle third party traffic over a trunk group that is a dedicated intrastate access traffic trunk group of BellSouth have essentially negated the small LECs' tandem design. By changing the terms of the dedicated trunk group to one in which multiple carriers' traffic is switched in tandem with BellSouth's traffic, potentially without a single responsible party, the ICOs' network planning is negated. This result is discriminatory in that BellSouth cannot be allowed unilaterally to make network decisions for the ICOs thereby denying them of their rights to design and deploy their own network.

tandem of BellSouth.[24]

Accordingly, there is no established standard, requirement or expectation that BellSouth has an automatic right to provide "transit services" in a manner that alleviates BellSouth from responsibility for terminating access payments to the ICOs unless and until the ICOs, the third party carriers and BellSouth agree to such arrangements. These arrangements would be strictly voluntary and, because these arrangements are not subject to any established standards or requirements, the desire of any party for such an arrangement is not ripe for, or subject to, arbitration. Nonetheless, and as stated above, the ICOs are willing to enter into mutually agreeable, reasonable, competitively fair, voluntary arrangements for such three-party arrangements, but only if their competitive concerns are properly addressed as set forth herein. The resolution of voluntary arrangements is not within the scope of an arbitration pursuant to processes of Section 252 of the Act.

The FCC's Subpart H rules regarding the transport and termination of traffic between carriers are not applicable to three party arrangements. The Subpart H rules are confined to arrangements where an interconnection point is established between two carriers.

Section 251(b)(5) of the Act and the corresponding FCC Subpart H rules specifically set forth the definitions, conditions, and scope of traffic which form the basis for the reciprocal compensation framework in the Act.[25] The Subpart H Rules are the exclusive rules that implement Section 251(b)(5) of the Act.[26] By the explicit terms and clear meaning of the words, the Subpart H Rules apply to a framework where an actual physical interconnection point is

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[24] Some ICOs have plans to migrate the subtending status of their end office(s) to other tandem switches. The right to do so must be maintained as the result of this proceeding.

[25] *See* 47 C.F.R. §51.701(a)-(b). The Subpart H rules are included here in Attachment C.

[26] *See* "Subpart D - Obligations of All Local Exchange Carriers," ("The rules governing reciprocal compensation are set forth in subpart H of this part.") 47 C.F.R. § 51.221.

established between the networks of two carriers that are the parties to the compensation arrangement. These rules apply only after a request for such interconnection point and only after the interconnection point is established. The FCC's discussion in the adoption of these rules describes this Subpart H framework:

> . . . [R]eciprocal compensation for transport and termination of calls in intended for a situation in which two carriers collaborate to complete a local call.
>
> . . . We define "transport" for purposes of Section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party . . . .[27]

Consistent with these rules, wireless carriers have options that include the possibility of using the facilities of another carrier as the means to establish the interconnection point between the CMRS provider and the LECs.[28] Regardless of the method of physical interconnection used, the rules and the related FCC discussion clearly establish that the Subpart H rules apply with respect to the interconnection point between the two carriers. In addition to the fact that the FCC has confirmed that the interconnection rules do not address so-called transit traffic arrangements, the Subpart H rules cannot be logically applied to an arrangement between and among three carriers, where there is one interconnection point between two LECs (BellSouth and an ICO) and one interconnection point between a CMRS provider and BellSouth, and there is no interconnection point between the CMRS provider and the ICO.

More importantly, the specific applicable rules define the scope of traffic subject to the transport and termination compensation framework in the context of whether the two carriers are

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[27] *First Report and Order* at paras. 1034 and 1039, underlining added.

[28] *First Report and Order* at para. 1039.

two LECs[29] or a LEC and a CMRS provider.[30] If the two carriers are a LEC and CMRS provider, then the Major Trading Area ("MTA") geographic distinction applies. However, if the two carriers are both LECs, then some other geographic area applies for the purpose of defining the scope of traffic that a carrier may choose to transmit to a terminating carrier on the basis of a reciprocal compensation arrangement.

The ICOs recognize that the CMRS providers may want to terminate, on the network of the rural LECs, traffic that is within the scope of the Subpart H rules. The ICOs acknowledge the right of a CMRS provider to request interconnection pursuant to terms of Sections 251 and 252 and to establish the interconnection point on the network of the rural LEC for these purposes.[31] A CMRS provider may utilize its own facilities to establish an interconnection point pursuant to these rules or, alternatively, the CMRS provider may utilize another carrier's facilities (*e.g.*, BellSouth) to establish an interconnection point for the purposes of transmitting traffic to and from the LEC's network.[32] The potential use of another carrier's facility to establish an interconnection point with a terminating carrier is, however, factually distinct from

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[29] 47 C.F.R. §51.701(b)(1).

[30] 47 C.F.R. §51.701(b)(2).

[31] Moreover, the FCC's rules regarding "Interconnection" state that "[a]n incumbent LEC shall provide . . . interconnection with the incumbent LEC's network: (1) . . . ; (2) at any technically feasible point within the incumbent LEC's network . . . ." 47 C.F.R. § 51.305, underlining added. The Act requirement to establish interconnection points with other carriers pertains to the LEC's actual network as confirmed by these FCC rules, not to some other LEC's network or to some other LEC's network in another LEC service area.

[32] As discussed herein, no LEC, particularly not a rural ICO, is responsible for interconnection or network arrangements outside of its own incumbent LEC service area network. An incumbent LEC's interconnection obligations only arise with respect to the geographic area within which it operates as an incumbent LEC and with respect to its incumbent network and facilities. *See* 47 U.S.C. § 251(h)(1)(A)-(B) ("For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that----on the date of enactment . . . provided telephone exchange service in such area . . . ." Underlining added.). No LEC, including regional Bell companies, have interconnection obligations in geographic areas in which the LEC has no facilities or is not even a LEC.

an arrangement whereby BellSouth's interexchange carrier access arrangement is used to terminate traffic to an ICO. Under this arrangement, the traffic is commingled with BellSouth's interexchange carrier traffic and, accordingly, there is no establishment of a distinct interconnection point between the ICO and the CMRS provider; there is no physical interconnection established that distinguishes the CMRS traffic from the BellSouth toll traffic carried over the common trunk group. Instead, the CMRS provider is utilizing an interconnection arrangement provided by BellSouth; this physical interconnection was established to carry interexchange traffic and is subject to access charges assessed to BellSouth. From a network perspective, this arrangement is not consistent with the connecting arrangement that is within the definition of transport and termination under the FCC's Subpart H "reciprocal compensation" rules; there is no distinct interconnection point that the CMRS provider has deployed or arranged to use to connect its network to the ICO. As stated above, the ICOs remain willing to establish voluntary arrangements under which a three-party arrangement for traffic may be properly established, but they will not voluntarily permit common interexchange trunk groups to be used in this manner in the absence of proper terms and conditions that address all of the issues the ICOs have raised.

CMRS ISSUE 2b

CMRS ISSUE 2b (excluding Verizon Wireless): Do the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC)?

CMRS Providers' Position: Yes. The FCC rules expressly provides for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered.

CMRS Claimed ICO Position: No. The ICOs believe that reciprocal compensation for land-to-mobile traffic is due only when that traffic is delivered via a direct connection.

Corrected ICO Position: The CMRS providers (notably excluding Verizon Wireless) are simply incorrect in their portrayal of the established rules; they have provided an incomplete and misleading explanation of their position that ignores the clear statements of the FCC. Moreover, the CMRS providers have misunderstood or misstated the ICOs' position. The ICOs' position is that a LEC's obligation to pay reciprocal compensation is applicable only with respect to the that LEC's local exchange service traffic. The obligation to pay reciprocal compensation cannot extend to a call that is carried by the originating customers's chosen interexchange carrier. Interexchange carrier traffic is mutually exclusive from the traffic subject to the reciprocal compensation framework. The ICOs positions are:

1. Traffic that is interexchange carrier traffic is not subject to the framework of reciprocal compensation; it is subject to the framework of access. As discussed below, the FCC has explicitly verified this treatment of traffic. [*See* ICO Exhibit 1, Section 3.4; and ICO Exhibit 2, Section 3.1.3.]

2. The scope of reciprocal compensation is defined as local exchange service traffic between a LEC and CMRS provider.[33] Interexchange service traffic between the IXC and the

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[33] The FCC has stated that the duty to establish reciprocal compensation is only with respect to a LEC's "local exchange service." *First Report and Order* at para. 1045 ("[P]ursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange services." Underlining added.) The framework does not apply to a service that a LEC does not offer or provide. The FCC also understood that the framework only applies to "certain" traffic, not all

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CMRS provider does not constitute traffic handled by the LEC. Interexchange service traffic is not the traffic of the LEC which provides only access service. It is nonsensical to apply reciprocal compensation obligations to a LEC when the call is not treated as "local exchange service," but is carried by the customer's toll provider.

3. The CMRS providers asked the FCC to declare that the framework of access applies to traffic that IXCs terminate to CMRS providers, and the FCC found that the framework of access applies.[34]

4. For interexchange services, the IXC is the service provider; the IXC is the provider that bills and receives the service revenues for the provision of the interexchange call; and it is the IXC provider which has the revenue to compensate the terminating carrier. While the FCC clarified that the framework of access applies for traffic that IXCs terminate to CMRS providers, the FCC questioned whether the CMRS providers had established the proper contractual obligations between the IXC and the CMRS provider in a manner that obligates the IXC to provide compensation. Accordingly, the CMRS providers have been left by the FCC in the position of knowing that the framework of access applies between an IXC and the CMRS provider but collecting from the IXC may be difficult. Finding themselves in this dilemma, some CMRS providers (excluding Verizon Wireless) have proposed irrationally that somehow the LEC providing access services to the IXC should be responsible for the payment of reciprocal compensation to compensate for the fact that the wireless carrier failed to establish proper terms and conditions when it terminates the traffic of an IXC. The ICOs respectfully urge the TRA to reject this attempt by those CMRS providers that would burden the ICOs for payment to cover their failing to establish proper access arrangements with IXCs.

5. The petitions of the CMRS providers demonstrate their misunderstanding of IXC services and the distinction from LEC services. In the last paragraph of their discussion of Issue 2b, they suggest that their position "does not impact the originating ICO's ability to assess toll charges on its end-users for these calls (assuming they are toll calls)."[35] This suggestion is inconsistent with the manner in which interexchange toll services are provided. Toll service is

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[33](...continued)
traffic (. . . will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers). *Id.* Certain traffic does not mean all traffic, and local exchange service traffic does not mean interexchange service traffic.

[34] *Declaratory Ruling*, In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges, WT Docket No. 01-316, released July 3, 2002. The CMRS providers will attempt after the fact to suggest that the FCC's findings regarding IXCs and the access charge framework were confined to interMTA IXC traffic only. That is once again misleading and wrong for the following reasons: (a) there is no evidence that the FCC's decision is confined to interMTA IXC traffic; the discussion is with respect to interstate access which is both interMTA and intraMTA; (b) an IXC is oblivious as to whether a interexchange service call in interMTA or intraMTA; and (c) the CMRS provider's petition and the FCC's discussion does not even mention this issue.

[35] *E.g.*, Sprint PCS at p. 14.

not a local exchange service, it is an interexchange carrier service. In their capacity as incumbent LECs, the ICOs provide access to interexchange carriers under an equal access arrangement; they do not provide intraLATA toll services like BellSouth. The ICOs involvement in an interexchange call is simply to provide originating access services to the presubscribed IXC or toll carrier. The ICOs do not bill toll on behalf of their LEC operations; toll charges are billed on behalf of interexchange carriers.[36]

6. An examination of the interconnection arrangements that BellSouth has with CMRS providers will reveal that BellSouth provides no compensation to CMRS providers for interexchange service traffic that BellSouth switches to competing interexchange carriers on an equal access basis, including those interexchange carriers that compete with BellSouth for the provision of intrastate, intraLATA interexchange toll business. BellSouth provides no compensation to CMRS providers for traffic that is terminated to the CMRS providers by other interexchange carriers.

7. The CMRS providers' demand for reciprocal compensation on calls handled by IXCs is inconsistent with facts and a common sense understanding of the industry and the FCC's specific conclusions.[37]

For all of these reasons, the position of the CMRS providers set forth under Issue 2b should be rejected and the issue should be dismissed.

Additional Information and Discussion:

The FCC fully anticipates that calls destined to mobile users may be completed by interexchange carriers and not subject to reciprocal compensation. As the FCC recognized in its original *First Report and Order* decision and its *Section 251(g) Decision,* Congress intended that

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[36] There is a distinct difference between BellSouth and the ICOs here. BellSouth is an intrastate, intraLATA interexchange carrier that competes with other intrastate interexchange carriers, but the ICOs are not. BellSouth does terminate interexchange service calls to CMRS providers while the ICOs do not.

[37] The ICOs note that Verizon Wireless correctly has not joined in with the other CMRS providers on this issue because Verizon Wireless has already recognized in ex parte presentations with the FCC that traffic carried by an IXC should not be part of the reciprocal compensation framework. *See* Notice of Ex Parte Presentation, CC Docket No. 01-92 - Intercarrier Compensation, filed by Verizon Wireless with the FCC on January 27, 2003 ("IXC-carried traffic should not be subject to reciprocal compensation even if it originates and terminates in the same MTA."). Consistent with the fact that Cingular's part owner, BellSouth, does not provide compensation to CMRS providers for other IXCs' traffic, an examination of Verizon's wireline local exchange carrier interconnection agreements with CMRS providers, including those with its affiliate Verizon Wireless, would demonstrate similar results.

the existing access arrangements of incumbent LECs on the date immediately preceding the date of enactment of the 1996 Act be maintained until explicitly superceded by new rules.[38] The FCC also concluded that "the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic."[39] The FCC also rejected the suggestion that the Section 251(b)(5) reciprocal compensation framework would apply "when a long-distant call is passed from the LEC serving the caller to the IXC."[40] Most significant, the FCC explicitly stated that "under [its] existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC . . . ."[41]

Four years after the *First Report and Order*, in reviewing a complaint against a large Bell company, and to further clarify the connecting carrier framework between LECs and CMRS providers, the FCC once again came to the same conclusion. The FCC restated the conclusion that LECs could and would hand off to interexchange service providers traffic destined to mobile users. The FCC recognized that the access charge framework may apply to traffic even when the end users are both located within the same MTA in those instances where the traffic is carried by an IXC:

> Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if

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[38] *Order on Remand and Order*, Implementation of Local Competition Provisions in the Telecommunications Act of 1996, 16 FCC Rcd 9151, 9167 (2001) ("*Section 251(g) Decision*") (para. 34).

[39] *First Report and Order* at para. 1034.

[40] *Id.*

[41] *Id.* at para. 1043, underlining added.

carried by an interexchange carrier.[42]

Moreover, and as discussed above, calls delivered by an IXC to the network of a CMRS provider for termination are subject to the compensation framework between the IXC and the CMRS provider. The FCC has stated that "[i]n the context of the existing access charge regime, we tentatively conclude that CMRS providers should be entitled to recovery of access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa). . . . We proposed to require that CMRS providers be treated no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from IXCs and LECs for interstate interexchange traffic."[43]

In a declaratory ruling released by the FCC on July 3, 2002, the FCC agreed with Sprint PCS that CMRS providers are not prohibited from charging IXCs access charges when IXCs terminate traffic to wireless carriers, but recognized that there was a question about whether Sprint PCS had established a contractual right to bill and collect the IXCs.[44] Because CMRS providers are not permitted, however, by the FCC to file access tariffs, they have apparently been unsuccessful at establishing contractual terms with IXCs. This fact does not support any effort by the CMRS providers to use this arbitration proceeding to establish a new extension of

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[42] *Memorandum Opinion and Order,* In the Matters of TSR Wireless, LLC, *et al.*, Complainants, v. US West Communications, Inc. *et al.*, Defendants, released June 21, 2000, in File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 ("*TSR Order*") at para. 31. *See also First Report and Order* at 11 FCC Rcd 16016-17 (paras. 1041-45). The *Section 251(g) Decision* also concluded that traffic subject to access charges is not within the scope of Section 251(b)(5) of the Act.

[43] *See, e.g., Notice of Proposed Rulemaking* in CC Docket Nos. 95-185 and 94-54, In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers. (released January 11, 1996) at para. 116.

[44] *Declaratory Ruling*, In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges, WT Docket No. 01-316, released July 3, 2002.

reciprocal compensation obligations on the ICOs or any LEC. This effort by the CMRS providers is improper in the context of an arbitration. The ICOs appreciate the fact that Verizon Wireless did not join in this issue, but respectfully submit that each of the other CMRS providers is equally aware of the fact that no ICO owes reciprocal compensation on calls to wireless carriers handled by interexchange carriers.

CMRS ISSUE 3

CMRS ISSUE 3: Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO?

CMRS Providers' Position: The carrier on whose network a call originates is responsible for paying the carrier on whose network the call terminates.

CMRS Claimed ICO Position: The carrier that delivers the traffic to the terminating carrier's network is responsible for paying the terminating carrier.

Corrected ICO Position: When a CMRS carrier elects to utilize BellSouth to transit traffic to the ICO networks instead of establishing a physical point of interconnection with the ICO network, the most reasonable administrative and efficient approach is that: 1) BellSouth contracts to provide the transit service to the CMRS provider; 2) the CMRS provider compensates BellSouth for the transport and termination service it receives: and 3) BellSouth compensates the ICO for the termination of all the traffic BellSouth carries to the ICO network through the interconnection of the common trunk group. This approach is consistent with the agreements that BellSouth and the CMRS providers have reached with the independent telephone companies in other states in which BellSouth operates.

While alternative approaches to the compensation arrangement may be possible (*i.e.*, the CMRS provider pays BellSouth and BellSouth is responsible for compensation to the ICOs, or multiple CMRS providers each pay the ICOs even though they are not directly interconnected), the mechanism utilized ultimately depends on what arrangements and contracts are established between and among multiple parties. The payment mechanism is not dependent upon any established interconnection standard that is subject to arbitration. Throughout the industry, it has been common practice for CMRS carriers to utilize interexchange carriers to deliver traffic for termination in the absence of direct physical interconnections. The CMRS providers are well aware that under these circumstances, IXC terminates the traffic to the LEC, the CMRS provider

compensates the IXC for the transport and termination service, and the IXC compensates the LEC for terminating access.

Under the existing arrangements and practices that govern BellSouth's interconnection to the ICO networks, and pursuant to which BellSouth offered to terminate the traffic of the CMRS providers on the ICO networks, BellSouth is responsible for compensating the ICOs. Before BellSouth and the CMRS providers bilaterally decided to implement so-called "meet point billing"[45] arrangements with respect to termination to the ICO networks, the interconnection agreements between BellSouth and the CMRS providers incorporated provisions whereby the CMRS provider was responsible for reimbursing BellSouth for any termination payments that BellSouth was responsible for making to the ICOs. These provisions in prior effective interconnection agreements demonstrate that this arrangement is both possible and workable. The ICOs respectively submit that this approach is more reasonable and efficient than the alternative under consideration which will require interconnection and billing arrangements between every carrier that transits traffic through BellSouth and every ICO. In these arbitration proceedings the result could be over 100 new interconnection agreements (5 CMRS carriers multiplied by 22 ICOs) to document that indirect interconnection arrangement which is already deployed in accordance with existing terms and conditions set forth in established agreements.

The so-called "meet-point billing" concept discussed by the parties in their negotiations and under consideration in these arbitrations is not an arrangement addressed by the existing

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[45] The Coalition is keenly aware that both BellSouth and the CMRS providers often refer to the implementation of so-called "meet point billing" arrangements as if the event were a natural phenomenon. There is no instance under wither industry guidelines or common principles of law whereby two parties may bilaterally establish agreements that imposes obligations on a third party in the absence of the third party's participation or authorization. When the CMRS providers and BellSouth established meet point billing arrangements affecting the ICOs, they never negotiated with any ICO.

interconnection rules and established standards. Meet point billing is a voluntary, mutually agreeable arrangement used when two or more carriers have decided to jointly provide a service to some other customer. With respect to the proposed arbitration issue of which the carrier has the "legal obligation" to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO, the answer is simply that this is not a matter of arbitration because is not a matter that has been subjected to interconnection rules and established standards. Regardless, even under industry standards, meet point billing is not a mandatory arrangement. In the absence of standards and rules, the matter is left to voluntary negotiation and not arbitration. This fact is rationally reflected by the voluntary compromise arrangements that BellSouth, the CMRS providers, and the ICOs have recently put in place in other states where similar issues were addressed.

CMRS ISSUE 4

CMRS ISSUE 4: When a third party provider transits traffic, must the Interconnection Agreement between the originating and terminating carriers include the transiting provider?

CMRS Providers' Position: No. Interconnection agreements between the CMRS providers and the ICOs should not include third party transiting carriers.

CMRS Claimed ICO Position: Yes. Any agreement between ICOs and CMRS providers concerning traffic delivered through a third party tandem provider should include the third party.

Corrected ICO Position: The CMRS providers already enjoy the utilization of an indirect interconnection arrangement with the ICOs through the utilization of transport service provided by BellSouth. These arbitrations do not involve the establishment of new interconnections arrangements. Instead, they involve the establishment of new terms and conditions for the existing arrangement. Under the existing terms and conditions, the ICOs look solely to BellSouth for responsibility for the traffic carried through the physical interconnection between BellSouth and each ICO. The existing interconnection arrangement cannot be maintained in the absence of appropriate terms and conditions that continue to address the use of the existing physical interconnection.

As indicated throughout this response and throughout the discussions among the Parties, the ICOs do not object to BellSouth's desire to alleviate itself of financial responsibility for the CMRS traffic it carries to the ICO networks through the common trunk connection established for intraLATA interexchange traffic. The ICOs request, however, that BellSouth's desires not be given preferential treatment at the expense of establishing mutually agreeable processes. The ICOs do not understand why any party or regulator would condone BellSouth's unilateral attempt to impose terms and conditions on the ICOs in the absence of even the semblance of good faith negotiation. This, however, is exactly what BellSouth did when it unilaterally informed the ICOs that it was implementing a "meet point billing" arrangement with the CMRS

providers and ceasing payment of associated terminating compensation to the ICOs. The new terms and conditions sought by the CMRS providers cannot be sustainable nor acceptable unless BellSouth fulfills specific obligations and maintains ultimate responsibility regarding the identification of the traffic it carries as the intermediary between the CMRS providers and the ICOs.

Additional Information and Discussion:

While the CMRS providers maintain that issues regarding BellSouth or any "transit" provider are irrelevant to the agreement between the ICOs and CMRS providers, the position is nonsensical. The CMRS position would be plausible if the CMRS providers proposed to arrange with BellSouth to use BellSouth trunks on a dedicated basis to transport their traffic and establish a point of interconnection with an ICO. That, however, is not the case. The telecommunications industry is replete with news stories regarding assertions of shams undertaken by carriers to reroute traffic or to "strip" traffic of its jurisdictional characteristics in order to avoid appropriate interconnection charges. The ICOs have a legitimate right and concern to ensure that any carrier (including BellSouth) that establishes a physical interconnection to their networks, uses that interconnection in accordance with established terms and conditions. No thoughtful or sustainable decision could include a suggestion that, in the absence of mutual agreement, BellSouth can utilize its interconnection to the ICOs, sell its transport service to the CMRS provider and avoid responsibilities. The concerns with respect to BellSouth are exacerbated by the fact that it is the only carrier that has been permitted to maintain a "C trunk" connecting common trunk group. It is the transmission of commingled traffic over this trunk group that gives rise to many of the ICO concerns because of the technical inability to identify the nature of the traffic on the terminating end. No carrier other than BellSouth is in a position to sell its service in this manner - at minimum, this issue raises facts

and anti-competitive concerns that cannot be ignored.

Interconnection on the switched telecommunications network does not occur in the absence of the establishment of proper terms and conditions. The indirect interconnection of the CMRS providers to the ICOs works today because the actual physical interconnection used (i.e., the interconnection between BellSouth and each ICO) was established under a framework of mutually agreed terms and conditions. While the terms and conditions can possibly be changed to alleviate BellSouth of primary financial responsibility for the termination charges applied to the CMRS traffic, the indirect interconnection arrangement cannot be altered in the absence of insuring that BellSouth maintains certain responsibilities that must be maintained in order for the indirect interconnection arrangement to function in an orderly manner. The ICOs respectively maintain that no reasonable authority would require a carrier to accept physical interconnection with another carrier in the absence that these and other basic responsibilities are maintained by BellSouth or any similarly situated "transit" provider including, but not limited to: (a) establishment of trunking facilities and a physical interconnection point with the ICOs; (b) responsibility to establish proper authority for either BellSouth or the ICOs to deliver traffic of third parties to the other; (c) responsibility not to abuse the scope of traffic authorized by the arrangement (*i.e*, the transmission of unauthorized traffic); (d) provision of complete and accurate usage records; (e) coordination of billing and collection and compensation (as discussed above in the previous issue); (f) responsibilities to resolve disputes that will necessarily involve issues where the factual information is in the possession of BellSouth (*e.g.,* how much traffic was transmitted, and which carrier originated the traffic); (g) responsibilities to act to implement network changes which alter or terminate the voluntary arrangement between the ICOs and BellSouth; (h) responsibilities to coordinate appropriate actions in the event of default and non-payment by a carrier transiting traffic through BellSouth. The ICOs do not suggest that this list

is exhaustive; this list, however, demonstrates the factual reality that a "transit" agreement will not and cannot work in the absence of established terms and conditions regarding the responsibilities and obligations of the transit carrier to the terminating carrier.

It is important to recall the genesis of this proceeding. The requested indirect interconnection already exists. BellSouth provided CMRS carriers with transit service that enabled the CMRS providers to terminate traffic on the ICO networks. No agreement between the CMRS providers and the ICOs was necessary because the physical interconnection utilized is subject to existing terms and conditions between BellSouth and each ICO. While BellSouth and the CMRS providers embarked bilaterally on a course to establish new terms and conditions, they ignored the fact that each ICO is an equal party to their so-called "meet point billing" arrangements.[46]

While any carrier has a Section 251(a) right to interconnection, the use of interconnection does not arise without proper processes and negotiation. While BellSouth has a right to interconnect traffic to ICO networks subject to an existing agreement, BellSouth has no "automatic" right to bring the traffic of other carriers to the ICO networks to achieve their desired "indirect interconnection" independent of the existing arrangement. The ICOs were gratified that the TRA recognized this fundamental concept. Based on the directives of the Pre-Hearing Officer set forth in the May 5, 2003, Order, the ICOs expected that collective negotiations would take place among all of the parties, including BellSouth, in order to ensure

[46] In fact, these bilateral agreements between BellSouth and the CMRS providers cannot have any binding effect on the ICOs because the Act explicitly states that an agreement should be rejected if it discriminates against a non-party. *See* 47 U.S.C. § 252(e)(2)(A)(i) (grounds for rejection include if "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement.") The CMRS providers' and BellSouth's view that the ICOs are required to accept their bilateral approach to this arrangement would, if adopted, result in the prohibited discrimination.

that all issues raised by the requested new terms and conditions for the existing "indirect interconnection" would be addressed.

The ICOs invested considerable resources to develop a three-party agreement to address all of the issues on a comprehensive basis (Exhibit 1). While the ICOs were disappointed by the refusal of both BellSouth and the CMRS providers to negotiate a three-way agreement, the ICOs continued negotiation of separate agreements with BellSouth and the CMRS providers. The ICOs have continually explained to the CMRS providers that in the absence of the establishment of terms and conditions with BellSouth that define the newly proposed relationship, BellSouth has no independent existing terms and conditions that permit it to transit traffic of third carriers on a commingled basis to the ICO networks (other than the existing arrangement that provides for BellSouth's financial responsibility for payment of the terminating charges).

The ICOs continue to believe that a comprehensive three-way agreement is preferable.[47] While the ICOs also have a continued willingness to accommodate the other parties by negotiating separate agreements for the new "indirect interconnection" terms and conditions with the CMRS providers and BellSouth, the ICOs emphasize that which should be readily apparent: the separate agreements must be consistent and compatible.[48]

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[47] This is also consistent with the approach that BellSouth and the CMRS providers have taken in other Southern states with other small, incumbent LECs similar to the ICOs. The parties have entered into one agreement, to settle disputes regarding this arrangement, while they discuss long term approaches.

[48] The ICOs note that "consistent and compatible" should not be interpreted as requiring the ICOs to accommodate whatever terms and conditions the CMRS providers and BellSouth may have incorporated into their bilateral agreements. The ICOs respectively note their expectation that no regulatory or legal body would deprive each ICO of its individual right to bargain and negotiate terms and conditions that are not subject to any established interconnection standard, rule or law. As a matter of law, two parties cannot contract with each other on a bilateral basis and affect the rights of third parties. Under the facts related to these arbitrations, but separate from these proceedings, a concern arises that the bilateral actions of two parties are

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The analysis that the CMRS providers set forth for their irrational position is simply inconsistent with the facts.[49] Under their approach, the CMRS providers recognize that they have a contract with BellSouth, but completely neglect to acknowledge that the ICOs must also have a contract with BellSouth. Contrary to the CMRS provider position, the FCC has never addressed three-party exchange of traffic arrangements, or arrangements whereby Bell companies use their existing intrastate access interconnection to commingle traffic of third parties under new terms and conditions that alleviate the Bell company of responsibility for the traffic. The FCC has not established standards regarding a framework for the terms and conditions that would govern the voluntary arrangement contemplated by the parties.

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[48](...continued)
knowingly intended to harm a third party. This concern is reflected by the cavalier suggestion of the CMRS providers that the "indirect interconnection" terms they seek could possibly become effective irrespective of the establishment of proper new terms and conditions between BellSouth and the ICOs. BellSouth has no established terms and conditions, other than the existing agreements with ICOs, pursuant to which it may "transit" traffic to ICO networks.

[49] *E.g.*, Sprint PCS Petition at p.15-16.

CMRS ISSUE 5

CMRS ISSUE 5: Is each party to an indirect interconnection arrangement obligated to pay for the transit costs associated with the delivery of intraMTA traffic originated on its network to the terminating party's network?

CMRS Providers' Position: Yes. The originating party is responsible for paying applicable transit costs associated with the delivery of its traffic to a terminating carrier.

CMRS Claimed ICO Position: No. An ICO is not responsible for paying the costs outside of its exchange boundary.

Corrected ICO Position: The interconnection obligations established in the Act and set forth in the FCC's rules address interconnection with a LEC's network and interconnection within the LEC's service area.[50] LECs have no obligations to establish interconnection with other carriers or provide interconnection services at a geographic point outside of its network or in areas where the LEC does not provide LEC service. Accordingly, the interconnection obligations and responsibilities of the ICOs do not extend beyond each of their respective LEC networks and service areas. The ICOs are not responsible for deployment or provisioning of network facilities or services for transport of telecommunications beyond their own networks. [*See* ICO Exhibit 1, Section 4.2.5; and ICO Exhibit 2, Section 4.5.4]

No LEC, including BellSouth and the ICOs, is obligated to provide interconnection at points that are not within its network service area. A LEC's interconnection responsibilities are

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[50] An incumbent LEC's interconnection obligations only arise with respect to the geographic area within which it operates as an incumbent LEC and with respect to its incumbent network and facilities. *See* 47 U.S.C. § 251(h)(1)(A)-(B) ("For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that----on the date of enactment . . . provided telephone exchange service in such area . . . ." Underlining added). Also, the FCC's rules regarding "Interconnection" state that "[a]n incumbent LEC shall provide . . . interconnection with the incumbent LEC's network: (1) . . . ; (2) at any technically feasible point within the incumbent LEC's network . . . ." 47 C.F.R. § 51.305, underlining added. The Act's requirement to establish interconnection points with other carriers pertains to the LEC's actual network, not to some other LEC's network or to some other service area.

related exclusively to its existing network and service area.

Additional Information and Discussion:

The position of the CMRS providers threatens the viability of the ICOs and the very fundamental precepts of universal service. The CMRS providers suggest that the ICOs must take financial responsibility to deploy or use a transport facility to take traffic originated by an ICO customer to a point of interconnection with the CMRS provider at any point designated by the CMRS provider, and irrespective of the distance from the ICO network to that point. Alternatively, the CMRS providers implicitly suggest that they can mandate that the ICOs utilize the BellSouth network to transport traffic for interconnection to them just because the CMRS providers have elected to send traffic to the ICOs through BellSouth.

The ICOs have the right, but not the obligation, to direct their traffic in the manner proposed by the CMRS providers or in any other lawful manner. The CMRS providers have no interconnection right to demand that the ICOs obtain a service from BellSouth for which the ICOs must pay BellSouth to transport traffic beyond the ICO's network. Nor do the ICOs have any obligation to establish an interconnection point with a CMRS provider at a point outside of the ICO's network service area. Consistent with applicable statute and regulation, the ICOs only obligation in this regard is to establish an interconnection point with other requesting carriers at an established technically feasible point on the ICO's network.

The CMRS carriers have not elected to establish an interconnection point on the networks of the ICOs; they have voluntarily chosen to utilize the BellSouth transit arrangement. In the course of the negotiations, and as a matter of voluntary compromise, the ICOs expressed willingness to deliver a defined scope of wireline to wireless traffic to the existing interconnection point between BellSouth and the ICO on the ICO's network. Under this proposal, BellSouth could deliver this traffic to an interconnection point that the CMRS

provider has with BellSouth for termination on the CMRS provider network. The ICO compromise proposal was based on the condition that the CMRS provider is responsible for the transport services provided by BellSouth from the BellSouth interconnection point with the ICO to the interconnection point that BellSouth has with the CMRS provider. The basis of this proposal was to accommodate the desires of the CMRS providers while preserving the ICO's rights with respect to the absence of an obligation for the ICO to transport traffic beyond its own network. The compromise voluntary proposal would make the CMRS providers responsible for the costs of transport beyond the ICO networks , consistent with the result that would occur under existing interconnection standards and rules when a requesting interconnecting carrier (the CMRS provider) establishes a point of interconnection with the existing incumbent LEC network.

The CMRS providers misunderstand the existing rules and standards. While Bell operating companies have been required to establish a single interconnection point with CMRS providers in a LATA, the CMRS providers apparently neglect to understand that this point of interconnection is on the Bell network, not the ICO network. Interconnection with BellSouth does not provide 251(b)(5) interconnection with the ICOs or any other non-Bell party. While the CMRS providers may wish and advocate otherwise, in no instance has the FCC required a LEC to establish an interconnection point with another carrier at a point not on the LEC's network. Ironically, and contrary to universal service considerations, the imposition of a requirement on a rural LEC to establish interconnection beyond its own network would be a requirement that is more onerous than any that was applied to Bell companies to address competitive concerns in Bell service areas.

Contrary to the position of the CMRS providers, LECs do not have responsibility for services to geographic points beyond their own local service areas. Calls to distant locations

beyond the established local calling scope of the LEC are provisioned by the originating customer's toll provider. In fact, the FCC has found that a terminating CMRS provider was responsible for compensating the intermediary LEC providing the transit service for traffic that originates on the networks of third party LECs.[51]

Interconnection obligations arise only with respect to the LEC's actual, existing network. To the extent that the Act requires a LEC to provide interconnection with its network, that interconnection arises only with respect to the LEC's existing network when the request is made. The U.S. Supreme Court and the Eighth Circuit Court of Appeals have made this clear.[52] In addition, the Ninth Circuit Court of Appeals, in the context of CMRS interconnection, also confirmed that interconnection obligations are established with respect to the LEC's existing network.[53]

Pursuant to the FCC's existing interconnection rules and established standards, an ICO may have interconnection rights to arrange to interconnect to a CMRS provider at a point beyond the ICO's network, but the ICO has no obligation to do so. The ramifications of any such requirement on the service offerings of the ICOs, and thereby on universal service, are significant. Requiring ICOs to comply with the proposed CMRS position would result in new

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[51] *E.g.*, in a complaint proceeding between a CMRS provider and Verizon Communications, the FCC confirmed that the intermediary LEC had not violated the rules when it charged the terminating CMRS provider for "traffic that originates on a third carrier's network, transits the [intermediary carrier's] network, and terminates to the [CMRS provider]." *Order on Reconsideration*, Texcom, Inc. d/b/a Answer Indiana, Complainant, v. Bell Atlantic Corp., d/b/a Verizon Communications, Defendant, File No. EB-00-MD-14, released March 27, 2002.

[52] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997). This aspect of the *Iowa Utils. Bd.* decision was not modified by the Supreme Court in Verizon v. FCC, 122 S. Ct. 1753 (U.S. 2002) and remains valid law.

[53] *U.S. West v. Wash. Utils. & Transp. Common*, 255 F.3d 990 (9th Cir. 2001)("Sections 251 and 252 of the Act require ILECs to allow CMRS providers to interconnect with their existing networks in return for fair compensation.")

and unplanned expenses incurred by the rural ICOs. These expenses would be associated with services outside of the established local services provided by each ICO. In order to recover the additional costs, the ICOs would have to consider establishing additional charges to the end user customers because these calls entail the additional and newly imposed cost of transport to a distant point beyond the local calling area. The ICOs have no obligation to provide local exchange services to their customers for calling that involves the transport of the calls to distant points well beyond the local calling area. Calls that must be transported to distant locations beyond the local calling area and beyond the interconnection points established within the ICO's own network are services that today are provided by the customer's chosen interexchange carriers.

Contrary to the position of the CMRS providers, the ICOs are not responsible for transporting traffic beyond the local service area of its own end users. The FCC has considered related issues; it has not required any LEC to transport calls beyond its network. When a LEC does carry traffic beyond its local boundary, it is permitted to assess a charge to the end user customer placing the call. In practice, the FCC has approved situations where the charges otherwise assessed to the originating wireline end user may be assessed to the CMRS provider. In a matter between a CMRS provider and Qwest, the FCC concluded that Qwest could charge the CMRS provider for the delivery of such traffic:

> Moreover, although Qwest concedes that is must allow [the CMRS provider] to interconnect without charge at any point within an MTA that is within the LATA, Qwest disagrees that it must transport, free of charge, all calls made to [the CMRS provider] within the MTA to [the CMRS provider's] interconnection point. Qwest points out that, for calls made by its end users in local calling areas outside the local calling area where [the CMRS provider's] interconnection point resides, Qwest would ordinarily assess toll charges to those end users, ... We agree with Qwest that, pursuant to the *TSR Wireless Order*, if [the CMRS provider] wants to avoid having callers to its [mobile wireless] customers pay such charges . . . , it may enter into a wide area calling arrangement with Qwest. . . . We, therefore, conclude that Qwest is not prohibited from assessing [the

CMRS provider] charges for such services.[54]

The FCC referred to this arrangement under which Qwest delivered traffic to a distance interconnection point not within the local calling area of the originating wireline user as a "Wide Area Calling" service. The FCC described this service as "an arrangement that allows a [CMRS provider] to subsidize the cost of calls from a LEC's customers to the [CMRS provider's] customers, when completing such calls requires the LEC to transport them from one of its local calling areas to another of its local calling areas."[55]

It should be noted that in this proceeding, the FCC further concluded that a LEC (Qwest) is not required to offer the so-called wide area calling arrangement to CMRS providers because "wide area calling services are not necessary for interconnection or for the provision of service by a [CMRS provider] to its customers," and the FCC's rules "do not require a LEC to offer such services at all." [56] Similarly, in this instance, the imposition of an obligation on any ICO to take financial responsibility for the transport of traffic to a CMRS provider beyond the ICO's network points of interconnection is " not necessary for interconnection or for the provision of service by a [CMRS provider] to its customers."

The ICOs reiterate the compromise offer extended to the CMRS providers. In the course of negotiations, and as a matter of voluntary compromise outside of interconnection standards and rules, the ICOs offered to treat a defined scope of wireline to wireless traffic as "local

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[54] *Memorandum Opinion and Order*, Mountain Communications, Inc., Complainant, v. Qwest Communications International, Inc., Defendant, File No. EB-00-MD-017, released February 4, 2002 at para. 13, and *Order on Review*, released July 25, 2002 in the same proceeding.

[55] *Id.* at para. 3. The TRA should also note that this quote refers to two areas that are both within the Qwest network but not in the same local calling areas. For the issue here, not only would the call be transported well beyond the local exchange area in which it originates but well beyond the LEC's own service area.

[56] *Id.* at para. 11.

exchange service." This offer is made without waiver of the other matters raised in these arbitrations and conditioned upon the establishment of explicit interconnection arrangements with each specific CMRS provider that accepts this offer, and address the responsibility of the CMRS provider for the transport of traffic beyond the ICO's established points of interconnection on the ICO network.

CMRS ISSUE 6

CMRS ISSUE 6: Can CMRS traffic be combined with other traffic types over the same trunk group?

CMRS Providers' Position: Yes. There is no technological reason for requiring CMRS provider traffic to be delivered over segregated trunk groups. It is also economically inefficient to require separate and distinct trunk groups for CMRS traffic.

CMRS Claimed ICO Position: CMRS traffic should be segregated on separate trunks.

Corrected ICO Position: This is not an issue for arbitration between the CMRS providers and the ICOs. The CMRS Providers already enjoy the utilization of the physical indirect interconnection that is the subject of these arbitrations. The CMRS providers seek only new terms and conditions applicable to the existing interconnection. Under this existing network arrangement, the CMRS providers are not required to deploy any trunk groups to the ICO networks. Instead, the trunk groups referred to in the issue statement above are trunk groups between BellSouth and the ICOs. The manner in which BellSouth and the ICOs decide to maintain physical interconnection, including the potential establishment of distinct trunk groups for different traffic types that each sends to the other, is a matter to be resolved between BellSouth and the ICOs.[57]

Each of the arguments advanced by the CMRS providers in their petition in support of their position on this issue raise matters that pertain to BellSouth's provision of services. BellSouth has yet to respond to the proposals set forth by the ICOs with respect to these issues,

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[57] The ICOs respectfully note the irony. The ICOs preferred to address this matter as part of a comprehensive three party approach described above. The CMRS providers insisted otherwise. Yet, they raise a matter regarding the provision of physical interconnection between BellSouth and each ICO as an issue for this arbitration! While this issue is not one subject to Section 252 arbitration, the matter of whether BellSouth should be required to establish separate trunks for traffic carried to the ICO networks does require resolution. The ICOs attempted to address this issue with the parties. [*See* ICO Exhibit 1, Sections 4.2.1, 4.3.2.1, 4.3.3; and ICO Exhibit 2, Sections 3.3.2, 3.3.4, 4.4.1, 4.4.2, 4.5.1, 4.5.2, 4.5.4, 4.7, 7.2, 7.6, 7.7, 8.0, and 16.0.]

and, as discussed previously, the CMRS providers did not want BellSouth to participate in three way discussions.

To the extent that the TRA considers this issue, the Authority should be fully aware of the competitively favorable position BellSouth holds with respect to the provision of tandem switching and transport services for other competing carriers. No carrier other than BellSouth has the opportunity to transport traffic on a commingled basis to the ICO networks utilizing an interexchange trunk group that technically prevents the terminating ICO from identifying what traffic originates on another carrier's network. No carrier has an established right to obtain this arrangement; and the ICOs are not required to provide any such arrangement to any carrier. At the interstate level, the FCC has previously decided not to require so-called "shared transport" access arrangements specifically because such arrangements would burden smaller LECs, including the ICOs, with respect to their ability to obtain proper compensation for the interconnection services they provide.[58] If BellSouth chooses to provide "transit services" to

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[58] *Report and Order*, In the Matter of Transport Rate Structure and Pricing, Resale, Shared Use and Split Billing, CC Docket No. 91-213, released March 5, 1998. "[W]e decline, based on the record before us, to require incumbent LECs to offer tariffed split billing arrangements". *Id.* at para. 1. "[T]he record indicates that a mandated split billing tariff would be costly and burdensome to many small LECs and, based on that record, we conclude that the benefits would not outweigh these costs. OPASTCO states that, although in general LECs may not be affected economically by mandated split billing, small LECs would be more likely to be harmed by non-payment, as well as by having to support the additional administrative costs that would be incurred to supervise the provision of split billing." *Id.* at para. 17, footnote omitted. The ICOs, in this proceeding, are asked to receive the commingled traffic of multiple carriers commingled over a BellSouth trunk. Instead of holding BellSouth responsible for this traffic, consistent with the existing arrangement, BellSouth and the CMRS carriers seek to impose on the ICOs the very same type of "split billing" that the FCC refused to mandate. On the basis of information provided by BellSouth, the ICOs would be required to "split bill" among several CMRS providers with which they do not directly interconnect. Because of the technical arrangement resulting from the commingled traffic, the ICOs have no means independently to verify the traffic sent by each carrier, nor to determine whether the residual traffic sent through the commingled trunk is the responsibility of any carrier other than BellSouth. As determined by the FCC's consideration of a similar "split bill" process, this arrangement is inequitably

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enable CMRS providers and other third party carriers to interconnect indirectly to the ICO networks, the establishment of separate trunk groups is necessary under any circumstances where BellSouth is alleviated from the responsibilities it holds under existing arrangements and practices.

Additional Information and Discussion:

The ultimate position of the ICOs with respect to whether BellSouth may switch and trunk various types of traffic to the ICOs on common trunks or separate trunks is largely dependent on what responsibilities for the traffic remain with BellSouth and how BellSouth fulfills those responsibilities. Under existing arrangements, BellSouth is properly responsible for all of the traffic it terminates to the ICO networks. If, by mutual agreement, BellSouth is alleviated of this responsibility, the ICOs will be severely disadvantaged, and at greater business risk, if they are required to seek compensation from multiple parties for the termination of commingled traffic transmitted to them by BellSouth in a manner that renders it impossible for the terminating ICO to measure.

Under this circumstance, the ICOs will be dependent on BellSouth for verifiable and auditable data to ensure that the process functions properly. On the basis of their experiences, the ICOs are not confident that BellSouth will account for all traffic correctly. Absent a regulatory directive that ignores these straight-forward business concerns and the resulting prejudicial position imposed on the rural ICOs, there is no impetus for the ICOs to enter into new terms and conditions that alleviate BellSouth of ultimate responsibility for the traffic BellSouth chooses to deliver to the ICO networks on a commingled basis.

The ICOs note that BellSouth does not face the same challenge of terminating

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[58](...continued)
disadvantageous to the ICOs.

commingled traffic. BellSouth avoids these concerns because it receives traffic from individual carriers on a dedicated trunk basis. Recognizing that the ICOs have a lawful right to establish their own tandem, it is important to recognize that any attempt to force an ICO to receive commingled traffic from BellSouth under terms that alleviate BellSouth from responsibility would apply equally to traffic directed to BellSouth from an ICO tandem.

BellSouth has designed the existing network arrangement in a manner that enables BellSouth to identify and measure the components of all traffic it transports, including the amount of its own intrastate interexchange carrier traffic. Even in those instances where the ICOs have established their own tandems in order to avoid dependence on the BellSouth tandem, the network arrangement that BellSouth has designed effectively imposes on the ICO an involuntary dependence on BellSouth. This result occurs because of BellSouth's unilateral decision to offer to transport third party carrier traffic, including that of the CMRS providers, to the ICO networks through trunks designed to carry BellSouth's intraLATA interexchange traffic. By arbitrarily attempting to impose "meet point billing" arrangements with respect to this third-party traffic, BellSouth has seized the role of a tandem provider to third parties irrespective of whether or not the LEC subtends BellSouth.

This parleying of its network prowess disregards the rights of each LEC to establish their own tandem and migrate traffic to direct trunk groups to their own tandem, thereby avoiding both dependence on BellSouth's questionable measurement and record keeping and the imposition of flawed "split billing" to interconnecting carriers. By commingling the third party traffic with its own intraLATA traffic, however, BellSouth effectively forces the ICO to subtend the BellSouth tandem switch with or without the ICO's agreement.

While the ICOs are willing to consider reasonable new terms and conditions applicable to the indirect interconnection that the CMRS providers utilize, any such arrangements must

address the array of concerns raised by the ICOs. Because BellSouth has not yet responded to the ICO concerns regarding these issues, the ICOs have not had an opportunity to explore voluntary terms and conditions, other than the establishment of separate trunk groups, that would equitably address the ICO concerns and ensure that no carrier seizes an opportunity to provide tandem and transport services in a competitively advantageous manner on a perpetual and exclusive basis.

CMRS ISSUE 7 [59]

CMRS ISSUE 7: (A) Where should the point of interconnection ("POI") be if a direct connection is established between a CMRS provider's switch and an ICO's switch? (B) What percentage of the cost of the direct connection facilities should be borne by the ICO?

CMRS Providers' Position Issue 7: The POI for a dedicated two-way facility may be established at any technically feasible point on the ICO's network or at any other mutually agreeable point. Pursuant to applicable federal rules, the cost of the dedicated facility between the two networks should be apportioned between the Parties based upon their relative use of such facility. (Sprint, T-Mobile, Verizon Wireless, and AWS agree that there should be some distance limitation on the facility to which proportionate use charges should apply.)

CMRS Claimed ICO Position Issue 7: The POI must always be at the ICO switch. It is unclear to what extent, if any, the ICOs would ever agree to share in any facility costs.

Corrected ICO Position: This issue only arises in the context of a direct interconnection between a specific CMRS provider and a specific ICO. The ICOs respectfully suggest that it is not productive or useful to attempt to address company specific interconnection issues on a generic basis. Each ICO operates its own network with its own established physical points of interconnection, switching and distribution. Within the context of the collective party negotiations, there has been no discussion of the speculative arrangements that would be applicable to any specific direct interconnection situation. As a collective party, the Coalition is aware that individual CMRS carriers and ICOs are negotiating company specific direct

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[59] The ICO's respectfully suggest that the CMRS providers have presented this issue 7 "out of order." CMRS Issue 7 addresses an issue that only arises in the context of direct interconnection. CMRS Issues 14 and 15 are threshold questions that address whether the scope of the arbitration relates specifically to so-called "transit traffic" arrangements involving BellSouth or whether the issues should be expanded to include other potential arrangements beyond this arrangement. Because Issue 7 deals with an issue that is relevant only with respect to interconnection when a CMRS provider actually establishes a point of interconnection on the network of a ICO, Issues 14 and 15 must logically be evaluated prior to the consideration of issues that arise only in the event that a CMRS provider seeks to establish an interconnection point on the network of an ICO. Consistent with the directive of the Pre-Hearing Officer's May 5, 2003 Order, the negotiations among the parties focused on the so-called "meet point billing" indirect interconnection arrangements. Each ICO remains ready, willing and able to negotiate direct interconnection of any requesting CMRS provider.

interconnection arrangements. To the extent that the resolution of those discussions are not ultimately resolved through negotiation, the resolution of company-specific network issues will require the discussion of company-specific facts, and not global policy considerations.

These arbitrations are the result of the Pre-Hearing Officer's May 5, 2003 Order directing the parties to meet collectively to address the transit traffic dispute with BellSouth created when BellSouth unilaterally informed the ICOs that it would not abide by the existing terms and practices pursuant to which it carries the CMRS provider traffic to the ICO networks for interconnection. All parties can agree as a matter of good faith that the focus of the negotiations has been the establishment of new terms and conditions for the "transit" arrangement of the existing indirect interconnection. The ICOs respectfully suggest that the parties agree as a matter of good faith to eliminate this issue 7 from the list of arbitrated issues.

Additional Information and Discussion:

If speculative direct interconnection arrangements are, nonetheless deemed part of this proceeding, the position of the ICOs with respect to this issue 7 is that each party has the right to establish one-way trunks to carry its own originating service traffic. Two way trunks may be established by mutual voluntary agreement; they are not mandatory. When two-way trunking arrangements are used by mutual agreement, dedicated connecting facilities between the CMRS provider's network and either the ICO's end office or tandem (a company-specific matter) are established within the LEC's service area, and the rated charges for those dedicated facilities will be prorated based on relative use. The dedicated, proportionately shared facilities are not part of the facilities and functions that are considered when determining the appropriate rate level for the "transport and termination" of traffic. [*See* ICO Exhibit 2, Sections 4.2.1 and 4.3.2] The compensation rate for transport and termination will be based on the ICO's network costs and take into account tandem switching at the tandem office, transport from the tandem to the end

office(s), and local switching at each terminating end office (again, dependent on company-specific facts). This established transport and termination rate will be used symmetrically by both parties.

The two-way facilities to which the proportionate use charges would apply are limited in distance to the geographic limits of the ICO's LEC service area. That is, the facilities for which the proportionate use applies cannot extend beyond a point at the border of the ICO's service area network. Traffic, if any, that the ICOs may want to terminate on the network of the CMRS providers will be limited to local exchange services offered by the ICO to its subscribers. As explained previously, the ICO is not required to take financial or network responsibility for the transport of local exchange service calls beyond the point that it transports any other local exchange service call. Therefore, the ICO's service boundary is the appropriate distance limitation for the facility for which the proportionate use responsibility should apply.[60]

With respect to one-way facilities, the proportionate use concept obviously does not apply; each party bears the expense of its one-way facility. For similar reasons as discussed previously, the ICO will not be responsible for transport beyond its service area boundary for one-way facilities used by the ICO to deliver its local exchange service calls to the CMRS

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[60] *See Order Establishing Requirements for the Exchange of Local Traffic*, issued by the State of New York Public Service Commission on December 22, 2000, in Case 00-C-0789 ("*New York Order*") at pp. 5-6 ("Independent companies connect to other incumbent carriers such as Verizon via two methods: (1) local trunks between their central office and the adjacent incumbent's central office, or (2) toll trunks to Verizon's tandem. In either case, the Independent's responsibility is limited to bringing its facilities to its boundary with the adjacent incumbent. The incumbent's responsibility is to provide connecting facilities within its territory to the boundary. . . . Because Independent responsibility is limited to delivering traffic to its service area borders, CLECs must either provide their own interconnection facilities or lease facilities to the meet-point.") *See also Order Denying Petitions for Rehearing*, Clarifying NXX Order, and Authorizing Permanent Rates, issued in the same Case on September 7, 2001 at p. 7 ("Independents' responsibility is limited to delivering traffic to their service area borders, therefore, CLECs must assume the obligation of delivery beyond the Independent service area border . . . .").

provider.

In summary, the ICOs reiterate the suggestion that Issue 7 be eliminated from these arbitrations as a matter of good faith and acknowledgment by all parties that the subject matter of the negotiations that give rise to these arbitrations is the establishment of new terms and conditions for the "indirect interconnection" that the CMRS providers receive through a transit arrangement with BellSouth. To the extent that Issue 7 remains an arbitrated issue, the ICOs suggest that there is nothing to arbitrate. As discussed above, the applicable standards have been established. In the absence of a fact-specific instance brought before the TRA, there are no facts to which the arbitrator could apply the established standards regarding the deployment of dedicated facilities to a point of interconnection.

CMRS ISSUE 8

CMRS ISSUE 8: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic?

CMRS Providers' Position: The TRA should adopt a bill-and-keep as the appropriate reciprocal compensation method until the ICOs (1) produce appropriate cost studies; and (2) rebut the presumption of roughly balanced traffic.

CMRS Claimed ICO Position: Reciprocal compensation principles do not apply to traffic exchanged through indirect interconnection.

Corrected ICO Position: The rate proposals of the ICOs are more than reasonable and are in compliance with the controlling regulatory requirements.

Additional Information and Discussion:

The pricing methodologies and costing rules for transport and termination apply to traffic that fits within the definition of the FCC's Subpart H rules. As explained above, the three party transit arrangement designed by BellSouth under which BellSouth commingles third party traffic with its interexchange carrier traffic is not subject to or consistent with a Subpart H arrangement. The FCC rules may be misapplied or misquoted, but they are clear. As previously addressed, there is no established set of standards or requirements applicable to the indirect interconnection arrangement through BellSouth that is used by the CMRS providers. Clearly, this arrangement cannot be a "reciprocal compensation" arrangement.[61] The choice of the CMRS providers to utilize BellSouth's transit services cannot lawfully result in a dictated mandate that an ICO must

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[61] *See, e.g.*, the plain straight-forward words of Section 51.701(e) of the FCC's Rules and Regulations. Reciprocal compensation applies to the exchange of traffic by two parties on one another's networks and contemplates the establishment of an "interconnection point between the two carriers." Many of the problems and issues that arise in these arbitrations would be corrected if the CMRS provider simply arranged to take responsibility for a connection through BellSouth to the ICO networks and used the BellSouth facility to establish an interconnection point with the ICO network. Until and unless the CMRS provider established an interconnection point on the networks of the ICO, however, the subpart H rules (reciprocal compensation) do not apply.

use the BellSouth transit service to send traffic to the CMRS provider!

Even if the three-party arrangement were an interconnection arrangement pursuant to the definitions of Subpart H, the FCC has specifically concluded that the forward-looking cost pricing rules, which the CMRS providers seek to utilize, do not apply to the ICOs and other Rural Telephone Companies.

Section XI. A of the *First Report and Order* is entitled "Reciprocal Compensation for Transport and Termination of Telecommunications" and addresses the termination of traffic and compensation for termination of traffic as required by Section 251(b)(5) of the Act.[62] Subsection 3 of that section is entitled "Pricing Methodology."[63] At paragraph 1053 within this "Pricing Methodology" subsection, the FCC notes the comments and concerns of the Western Alliance (an organization representing small and rural LECs) which were reflective of the position of most rural LECs in the proceeding.[64] The FCC notes that the Western Alliance had expressed concern that the FCC's pricing methodology would be harmful to small and rural LECs:

> The . . . rates for the transport and termination of traffic must allow rural LECs to recover the incremental cost of local access, a reasonably apportionment of joint and common costs, and any lost contribution to basic, local service rates represented by the interconnecting carriers' service. The Western Alliance argues that recovery of lost contribution is especially important for smaller LECs because they are unlikely to have alternative sources from which to support basic service rates.[65]

At the close of the FCC's discussion in the section on "Cost-Based Pricing Methodology" for transport and termination set forth in the *First Report and Order*, the FCC notes the concerns of the Western Alliance and addresses the impact on small incumbent LECs:

. . . We have considered the economic impact of our rules in this section on small

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[62] *First Report and Order* at para. 1027.

[63] *Id.* at para. 1046.

[64] *Id.* at para. 1053.

[65] *Id.* at para. 1048.

> incumbent LECs. For example, we conclude that termination rates for all LECs should include an allocation of forward-looking common costs, but find that the inclusion of an element for the recovery of lost contribution may lead to significant distortions in local exchange markets. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.[66]

All of the ICOs that are parties to this proceeding are not subject to the FCC's specific pricing rules by virtue of the protections afforded Rural Telephone Companies under Section 251(f)(1) of the Act. The ICOs, nonetheless, recognize that the CMRS providers could pursue direct interconnection arrangements defined within the scope of the FCC's Subpart H rules and that the CMRS providers could attempt to demonstrate that the protections afforded by Section 251(f)(1) of the Act should no longer apply with respect to the pricing methodology applicable to the ICOs. Recognizing the existence of these potential issues, the ICOs provided the CMRS providers with a proposal to establish new rates applicable to the termination of traffic through the indirect interconnection arrangement. The proposed rates, offered in the course of the negotiations, represent a significant reduction from traditional access rates that have been applicable to the termination of all traffic carried by BellSouth through the existing interconnection arrangement. Not only was this rate proposal offered in good faith as a matter of compromise, but the ICOs respectfully submit that the proposed rates are consistent with those that would result from application of the FCC's pricing rules if those rules were deemed to apply to rural telephone companies. The rates that the ICOs have proposed are within, or actually lower than, any reasonable expectation of the rates that would result under the specific pricing rules.

Even though the FCC states that it is appropriate for the small and rural companies to

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[66] *Id.* at para. 1059, underlining added.

include a component of common costs in the establishment of their rates, the ICOs proposed rate does not include any recovery of common line. The ICO rate proposal was based, in part, on reference to interstate access rates for identical functional elements of service provided; the utilization of this frame of reference leads to very low rates. As the TRA is aware, the actions of the FCC in recent years have superceded the analysis in the *First Report and Order* regarding access at the time the pricing rules were first adopted. In the proceeding known as the Multi-Association Group ("MAG") Plan, the FCC more recently adopted an approach to interstate access rates which yields extremely low rates for interstate access network functions.[67] In fact, in some instances, as the small and rural LECs have argued to the FCC, the FCC reduced the rates for the interstate traffic-sensitive elements well below any reasonable level of actual costs.[68] Accordingly, it is the position of the ICOs that any true forward-looking cost development, based on the actual cost characteristics of their rural networks, will likely result in higher effective rates for the ICOs than those proposed by the ICOs in the course of the negotiations.

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[67] *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256. Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, released by the FCC on November 8, 2001, In the matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; and Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, in CC Docket Nos. 00-256, 96-45, 98-77, and 98-166 ("*MAG Plan Order*").

[68] The *MAG Plan Order* is still awaiting the resolution of several reconsideration requests. One reconsideration request demonstrates that the FCC's decision moved improperly clearly identifiable traffic sensitive cost recovery to the common line elements, thereby making the resulting traffic sensitive rates lower than the actual costs. *See, e.g.*, Petition for Reconsideration of the Plains Rural Independent Companies, filed with the FCC on December 31, 2001, in CC Docket Nos. 00-256, 96-45, 98-77 and 98-166.

The ICOs respectfully note that the compromise rate proposal was offered as a compromise position in the course of the negotiations. Notwithstanding this compromise offer, the arbitration position of the ICOs is consistent with the law. The pricing standard for transport and termination of traffic subject to §251(b)(5) of the Act (reciprocal compensation) is set forth in § 252(d)(2).[69] Neither the concept of "reciprocal compensation," nor the associated pricing standard is applicable to the "indirect" Section 251(a) interconnection arrangement chosen by the CMRS providers. The CMRS providers have voluntarily chosen to utilize Section 251(a) and to avail themselves of BellSouth's transit services to the ICO networks instead of electing to utilize Section 251(b)(5) and establish an interconnection point on the networks of the ICOs.

The compromise rate proposal offered by the ICOs to utilize the framework of the lower interstate rates applicable to comparable service functions is a generous and reasonable approximation for rate purposes applicable either to indirect or direct interconnection of the CMRS networks to the ICO networks. The CMRS providers and all parties should acknowledge that the statutory pricing standard for "reciprocal compensation" provides that the rates should be based on a carrier's costs determined "on the basis of a reasonable approximation of the additional costs of terminating such calls."[70] In this regard, and in order to avoid unnecessary cost and regulatory burden on the resources of all of the parties and the TRA, the ICOs respectfully note that § 252(d)(2)(B)(ii) of the Act "shall not be construed . . . to authorize the [FCC] or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting and terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls." Accordingly, the

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[69] 47 U.S.C. § 252(d)(2).

[70] *Id.*

fact that the ICOs have not provided costly company specific economic cost studies is consistent both with the fact that the pricing standard is inapplicable and that the burdensome studies are not required, consistent with §252(d)(2)(B)(ii), as quoted above.

The CMRS "Bill and Keep" Proposal is Inappropriate

The proposal of the CMRS providers to utilize a no compensation "bill-and-keep" approach is not credible. Fundamentally, the interconnection arrangement is not a "reciprocal compensation" arrangement and there can be no presumed "balance" of traffic. Moreover, even if "reciprocal compensation" were applicable, the traffic is hardly balanced. The CMRS providers are fully aware that this is an unconscionable proposal inconsistent with the facts related to the disparate amounts of traffic for which each carrier is responsible. By virtue of the Major Trading Area ("MTA") geographic criterion under which they may originate calls anywhere in a huge MTA and obtain favorable termination arrangements according to the FCC's rules, the CMRS providers are already afforded an artificial competitive advantage.

The fact that the traffic is hardly balanced is further demonstrated by the likelihood that the CMRS providers will use a transit traffic arrangement with BellSouth to deliver mobile user traffic originated in other MTAs. The ICOs attempted unsuccessfully in the course of the negotiations to obtain information from the CMRS providers specifying the geographic area from which they will originate mobile user calls in order to consider the utilization of traffic factors applicable to a proposed compromise solution. The amount of interMTA traffic that the CMRS providers are likely to terminate will continue to increase from already significant levels.[71]

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[71] Under existing nationwide service arrangements it is likely that interMTA traffic will increase in the same manner that the FCC has observed that interstate CMRS traffic is increasing. "To address the concerns raised in the record that the current interim safe harbor [for (continued...)

The CMRS carriers also overstate the amount of traffic that would be subject to a reciprocal compensation arrangement in the event such an arrangement was lawfully established between an ICO and a CMRS provider. As previously discussed, the CMRS carriers incorrectly assert that a LEC is responsible for "reciprocal compensation" for calls from the wireline network to the CMRS network irrespective of the fact that the call is carried by the originating customer's chosen toll carrier, and not by the LEC. Irrespective of whether the wireline to wireless call is carried by the LEC or by the customer's toll carrier, none of the CMRS providers like to deal with the annoying, but unavoidable factual issues. When a call is originated by a wireline customer to the wireless mobile customer, how does the originating carrier know whether the wireless carrier is located within the same MTA at the time of call termination much less whether the wireless customer is located within the local service area of the originating wireline customers?

While the CMRS providers opt to ignore the annoying facts, the ICOs offered a compromise proposal in the course of the negotiations. For purposes of compromise, and subject to conditions requiring the CMRS provider to take responsibility for the transport of traffic beyond the ICO network (as previously discussed), the ICOs offered to transport as "local

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[71](...continued)
the percentage of interstate revenue] for mobile wireless providers is inappropriate in light of changing market conditions, we raise the safe harbor from 15 to 28.5 percent." *Report and Order and Second Further Notice of Proposed Rulemaking*, released December 13, 2002, In the Matter of Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the American with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; and Truth-in-Billing and Billing Format, in CC Docket Nos. 96-45, 98-171, 90-671, 92-237, 99-200, 95-116 and 98-179 ("*Safe Harbor Order*") at para. 19.

exchange service traffic" those calls originated by their customers and directed to the NPA-NXXs of CMRS providers that are issued in a manner that may appear to be within the local calling scope of the ICOs networks. If the CMRS providers accepted this compromise proposal, this wireline to wireless traffic would be the only traffic considered in determining whether the traffic between the ICOs and the CMRS providers is "balanced," as the CMRS providers propose. In the absence of this voluntary agreement, there exists no law or regulation that requires the ICOs to treat the traffic to a wireless carrier as "local exchange service." The ICOs may rightfully treat this traffic as interexchange traffic and hand it off to the originating customer's chosen toll or interexchange carrier. Accordingly, under these circumstances for some ICOs, or for some exchanges of some ICOs, there are no local exchange service calls to some of the CMRS providers.[72] Under these circumstances, it is unreasonable even to suggest that the traffic would be in balance between the parties.

Assuming *arguendo* that the FCC's Subpart H rules applied to the indirect interconnection arrangement (they do not), these rules do not require the TRA to adopt a bill-and-keep approach as one might surmise from reading the petitions of the CMRS providers. Section 51.713(b) of the FCC's rules states that a "state commission may impose bill-and-keep arrangements if the state commission determines that the amount" of traffic in the two directions subject to the terms of the arrangement is roughly equal. The TRA's experience with other CMRS-LEC interconnection arrangements should adequately demonstrate that such a determination should not and cannot be made. To impose this CMRS provider "wish-list"

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[72] Much of the traffic directed to the CMRS provider's mobile users is interexchange service provided by IXCs. For some ICOs and some CMRS providers, the directionality may be 100 percent mobile-to-land and zero percent land-to-mobile because under all circumstances because there are no NPA-NXXs of the CMRS provider included within the local exchange service calling area of the originating wireline user's exchange.

presumption would only waste the time and resources of the TRA and all parties that will be required to engage in further costly studies to demonstrate the fact that the traffic is not balanced. In order to avoid burdensome processes, the ICOs proposed consideration of the utilization of reasonable traffic factors as an element of a compromise proposal. Although the negotiation process included some preliminary consideration of the use of such factors by the parties, the arbitration window time frame intervened.

In the absence of voluntary agreement, the factual information available to the TRA demonstrates that the "bill and keep" proposal is inappropriate; the traffic is not balanced. Moreover, in the absence of a voluntary agreement, a reciprocal compensation rate should only apply to that traffic established pursuant to a reciprocal compensation arrangement where, in accordance with FCC rules, a point of interconnection is established between the networks of the CMRS provider and the ICO. Once such an arrangement is established, and in the absence of a factual determination that the exchanged traffic is balanced, the reciprocal compensation rate would apply only to that traffic exchanged through the established point of interconnection, in accordance to the FCC rules.[73]

[73] *See*, 47 C.F.R. Section 51.703

CMRS ISSUE 9

CMRS ISSUE 9: Assuming the TRA does not adopt bill and keep as the compensation mechanism, should the Parties agree on a factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic?

CMRS Providers' Position: Yes. There are circumstances under which the Parties may need, or choose, to use factors.

CMRS Claimed ICO Position: The ICOs oppose the use of a traffic factor in situations involving indirect interconnection , because the ICOs believe that reciprocal compensation principles do not apply in such cases.

Corrected ICO Position: The established interconnection rules and standards do not contemplate a requirement by any party to utilize a traffic factor. In the absence of voluntary agreement, the traffic subject to a reciprocal compensation arrangement, where such an arrangement is lawfully established, should be measured and the appropriate reciprocal compensation rate should be applied.

Additional Information and Discussion:

Default factors are one option that the parties may consider as a voluntary method to resolve the outstanding issues, but the parties are not required to use default factors because the indirect traffic arrangement presumes that traffic will be identified and measured. As indicated previously, the ICOs expressed willingness to consider the utilization of traffic factors as an element of a full compromise proposal. The resolution of this issue will be inextricably tied to the resolution of many issues, both between BellSouth and the ICOs and with the CMRS providers. There is no requirement to use factors, but to the extent that factors are a useful way to arrive at a compromise beyond the requirements of the Act and the interconnection rules, the ICOs remain willing to consider their use.

CMRS ISSUE 10

CMRS ISSUE 10: Assuming the TRA does not adopt bill and keep as the compensation mechanism for all traffic exchanged and if a CMRS provider and an ICO are exchanging only a *de minimis* amount of traffic, should they compensate each other on a bill and keep basis? If so, what level of traffic should be considered *de minimis*?

CMRS Providers' Position: Bill and keep is appropriate when the amount of traffic does not justify the cost of recording traffic and producing bills. Sprint proposes that less than 50,000 minutes per month is *de minimis*.

CMRS Claimed ICO Position: When reciprocal compensation principles apply to traffic exchanged between CMRS providers and ICOs, bill and keep principles are never appropriate.

Corrected ICO Position: Although the ICOs proposed alternative mechanisms to address the concerns raised by the CMRS providers, the ICOs do insist on exercising their rights to require the accurate identification and measurement of all traffic terminated on their networks. While a proposed level of 50,000 minutes a month may be "*de minimis*" to an individual CMRS provider, this amount is not "*de minimis*" to the ICOs. The impact of the "*de minimis*" characterization is easily seen by multiplying the 50,000 minutes by the 5 CMRS Providers involved in these proceedings. The impact grows with the identification of additional carriers and the concerns become even greater if the would-be "*de minimis*" traffic is commingled with BellSouth's intrastate access traffic. Under this circumstance, what party is responsible for providing auditable and verifiable data attesting to the "*de minimis*" traffic from which the ICO would receive no compensation.

If an ICO, or any business, simply overlooks all charges for services that are below a certain amount, it would forego large amounts of revenue, and the large volume users of service would be effectively subsidizing small volume users. If the CMRS provider concerns are simply matters of administrative efficiency, their concerns can be addressed by other voluntarily agreed to means. Imposing a "*de minimis*" benchmark on charges for interconnection services is not an

element of any established interconnection standard or rule and the CMRS proposal should not be an issue for arbitration.

Additional Information and Discussion:

This issue of the CMRS providers is frivolous. In the course of negotiations related to this matter, the ICOs noted that if the ultimate usage was small, then the bill would also obviously be small. The ICOs informed the CMRS providers that they would be willing to consider accommodating any legitimate concerns regarding administrative efficiency by working toward an agreement to hold billing until the amount due reached a threshold amount. Alternatively, the same administrative concerns could be addressed by voluntary agreement to render bills on a less frequent basis than the traditional industry practice of monthly billing.

With respect to those CMRS providers that have filed arbitration petitions, the ICOs have no reason to believe that the amount of traffic from any one of these nationwide wireless carriers will fall below a level such as to consider it *"de minimis"* under any measure. On its face, there is no reason for any of these carriers to invest their companies' dollars in these proceedings if their traffic to the ICO networks is minimal. From the ICO perspective, there is no reason for any ICO to burden itself with billing for interconnection if it deems the billing process to be greater than the value of the bill. This CMRS issue is a good example of why Section 252 arbitration requires a state regulatory body to ensure that the resolution of issues is consistent with the requirements of Section 251 and related regulations. Where there is no requirement or standard, a petitioning party should not be indulged the use of the arbitration process to establish requirements where none exist. Section 252 is explicit; parties may voluntarily agree to terms "without regard" to the Section 251 standards. When an agreement is arbitrated, however, the resolution of any issue must be consistent with established standards. There is no requirement or standard to treat interconnecting traffic as "*"de minimis.*" Accordingly, there is no issue here to

arbitrate. This frivolous issue, however, is reflective of an attempt by the CMRS providers to utilize the arbitration process as a forum to establish interconnection policies and requirements when the arbitration process is statutorily defined as a mechanism whereby established interconnection standards and requirements are applied to open issues when the parties fail to reach agreement through negotiation.[74]

[74] The ICOs reiterate their respectful conclusion that it is the very lack of established standards and requirements applicable to "transit traffic" arrangements that has resulted in multi-party compromise agreements in other states to resolve these pending matters for a defined period of timer during which it is anticipated that the FCC will address the underlying issues that must be determined through proper rule making.

CMRS ISSUE 11

CMRS ISSUE 11: Should the parties establish a factor to delineate what percentage of traffic is interMTA and thereby subject to access rates? If so, what should the factor be?

CMRS Providers' Position: Yes. The CMRS providers have negotiated interMTA factors with other similarly situated LECs in other states. One CMRS provider, Sprint expects an interMTA factor of two percent or less; AT&T Wireless expects a factor of one to five percent).

CMRS Claimed ICO Position: It appears the ICOs would like to negotiate an interMTA factor, but the CMRS providers do not know what factor they would accept.

Corrected ICO Position: The ICO position regarding the establishment of an "interMTA factor" is based on the same analysis and consideration set forth in the discussion above regarding Issue 9 and consideration of other default factors. In the course of the negotiations, the ICOs did indicate a willingness to negotiate a mutually agreeable factor. The interests of all parties require that the factor reflects an accurate representation of the actual amount of traffic that is interMTA. In addition, the ICOs observe that the amount of traffic that is interMTA will vary with respect to each ICO on the basis of many factors including the geographic scope of the CMRS provider's service area and the proximity of the LEC's service area to an MTA boundary.

Additional Information and Discussion:

The proposals to utilize factors of one to five percent are not credible based on generally known facts, including the trend of migration to wireless of traffic formerly carried by long distance providers. As discussed above, the FCC's *Safe Harbor Order* reflected the fact that the amount of interstate traffic carried by CMRS carriers is increasing. This FCC Order raised the imputed factor used to determine how much of a CMRS carrier's revenues are derived from interstate service from 15 percent to 28.5 percent. Although the amount of interstate service is not precisely related to the amount of interMTA service (because MTA borders may overlap state boundaries), the facts in the public domain certainly suggest that a one to 5 percent

interMTA factor is not reflective of the actual amount of interMTA traffic. The relative percentage of interstate and interMTA traffic carried by wireless providers is growing.

The ICOs respectfully suggest that there is no basis to arbitrate this issue. In the absence of voluntary agreement, the CMRS provider should provide verifiable information to confirm that traffic is intraMTA when the CMRS provider seeks the favorable interconnection treatment available under FCC rules with respect to intraMTA traffic. The ICO note that the CMRS providers have framed the issue in an inaccurate and misleading manner. An accurate framing of issue 11 should incorporate an understanding that the establishment of any proposed interMTA precentage must be based on factual information related to the actual services provided by the CMRS carrier. Only the CMRS provider knows which cell site serves its mobile customers at the beginning of each call; the location of the initial cell site and the physical location of the wireline user determine whether a CMRS call is intraMTA or interMTA.

In order to equitably arrive at a negotiated reasonable factor, the CMRS providers must produce credible and accurate information that may be used to establish an accurate percentage factor that is representative of the amount of intrastate and interstate interMTA traffic that each CMRS provider will originate and terminate on the network of each ICO. As reflected by the ICO draft agreement proposals, the ICOs remain open to the establishment of an interMTA factor.[75] In the absence of voluntary agreement, actual identification and measurement of the traffic based on representative, verifiable data should be required in order for the CMRS provider to establish entitlement to the preferential interconnection arrangements available under

[75] *See* ICO Exhibit 1, Sections 4.1.4 and 4.1.5; and ICO Exhibit 2, Sections 4.3.4.1, 4.3.4.2, 4.5.3, 4.5.3.1, and 4.5.3.2.

FCC rules with respect to intraMTA traffic.[76]

[76] The ICO position in this regard is not groundbreaking. It is consistent with well established industry practice. Regulators are very familiar with similar interconnection arbitrage issues in the context of interexchange access when there is a disparity in interstate and intrastate rates. This disparity results in efforts by carriers to classify their interexchange traffic in a manner that receives application of the lower rates. In the event that precise accurate measurement is not available, established processes exist for the carriers to utilize factual data to establish realistic representative factors (called "PIU" or "percentage interstate usage" factors) used to determine how much traffic is interstate and intrastate.

CMRS ISSUE 12

CMRS ISSUE 12: Must an ICO provide dialing parity and charge its end users the same rates for calls to a CMRS NPA/NXX as calls to landline NPA/NXX in the same rate center?

CMRS Providers' Position: Yes. The FCC rules expressly require dialing parity regardless of the called party's provider and other state commissions and basic principles of fairness and non-discrimination requires ICOs to charge the same end user rates.

CMRS Claimed ICO Position: There is no dialing parity requirement unless the CMRS provider has a direct connection and either NPA/NXXs in the ICO rate center or in and end office to which the ICO has an extended area calling agreement.

Corrected ICO Position: The ICOs fully understand and abide by the Section 251(b) dialing parity obligation to the extent that the obligation is applicable. Neither the Section 251(b) dialing parity obligation, associated FCC rules and regulations, nor any applicable statute or regulation establish requirements with respect to the rates any LEC, including the ICOs, charge their end user customers for the provision of wireline to wireless calls. Any issue related to ICO end user service charges is not properly the subject of arbitration.[77]

Additional Information and Discussion:

The position advocated by the CMRS providers is totally inconsistent with the dialing parity requirements established pursuant to Section 251(b)(3) of the Act and the associated rules and standards established by the FCC. Contrary to the claims made by the CMRS providers, the requirements of dialing parity do not govern the rates that a LEC may assess for the provision of service with respect to a landline to wireless call. In fact, the dialing parity requirement does not address end user rates at all. Dialing parity is:

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[77] The ICOs respectfully suggest that the CMRS providers and their representatives withdraw this issue. The CMRS providers cannot point to any statute or regulation that provides support for their position. Within the "Additional Information and Discussion" below, the ICOs will provide a summary demonstrating the absence of any basis to support the assertion of the position advocated by the CMRS providers. In addition to this discussion, the ICOs respectfully observe that those ICOs that are Cooperatives are not subject to the ratemaking jurisdiction of the TRA.

> The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such provider to have discriminatory acess to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.[78]

Consistent with the statutory requirement, which clearly does not address charges to end users, the FCC adopted rules for dialing parity requirements that explicitly address the applicability to CMRS providers: "To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity." [79] No CMRS provider has indicated intent to provide "telephone exchange service," a statutorily defined term distinct from the provision of commercial mobile radio services.[80]

The FCC has clearly articulated and affirmed the right of a LEC to assess rates applicable to wireline to wireless traffic services. In addressing a complaint against US West by a CMRS provider (a paging carrier), the FCC articulated the fact that the reciprocal compensation rules address only "how carriers must compensate each other for the transport and termination of calls." The reciprocal compensation rules do "not address the charges that carriers may impose upon their end users."[81]

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[78] Section 251(b)(3) of the Act, underlining added.

[79] *Second Report and Order and Memorandum Opinion and Order*; In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois; CC Docket Nos. 96-98, 95-185, 92-237, and 94-102; and NSD File No. 96-8; and IAD File No. 94-102, at para. 68, emphasis added.

[80] *See, e.g.,* Section 3(47) of the Act (defining "telephone exchange service") and Section 332 (c)(3) with respect to the State regulatory authority to rate regulate CMRS providers when they provide service that are a "substitute" or "replacement" for landline telephone exhange service. No CMRS provider has claimed this status.

[81] *Memorandum Opinion and Order,* In the Matters of TSR Wireless, LLC, *et al.*, Complainants, v. US West Communications, Inc. *et al.*, Defendants, released June 21, 2000, in (continued...)

As reflected by CMRS Issue 12, the CMRS providers do not seek "parity." They seek TRA endorsement of a system of disparity that provides them with competitive advantage. If the "parity" sought by the CMRS providers was applicable, the CMRS providers would equally be responsible to provide parity. The end user rate issues set forth by the CMRS providers in Issue 12, consequently raise equal protection concerns. The CMRS providers seek TRA issued regulatory mandates over the charges that the ICOs can charge on calls between wireline and wireless networks when the call is originated on the wireline network. It is unlikely that the CMRS providers want the TRA to impose the same regulatory mandate on the same route when the call is originated on the wireless network.

The fact that traffic between wireline and wireless networks constitutes CMRS traffic, and not "local exchange service," is often overlooked by parties addressing this issue. Section 332 of the Act defines "commercial mobile radio service" or "CMRS" as "any mobile service (as defined in section 3) that is provided for profit, and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the [FCC] . . . ."[82] Moreover, "mobile service" is defined in Section 3(27) of the Telecommunications Act and Section 20.3 of the FCC's rules as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves."[83] The statutory definition of CMRS does not rely on or refer to whether the call originates on the wireline or

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[81](...continued)
File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 ("*TSR Order*") at para. 31. Accordingly, the requirements of § 251 of the Act do not address charges that a carrier applies to its end users, and therefore, these charges cannot be the subject of a request for interconnection and cannot be the subject of any arbitration pursuant to § 251 of the Act.

[82] 47 U.S.C. § 332(d)(1).

[83] 47 U.S.C. § 3(27); 47 C.F.R. § 20.3 (underlining added).

wireless network. Both landline-to-mobile and mobile-to-landline calls fall within the definition of a Commercial Mobile Radio Service, consistent with the analysis of the FCC.[84]

Acordingly, the landline-to-mobile and mobile-to-landline calls are subject to the requirements set forth in §332(c)(3) of the Act including exemption from state regulation of service entry and rates for Commercial Mobile Radio Services.[85] If the CMRS providers seek rate regulation when the call is originated on the wireline network, there is no basis to deny the ICOs equal protection and impose the same requirements when the call originates on the wireless network.

CMRS provider Issue 12 reflects an attempt by the CMRS providers to leap frog over several interrelated fact-laden issues that are subject to very specific rules, regulations and FCC decisions. The CMRS providers seek a simple self-serving answer from the TRA. The CMRS providers want the TRA to require the ICOs to treat landline to wireless traffic as "local:"

1. without regard to the geographic originating and terminating point of the call and the fact that the jurisdiction of the traffic is not determined by the "rate center" with which a wireless carrier attempts to associate a wireless NPA-NXX;

2. without regard to the established right of the ICO to hand the call to the origination customer's chosen toll provider;

3. without regard to the established right of the ICO to assess charges for the provision of the service; and

4. without regard to the fact that neither "parity" requirements nor any other interconnection requirements address or impose restrictions on the rates that the ICOs, or any LEC, may assess for landline to wireless traffic.

The attempted and wrongful utilization by the CMRS providers of the "parity"

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[84] This analysis and these conclusions are set forth fully in *Memorandum Opinion and Order on Reconsideration and Order Terminating Proceeding*, In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, released April 13, 2001, ("*Calling Party Order*") at paras. 10-19.

[85] *See* 47 U.S.C. § 332(c)(3).

requirements should not be condoned.[86] An informed review of both the position and the related support set forth by the CMRS providers with respect to this issue is similar to reading a book report provided by a student who has not read the book. The "parity" requirements relied upon by the CMRS providers do not and cannot support the position that ICOs must treat any landline to wireless traffic as "local exchange service." Issue 12 should be withdrawn from these proceedings.

[86] Several of the CMRS providers apparently take comfort in their ability to convince regulatory authorities in other states. As the CMRS providers know, the representatives of the ICOs were not involved in the referenced proceedings in those states. Flawed decisions in other jurisdictions are not a basis of a flawed decision in Tennessee. The CMRS providers fail to address the federal authority and state decisions that conflict with their unsustainable position. If this issue is not withdrawn, the ICOs will provide further discussion and authority within the procedural process established by the TRA. Unlike the proceedings in other states referenced by the CMRS providers, the pursuit of this issue 12 in these proceedings will not take place ion the absence of the full consideration of all established statutory authority, related regulatory decisions and consideration of equal protection and anti-competitive issues.

CMRS ISSUE 13

CMRS ISSUE 13: Should the scope of the Interconnection Agreement be limited to traffic for which accurate billing records (11-01-01 or other industry standard) are delivered?

CMRS Providers' Position: No. All traffic exchanged between the Parties should be included in the scope of the Agreement.

CMRS Claimed ICO Position: Yes. The scope of the Agreement should be limited to that traffic for which the tandem provider delivers accurate 11-01-01 records.

Corrected ICO Position: The willingness of the ICOs to enter into a new voluntary agreement is conditioned upon assurance that BellSouth will provide the ICOs with complete and accurate usage records pursuant to enforceable terms and conditions.

Additional Information and Discussion:

Issue 13, as framed by the CMRS providers, presupposes an outcome that is incorrect. The issue presented by the CMRS providers inherently assumes that the FCC has established standards and rules that apply to "transit traffic" arrangements. As discussed throughout this response, the FCC has not established any such standards or rules. While the ICOs have indicated a willingness to establish new terms and conditions through a mutually agreeable arrangement, any such arrangement cannot rightfully or lawfully impose competitive or financial disadvantage on the ICOs. Accordingly, any set of terms and conditions applicable to the BellSouth "transit" indirect interconnection must, at minimum, provide certainty that BellSouth provides accurate and complete billing records of all traffic it carries to the ICO networks.

In the absence of the provision of complete and accurate traffic data, the ICOs will have no reasonable means to bill carriers for the terminating usage they transit through BellSouth. Accordingly, the ICOs will not voluntarily enter into new terms and conditions (and, no such agreement could be equitable or lawfully sustainable) unless the ICOs are assured of a complete and accurate accounting of all traffic that BellSouth delivers to their network. [*See* ICO Exhibit

1, Sections 3.1 and 4.2.2; and ICO Exhibit 2, Sections 3.3.5 and 4.7.]

The concerns related to this issue further demonstrates the need for BellSouth's presence and participation in these proceedings. While the ICOs and CMRS providers can discuss hypothetical new terms and conditions applicable to an indirect interconnection arrangement, the terms and conditions have no practical application unless the "transit" provider (BellSouth) has established terms and conditions that provide it with the right to deliver third party traffic. The only existing terms and conditions that provide BellSouth with any possible right to deliver the CMRS provider traffic to the ICO networks are the existing agreements and practices pursuant to which BellSouth is responsible for compensating the ICOs for all of the traffic BellSouth delivers to the ICO networks for termination. There is no basis in law or equity to expect or require the ICOs to establish new terms that alleviate BellSouth from its responsibilities unless new payment obligations and billing and collecting mechanics are established that ensure no competitive or financial disadvantage to the ICOs. Any such arrangement will require BellSouth's commitment to provide complete and accurate usage records pursuant to enforceable terms and conditions.

CMRS ISSUE 14

CMRS ISSUE 14: Should the scope of the Interconnection Agreement be limited to traffic transited by BellSouth?

CMRS Providers' Position Issue 14: The Interconnection Agreement should apply to all traffic exchanged between the carriers, and it should not be limited to cover only specific transiting carriers.

CMRS Claimed ICO Position Issue 14: The ICO position appears to be that the ICO must have an agreement with the intermediate carrier before the CMRS provider delivers traffic to the ICO via that intermediate carrier.

Corrected ICO Position: The scope of these arbitration proceedings should be limited to the consideration of the issues identified in the Pre-Hearing Officer's May 5, 2003 Order which initiated the collective negotiations that have led to these arbitrations: the indirect "transit" arrangement involving BellSouth as an intermediary.

Additional Information and Discussion:

As a matter of good faith and rational processes, it simply does not make sense to broaden the scope of these proceedings beyond the indirect interconnection through BellSouth that the CMRS providers have chosen to utilize. In the course of the negotiations, the CMRS providers did indicate that they would prefer the negotiations to lead to terms and conditions that they could utilize irrespective of whether their "transit traffic" provider is BellSouth or any other carrier. The ICOs, in response, noted that indirect "transit arrangements" cannot possibly work in the absence of terms and conditions between the "transit" provider and the ICO that establish the rights and responsibilities associated with the physical interconnection of the traffic.

In addition, the ICOs explained that no other carriers have interconnection with the ICOs that could be utilized to transit traffic to the ICOs pursuant to the terms and conditions proposed by the CMRS providers and BellSouth. Moreover, the ICOs are not aware of any carrier other

than BellSouth that claims any perceived right to deliver third party traffic to ICO networks without incurring responsibilities. There is no basis for the arbitration proceedings to address any interconnection arrangement other than that which was the subject of the collective negotiations that took place.

CMRS ISSUE 15

CMRS ISSUE 15: Should the scope of the Interconnection Agreement be limited to indirect traffic?

CMRS Providers' Position Issue 15: No. The scope of the Agreement should include both direct and indirect traffic.

CMRS Claimed ICO Position Issue 15: Yes. The ICO position appears to be that a separate agreement is required for a direct interconnection scenario.

Corrected ICO Position: The scope of these arbitration proceedings should be limited to the consideration of the issues identified in the Pre-Hearing Officer's May 5, 2003 Order which initiated the collective negotiations that have led to these arbitrations. If the TRA were to ask each party about the scope of the negotiations that have taken place, each party must acknowledge with candor that the discussions have focused on the establishment of new terms and conditions to apply to the existing interconnection arrangement whereby the CMRS providers have chosen to connect indirectly to the ICO networks through BellSouth in lieu of establishing a point of interconnection with any ICO.

Additional Information and Discussion:

The ICOs respectfully reiterate the statement set forth in response to Issue 14, above - as a matter of good faith and rational processes, it simply does not make sense to broaden the scope of these proceedings beyond the indirect interconnection through BellSouth that the CMRS providers have chosen to utilize.

To the extent that the CMRS providers suggest that these arbitration proceedings should address direct interconnection arrangements, the ICOs respectfully observe that the collective negotiations did not address any such specific arrangements between the CMRS providers and the ICOs. To the limited extent that the subject of direct interconnection was raised by the CMRS providers, the ICOs responded by requesting that any CMRS provider seeking direct

interconnection address the specific requirements of direct interconnection including, but not limited to the establishment of a point of interconnection. No CMRS provider responded within the framework of the collective negotiations.[87]

This proceeding arises from the unilateral actions taken by BellSouth with respect to the traffic that BellSouth delivers to the ICOs' networks and the resulting dispute regarding BellSouth's failure to compensate the ICOs in accordance with existing arrangements. The TRA correctly considered these issues within the proceeding established to consider rural universal service issues. The Pre-Hearing Officer's May 5, 2003 clearly articulates the subject matter of the collective negotiations that have led to these arbitration proceedings.

In the event that the TRA nonetheless determines that direct interconnection arrangements are within the scope of these arbitrations, the ICOs offer the following observations. Direct interconnection arrangements are conceptually and functionally separate and distinct from indirect transit arrangements. While it may be appealing to gloss over specific details and assume that the same terms and conditions are applicable to each arrangement, the applicable statutory and regulatory requirements and operational facts require a different result.

Indirect interconnection utilizing a transit arrangement to reach the networks of the ICOs (in lieu of the establishment of a point of interconnection) involves voluntary agreements among all of the parties (the ICOs, the CMRS providers and BellSouth). In contrast, an interconnection arrangement involving the establishment of an actual interconnection point on the network of an ICO for the exchange of traffic with the CMRS providers is subject to an involuntary arrangement required by statute and rules with terms. The terms and conditions of this type of arrangement, unlike the indirect transit arrangement that was the subject of the collective

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[87] On a very limited basis, some CMRS providers and ICOs are separately continuing discussions regarding direct interconnection.

negotiations, are in no manner dependent on BellSouth's involvement. The distinction arises because this type of arrangement involves the establishment of a physical point of interconnection.

Under these circumstances, the resulting terms and conditions will be distinct from those terms and conditions that are necessary for the indirect "transit" arrangement that was the subject of the collective negotiations among the parties. When a CMRS provider establishes an interconnection point on the network of an ICO, there no longer exists any reason for any of the terms and conditions associated with an indirect "transit" agreement. The establishment of a point of interconnection, as contemplated by the FCC's Subpart H Rules applicable to reciprocal compensation arrangements, alleviates the ICO concerns regarding the accurate measurement and billing of traffic that is transported by BellSouth on a commingled basis under the existing "transit" arrangement.[88]

Interconnection arrangements where the CMRS provider establishes a point of interconnection on the ICO networks were not addressed by the May 5, 2003 Order of the Pre-Hearing Officer; nor did the parties focus on this type of arrangement in the course of the collective negotiations that resulted in these proceedings. Accordingly, the scope of this proceeding should not include these arrangements which are subject to distinct terms and conditions.

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[88] The ICOs note that the CMRS providers could utilize the BellSouth network to carry their traffic under this arrangement by utilizing a BellSouth dedicated trunk to establish a point of interconnection with the ICO network. Under this set of circumstances, pursuant to which the CMRS providers could choose to interconnect "indirectly' to the ICO networks, the CMRS carrier's traffic would not be commingled with traffic of other carriers and the ICOs would not be required to depend on BellSouth to provide accurate and verifiable traffic data.

CMRS ISSUE 16

CMRS ISSUE 16: What standard commercial terms and conditions should be included in the Interconnection Agreement?

CMRS Providers' Position: The TRA should adopt the standard terms and conditions contained in (CMRS) Exhibit 2 which are typical of other commercial contracts.

CMRS Claimed ICO Position: The ICOs appear desirous of standard terms and conditions.

Corrected ICO Position: The TRA should adopt the standard terms and conditions contained in either ICO Exhibit 1 or ICO Exhibit 2 attached to this Response.

Additional Information and Discussion:

The CMRS providers do not provide any specific issues for arbitration with respect to this Issue 16. The position of the ICOs is that the standard terms and conditions proposed in ICO Exhibits 1 and 2 are the terms and conditions that will apply to the CMRS providers. The CMRS providers have not set forth any issues with respect to these provisions that require arbitration.

CMRS ISSUE 17

CMRS ISSUE 17: Under which circumstances should either Party be permitted to block traffic or terminate the Interconnection Agreement?

CMRS Providers' Position: A Party may terminate when the other Party defaults in the payment of any undisputed amount due under the terms of the Agreement, or upon providing requisite notice ninety (90) days prior to the end of the term. All other disputes should be resolved pursuant to the dispute resolution procedures proposed by the CMRS providers. Blocking of traffic should never be permitted.

CMRS Claimed ICO Position: The Agreement may be terminated for any reason. The ICOs should be allowed to block traffic if a CMRS provider defaults.

Corrected ICO Position: An ICO should cease the provision of interconnection services to a CMRS provider when, after appropriate notice and opportunity to cure a default, the CMRS provider remains in default of its lawfully established obligations to the ICO. The provision of notice and opportunity to cure default should be consistent with that provided to other interconnecting carriers pursuant to long existing standards, terms and conditions.

Additional Information and Discussion:

The ICOs observe that the CMRS providers have framed this issue in a manner intended to evoke emotional response by utilizing the term "blocking." Obviously, no carrier should ever improperly "block" traffic of another carrier. Circumstances arise, however, when it is not only appropriate for an ICO to discontinue the provision of interconnection services, but they are lawfully required to do so under the long standing terms and conditions pursuant to which they provide interconnection.

Several of the CMRS providers have (or have had) interexchange carrier affiliates that are very well familiar with the existing terms and conditions applicable to cessation of interconnection services in the event of default. In the wake of the bankruptcy experiences of major national carriers (WorldCom and Global Crossing) that resulted in financial loss by the

ICOs and other similarly situated rural carriers, the ICOs will not be less than vigilant with respect to protecting and enforcing their rights in this regard.

The proposals of the ICOs are more than reasonable. [*See, e.g.,* ICO Exhibit 1, Section 7; and ICO Exhibit 2, Section 7.] As with the provision of any service, no carrier or service provider can continue to provide a service, and continue to incur costs in the provision of that service, if the customer of that service does not provide the lawfully established compensation due for the service. With respect to the terms and conditions applicable to the termination of any interconnection arrangement, the ICOs have set forth very reasonable and extended terms in order to ensure that the interconnecting carrier has all reasonable opportunities to cure any default situation, to plan for changes, and to seek different forms of interconnection consistent with the Act and their rights. [See ICO Exhibit 1, Sections 7.3 and 7.6; ICO Exhibit 2, Sections 7.3 and 7.6.]

CMRS ISSUE 18

CMRS ISSUE 18: If the ICO changes its network, what notification should it provide and which carrier bears the cost?

CMRS Providers' Position: The ICO must comply with the FCC's rules regarding notification of network changes and should bear the cost of those changes. If the CMRS provider objects to a proposed change, the dispute shall be handled pursuant to the Dispute Resolution process section in the Interconnection Agreement. The ICO may proceed with the network change, but shall also maintain the existing network configuration until the dispute is resolved.

CMRS Claimed ICO Position: The ICOs have the absolute right to make network changes without interference from the CMRS providers and the CMRS providers should bear the costs.

Corrected ICO Position: Although the rules regarding notification of network changes are not applicable to the ICOs, the ICOs have offered to provide the CMRS providers with greater notice of network changes than the FCC rules require.[89] The ICOs have not required or requested that the CMRS providers bear the costs of an ICO network change.

Additional Information and Discussion:

The indirect "transit" arrangement that the CMRS providers utilize to indirectly connect o the ICOs should only work in an instance where an ICO subtends a BellSouth tandem.[90] In the course of these negotiation, the Coalition has informed the CMRS providers of the intent of many ICOs to discontinue the utilization of the BellSouth tandem.

The ICOs will bear their own network costs for the network changes that they make. The ICOs will not, however, take responsibility for any network changes that the CMRS providers may make in response. The ICOs did not ask the CMRS providers to choose to

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[89] *See* ICO Exhibit 1, Sections 7.3 and 7.7; and ICO Exhibit 2, Sections 7.3 and 7.7.

[90] The Coalition has information regarding at least one instance where an ICO does not subtend a BellSouth tandem, but BellSouth delivers third party traffic to the ICO wrongly and irrespective of this fact. The resources of the ICOs are limited. Without waiving any rights or limiting the right of any ICO to redress this matter, the Coalition respectfully urges the TRA to investigate this matter on its own motion.

interconnect indirectly through a BellSouth "transit" arrangement. The ICOs had nothing to do with the establishment of this arrangement; in fact, they were excluded from the establishment of the arrangement, in contrast to industry guidelines which require the agreement of all parties to a multi-party "meet-point billing" arrangement. Clearly, the ICOs have never held themselves out to the CMRS providers in a manner that would in any way justify the CMRS providers in relying upon the ICOs to continue to subtend a BellSouth tandem.

ICOs should not be limited in their network design choices because of the interconnection choices made by the CMRS providers. Nor should the ICOs bear any financial responsibility for changes the CMRS providers may have to make if the ICO makes a network change; the CMRS providers should bear their own costs for any network changes they make.[91] The ICOs are not responsible for the CMRS providers' network costs, or required to maintain a tandem arrangement with BellSouth to accommodate the CMRS providers or any carrier.

In the event that a CMRS provider seeks direct interconnection with an ICO, the ICOs are willing to negotiate terms and conditions that mutually commit the parties to maintain the direct interconnection arrangement without change for a reasonable and mutually agreeable period. The ICOs will not, however, waive their rights to reconfigure their networks including the possibility that they may migrate their end offices to different tandems and may cease subtending arrangements with the BellSouth tandem. [*See* ICO Exhibit 1, Section 7.7; and ICO Exhibit 2, Section 7.7.] The proposals of the ICOs provide more than reasonable notice and time for other parties to reconfigure their services and necessary arrangements under all circumstances.

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[91] Similarly, the ICOs are not responsible for any IXC network change costs when an ICO or any LEC elects to change its tandem.

V. ICOs' Additional Issues

The Act permits the non-petitioning party to "provide such additional information as it wishes . . . "[92] The ICOs set forth the following additional issues and comments relevant to this proceeding and the ultimate arrangement between and among the parties.

1. **In a three party indirect transit arrangement, the carrier sending traffic should be responsible for payment directly to the party with which it physically interconnects.** The billing and revenue methods between and among the parties should continue to be with the carrier with which another carrier interconnects; *i.e.*, with BellSouth. The CMRS providers should provide compensation to BellSouth for BellSouth's provision of transit traffic service, and BellSouth should continue to remit payment to the ICOs for the CMRS providers' traffic. This is consistent with the manner in which this traffic has been handled for years and is consistent with agreements in other states that BellSouth and the CMRS providers have made with the Independents for this traffic.

2. **BellSouth should not deliver third-party traffic to an ICO that does not subtend a BellSouth tandem.** Indirect transit traffic arrangements may be appropriate where small ICOs have not deployed their own tandem switching offices and have elected, for now, to subtend a Bell tandem. However, ICOs that deploy their own tandems have no continuing obligation to use the Bell tandem, transit traffic arrangement, involuntarily. No law or regulation requires any carrier to subtend a BellSouth tandem. There will be a chilling effect on competition if BellSouth is allowed to establish itself always at the center, between and among all other carriers as the switch and transport provider.

3. **Any new terms and conditions applicable to the existing indirect "transit" arrangements should be established in a single agreement among all three parties: the CMRS provider, the ICO and BellSouth.** Because the relationships between BellSouth, the ICOs and the CMRS providers are inextricably related physically, operationally, and financially in any three party transit traffic arrangement, there should be a single agreement between and among the three parties for this traffic arrangement. To the extent that a approach under which there are three separate agreements is the resolution of this proceeding (*i.e.*, BellSouth-CMRS, BellSouth-ICO, and ICO-CMRS), then the separate agreement between an ICO and a CMRS provider cannot be effective with respect to any specific intermediary carrier (*e.g.* BellSouth) unless and until the intermediary has an authorizing interconnection agreement in place with the ICO that is compatible and consistent with the separate terms of the ICO-CMRS provider agreement. No carrier has the right to send traffic without an interconnection request, the negotiation of an interconnection agreement, and the approval of that interconnection agreement before the TRA. [*See* ICO Exhibit 1, Sections 3.1 and 3.5; and ICO Exhibit 2, Section 3.3.]

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[92] 47 U.S.C. § 252(b)(3).

4. **The CMRS providers should clarify which of their affiliate entities seeks new terms and conditions for the utilization of indirect "transit" arrangements.** The CMRS providers are comprised of many corporate entities. An ICO's interconnection will be with a the CMRS licensee that holds the license in the specific MTA in which the ICO operates. It will be this specific CMRS provider which terminates intraMTA traffic with the ICO. The CMRS providers have not in all cases indicated which corporate entity will be the contracting entity but must do so. It is not clear which CMRS provider licensee actually operates in the MTAs of each individual ICO. The ICOs asked the CMRS providers for this information and have not yet received it.

5. **The CMRS providers should indicate the specific scope of the traffic originating on their respective networks that is the subject of these proceedings.** Each CMRS provider must provide the specific geographic area from which it will originate mobile user traffic for each type of interconnection arrangement it may have with an ICO. The geographic scope of the originating mobile user area will be one key factor in determining the extent of interMTA traffic to be terminated to the ICO. [ICO Exhibit 1 and Exhibit 2, Section 3.1.4]

6. **Access charges apply to both the origination and termination of interMTA traffic on the networks of the ICOs.** The TRA should note that, consistent with applicable FCC decisions, intrastate and interstate access charges apply to interMTA traffic that a CMRS provider both originates and terminates on the LEC network of an ICO. The ICO's intrastate and interstate access charges apply to both originating and terminating traffic. When a CMRS provider carries a call to a mobile user that is located in another MTA, the CMRS provider is acting as an interexchange carrier, is obtaining originating access from the ICO, and must pay the ICO for this originating service. This is consistent with the FCC's conclusions that the LEC's access charge tariffs apply to interMTA traffic.[93] [*See* ICO Exhibit 1, Section 4.1.3; and ICO Exhibit 2, Sections 4.3.4 and 4.5.2.]

7. **Many of the issues raised in these proceedings are not the subject of established FCC rules and regulations. The parties must recognize that these issues are subject to voluntary agreement, and not to involuntary arbitration.** To the extent that an agreement between the parties is the result of an arbitration pursuant to Section 252 of the Act, then the provisions of the agreement must be consistent with the requirements of Section 251 of the Act and the FCC's implementing rules. Therefore, the "Changes in Law" provision which would recognize subsequent legislative, regulatory or judicial or other governmental decision (including potential clarifications of any matter addressed by the interconnection agreement) that either materially affects the terms of the agreement or determines that the ICO is not required by law to provide some service, arrangement, payment, or benefit to any other party must be included in the arbitrated agreement. [*See* ICO Exhibit 2, Section 24.]

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[93] *First Report and Order* at note 2485.

8. **Any agreement must accurately define the scope of traffic authorized to be delivered over an interconnection to ensure that the interconnection arrangement is not misused.** Any agreement which involves the delivery of traffic by one party to the network of another carrier must set forth the specific scope of traffic that is authorized by the interconnection arrangement. [*See* ICO Exhibit 1, Sections 3.1 through 3.5; and ICO Exhibit 2, Sections 3.2.1 through 3.2.4 (direct traffic) and Sections 3.3.1 through 3.3.5 (intermediary traffic).]

9. **Issues governing the physical interconnection arrangement between BellSouth and the ICOs must be resolved before effective new terms and conditions can be established between the CMRS providers and BellSouth.** In resolving an interconnection agreement between the ICOs and the CMRS providers, many issues associated with arrangements with BellSouth must be resolved as a prerequisite to any three party arrangement. For example, the scope of traffic ultimately within the scope of any agreement will depend on the physical interconnection terms and conditions between the ICOs and BellSouth. [*See* ICO Exhibit 2, Sections 3.3 and 4.4] The billing and compensation terms are dependent on the role that BellSouth play in the process. [*See* ICO Exhibit 2, Sections 4.5.1 and 4.5.2.] The billing and revenue distribution methods will depend on BellSouth's duties. [*See* ICO Exhibit 2, Section 4.7.] The term and termination of the agreements will depend on the status of the tandem interconnection between BellSouth and the ICO. [*See* ICO Exhibit 2, Sections 7.2, 7.6, and 7.7.] Disputes involving measurement by BellSouth and billing to the ICOs and the CMRS providers can only be settled between and among the interrelated parties. [*See* ICO Exhibit 2, Section 8.] The treatment of proprietary information created by BellSouth can only be resolved between and among the three parties to a transit traffic arrangement. [*See* ICO Exhibit 2, Section 16.]

10. **The CMRS providers must provide any specific objections or concerns that they have with the terms and conditions proposed by the ICOs.** All issues that arise as a result of the differences in agreement language between the ICOs Exhibit 1 or Exhibit 2 draft agreements and the CMRS providers' Exhibit 2 draft agreement must be resolved.

VI. Conclusion

Consistent with this Response, the ICOs respectfully request that the Tennessee Regulatory Authority:

- confine this proceeding to consideration of the so-called "meet-point billing" " transit traffic" issues which led to the Pre-Hearing Officer's requirement of collective negotiations; prior to expending further resources, the ICOs respectfully urge the TRA to consider the utilization of alternative dispute resolution means, recognizing the fact that: 1) the FCC has not established standards and rules applicable to indirect "transit" arrangements; and 2) many of the associated issues are currently before the FCC.

- require BellSouth to become a party to this proceeding in order to address comprehensively the issues raised in the context of three-party interconnection arrangements.

- determine that, if new terms and conditions should be applied to the existing interconnection of CMRS providers to the ICOs through BellSouth, any such terms and conditions should be set forth in a single agreement between and among all parties: BellSouth, the CMRS provider, and an ICO. The alternative approach utilizing three separate agreements (BellSouth-CMRS, BellSouth-ICO, and ICO-CMRS) is more complex, administratively inefficient, and may result in inconsistent terms and conditions.

- order that the billing and revenue distribution mechanics for three-party transit traffic arrangements should continue to be based on a process under which the CMRS providers are responsible for compensation to BellSouth which, in turn, is responsible for compensation to the ICOs for the termination of the transit traffic. This approach is consistent with the approach agreed to by the CMRS providers and BellSouth in other states to resolve pending issues for a period of time during which it is anticipated that the FCC will address the related unresolved issues.

- determine that the consideration of the issues raised by these arbitrations cannot result in any limitation of the rights of the ICOs to design and deploy their own networks without restriction or limitations imposed by any carrier. Neither an ICO nor any other competitive carrier can be required to subtend a tandem of BellSouth or any other carrier.

- reject the arguments of the CMRS providers that conflict with the decisions of the FCC that confirm that interexchange carrier service traffic is subject to the access framework and not subject to the reciprocal compensation framework

- reject arguments of the CMRS providers that ignore the FCC's conclusions regarding

the fact that the FCC has not imposed forward-looking cost methodology on the rural LECs, and recognize that the pricing standards associated with Section 251(b)(5) reciprocal compensation are not applicable to the indirect "transit" arrangements used by the CMRS providers.

- Affirm that the issues that are outside the scope of arbitration should be addressed through voluntary business negotiations between the parties without regulatory intervention. In the absence of standards and rules established through appropriate administrative processes, parties are not subject to the imposition of involuntary terms and conditions; the arbitration process is not a forum to establish policy; it is a forum to apply established rules and standards.

- Confirm that when a CMRS provider decides to utilize a transit arrangement in lieu of establishing a point of interconnection with an ICO, the CMRS provider will be responsible to provide compensation to BellSouth for BellSouth's transport of traffic from the ICO's network to the CMRS provider.

- Confirm that there is no geographic area calling parity between wireline calls to specific local exchanges and calls to mobile users that may be located virtually anywhere in the nation.

- Conclude that when a CMRS provider elects to interconnect indirectly to an ICO network utilizing a BellSouth "transit" service, the terms and conditions applicable to any such arrangement must include enforceable requirements that BellSouth provide absolutely accurate, complete, verifiable and auditable identification and measurement of all traffic on a timely basis.

In considering the issues raised by these arbitrations, the ICOs respectfully reiterate and emphasize:

1. The subject indirect interconnection arrangement through BellSouth is already in place; the CMRS providers have used this indirect interconnection for an extensive period of time.

2. This existing interconnection works only because a physical interconnection was established between BellSouth and each ICO. That interconnection is subject to existing terms and conditions.

3. The TRA should not condone the fact that BellSouth has unilaterally elected to ignore the existing terms and conditions. While the existing terms and conditions are subject to change, the ICOs respectfully urge the TRA, consistent with the public interest in the provision of orderly processes, to require BellSouth to abide by existing terms and conditions until those terms and conditions are lawfully replaced.

To the extent that these proceedings result in any changes to the existing terms and

conditions applicable to the indirect interconnection of CMRS providers through BellSouth, the ICOs respectfully request that the TRA ensure that any such changes do not financially or competitively disadvantage any ICO or adversely impact the provision of universal services in the areas served by the ICOs.

Respectfully submitted,

The Rural Coalition of Small LECs
and Cooperatives

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December 1, 2003

Tennessee Coalition/CMRS Provider Issues Matrix
Dated 06/19/03

Issue No.	ISSUE DEFINITION	LEC POSTION	CMRS POSITION	CURRENT STATUS
`LEC6.	If a CMRS carrier establishes an interconnection with BellSouth and utilizes BellSouth's transport and termination, is the ICO required to transmit traffic to the CMRS provider through the arrangement established by the CMRS provider and BellSouth?	NO - the ICO is not required to utilize the interconnection arrangement established by the CMRS provider.	If the ICO is not directly connected to the CMRS provider, ICO originated traffic can be routed via the instructions of the LERG through the BellSouth tandem.	
LEC8.	If BellSouth terminates a CMRS carrier's traffic to an ICO through a transiting arrangement established by the CMRS carrier and BellSouth, what are the ramifications of non-payment or any other form of default by the CMRS carrier or BellSouth? What terms and conditions, if any, should be established for non-payment or default by either party.	While these terms are negotiable, the ICOs propose that, similar to any situation where an interconnecting carrier defaults on interconnection obligations, the interconnection should cease upon proper notice and failure to cure the default.	The CMRS providers agree that terms related to non-payment and other forms of default may be negotiated between the CMRS providers and the ICOs, but neither party should have a unilateral right to cease providing services. Any terms related to this issue should be defined in the dispute resolution section of the interconnection agreements between the CMRS providers and the ICOs. Moreover, if such a provision is included in the agreement, it must comport with any federal/state notice requirements.	

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CMRS1.	Are Commercial Mobile Radio Service ("CMRS") providers, Competitive Local Exchange Carriers ("CLECs"), and incumbent local exchange carriers ("ILECs") "telecommunications carriers" within the meaning of Section 251(a) of the federal Telecommunications Act of 1996 ("1996 Act")?	YES	YES.	
CMRS2.	Are the local exchange carriers ("LECs) that comprise the member companies of the Coalition and that are commonly referred to as "Independent Telephone Companies" ("ICOs") "telecommunications carriers" within the meaning of Section 251(a) of the 1996 Act?	YES	YES.	
CMRS3.	Are the ICOs "incumbent	YES	YES.	

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	local exchange carriers" within the meaning of Section 251 (h) of the 1996 Act?			
CMRS4.	Does an ICO have a duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?	YES	YES.	
CMRS5.	Does an ICO have a duty to provide dialing parity to a CMRS provider's NPA-NXXs so that ICO customers dial the same number of digits and pay the same charges to call a CMRS NPA-NXX that the ICO customer would to call a landline NPA-NXX in the same rate center as the CMRS NPA-NXX?	NO – treatment of originating landline to wireless traffic is negotiable.	Yes. 47 U.S.C. §251(b)(3) and 47 C.F.R §51.207 require that LECs permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.	
CMRS6.	Is an ICO required to negotiate in good faith with other telecommunications carriers, including CMRS providers, desiring either direct or indirect	ICO will negotiate interconnection requests in good faith.	Yes. The CMRS providers and the ICOs have agreed to negotiate pursuant to the timelines set forth in the Act. The CMRS providers accept the ICO representation that they will negotiate in good faith.	

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	interconnection, the rates, terms, and conditions for such interconnection as well as reciprocal compensation for the transport and termination of telecommunications traffic that is exchanged either directly or indirectly?	Section 251(b)(5) reciprocal compensation is not within the scope of Section 251(a) indirect interconnection.	All intraMTA traffic is subject to reciprocal compensation whether it is exchanged on a direct or an indirect basis. The CMRS providers would like to discuss this further to see if it is indeed an issue between the parties.	
CMRS7.	When an intraMTA call initiated by the subscriber of a CMRS provider that originates on the CMRS provider's network, transits BellSouth's network, and is handed off to the ICO for termination, is the originating CMRS provider obligated to compensate the ICO for its portion of the transport and termination of the call? If so, is the appropriate pricing methodology for establishing a rate forward looking costs and what should the rates be, based on that pricing methodology?	The CMRS provider is required to compensate the ICO only consistent with the terms and conditions of the interconnection arrangement established between the ICO, BellSouth and the CMRS provider. The CMRS provider may alternatively arrange to hand its traffic to an intermediate carrier which arranges for the termination on the ICO network and compensates the ICO in accordance with the terms and conditions associated with the interconnection arrangement utilized by the intermediate carrier to achieve the termination. The appropriate pricing methodology and rate will be dependent upon the type of interconnection arrangement	The CMRS provider answer to the first question is yes. Under the current law the originating party is responsible for compensating the terminating party for its portion of the transport and termination of an intraMTA call. Any use of an intermediate carrier by the originating party to deliver its intraMTA traffic to the terminating party is irrelevant from a compensation perspective. The originating party still has the obligation to compensate the terminating party for their termination of this intraMTA traffic. Absent a negotiated rate, current law requires that an ICO perform a forward looking incremental cost study to support rates to be used for intraMTA traffic on a reciprocal and	

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		utilized.	symmetrical basis. For the purposes of facilitating negotiations of such rates among the Parties, the CMRS carriers request that each ICO propose a forward looking cost based rate by July 30, 2003 with adequate cost support.	
CMRS8.	When an intraMTA call is initiated by the subscriber of an ICO that originates on the ICO's network, is the ICO obligated to compensate the CMRS provider for its portion of the transport and termination of the call? If so, what is the appropriate pricing methodology for establishing a rate, and what should the rates be, based on that pricing methodology?	The ICO is required to compensate the CMRS provider only consistent with the terms and conditions of the interconnection arrangement established between the ICO and the CMRS provider. If the ICO does not exercise its right to terminate the traffic pursuant to Section 251(b)(5), the ICO may not be the carrier of the traffic. Under these circumstances, the ICO provides only originating access and hands the traffic off to the IXC selected by the originating end user customer. The appropriate pricing methodology and rate will be dependent upon the type of interconnection arrangement	The CMRS provider answer to the first question is yes. Under the current law the originating party is responsible for compensating the terminating party for its portion of the transport and termination of an intraMTA call. Any use of an intermediate carrier by the originating party to deliver its intraMTA traffic to the terminating party is irrelevant from a compensation perspective. The originating party still has the obligation to compensate the terminating party for their termination of this intraMTA traffic. Absent a negotiated rate, current law requires that an ICO perform a forward looking incremental cost	

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		utilized.	study to support rates to be used for intraMTA traffic on a reciprocal and symmetrical basis.	
CMRS9.	Are the billing records provided by BellSouth to the ICOs sufficient to enable the ICOs to bill the CMRS providers for traffic originated on the CMRS network and terminated on the ICO network?	No. On the basis of the review of the information provided, the ICOs are not satisfied that the billing records provided by BellSouth are sufficient.	The CMRS providers understand that category 1101 records are currently utilized by the ICOs to bill interexchange carriers for access traffic. The CMRS providers do not understand why category 1101 records associated with CMRS intraMTA traffic would not be sufficient for the ICOs to bill the CMRS providers. The CMRS providers would like to discuss this issue in more detail.	
CMRS10.	If a CMRS provider does not measure traffic that originates on the ICO's network and terminates on the CMRS providers network, should the parties agree on a factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance?	The ICOs recognize that such factors have and can be negotiated.	Yes. CMRS carriers may need to utilize factors under certain circumstances.	
CMRS11.	If a CMRS provider and an ICO are exchanging a *de minimis* amount of traffic,	The ICOs agree that such terms and conditions may be negotiated. We have no current position on what	Yes. The CMRS providers will make a proposal to the ICOs regarding "de minimis" traffic.	

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	should they compensate each other on a bill and keep basis? If so, what level of traffic should be considered *de minimis*?	level of traffic should be considered *de minimis*.		
CMRS12.	If a CMRS provider and an ICO exchange traffic, either directly or indirectly, such that the traffic is roughly balanced, should they compensate each other on a bill and keep basis?	The ICOs recognize that with respect to a 251(b)(5) interconnection,the exchange of traffic in balance will result in a result similar to "bill and keep" if the applied rate rate is the same for both parties. In the absence of a negotiated agreement under Section 252 (a)(1)("and without regard to the standards set forth in subsections (b) and (c) of section 251…"), the concept set forth in this CMRS Issue 12 is inapplicable to "indirect" interconnection.	The CMRS providers believe that a "bill and keep" arrangement may be appropriate even in an indirect interconnection scenario.	
CMRS13.	Should the parties establish a factor to delineate what percentage of traffic is interMTA and thereby subject to access rates? If so, what should the factor be?	The ICOs recognize that this "interMTA factor" may be negotiated. The appropriate factor should be based on specific characteristics of the traffic exchanged between two parties. For example, one ICO may be situated on or near a border of an MTA and consequently more traffic may be	CMRS providers agree that an interMTA factor may be negotiated. The factor is developed by evaluating how much traffic recorded as traffic subject to reciprocal compensation is actually subject to access because the call originated or terminated from a cell site located in a different MTA than the ICO end office.	

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		interMTA traffic.		
CMRS14.	If a direct connection is established between a CMRS provider and an ICO, should both parties be required to deliver their originated intraMTA traffic over those facilities?	NO – either party may elect to establish a direct point of connection to the other party's network under Section 251(b)(5) and the applicable FCC rules. The establishment of the interconnection point by one carrier does not result in an obligation of the other carrier to transmit traffic through that interconnection point. The exchange of traffic through the interconnection point may be a matter of negotiation.	CMRS carriers agree that both parties are not required to use the same two-way facilities to deliver their originated traffic to one another. However, each party is responsible for delivering traffic originated on its network to the other party's network for termination. Moreover, once an agreement governing the exchange of traffic is in place, neither party can unilaterally change how covered traffic is routed without negotiating and amending the Interconnection Agreement.	
CMRS15.	If a direct connection is established between a CMRS provider's switch and an ICO's switch, what should the point of interconnection be and what percentage of the cost of the direct connection facilities should be borne by the ICO?	The establishment of a direct connection under these circumstances is subject to negotiation. In general, the ICOs have specific points of interconnection established on their networks and make interconnection available to all carriers at the established point of interconnection.	The point of interconnection for mobile-to-land traffic is at the end of the transport facility at the ICO switch. The point of interconnection for land-to-mobile traffic is at the end of the transport facility at the CMRS provider switch.	
CMRS16.	Does the definition set forth in 47 C.F.R. § 701(b)(2) apply to all IntraMTA mobile-to-land and land-to-mobile traffic, whether such	The definition set forth at 47 CF.R. §**51.**701(b)(2) is provided under SubPart H of the FCC's Rules – these rules pertain only to Section 251(b)(5) and specifically	The CMRS provider response to this question is yes. The reciprocal compensation rules apply whether or not there is a direct or indirect interconnection. Subpart B, 47 C.F.R.	

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	traffic is directly or "indirectly" routed through a third party LEC's tandem facilities?	contemplate a direct connection between the networks of the two interconnecting parties. "Indirect interconnection" is addressed at SubPart B, 47 CF.R. §51.100. The definition in SubPart H is not applicable to SubPart B. With respect to the referenced definition, the rules establish the definition of the traffic that is subject to a request by an originating party for termination pursuant to Section 251(b)(5). Neither the definition or rule establishes any requirement on how a carrier send traffic to another carrier.	§51.100(a)(1) imposes a duty upon the ICOs "to interconnect directly or indirectly". Subpart H, 47 C.F.R. §51.701 establishes the definition of traffic subject to reciprocal compensation without qualification as to whether the traffic is delivered on a direct or indirect basis.	
CMRS17.	Is each party to an indirect interconnection arrangement obligated to pay for the transit costs associated with the delivery of intraMTA traffic originated on its network to the terminating party's network?	Based on our conversation June 2-3 in Nashville, the ICOs observe that the question reflects a misunderstanding with respect to the treatment of landline traffic that is not "local." Such traffic is dialed on a 1+ basis, and is switched to the originating customer's choice of IXC carrier. The ICO provides only originating access service to the IXC with respect to these calls. For interconnection purposes, the end user is making an interexchange call that originates on the network of the	Yes. The FCC has established a "calling party network pays" ("CPNP") regime for telecommunications traffic. The ICOs are not exempted from this regime. The ICOs are responsible for paying any costs associated with delivering their originated intraMTA traffic to the terminating party and compensating the terminating party for the use of their network in the termination of this intraMTA traffic. The ICOs apparently assume that the obligation associated with the delivery	

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		IXC which has purchased local exchange access from the ICO. The local exchange services provided by the ICOs do not include or entail any responsibility for transport beyond the ICO's service area.	of intraMTA traffic to the CMRS providers is driven by the ICO relationship with the originating end user customer. Both Parties have obligations to their end users which are separate and unrelated to the reciprocal compensation obligations between the Parties. However, intraMTA traffic is subject to reciprocal compensation regardless of how the ICO charges its customers for the services it provides.	

ATACHMENT B – Response of ICOs

BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION

In Re:	)	
	)	
Petition for Emergency Relief and	)	Docket No. 2003-AD-235
Request for Standstill Order by the	)	
Mississippi Incumbent Rural	)	
Independent Telephone Companies	)	

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered into by and between BellSouth Telecommunications, Inc. ("BellSouth"), the Mississippi Incumbent Rural Independent Telephone Companies ("ICOs") as defined herein, AT&T Wireless PCS, LLC, AMT Cellular, LLC, DigiCall, Inc., TeleCorp Communications, Inc., and Tritel Communications, Inc., (collectively "AT&T Wireless"), Verizon Wireless Personal Communications LP d/b/a Verizon Wireless and Verizon Wireless Tennessee Partnership d/b/a Verizon Wireless (collectively "Verizon Wireless"), BellSouth Mobility LLC d/b/a Cingular Wireless and BellSouth Personal Communications LLC d/b/a Cingular Wireless, Inc. (collectively "Cingular"), Sprint Spectrum L.P. and SprintCom ("Sprint"), and Centennial Southeast License Company, LLC. d/b/a Centennial Wireless ("Centennial") on their own behalf and on behalf of their past, present and future agents, employees, successors, assigns and anyone claiming for the benefit of any of them (collectively referred to as "the Parties").

In consideration of the mutual agreements, undertakings and representations contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1.00 Definitions

1.01 For purposes of this Settlement Agreement only, the Parties agree to utilize the definitions set forth in this Section 1.00.

1.02 "CMRS Provider" is a telecommunications carrier providing commercial mobile radio service within the meaning of 47 C.F.R. § 20, *et seq.,*

1.03 "Covered CMRS Transit Traffic" is defined as telecommunications traffic originated by a subscriber of a CMRS Provider that transits BellSouth's network to an ICO for termination to the ICO's customer.

1.04 "ICOs" are defined as the local exchange companies holding a certificate of public convenience and necessity in Mississippi that are listed on Exhibit A to this Settlement Agreement.

1.05 "Signatory CMRS Providers" are defined as AT&T Wireless, Verizon Wireless, Cingular, Sprint and Centennial.

1.06 The "Act" refers to the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

2.00 Specific Terms

2.01 BellSouth and the ICOs will continue to handle Covered CMRS Transit Traffic consistent with the terms of their respective agreements and all effective Annexes and Attachments thereto, including, but not limited to, the network provisioning, transport, termination, and billing and collection of such traffic.

2.02 Notwithstanding the foregoing Section 2.01, BellSouth shall compensate the ICOs for Covered CMRS Transit Traffic at a rate of $0.0250 per minute, unless the CMRS Provider is compensating the ICO directly for such traffic pursuant to an existing interconnection agreement, in which case the terms of that agreement shall apply. Subject to Section 3.0 below, such compensation will only be paid by BellSouth for Covered CMRS Transit Traffic during the duration of this Settlement Agreement. This rate is separate and apart and not inclusive of facility charges that may be due from BellSouth or the ICOs in connection with the facilities used to interconnect BellSouth's and the ICOs' networks. The ICOs agree not to seek any compensation from a Signatory CMRS Provider for any Covered CMRS Transit Traffic for which BellSouth has paid prior to the effective date of this Settlement Agreement, or is obligated to pay the ICOs.

2.03 BellSouth and the Signatory CMRS Providers will continue to handle Covered CMRS Transit Traffic consistent with the terms of their respective interconnection agreements and all effective Annexes and Attachments thereto, including, but not limited to, the network provisioning, transport, termination, and billing and collection of such traffic.

2.04 Notwithstanding the foregoing Section 2.03, the Signatory CMRS Providers shall compensate BellSouth for Covered CMRS Transit Traffic for which BellSouth has provided industry standard call detail records at a rate of $0.010 per minute, unless the CMRS Provider is compensating the ICO directly for such traffic pursuant to an existing interconnection agreement, in which case the terms of that agreement shall govern. Subject to Section 3.0 below, such compensation will only be paid by the Signatory CMRS Providers during the duration of this

Settlement Agreement. Such compensation shall be in addition to, and not in lieu of, any other compensation that may be due BellSouth for transiting traffic under the terms of the current Interconnection Agreements between BellSouth and the Signatory CMRS Providers, including all effective Annexes and Attachments thereto. BellSouth agrees not to seek any additional compensation from a Signatory CMRS Provider for any Covered CMRS Transit Traffic for which BellSouth has paid prior to the effective date of this Settlement Agreement, or is obligated to pay the ICOs pursuant to this Settlement Agreement.

2.05 Nothing herein shall affect, modify, or supercede any existing interconnection agreement between a Signatory CMRS Provider and an ICO. Such existing interconnection agreements shall continue in full force and effect in accordance with the existing terms and conditions contained in such agreements. A Signatory CMRS Provider and ICO shall provide BellSouth with a copy of any such interconnection agreement or, if publicly available, indicate where such a copy may be obtained.

3.00 Duration

3.01 This Settlement Agreement will take effect July 1, 2003 and will remain in effect until December 31, 2004, at which time all duties, rights, and obligations hereunder will terminate. Notwithstanding the foregoing, the Parties shall apply the compensation provisions of this Agreement retroactively to April 10, 2003 for Covered CMRS Transit Traffic.

3.02 The Signatory CMRS Providers and the ICOs agree that either may request interconnection from any or each of the others at any time, and that the ICOs and Signatory CMRS Providers will negotiate and arbitrate pursuant to Sections 251(a) and (b) and 252 of the Act with respect to negotiations and arbitrations of interconnection agreements. Accordingly, nothing herein shall preclude the ICOs and the Signatory CMRS Providers from negotiating interconnection agreements consistent with the requirements of Sections 251 and 252 of the Act. Such negotiations, which may include rates, terms, and conditions for indirect and direct interconnection arrangements under Section 251(a) of the Act and reciprocal compensation arrangements under Section 251(b) of the Act, shall be conducted in good faith. In the event such negotiations are unsuccessful and the Mississippi Public Service Commission ("MPSC") is asked to arbitrate any open issues, the Parties shall submit to the arbitration process and deadlines set forth in Section 252(b) of the Act to settle any open issues relating to direct or indirect interconnection or reciprocal compensation arrangements, pursuant to Sections 251(a) and 251(b) of the Act, respectively.

3.03 Notwithstanding Sections 3.01 and 3.02, upon execution of any interconnection agreement between an ICO and a Signatory CMRS Provider subsequent to the date of this Settlement Agreement, the ICO and the Signatory CMRS Provider shall exchange traffic and compensate one another consistent with the terms of that agreement, and BellSouth's obligation to compensate that ICO for Covered CMRS Transit Traffic as set forth in Section 2.02 and that Signatory CMRS Provider's obligation to compensate BellSouth for Covered CMRS Transit Traffic as set forth in Section 2.04 will cease.

3.04 An ICO and a Signatory CMRS Provider shall provide BellSouth with a copy of any interconnection agreement that the parties may execute subsequent to the date of this Settlement Agreement or, if publicly available, indicate where such a copy may be obtained.

4.00 No Admission of Liability

4.01 It is understood and agreed between the Parties that this Settlement Agreement is a compromise of compensation arrangements and any payments hereunder are not to be construed as an admission of liability or the appropriateness of the level of compensation on the part of any of the Parties, which is expressly denied.

4.02 Nothing in this Settlement Agreement shall be construed as a waiver of any of the rights or obligations imposed by Sections 251 or 252 of the Act; provided, however, that notwithstanding the foregoing, the ICOs shall not claim or make a request before the MPSC for any exemption, modification or suspension of or from Section 251(b)(5) of the Act.

4.03 Nothing in this Settlement Agreement shall preclude any Party from participating in any MPSC proceeding or proceeding before the Federal Communications Commission ("FCC") relating to any issue, including transit traffic or interconnection with rural carriers or from petitioning the MPSC or the FCC to resolve any issue, including those related to transit traffic and interconnection with rural carriers. The Parties reach this Settlement Agreement without waiving or prejudicing any positions they have taken previously, or may take in the future, in any judicial, legislative, regulatory, or other public forum addressing any matters, including matters specifically related to, or other types of arrangements prescribed in this Settlement Agreement.

5.00 Warranties

5.01 The Parties represent and warrant that they have the sole right and exclusive authority to execute this Settlement Agreement and to make or receive payments hereunder.

5.02 The Parties represent and warrant that they have fully read and understand the terms of this Settlement Agreement, and have freely and voluntarily executed this Settlement Agreement. The Parties represent and warrant that they enter into this Settlement Agreement without reliance upon any statement, inducement, promise or representation of the other Party or anyone else not fully expressed herein.

5.03 The Parties represent and warrant that they will not, directly or indirectly, seek to have a regulatory agency or court continue this Settlement Agreement or extend the duties, rights, and obligations hereunder beyond the duration of the Settlement Agreement as set forth in Section 3.00.

5.04 The Parties represent and warrant that during the duration of this Settlement Agreement as set forth in Section 3.00, the terms and conditions set forth herein will be made available on a nondiscriminatory basis to any CMRS Provider in Mississippi that becomes similarly situated to the Signatory CMRS Providers.

5.05 The Parties agree that in the event the MPSC or the FCC renders any decision establishing the rights and obligations of originating, terminating and transiting carriers, then upon the request of any Party hereto, the Parties, within sixty (60) days of such request will renegotiate the terms of this Settlement Agreement consistent with such decision.

6.00 Entire Agreement and Successors in Interest

6.01 This Settlement Agreement reflects the entire agreement and understanding between the Parties with respect to the settlement contemplated herein, supersedes all prior agreements, arrangements, understandings, communications, representations or warranties, both oral and written, related to the subject matter hereof, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, assigns, and successors of each Party.

7.00 Severability of Provisions

7.01 The Parties agree that any provision of this Settlement Agreement, which is or becomes prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. In the event of the prohibition or unenforceability of any provision of this Settlement Agreement in any jurisdiction, the Parties agree to negotiate in good faith to revise such

provision to accomplish the intent of the Parties in a manner permissible and enforceable within such jurisdiction.

8.0 Governing Law

8.01 The Settlement Agreement including all matters of construction, validity and performance shall be governed by, and construed in accordance with, the laws of the State of Mississippi without giving effect to the choice of law or conflicts of law provisions thereof.

9.0 Additional Documents and Negotiations

9.01 The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement, including, but not limited to, resolving any and all operational issues associated with the implementation of the Settlement Agreement.

9.02 Upon execution of this Settlement Agreement, the Parties agree to work cooperatively to identify and resolve any other issues associated with the handling of traffic exchanged between the Parties' networks.

9.03 Nothing herein shall preclude any ICO subject to rate-based rate of return regulation from seeking, consistent with applicable law, to recover revenues lost if any, as a result of the implementation of this Settlement Agreement through a filing before the MPSC.

10.0 Counterparts

10.1 This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS THEREOF, the Parties have fully executed this Settlement Agreement effective as of the 1st day of July, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____
Title: _____

AT&T WIRELESS PCS, LLC, on behalf of itself and its affiliates AMT Cellular, LLC, DigiCall, Inc., TeleCorp Communications, Inc., and Tritel Communications, Inc.

By: _____
Title: _____

SPRINT SPECTRUM L.P. and SPRINTCOM

By: _____
Title: _____

BELLSOUTH MOBILITY LLC d/b/a CINGULAR WIRELESS and BELLSOUTH PERSONAL COMMUNICATIONS LLC d/b/a CINGULAR WIRELESS

By: _____
Title: _____

VERIZON WIRELESS PERSONAL COMMUNICATIONS LP d/b/a VERIZON WIRELESS

VERIZON WIRELESS TENNESSEE PARTNERSHIP d/b/a VERIZON WIRELESS
By CELLCO PARTNERSHIP, Its General Partner

By: _____
Title: _____

CENTENNIAL SOUTHEAST LICENSE COMPANY, LLC. d/b/a CENTENNIAL WIRELESS

By: _____
Title: _____

MISSISSIPPI INCUMBENT RURAL INDEPENDENT TELEPHONE COMPANIES, on behalf of, and with the explicit consent of the Companies listed in Exhibit A to this Agreement

By: _____

Title: _____

EXHIBIT A
MISSISSIPPI INCUMBENT RURAL
INDEPENDENT TELEPHONE COMPANIES

ALLTEL Mississippi, Inc.
Bay Springs Telephone Company
BPM Noxapater Telephone Company
Bruce Telephone Company
Calhoun City Telephone Company
Decatur Telephone Company
Delta Telephone Company
Franklin Telephone Company
Frontier Communications of Mississippi, Inc.
Fulton Telephone Company
Lakeside Telephone Company
Mound Bayou Telephone Company
Myrtle Telephone Company
Sledge Telephone Company
Smithville Telephone Company
Southeast Mississippi Telephone Company

FCC Rules
Related to the Transport and Termination of Traffic Subject to Section 251(b)(5) of the Act.

§ 51.221 Reciprocal compensation.
The rules governing reciprocal compensation are set forth in subpart H of this part.
. . .

Subpart H - Reciprocal Compensation for Transport and Termination of Telecommunications Traffic.

§ 51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.

(b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, paras. 23, 36, 39, 42-43); or

(2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

§ 51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

§ 51.705 Incumbent LECs' rates for transport and termination.

(a) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(1) the forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

~~(2) default proxies, as provided in § 51.707;~~ or

(3) a bill-and-keep arrangement, as provided in § 51.713. (b) In cases where

both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

~~**§ 51.707 Default proxies for incumbent LECs' transport and termination rates.**~~

~~(a) A state commission may determine that the cost information available to it with respect to transport and termination of telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511. In that event, the state commission may establish rates for transport and termination of telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:~~

~~(1) any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and~~

~~(2) the state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of local telecommunications traffic, or for specific components included within transport and termination.~~

~~(b) If a state commission establishes rates for transport and termination of telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:~~

~~(1) *Termination.* The incumbent LEC's rates for the termination of telecommunications traffic shall be no greater than 0.4 cents ($0.004) per minute, and no less than 0.2 cents ($0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents ($0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.~~

~~(2) *Transport.* The incumbent LEC's rates for the transport of telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(c)(3), (4), and (5) of this part that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.~~

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, a state commission shall establish rates for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

§ 51.711 Symmetrical reciprocal compensation.

(a) Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

(2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(b) A state commission may establish asymmetrical rates for transport and termination of telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

(c) Pending further proceedings before the Commission, a state commission shall establish the rates that licensees in the Paging and Radiotelephone Service (defined in part 22, subpart E of this chapter), Narrowband Personal Communications Services (defined in part 24, subpart D of this chapter), and Paging Operations in the Private Land Mobile Radio Services (defined in part 90, subpart P of this chapter) may assess upon other carriers for the transport and termination of telecommunications traffic based on the forward-looking costs that such licensees incur in providing such services, pursuant to §§ 51.505 and 51.511. Such licensees' rates shall not be set based on the default proxies described in § 51.707.

§ 51.713 Bill-and-keep arrangements for reciprocal compensation.

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).

(c) Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

~~(2) In a state in which the state commission has established transport and termination rates consistent with the default price ranges and ceilings described in § 51.707, an incumbent LEC shall use these state-determined rates as interim rates.~~

~~(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in § 51.707, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in § 51.707(b)(2)).~~

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of telecommunications traffic subject to the interim arrangement:

(1) a voluntary agreement has been negotiated and approved by a state commission;

(2) an agreement has been arbitrated and approved by a state commission; or

(3) the period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equalled the rates later established by the state commission pursuant to § 51.705.

§ 51.717 Renegotiation of existing non-reciprocal arrangements.

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

MULTI-PARTY AGREEMENT FOR THE EXCHANGE OF CMRS TRAFFIC TENNESSEE

This Multi-Party Agreement for the Exchange of CMRS Traffic ("Agreement") is made and entered into by and between BellSouth Telecommunications, Inc., a [Tennessee corporation] ("BellSouth"), _____, a [STATE corporation] ("CMRS Carrier"), and _____, a [Tenessee corporation] ("Rural LEC"). BellSouth, CMRS Carrier, and Rural LEC are referred to herein collectively as "Parties" and are referred to individually as a "Party."

RECITALS

Whereas, BellSouth and Rural LEC are both Local Exchange Carriers ("LEC") providing local exchange carrier services in their mutually exclusive incumbent service areas in the State of Tennessee; and

Whereas, CMRS Carrier is licensed by the Federal Communications Commission ("FCC") as a Commercial Mobile Radio Service provider; and

Whereas, interconnection between BellSouth and CMRS Carrier and interconnection between BellSouth and Rural LEC are both necessary for BellSouth to offer and provide intermediary tandem switching and transport services to CMRS Carrier for the exchange of traffic between CMRS Carrier and Rural LEC; and

Whereas, BellSouth has previously established an interconnection point between its network and that of Rural LEC for access service purposes and BellSouth will utilize this previously established interconnection arrangement to provide the intermediary services to CMRS Carrier; and

Whereas, the Parties are voluntarily agreeing to terms under which (1) BellSouth may provide Intermediary Services to CMRS Carrier; (2) CMRS Carrier and Rural LEC will exchange traffic; and (3) the Parties will provide compensation to each other as set forth herein.

Therefore, in consideration of the mutual agreements, undertakings and representations contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Section:

1.1 "Act" means the Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended, including the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized orders and regulations of the FCC.

1.2 "CMRS" or "Commercial Mobile Radio Service" is as defined in the Act.

1.3 "FCC" means the Federal Communications Commission.

1.4 "Intermediary Services" refers to BellSouth's provision of tandem switching and transport services with respect to the Telecommunications Traffic exchanged between CMRS Carrier and Rural LEC pursuant to the terms of this Agreement.

1.5 "IntraMTA Traffic" is CMRS Carrier wireless to Rural LEC wireline and Rural LEC wireline to CMRS Carrier wireless calls that are within the scope of this Agreement which originate and terminate within the same MTA based on the location of the cell site serving CMRS Carrier's mobile the wireless subscriber at the beginning of the call and the central office serving Rural LEC's for the landline end-user.

1.6 "InterMTA Traffic" is CMRS Carrier wireless to Rural LEC wireline and Rural LEC wireline to CMRS Carrier wireless calls that are within the scope of this Agreement which do not originate and terminate within the same MTA based on the location of the cell site serving the CMRS Carrier's mobile wireless subscriber at the beginning of the call and the central office for the landline end-user.

1.7 "Local Exchange Carrier" or "LEC" is as defined in the Act.

1.8 "Major Trading Area" (MTA) means a geographic area established by Rand McNally's 1992 Commercial Atlas and Marketing Guide, 123rd edition, at pages 38-39 and used by the FCC in defining CMRS license boundaries for CMRS carriers .

1.9 "Termination" means, for CMRS Carrier and Rural LEC, the switching of Traffic at the terminating end-office switch, or equivalent facility, and the delivery of such Traffic to the called Party.

1.10 "TRA" means the Tennessee Regulatory Authority.

1.11 "Traffic," for purposes of this Agreement, means all IntraMTA Traffic and InterMTA Traffic that is within the scope of this Agreement for which BellSouth creates and delivers to both CMRS Carrier and Rural LEC accurate and complete industry standard 110101 format message, call detail, and billing records identifying the originating carrier, terminating carrier, and the minutes of use of such Traffic .

1.12 "Transport," for Rural LEC, means the transmission and any necessary tandem switching from the interconnection point between BellSouth and the Rural LEC to Rural LEC's terminating end office that serves the called end user. "Transport," for CMRS Carrier and for purposes of this Agreement is the functional equivalent to that of Rural LEC's Transport.

2. INTERPRETATION AND CONSTRUCTION

2.1 All references to Sections and Attachments of the Agreement shall be deemed to be references to Sections of and Attachments to this Agreement unless the context shall otherwise require. Any headings of Sections are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument

(including either Party's or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

2.2 The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by and federal or state government authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the Parties agree to negotiate in good faith toward an agreement to modify, in writing, any affected term and condition of this Agreement to bring them into compliance with such law, rule, regulation or guideline.

2.3 The Parties enter into this Agreement without prejudice to any position they may take with respect to similar future agreements between the Parties or with respect to positions they may have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters including matters, related to the rates to be charged for Transport and Termination of IntraMTA Traffic or the types of arrangements prescribed by this Agreement.

3. SCOPE OF AGREEMENT

3.1 This Agreement sets forth the terms and conditions between and among the Parties for the exchange of Telecommunications Traffic under circumstances where CMRS Carrier does not establish an interconnection point within the incumbent LEC service area of Rural LEC and Intermediary Services of BellSouth are utilized for the exchange of Traffic between CMRS Carrier and Rural LEC. The terms and conditions of this Agreement apply solely to Traffic utilizing BellSouth's Intermediary Services that is either (1) originated by CMRS Carrier, delivered to Rural LEC over the BellSouth-Rural LEC interconnection facilities pursuant to the terms of this Agreement, and terminated by Rural LEC or (2) originated by Rural LEC, delivered to BellSouth over the BellSouth-Rural LEC interconnection facilities pursuant to the terms of this Agreement, and terminated by CMRS Carrier. Traffic that is within the scope of this Agreement is specifically limited to Traffic for which BellSouth provides to both CMRS Carrier and Rural LEC accurate and complete industry standard 110101 format message, call detail, and billing records identifying the originating carrier, terminating carrier, and the minutes of use of such Traffic.

3.2 CMRS Carrier traffic that is authorized under this Agreement and within the scope of this Agreement is specifically limited by the geographic area from which CMRS Carrier may originate traffic. The specific geographic area for CMRS Carrier is set forth in Attachment X.

3.3 With respect to CMRS Carrier, Traffic is limited solely to its CMRS services. With respect to Rural LEC, Traffic is limited solely to its local exchange carrier services.

3.4 This Agreement applies solely to Telecommunications traffic specifically defined as within the scope of this Agreement. Telecommunications traffic that either Party originates to, or terminates from, any other carrier or Telecommunications traffic carried by any other carrier other than the carriers that are the Parties to this Agreement is not within the scope of this Agreement. Interexchange traffic originated by Rural LEC that is subject to equal access presubscription is not within the scope of this Agreement. Telecommunications traffic for which

BellSouth does not provide complete and accurate industry standard 110101 format message, call detail, and billing records identifying the originating carrier, terminating carrier, and the minutes of use is not within the scope of this Agreement.

3.5 The authorization for BellSouth to deliver traffic to Rural LEC under the terms of this Agreement and the scope of this Agreement are specifically limited to those facilities for which there is a separate interconnection agreement between BellSouth and Rural LEC which specifically references this Agreement. The referenced separate facilities agreement between BellSouth and Rural LEC is set forth in Attachment X. Notwithstanding any provision of this Agreement, BellSouth has no authority to deliver any traffic to the network of Rural LEC over any interconnecting facilities unless and until a proper facilities interconnection agreement is in place between BellSouth and Rural LEC which sets forth the authorization for such traffic for BellSouth or Rural LEC with respect to the specific network interconnection facilities.

4. TRAFFIC EXCHANGE AND COMPENSATION

4.1 Terms and Conditions Between CMRS Carrier and Rural LEC

4.1.1 Rural LEC shall terminate Traffic on its network that is originated by CMRS Carrier and delivered to Rural LEC via the BellSouth-Rural LEC interconnection facilities. CMRS Carier shall terminate Traffic on its network that is originated by Rural LEC and is delivered to BellSouth via the BellSouth-Rural LEC interconnection facilities.

4.1.2. For intraMTA Traffic within the scope of this Agreement, CMRS Carrier and Rural LEC agree that the originating Party will pay compensation to the terminating Party pursuant to the rates, measurement methods, minutes of use calculation, and percentage traffic values set forth in Appendix X. Compensation for both Parties will be based on a single, combined, per-minute rate, as specified in Appendix X, which encompasses total compensation for Transport and call Termination.

4.1.3. InterMTA Traffic is subject to treatment under Rural LEC's intrastate and interstate access tariffs. For InterMTA Traffic, CMRS Carrier will provide compensation to Rural LEC for Inter-MTA Traffic originated and terminated on the network of Rural LEC according to the terms and conditions of Rural LEC's applicable federal and state access tariffs that apply to access usage. Access charges wil be calculated pursuant to the measurement methods, minutes of use calcuation, and percentage traffic values set forth in Appendix X

4.1.4 [TO BE DISCUSSED AND MODIFIED BASED ON INDIVIDUAL CIRCUMSTANCES] Because Rural LEC and CMRS Carrier cannot determine the location of CMRS Carrier's mobile end user at the time a call is made and consequently whether traffic between CMRS Carrier and Rural LEC is Intra-MTA or Inter-MTA, CMRS Carrier and Rural LEC will develop a mutually acceptable percent usage factors for the relative amounts of interMTA and intraMTA Traffic that is representative of the actual nature of the traffic. The percent usage factors are set forth in Appendix X.

4.1.5. [TO BE DISCUSSED AND MODIFIED BASED ON INDIVIDUAL CIRCUMSTANCES] CMRS Carrier and Rural LEC recognize that InterMTA Traffic may be both Interstate and Intrastate in nature. For the InterMTA Traffic, CMRS Carrier and Rural LEC will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are

specified in Appendix X.

4.2 Terms and Conditions With BellSouth

4.2.1 Subject to all the terms of this Agreement, the interconnection facilities between BellSouth and Rural LEC established pursuant to this Agreement may be used by BellSouth to provide Intermediary Services to CMRS Carrier and to deliver to the network of Rural LEC CMRS Carrier Traffic provided that CMRS Carrier has a CMRS license within the same MTA(s) in which Rural LEC's network is located. The interconnection facilities between BellSouth and Rural LEC over which Traffic within the scope of this Agreement will be exchanged are set forth in Attachment X. BellSouth is provided authority under this Agreement to provide Intermediary Services and to deliver traffic to Rural LEC pursuant to the terms of this Agreement on to the extent that BellSouth has a separate facilities interconnection agreement in place with Rural LEC covering the facilities that will be used for the exchange of Traffic that is the subject of this Agreement. The separate facilities agreement will be set forth in Attachment X. (NOTE: To be discussed. Use of FGC facilities and trunking not necessarily acceptable. Rural LEC not required to accept mutliple carrier traffic commingled with interexchange carrier traffic unless BellSouth is responsible for ultimate compensation. Trunk groups subject to discussion.) (Subject to Discussion) (OPEN) Unless specifically stated otherwise in Attachment X, BellSouth will utilize the access facilities and signaling with Rural LEC that BellSouth uses for intrastate access traffic for purposes of the exchange of Traffic that is the subject of this Agreement.

4.2.2 BellSouth is responsible to Rural LEC and to CMRS Carrier for providing to the appropriate terminating Party complete and accurate industry standard 110101 format messege and billing records detailing the originating carrier, the terminating carrier, and the minutes of use. BellSouth will provide such records to the terminating Party not later than 45 days after such usage occurs.

4.2.3 Except as required by this Agreement, BellSouth and CMRS Carrier will treat CMRS Carrier's Traffic, including Traffic within the scope of this Agreement, consistent with the terms of the interconnection agreement between BellSouth and CMRS Carrier and all effective Annexes and Attachments thereto, including, but not limited to, the network provisioning, transport, termination, and biling and collection of such traffic.

4.2.4 For CMRS Carrier traffic terminating to Rural LEC that could otherwise be subject to this Agreement but for which BellSouth fails to meet the administrative requirements set forth in Section 4.2.2 above, such Traffic will be subject to the same intrastate access charges that apply to other BellSouth terminating intrastate interexchange services, to be paid by BellSouth to Rural LEC. For Rural LEC traffic terminating to CMRS Carrier that could otherwise be subject to this Agreement but for which BellSouth fails to meet the administrative requirements set forth in Section 4.2.2 above, such Traffic will be subject to charges equal to the charges that apply to other BellSouth terminating traffic pursuant to the interconnection agreement between BellSouth and CMRS Carrier, to be paid by BellSouth to CMRS Carrier.

4.2.5 BellSouth is responsible for compensation to Rural LEC for all traffic that BellSouth delivers to the network of Rural LEC over the interconnection facilities set forth in Appendix X except for Traffic for which BellSouth satisfies its administrative requirements set forth in Section 4.1.2 and such traffic is billed, collected, and accounted for pursuant to Section

4.3.2.

4.2.5 This Agreement addresses the exchange of Telecommunications Traffic between CMRS Carrier and Rural LEC under circumstances where CMRS Carrier does not establish an interconnection point within the incumbent LEC network of Rural LEC, and accordingly, Traffic originated on the network of Rural LEC may be transported and switched by BellSouth beyond Rural LEC's incumbent LEC network. The Parties agree that Rural LEC's willingness to offer and provide local exchange services to its end users and to route such local exchange service Traffic to CMRS Carrier via BellSouth pursuant to the Intermediary Services arrangement set forth in this Agreement, beyond the incumbent LEC service area of Rural LEC, is conditioned on Rural LEC not incurring additional costs for transport and switching beyond that which Rural LEC incurs within its own network for other local exchange services. Therefore, for the Traffic that is within the scope of this Agreement, and to get Traffic to and from the interconnection point on the network of Rural LEC to the interconnection point that CMRS Carrier has established with BellSouth at a point outside of Rural LEC's network, CMRS Carrier will be responsible for compensation to BellSouth for all Intermediary Services provided by the BellSouth for the exchange of Traffic that is within the scope of this Agreement.

4.3. Billing.

4.3.1 Billing Between CMRS Carrier and RLEC

Rural LEC and CMRS Carrier shall bill the other pursuant to the compensation terms set forth in Section 4.1. CMRS Carrier and Rural LEC agree to accept BellSouth's accurate and complete measurement of minutes of use based on the industry standard 110101 format message, call detail, and billing records created by BellSouth and provided to both Rural LEC and CMRS Carrier. The billing Party will issue an invoice on a monthly basis to the billed Party for Traffic subject to the terms of this Agreement. The billed Party shall pay such invoice, in immediately available U.S. funds, within thirty (30) days of the invoice date. The billed Party shall pay a late charge on the unpaid amounts that have been billed that are greater than thirty (30) days old. The rate of the late charge shall be the lesser of 1.5% per month or the maximum amount allowed by law. Although it is the intent of Rural LEC and CMRS Carrier to submit timely and accurate statements of charges, failure by either Rural LEC or CMRS Carrier to present statements to the other Party on a timely basis shall not constitute a waiver of the right to payment of the incurred charges. Neither Party shall bill the other Party for Traffic that is more than one hundred and eighty (180) days old.

4.3.2 Billing to BellSouth

4.3.2.1. (Subject to discussion related to trunk groups and traffic, Total usage needs to be reconciled among multiple providers. Reconciliation will depend on what traffic may be commingled.) Reconciliation of Total Terminating Usage. Rural LEC shall bill BellSouth (or if Rural LEC does not bill BellSouth, BellSouth will account for compensation to Rural LEC through the monthly settlement process) and BellSouth shall be responsible for compensation to Rural LEC for all minutes of use delivered over the interconnection facilities as set forth in Appendix X according to intrastate access rates that apply to intrastate intraLATA interexchange service usage except that Rural LEC will reduce the amount billed to BellSouth (or BellSouth will reflect a reduction in the settlement due Rural LEC if Rural LEC does not bill BellSouth) to reflect those revenues billed to and collected from CMRS Carrier pursuant to

Section 4.3.1. Rural LEC will issue an invoice on a monthly basis to BellSouth (or BellSouth will issue a monthly settlement statement) for all traffic including the reduction to reflect CMRS Carrier Traffic. BellSouth shall pay such invoice (or submit such monthly settlements), in immediately available U.S. funds, within thirty (30) days of the invoice date (or at the same time as the settlement date). In the case of settlements, BellSouth shall provide settelement payments no later than thirty (30) days after the end of any monthly period.

4.3.2.2 BellSouth shal bill CMRS Carrier for Intermediary Services pursuant to the rates contained in its Interconnection Agreement with CMRS Carrier.

4.3.3 Audits (Subject to discussion based on trunk groups and type of commingled traffic)

4.3.3.1 Both Rural LEC and CMRS Carrier have a right to assurance, and BellSouth has an obligation for such assurance, that the records that BellSouth creates and provides to Rural LEC and CMRS Carrier pursuant to Section 4.2.2 are accurate and complete and that the total usage (including Traffic subject to this Agreement and any other traffic that BellSouth may switch and transport over the same facilities in combination with Traffic that is the subject of this Agreement) to and from either Rural LEC or CMRS Carrier utilizing BellSouth Intermediary Services is accurate and that all components of traffic are accurate and complete with respect to the total usage over the facilities. Accordingly, Rural LEC and CMRS Carrier may audit, examine, and verify the relevant records, systems, procedures, recording mechanisms, measurement methods, data processing methods, and any infomration or documents pertaining to BellSouth's provision of Intermediary Services for Traffic subject to this Agreement and for any other traffic that BellSouth delivers or receives over the interconnection facilities in combination with the Traffic subject to this Agreement between BellSouth and Rural LEC and between BellSouth and CMRS Carrier.

4.3.3.2 Audits may be performed no more frequently than once per six (6) month period to evaluate the accurate of the records and billing data provided by BellSouth. Audits shall be performed following at least fifteen (15) days prior written notice to BellSouth and subject to reasonable scheduling. BellSouth will maintain all records for a minimum of twenty-four (24) months that establish the accuracy and completeness of the information provided to Rural LEC and CMRS Carrier pusuant to Section 4.2.2.

4.3.3.3 All compensation to Rural LEC and to CMRS Carrier to account for adjustments and corrections shall be the responsibility of BellSouth. Audit findings may be applied retroactively for no more than twenty four (24) months from the date the audit began. Interest shall be applied to compensation adjustments and corrections not to exceed the highest interest rate allowable by law for commercial transactions and shall be computed by compounding daily, from the time of the error. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution procedures described in §xx0 of this Agreement.

4.3.3.4 BellSouth will cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the accuracy of the BellSouth's records and information.

4.3.3.5 For purposes of conducting an audit pursuant to this

Agreement, Rural LEC and CMRS Carrier may employ other persons or firms for this purpose (so long as said Parties are bound by this Agreement).

4.4. Taxes.

Any Federal, state or local excise, license, sales, use, or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon another Party. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The Party obligated to collect and remit taxes shall do so unless the other applicable Party provides such Party with the required evidence of exemption. The Party so obligated to pay any such taxes may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The Party obligated to collect and remit taxes shall cooperate fully in any such contest by the other Party by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest.

5. INDEPENDENT CONTRACTORS

The Parties to this Agreement are independent contractors. No Party is an agent, representative, or partner of another Party. No Party shall have the right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind any other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between any of the Parties or to impose any partnership obligation or liability upon any Party.

6. LIABILITY

6.1. No Party nor any of its affiliates shall be liable for any incidental, consequential or special damages arising from any other Party's use of service provided under this Agreement. Each Party shall indemnify and defend the other Parties against any claims or actions arising from the indemnifying Party's participation in the arrangements set forth in this Agreement, except to the extent of damages caused by the negligence or willful misconduct of an indemnified Party.

6.2. No Party makes any warranties, express or implied, for any hardware, software, goods, or services provided under this Agreement. All warranties, including those of merchantability and fitness for a particular purpose, are expressly disclaimed and waived.

6.3. With the exception of the requriements of Sections _____ , the liability of any Party to any other Party for damages arising out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of applicable tariff(s) of the Party. In the event no tariff(s) apply and with the exception of the requirements of Sections _____, the providing Party's liability shall not exceed an amount equal to the pro-rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors, or defects occur. Except as required in Sections

_____, recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors, or defects.

7. TERM OF AGREEMENT

7.1. The Parties will submit this Agreement to the TRA for approval. This Agreement shall be effective 30 days following TRA approval . This terms and conditions set forth in this Agreement do not apply to time periods prior to the effective date.

7.2 BellSouth may terminate without cause its participation in the network interconnection arrangement with Rural LEC for CMRS Carrier Traffic that is the subject matter of this Agreement upon written notice of at least sixty (60) days to Rural LEC and CMRS Carrier. In the event of such termination by BellSouth and subject to the post-termination provisions of Section 7.3, BellSouth shall discontinue the delivery of all CMRS Carrier traffic to the network of Rural LEC. Rural LEC may terminate without cause its participation in the network interconnection arrangement with BellSouth for CMRS Carrier Traffic that is the subject matter of this Agreement upon written notice of at least sixty (60) days to BellSouth and CMRS Carrier. In such event of termination by Rural LEC and subject to the post-termination provisions of Section 7.3, BellSouth shall discontinue the delivery of all CMRS Carrier traffic to the network of Rural LEC. CMRS Provider may terminate without cause its participation in this Agreement upon written notice of at least sixty (60) days to BellSouth and Rural LEC. In the event of termination by CMRS Carrier, BellSouth shall discontinue the delivery of all CMRS Carrier Traffic to the network of Rural LEC. CMRS Carrier is free to request and negotiate network interconnection with Rural LEC consistent with Sections 251 and 252 of the Act and the FCC's controlling rules, and CMRS Carrier is also free to re-route its traffic over any other available network arrangement. At such time as an interconnection agreement between Rural LEC and CMRS Carrier becomes effective, the arrangements set forth in this Agreement may be terminated with respect to CMRS Carrier and Rural LEC only to the extent that the Parties set forth such intent within the terms and conditions of any such new agreement.

7.3 Except in the case of termination as a result of a Party's default, the following post-termination provisions shall apply in the event of termination by BellSouth or Rural LEC: (1) for those service arrangements made available to CMRS Carrier under this Agreement and existing at the time of termination, those arrangements may continue without interruption for CMRS Carrier, provided that CMRS Carrier requests such continuing arrangements; and (2) the continuing arrangements will be made available for a period of time to allow CMRS Carrier to replace the arrangements set forth in this Agreement with alternate arrangements, to the extent that alternative arrangements are necessary, but in no case will the existing service arrangements continue for longer than 12 months following the date on which notice of termination is provided by either BellSouth or a Rural LEC. All of the obligations set forth in this Agreement will continue to be in effect during the time the provisions of this Section 7.3 are applicable.

7.4 Upon termination of this Agreement in accordance with this Section 7.0:
(a) each Party shall comply immediately with its obligations set forth in this Agreement;
(b) each Party shall promptly pay all amounts owed under this Agreement;
(c) each Party's indemnification obligations shall survive termination or expiration

of this Agreement.

7.5 In the event of Default by a Party, as defined below in this subsection, the non-defaulting Parties may terminate any and all terms and conditions of this Agreement provided that the non-defaulting Party seeking termination with respect to the defaulting Party notifies the defaulting Party and the other non-defulating Party in writing of the Default and the defaulting Party does not cure the alleged Default within thirty (30) days after receipt of such written notice. With respect to a defaulting Party, Default is defined as: (a) that Party's material breach of any of the material terms of this Agreement, including the compensation terms; or (b) any aspect of a Party's operations or actions are determined by a court with proper jurisdiction or the TRA to be unlawful or not authorized.

7.6 If CMRS Carrier defaults by failure to comply with the compensation terms of this Agreement for compensation between CMRS Carrier and Rural LEC, Rural LEC may terminate this Agreement with respect to CMRS Carrier. If Rural LEC is unable to effectuate discontinuance of the termination of the CMRS Carrier Traffic at Rural LEC's network or end offices, and following written notice of at least thirty (30) days to both BellSouth and CMRS Carrier, BellSouth agrees to take the necessary steps within its network to disconnect service and discontinue the delivery, to the network of Rural LEC, all CMRS Carrier's traffic. To the extent that BellSouth fails to discontinue the delivery of CMRS Carrier's traffic to the network of Rural LEC following such written notice, BellSouth shall be responsible for payment of compensation to Rural LEC for such CMRS Carrier Traffic at the prevailing intrastate access rates applicable to other BellSouth intrastate interexchange service access traffic.

7.7 Notwithstanding the voluntary arrangements between the Parties as set forth in this Agreement, each Party to this Agreement shall have the right, at its discretion, to design and deploy its own network and facilities, upgrade its network, modify its end office and tandem switching hierarchy and/or architecture, modify trunking arrangements with other carriers, install new equipment or software, maintain its network, determine and designate the tandem switch(es) which its end offices will subtend for all traffic, or otherwise, including modifications that may alter or discontinue the arrangements that are the subject matter of this Agreement. If a Party makes a change in its network which it believes will materially affect the arrangements which are the subject matter of this Agreement, the Party making the change shall provide at least one hundred and twenty (120) days advance notice to the other Parties regarding the nature of the change and when the change will occur. Each Party shall be solely responsible for the cost and activities associated with accommodating such changes within its own network including, but not limited to, the migration of traffic routing. To the extent that notice of a network change pursuant to this Section 7.7 results in the termination of this Agreement by any Party, the same post-termination provisions of Section 7.3 shall apply.

8. DISPUTE RESOLUTION PROCESS

8.1. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be resolved by the Parties according to the procedures set forth below.

8.2. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute

resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

8.3. At the written request of a Party, the other Parties will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, format, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Prior to arbitration described below, and subject to agreement by all of the Parties, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations.

8.4. If the negotiations or mediations do not resolve the dispute within sixty (60) days of the initial written request, then any Party may pursue any remedy available pursuant to law, equity or agency mechanism; provided that upon agreement by all of the Parties such disputes may also be submitted to binding arbitration. Each Party will bear its own costs of these procedures. The Parties shall equally split the fess of any mutually agreed upon arbitration procedure and the associated arbitrator.

8.5. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the parties shall continue to perform their obligations, including making payments, in accordance with this Agreement.

9. THIRD PARTY BENEFICIARIES

This Agreement is not intended to benefit any person or entity not a Party to it and no beneficiaries other than the Parties are created by this Agreement.

10. GOVERNING LAW, FORUM, AND VENUE

To the extent not governed by the laws and regulations of the United States, this Agreement shall be governed by the laws and regulations of the State of Tennessee. Disputes arising under this Agreement, or under the particpation in the arrangements under this Agreement, shall be resolved in state or federal court in Tennessee, the TRA, or the FCC.

11. FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, a Party shall not be liable nor deemed to be in default for any delay or failure of performance under this Agreement resulting directly from acts of God, civil or military authority, acts of public enemy, war, hurricanes, tornadoes, storms, fires, explosions, earthquakes, floods, government regulation, strikes, lockouts or other work interruptions by employees or agents no within the control of the non-performing Party.

12. ENTIRE AGREEMENT

This Agreement incorporates all terms of the Agreement between the Parties, and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. This Agreement may not be modified except in writing signed by all Parties, which modification shall become effective (30) thirty days after its execution, unless otherwise mutually agreed by the Parties. This Agreement is a result of a negotiation between the Parties, and it was jointly drafted by all Parties.

13. NOTICE

Notices given by one Party to another Party or to the other Parties under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service, or (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to the following addresses of the Parties:

BellSouth

CMRS Carrier

Rural LEC

Bills and payments shall be sent to:

BellSouth

CMRS Carrier

Rural LEC

14. ASSIGNABILITY

A Party may assign this Agreement upon the written consent of all of the other Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent shall be required for the assignment of this Agreement in the context of the sale of all or substantially all of the assets or stock of any Party. Notwithstanding the foregoing, a Party may assign this Agreement or any rights or obligations hereunder to an affiliate of such Party without the consent of the other Parties.

15. MISCELLANEOUS

15.1 Failure of any Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right, or privilege.

15.2 The Parties acknowledge that Rural LEC is a Rural Telephone Company and is entitled to all rights afforded Rural Telephone Companies under the Act including, but not limited to, the rights provided by 47 U.S.C. 251(f) of the Act and that by entering into this Agreement Rural LEC does not waive these rights.

15.3 Nothing herein shall affect any Party's right to seek interconnection with any carrier, including with a carrier that is a Party to this Agreement, or preclude any Party from negotiating an interconnection agreement with another Party consistent with Sections 251 and 252 of the Act. Moreover, in the event that CMRS Carrier and Rural LEC subsequently execute an interconnection agreement, such agreement may supercede the rights and obligations set for in this Agreement only to the extent that the Parties specifically set forth such intent within the terms and conditions of any such new agreement.

15.4 The Parties agree that this Agreement represents a voluntary resolution of terms and conditions between and among the Parties, including the terms and conditions for compensation, and any compensation terms hereunder should not be construed as the agreement of any Party as to the appropriateness of such level of compensation.

15.5 Nothing in this Agreement shall be construed to create legal or regulatory requirements for the Parties that do not otherwise apply. Nothing is this Agreement shall be construed as a waiver by any of the Parties of any of the rights afforded, or obligations imposed, by Sections 251 or 252 of the Act. The terms of the voluntary arrangements set forth in this Agreement shall not prejudice the outcome of any subsequent interconnection negotiations between or among the parties or any TRA arbitration.

15.6 Nothing in this Agreement shall preclude any Party from participating in any TRA proceeding or proceeding before the Federal Communications Commission ("FCC") relating to any issue, including matters specifically related to or other types of arrangements related to the subject matter of this Agreement or from petitioning the TRA or the FCC to resolve any issue, including matters specifically related to, or other types of arrangements related to the subject matter of this Agreement.

15.7 BellSouth is a corporation duly organized, validly existing and in good standing

under the laws of the [STATE] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. Cellular Carrier is a corporation duly organized, validly existing and in good standing under the laws of the [STATE] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. Rural LEC is a corporation duly organized, validly existing and in good standing under the laws of the [STATE] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

16. (OPEN) NONDISCLOSURE OF PROPRIETARY INFORMATION

The Parties agree that it may be necessary to exchange certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Communications Act of 1934, as amended, and the rules and regulations of the FCC and similar information ("Confidential Information"). Confidential Information shall include (i) all information delivered in written or electronic form and marked "confidential" or "proprietary" or bearing mark of similar import; or (ii) information derived by the Recipient from a Disclosing Party's usage of the Recipient's network including customer account data and CPNI. The Confidential Information is deemed proprietary to the Disclosing Party and it shall be protected by the Recipient as the Recipient would protect its own proprietary information. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement. For purposes of this Section XV, the Disclosing Party shall mean the owner of the Confidential Information, and the Recipient shall mean the Party to whom Confidential Information is disclosed.

Information shall not be deemed Confidential Information and the Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by Recipient, (iii) after it is rightfully acquired by Recipient free of restrictions on the Disclosing Party, or (iv) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency provided the Recipient shall give at least thirty (30) days' notice (or such lesser time as may be sufficient based on the time of the request) to the Disclosing Party to enable the Disclosing Party to seek a protective order. Each Party agrees that Disclosing Party would be irreparably injured by a breach of this Agreement by Recipient or its representatives and that Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this paragraph. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

17. COMPLIANCE WITH SECTION 252(i)

In accordance with Section 252(i) of the Act, Rural Carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to CMRS Carrier upon the same terms and conditions as those provided in the agreement.

18.0 Indemnification

18.1 Each Party agrees to release, indemnify, defend and hold harmless the other Parties from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorney's fees (collectively, a "Loss"), (a) whether suffered, made, instituted or asserted by any other party or person, relating to personal injury to or death of any person, defamation or for loss, damage to or destruction of real and/or personal property, whether or not owned by others, arising during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted or asserted by its own customer(s) against another Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this such Section 18.0 shall affect or limit any claims, remedies or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s) regulations or laws for the indemnified Party's provision of said services.

18.2 The indemnification provided herein shall be conditioned upon:

(a) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.

(b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.

(c) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not unreasonably withheld.

(d) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs or customer contracts that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.

(e) The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

18.3 In addition to its indemnity obligations under Section 18.1 and 18.2, each Party shall provide, in its Tariffs or customer contracts that relate to any Telecommunications Service or network services provided by one Party to the other Party under this Agreement, or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any consequential damages (as defined in Subsection 19.2, below).

19.0 Disclaimer of Representation and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY,

NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

20.0 No License

20.1 Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by any Party. No Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of any the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

20.2 No Party shall have any obligation to defend, indemnify or hold harmless or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, any other Party or its customers based on or arising from any claim, demand or proceeding by any party not a party to this Agreement that may allege or assert that the use of any circuit, apparatus or system, or the use of any software, or the performance of any service or method or the provision of any facilities by any Party under this Agreement, alone or in combination with that of any other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

20.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NO PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY ANY PARTY OF ANY OTHER PARTY'S FACILITIES, ARRANGEMENTS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY PARTY NOT A PARTY TO THIS AGREEMENT OF INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH OTHER PARTY THAT IS NOT A PARTY TO THIS AGREEMENT.

21.0 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

22.0 Modification, Amendment, Supplement or Waiver.

No modification, amendment, supplement to or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided or to require performance of any of provisions hereof shall in no way be construed to be a waiver of such provisions or options.

23.0 Entire Agreement.

This Agreement and any Exhibits, Appendices, Schedules or tariffs which are incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and no Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of all of the Parties to be bound thereby.

By: Rural Telco

_____ _____

Signature (date)

_____

Printed name and title:

By: CMRS Carrier

_____ _____

Signature (date)

_____

Printed name and title:

Signature Page dated _____, 2003 to Interconnection Agreement between Rural Telco and CMRS Carrier.

CMRS-LEC AGREEMENT
TENNESSEE

This Agreement by and between , _____, a [STATE corporation] ("CMRS Carrier"), and _____, a [Tennessee corporation] ("Rural LEC"). CMRS Carrier and Rural LEC are referred to herein collectively as "Parties" and are referred to individually as a "Party." This Agreement sets forth the terms and conditions under which the Parties will interconnect their networks for Direct Traffic, exchange Direct Traffic and Intermediary Traffic, and provide compensation to each other. In consideration of the mutual agreements, undertakings and representations contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the terms and conditions as set forth herein.

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Section 1.0:

1.x "Act" means the Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended, including the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized orders and regulations of the FCC.

1.x "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

"End Office Switches" which are used to terminate lines from individual stations for the purpose of interconnection to each other and to trunks; and

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches, an End Office Switch and another Tandem Office Switch, or two Tandem Office Switches.

A Central Office Switch may be employed as a combination End Office/Tandem Office Switch.

1.x "CMRS" or "Commercial Mobile Radio Service" is as defined in Part 20 of the FCC's Rules.

1.x "Common Channel Interoffice Signaling" or "SS7" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis, and, unless otherwise agreed by the Parties, the Common Channel Interoffice Signaling used by the Parties shall be Signaling System Seven.

1.x "DS1" is a digital signal rate of 1.544 Mbps (mega bits per second).

1.x "DS3" is a digital signal rate of 44.736 Mbps.

1.x "Direct Traffic" is Telecommunications traffic within the scope of this Agreement that

either Party delivers to the other Party at the Interconnection Point(s).

1.x "FCC" means the Federal Communications Commission.

1.x "Interconnection" for purposes of this Agreement is the linking of the CMRS Carrier and Rural LEC networks at the Interconnection Point for the mutual exchange of Direct Traffic.

1.x "Interconnection Point" or "IP" is a point(s) of demarcation, as referenced in 47 C.F.R. Section 51.701(c), between the networks of the two Parties where the delivery of traffic subject to Section 251(b)(5) of the Act takes place from one Party to the other Party.

1.x "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.

1.x "Intermediary Provider" is a third-party telecommunications carrier between the networks of CMRS Carrier and Rural LEC that: (a) provides intermediary tandem switching and/or transport services with respect to Intermediary Traffic exchanged between the Parties pursuant to this Agreement; (b) has an established interconnection point between its network and that of CMRS Carrier for the purpose of transporting Intermediary Traffic to and from the network of CMRS Carrier Traffic; and (c) has an established interconnection point between its network and that of Rural LEC for the purpose of transporting Intermediary Traffic to a from the network of Rural LEC.

1.x "Intermediary Services" refers to tandem switching and/or transport services provided by an Intermediary Provider with respect to the Intermediary Traffic exchanged between CMRS Carrier and Rural LEC pursuant to the terms of this Agreement.

1.x "Intermediary Traffic" is Telecommunications traffic within the scope of this Agreement that is exchanged between the Parties via the use of Intermediary Services provided by an Intermediary Provider.

1.x "IntraMTA Traffic" is Traffic which originates and terminates within the same MTA based on the location of the cell site serving CMRS Carrier's mobile wireless end user at the beginning of the call and the central office serving Rural LEC's landline end user.

1.x "InterMTA Traffic" is Traffic which does not originate and terminate within the same MTA based on the location of the cell site serving the CMRS Carrier's mobile wireless end user at the beginning of the call and the central office serving Rural LEC's landline end user.

1.x "Local Exchange Carrier" or "LEC" is as defined in the Act.

1.x "Major Trading Area" (MTA) means a geographic area established by Rand McNally's 1992 Commercial Atlas and Marketing Guide, 123rd edition, at pages 38-39 and used by the FCC in defining CMRS license boundaries for CMRS carriers .

1.x "Termination" means, for CMRS Carrier and Rural LEC, the switching of Telecommunications Traffic at the terminating end-office switch, or equivalent facility, and the delivery of such Telecommunications Traffic to the called Party.

1.x "TRA" means the Tennessee Regulatory Authority.

1.x "Telecommunications Traffic," for purposes of this Agreement, includes Direct Traffic and Intermediary Traffic between an end user of one Party and an end user of the other Party.

1.x "Transport" means, as set forth in 47 C.F.R. Section 51.701(c), the transmission and any necessary tandem switching on a Party's network to the terminating Party's end office that serves the called end user.

1.x "Telecommunications" is as defined in the Act.

2. INTERPRETATION AND CONSTRUCTION

2.1 All references to Sections and Attachments of the Agreement shall be deemed to be references to Sections of and Appendices to this Agreement unless the context shall otherwise require. Any headings of Sections are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including either Party's or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

2.2 The Parties acknowledge that some of the services, facilities or arrangements described herein may reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Appendix hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this Agreement shall prevail.

3. SCOPE OF AGREEMENT

3.1 General Scope

3.1.1 This Agreement sets forth the terms and conditions between the Parties for the exchange of Telecommunications Traffic.

3.1.2 With respect to CMRS Carrier, the scope of Telecommunications Traffic to be exchanged between the Parties is specifically limited to its CMRS services. With respect to Rural LEC, Telecommunications Traffic is specifically limited to its local exchange services.

3.1.3 This Agreement applies solely to Telecommunications Traffic that is specifically defined as within the scope of this Agreement. With the exception of those Intermediary Carriers specifically referenced by this Agreement, traffic that either Party originates to, or terminates from, any other carrier or traffic carried by any other carrier other than the Parties or those Intermediary Carriers specifically referenced by this Agreement is not within the scope of this Agreement. Traffic that Rural LEC delivers to or receives from a third

party carrier over facilities or service arrangements that the third party has obtained pursuant to an access arrangement or access tariff service offering, regardless of the originating or terminating points of the call, is not within the scope of this Agreement. Interexchange carrier traffic originated by Rural LEC that is subject to equal access presubscription is not within the scope of this Agreement.

3.1.4 The terms of this Agreement, including but not limited to, traffic directionality, usage distribution, and/or the proportion of minutes of use of Telecommunications Traffic that is intraMTA and interMTA are directly related, and dependent on, the specific geographic scope of the mobile service area of CMRS Carrier from which Telecommunications Traffic will be originated by CMRS Carrier. The specific geographic area (i.e., counties) for each type of originating CMRS Carrier traffic (Direct Traffic and Intermediary Traffic) is set forth in Attachment X. For CMRS Carrier to Rural LEC Telecommunications Traffic, the terms and conditions of this Agreement applies only to Telecommunications Traffic originated by CMRS Carrier from a mobile CMRS user within the specified geographic area of CMRS Carrier. The specific geographic service area of Rural LEC for Telecommunications Traffic is defined by its incumbent LEC service area. Accordingly, the terms and conditions of this Agreement applies only to traffic originating or terminating to a wireline end user of Rural LEC located within its incumbent LEC service area. Rural LEC's incumbent LEC service area is set forth in its local exchange service tariff. Wireline to and from wireline traffic and wireline to and from non-CMRS Telecommunications is not within the scope of this Agreement.

3.1.5 This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement has no effect on the end user services that either Party offers or chooses to offer to its own end users, the rate levels or rate structures that either Party charges its end users for services, or the manner in which either Party provisions or routes the services either Party provides to its respective end user customers.

3.2 Scope of Direct Traffic

The terms and conditions for Direct Traffic apply solely with respect to Telecommunications Traffic that either Party delivers over the Direct Traffic connecting facilities and Interconnection Point(s) between the Parties' two networks established pursuant to this Agreement. Direct Traffic within the scope of this Agreement specifically includes:

3.2.1 CMRS Carrier to Rural LEC IntraMTA Traffic that is: (a) originated on the network of CMRS Carrier; (b) delivered to the Rural LEC network over the Direct Traffic connecting facilities and Interconnection Point(s) established pursuant to this Agreement; and (c) terminated on the incumbent LEC network of Rural LEC;

3.2.2 Rural LEC to CMRS Carrier IntraMTA Traffic that is: (a) originated on the incumbent LEC network of Rural LEC; (b) delivered to CMRS Carrier over the Direct Traffic connecting facilities and interconnection Point(s) established pursuant to this Agreement; and (c) terminated on the CMRS network of CMRS Carrier;

3.2.3 InterMTA Traffic that is: (a) originated by CMRS Carrier on its network; (b) transported, for termination, by CMRS Carrier to a different MTA than the MTA in which the traffic originated; (c) delivered by CMRS Carrier over Direct Traffic connecting facilities and Interconnection Point(s) established pursuant to this Agreement; and (d) terminated on the

incumbent LEC network of Rural LEC;

3.2.4 InterMTA Traffic that is: (a) originated on the network of Rural LEC; (b) delivered to CMRS Carrier over the Direct Traffic connecting facilities and Interconnection Point(s) established pursuant to this Agreement; (c) transported by CMRS Carrier to a different MTA than the MTA in which the traffic originated; and (d) terminated by CMRS Carrier on its CMRS network.

3.3 Scope of Intermediary Traffic

The terms and conditions for Intermediary Traffic apply solely with respect to Telecommunications Traffic that the Parties exchange via the utilization of Intermediary Services of an Intermediary Provider as designated in Appendix X to this Agreement. Intermediary Traffic is specifically limited to traffic that is delivered to Rural LEC or to CMRS Carrier by, or delivered by Rural LEC or CMRS Carrier to, an Intermediary Provider that has an effective facilities interconnection agreement in place with Rural LEC which sets forth the rights and obligations of both the Intermediary Provider and Rural LEC with respect to Intermediary Traffic as defined in this Agreement and an effective facilities interconnection agreement in place with CMRS Carrier which sets forth the rights and obligations of both the Intermediary Provider and CMRS Carrier with respect to Intermediary Traffic as defined in this Agreement. Intermediary Traffic within the scope of this Agreement specifically includes:

3.3.1 CMRS Carrier to Rural LEC IntraMTA Traffic that is: (a) originated on the network of CMRS Carrier; (b) delivered to the Rural LEC network by an Intermediary Provider over interconnection facilities established between the Intermediary Provider and Rural LEC for Intermediary Traffic; and (c) terminated on the incumbent LEC network of Rural LEC;

3.3.2 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* Rural LEC to CMRS Carrier IntraMTA Traffic that is: (a) originated on the incumbent LEC network of Rural LEC; (b) delivered to CMRS Carrier network by an Intermediary Provider over interconnection facilities established between the Intermediary Provider and CMRS Carrier for Intermediary Traffic; and (c) terminated on the CMRS network of CMRS Carrier;

3.3.3 InterMTA Traffic that is: (a) originated by CMRS Carrier on its network; (b) transported, for termination, to a different MTA than the MTA in which the traffic originated; (c) delivered to Rural LEC by an Intermediary Provider over interconnection facilities established between the Intermediary Provider and Rural LEC for Intermediary Traffic; and (d) terminated on the incumbent LEC network of Rural LEC;

3.3.4 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* InterMTA Traffic that is: (a) originated on the network of Rural LEC; (b) delivered to CMRS Carrier by an Intermediary Provider over the interconnection facilities established between the Intermediary Provider and CMRS Carrier for Intermediary Traffic; (c) transported by CMRS Carrier to a different MTA than the MTA in which the traffic originated; and (d) terminated by CMRS Carrier on its CMRS network.

3.3.5 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* Intermediary Traffic that is within the scope of this

Agreement is specifically limited to Intermediary Traffic for which the Intermediary Provider provides to both CMRS Carrier and Rural LEC accurate and complete industry standard 110101 format message, call detail, and billing records identifying the originating carrier, terminating carrier, and the minutes of use of such Traffic, or some other form of data which includes this information as may be mutually agreed to by the Intermediary Provider and Rural LEC. Traffic for which the Intermediary Provider is responsible for compensation to either Rural LEC or CMRS Provider is specifically not within the scope of Intermediary Traffic under this Agreement.

4. TRAFFIC EXCHANGE, SERVICE ARRANGEMENT, AND COMPENSATION

4.1 Traffic Exchange and Service Arrangement Terms

Subject to all of the other terms and conditions of this Agreement, both Parties shall terminate Direct Traffic and Intermediary Traffic on their respective network.

4.2 Service Arrangement -- Direct Traffic

4.2.1 For Direct Traffic purposes, the Parties agree to interconnect their respective networks within the incumbent LEC service area of Rural LEC at one or more IPs as agreed to by the Parties. For Direct Traffic terminating on the network of Rural LEC, interconnection and termination of Direct Traffic will be provided through a Rural LEC tandem switching office or a Rural LEC end office. The IP(s) will be set forth in Appendix X. The Parties will establish Direct Traffic connecting facilities to the IP(s) over which either Party may deliver to the other Party Direct Traffic as described in Subsections 3.2.1, 3.2.2, 3.2.3. and 3.2.4. By mutual agreement, the Parties may interconnect a trunk group on a bi-directional basis using two-way trunks between the Parties' networks. All interconnecting facilities will be at a DS1 level, multiple DS1 level or DS3 level and will conform to industry standards.

4.2.2 For Direct Traffic terminating on the network of Rural LEC via an interconnection through a Rural LEC tandem switching office, CMRS Carrier may terminate Direct Traffic to end users of Rural LEC with valid NXX codes associated with Rural LEC's end offices that subtend the specific Rural LEC tandem office to which the interconnection is made. For Direct Traffic terminating on the network of Rural LEC through an end office interconnection, CMRS Carrier may terminate Direct Traffic to end users of Rural LEC served by that end office.

4.2.3 Connecting facilities established for Direct Traffic pursuant to this Agreement shall not be used by either Party to deliver any traffic not specifically authorized under this Agreement as described in Section 3.2. It will constitute a Default of this Agreement for a Party to deliver, over the connecting network facilities, any traffic other than the Direct Traffic that is within the scope of this Agreement as specifically identified in Section 3.2.

4.3 Compensation - Direct Traffic

4.3.1 Each Party shall pay the other Party for the Transport and Termination of Direct Traffic that is IntraMTA ("IntraMTA Direct Traffic") that either Party delivers to the other Party's network over the Direct Traffic connecting facilities established pursuant to this Agreement. For any specific IP, both Parties will apply a single, combined, per-minute rate, as specified in Appendix X which encompasses total compensation between the Parties for Transport, call Termination and any other facilities utilized to terminate IntraMTA Direct Traffic

on the other Party's network. These charges and rates do not apply to any other types of traffic or for traffic delivered in any other areas other than those set forth in this Agreement.

4.3.2 Connecting Facilities Rate Structure. An IP(s) will be established between the Parties' facilities-based networks as specified in Appendix A for the delivery of Direct Traffic. CMRS Carrier will order from Rural LEC connecting facilities between the IP(s) in the incumbent service area of Rural LEC and either the Rural LEC tandem switching office or end office with which the interconnection is made. These connecting facilities will be subject to charges from Rural LEC to CMRS Carrier pursuant to the rates and terms and conditions contained in Rural LEC's intrastate access tariff. These connecting facilities are set forth in Appendix X. These charges for the connecting facilities will be reduced, as specified in Appendix X, to reflect the proportionate share of the total usage of the facilities that is related to IntraMTA Direct Traffic originated by Rural LEC.

4.3.3 Non-Recurring Charges. CMRS Carrier agrees to pay non-recurring fees pursuant to the rates and terms and conditions of Rural LEC's intrastate access tariff for any additions to, or added capacity for, the connecting facilities. The non-recurring charges for the connecting facilities will be reduced, as specified in Appendix X, to reflect the proportionate share of the total usage of the facilities that is related to IntraMTA Direct Traffic originated by Rural LEC.

4.3.4 InterMTA Traffic. The specific compensation arrangements set forth in this Agreement for IntraMTA Direct Traffic are not applicable to Direct Traffic that is InterMTA Traffic ("InterMTA Direct Traffic") described in Sections 3.2.3 and 3.2.4. CMRS Carrier will provide compensation to Rural LEC for all InterMTA Direct Traffic originated and terminated on the network of Rural LEC according to the terms and conditions of Rural LEC's applicable federal and state access tariffs that apply to access usage.

4.3.4.1 *[OPEN -- To be discussed and modified based on individual circumstances]* Because Rural LEC cannot determine the location of CMRS Carrier's mobile end users at the time a call is made and consequently whether Section 3.2.2. and 3.2.4 traffic originated on the network of Rural LEC is IntraMTA or InterMTA, the Parties will develop mutually acceptable percent usage factors for the relative amounts of InterMTA Direct Traffic and IntraMTA Direct Traffic.

4.3.4.2 *[Open -- To be discussed and modified based on individual circumstances]* The Parties recognize the InterMTA Direct Traffic (defined in Sections 3.2.3 and 3.2.4) may be both Interstate and Intrastate in nature. For the InterMTA Direct Traffic, the Parties will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix X. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of InterMTA Direct Traffic that is interstate in nature; intrastate access charges will apply to the percentage of InterMTA Direct Traffic that is intrastate in nature.

4.4 Service Arrangement - Intermediary Traffic

4.4.1 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* For Intermediary Traffic, the Parties agree to terminate Intermediary Traffic in accordance with the interconnection and contract terms and conditions

that each Party has in place with the specific Intermediary Provider which delivers Intermediary Traffic to each Party's network for termination. For Intermediary Traffic terminating on the network of Rural LEC, termination of Intermediary Traffic will be provided in accordance with the interconnection and contract terms and conditions with the Intermediary Provider for delivery of traffic either through a Rural LEC tandem switching office or a Rural LEC end office. The interconnection arrangement between each Intermediary Provider and Rural LEC will be set forth in Appendix X. The Intermediary Traffic arrangement between the Parties may be used to deliver to the other Party, via the Intermediary Provider, Intermediary Traffic described in Subsections 3.3.1, 3.3.2, 3.3.3. and 3.3.4.

4.4.2 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* For Intermediary Traffic terminating on the network of Rural LEC via an Intermediary Provider with interconnection with Rural LEC through a Rural LEC tandem switching office, CMRS Carrier may terminate Intermediary Traffic to end users of Rural LEC with valid NXX codes associated with Rural LEC's end offices that subtend the specific Rural LEC tandem office to which the interconnection is made with Intermediary Provider. For Intermediary Traffic terminating on the network of Rural LEC via an Intermediary Provider with interconnection to an end office of Rural LEC, CMRS Carrier may terminate Intermediary Traffic to end users of Rural LEC served by that end office.

4.5 Compensation - Intermediary Traffic

4.5.1 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* With respect Intermediary Traffic that is IntraMTA ("IntraMTA Intermediary Traffic") and with respect to a specific Intermediary Provider, CMRS Carrier and Rural LEC agree that the originating Party will pay compensation to the terminating Party pursuant to the rates, measurement methods, minutes of use calculation, and percentage traffic values set forth in Appendix X. Compensation for both Parties will be based on a single, combined, per-minute rate, as specified in Appendix X, which encompasses total compensation to either Party for Transport and call Termination of the specific intraMTA Intermediary Traffic.

4.5.2. *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* Intermediary Traffic that is InterMTA Traffic ("InterMTA Intermediary Traffic") is subject to treatment under Rural LEC's intrastate and interstate access tariffs. For InterMTA Intermediary Traffic, CMRS Carrier will provide compensation to Rural LEC for InterMTA Intermediary Traffic originated and terminated on the network of Rural LEC according to the terms and conditions of Rural LEC's applicable federal and state access tariffs that apply to access usage. Access charges wil be calculated pursuant to the measurement methods, minutes of use calculation, and percentage traffic values set forth in Appendix X

4.5.3 *[TO BE DISCUSSED AND MODIFIED BASED ON INDIVIDUAL CIRCUMSTANCES]* Because Rural LEC and CMRS Carrier cannot determine the location of CMRS Carrier's mobile end user at the time a call is made and consequently whether Section 3.3.2 and 3.3.4 traffic between CMRS Carrier and Rural LEC is IntraMTA Intermediary Traffic or InterMTA Intermediary Traffic, CMRS Carrier and Rural LEC will develop a mutually acceptable percent usage factors for the relative amounts of interMTA Intermediary Traffic and intraMTA Intermediary Traffic that is representative of the actual nature of the traffic. The percent usage factors are set forth in Appendix X.

4.5.3.1 The Parties recognize the InterMTA Direct Traffic (defined in Sections 3.3.2 and 3.3.4) may be both Interstate and Intrastate in nature. For the InterMTA Direct Traffic, the Parties will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix X. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of InterMTA Direct Traffic that is interstate in nature; intrastate access charges will apply to the percentage of InterMTA Direct Traffic that is intrastate in nature.

4.5.3.2 *[TO BE DISCUSSED AND MODIFIED BASED ON INDIVIDUAL CIRCUMSTANCES]* The Parties recognize that InterMTA Intermediary Traffic may be both Interstate and Intrastate in nature. For the InterMTA Intermediary Traffic, CMRS Carrier and Rural LEC will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix X. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of InterMTA Intermediary Traffic that is interstate in nature; intrastate access charges will apply to the percentage of InterMTA Intermediary Traffic that is intrastate in nature.

4.5.4 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* This Agreement includes terms and conditions for the exchange of Intermediary Traffic between CMRS Carrier and Rural LEC under circumstances where CMRS Carrier does not establish an Interconnection Point within the incumbent LEC network of Rural LEC, and accordingly, traffic originated on the network of Rural LEC may be transported and switched by an Intermediary Provider beyond Rural LEC's incumbent LEC network. The Parties agree that Rural LEC's willingness to offer and provide local exchange services to its end users and to route such local exchange service traffic to CMRS Carrier via an Intermediary Provider pursuant to an interconnection arrangement with the Intermediary Provider, to a point on CMRS Carrier's network that is outside the incumbent LEC service area of Rural LEC, is conditioned on Rural LEC not incurring additional costs for transporting and switching such calls on networks beyond and outside its own incumbent LEC network. Therefore, to transport Intermediary Traffic, via an Intermediary Provider, to and from a point on CMRS Carrier's network outside of Rural LEC's incumbent LEC network, CMRS Carrier agrees to be responsible for compensation to Intermediary Providers for all Intermediary Services provided by the Intermediary Provider for the exchange of Intermediary Traffic. CMRS Carrier agrees to indemnify, defend and hold Rural LEC harmless against any and all charges and any other claims by the Intermediary Providers set forth in Appendix X for Intermediary Services provided by those Intermediary Providers for the exchange of Intermediary Traffic between the Parties.

4.6 Signaling.

The Parties agree to exchange all appropriate SS7 messages for call set-up, including ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate full interoperability of all CLASS features and functions for Direct Traffic and Intermediary Traffic between their respective networks. Each Party shall utilize SS7 facilities at its own costs for the exchange of SS7 message information for all Direct Traffic and Intermediary Traffic.

4.7. Billing.

[Subject to resolution of terms and conditions with Intermediary Carrier between and among CMRS Carrier and Rural LEC] Rural LEC and CMRS Carrier shall bill the other pursuant to the compensation terms set forth in this Agreement. For Intermediary Traffic, CMRS Carrier agrees to accept the Intermediary Provider's measurement of minutes of use of Intermediary Traffic based on industry standard 110101 format message, call detail, and billing records created by Intermediary Providers (the format as mutually agreed to by Rural LEC and Intermediary Provider or some other form of data as may be mutually agreed to by the Intermediary Provider and Rural LEC) and provided to both Rural LEC and CMRS Carrier. The billing Party will issue an invoice on a monthly basis to the billed Party for Traffic subject to the terms of this Agreement. The billed Party shall pay such invoice, in immediately available U.S. funds, within thirty (30) days of the invoice date. The billed Party shall pay a late charge on the unpaid amounts that have been billed that are greater than thirty (30) days old. The rate of the late charge shall be the lesser of 1.5% per month or the maximum amount allowed by law. Although it is the intent of Rural LEC and CMRS Carrier to submit timely and accurate statements of charges, failure by either Rural LEC or CMRS Carrier to present statements to the other Party on a timely basis shall not constitute a waiver of the right to payment of the incurred charges. Neither Party shall bill the other Party for Traffic that is more than one hundred and eighty (180) days old. *[OPEN ISSUE: How can CMRS Carrier and Rural LEC agree to bilaterally to be obligated to provide compensation to each other when that obligation depends directly on obligations and actions of a third party that is not a party to this Agreement?]*

4.4. Taxes.

Any Federal, state or local excise, license, sales, use, or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon another Party. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The Party obligated to collect and remit taxes shall do so unless the other applicable Party provides such Party with the required evidence of exemption. The Party so obligated to pay any such taxes may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The Party obligated to collect and remit taxes shall cooperate fully in any such contest by the other Party by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest.

5. INDEPENDENT CONTRACTORS

The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind any other Party. *[OPEN ISSUE: CMRS Carrier apparently has already entered into bilateral agreement with BellSouth (a potential future Intermediary Provider) under which BellSouth and CMRS Carrier now attempt to bind the Rural LECs to arrangements for which the Rural LECs have no legal obligation and to force network arrangements on the Rural LECs not required of the Rural LECs.]* This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between any of the Parties or to impose any partnership obligation or liability upon any Party.

6. LIABILITY

6.1. Neither Party nor any of its affiliates shall be liable for any incidental, consequential or special damages arising from the other Party's use of service provided under this Agreement. Each Party shall indemnify and defend the other Party against any claims or actions arising from the indemnifying Party's participation in the arrangements set forth in this Agreement, except to the extent of damages caused by the negligence or willful misconduct of an indemnified Party.

6.2. Neither Party makes any warranties, express or implied, for any hardware, software, goods, or services provided under this Agreement. All warranties, including those of merchantability and fitness for a particular purpose, are expressly disclaimed and waived.

6.3. With the exception of the requirements of Sections _____ , the liability of either Party to the other Party for damages arising out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of applicable tariff(s) of the Party. In the event no tariff(s) apply and with the exception of the requirements of Sections _____, the providing Party's liability shall not exceed an amount equal to the pro-rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors, or defects occur. Except as required in Sections _____, recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors, or defects.

7. TERM OF AGREEMENT

7.1. The Parties will submit this Agreement to the TRA for approval. This Agreement shall be effective 30 days following TRA approval . This terms and conditions set forth in this Agreement do not apply to time periods prior to the effective date. With the exception of termination pursuant to Sections 7.2, 7.5, 7.6, and 7.7, the initial term of this Agreement shall be _____ year(s) from the effective date. With the exception of termination pursuant to Sections 7.2, 7.5, 7.6 and 7.7, this Agreement shall continue in force and effect after the initial term until (i) replaced by another Agreement mutually agreed to in writing by both Parties; or (ii) until terminated by either Party upon sixty (60) days written notice to the other Party.

7.2 Termination -- Arrangements with Third-Party Intermediary Provider

[Subject to change and resolution of terms and conditions with Intermediary Carrier] Should an Intermediary Provider and Rural LEC terminate their network interconnection for Intermediary Traffic, Rural LEC will provide to CMRS Carrier written notice of termination of its arrangement with the Intermediary Provider with respect to Intermediary Traffic exchanged between the Parties. Subject to both written notice and the availability of the post-termination provisions of Section 7.3, the terms of this Agreement will no longer apply to Intermediary Traffic exchanged between the Parties via the Intermediary Provider that is terminating its Intermediary Traffic arrangement with Rural LEC. Should an Intermediary Provider and CMRS Carrier terminate their network interconnection for Intermediary Traffic, CMRS Carrier will provide to Rural LEC written notice of termination of its arrangement with the Intermediary Provider with respect to Intermediary Traffic exchanged between the Parties. Subject to both written notice

and the availability of the post-termination provisions of Section 7.3, the terms of this Agreement will no longer apply to Intermediary Traffic exchanged between the Parties via the Intermediary Provider that is terminating its Intermediary Traffic arrangement with CMRS Carrier.

7.3 *[OPEN ISSUE requiring further discussion.]* Except in the case of termination as a result of a Party's default, the following post-termination provisions shall apply in the event of termination by Rural Carrier or CMRS Carrier: (1) for those service arrangements made available to CMRS Carrier or to Rural LEC under this Agreement and existing at the time of termination, those arrangements may continue without interruption for CMRS Carrier and/or for Rural LEC, provided that either Party requests such arrangements continue to be made available for its use; and (2) the continuing arrangements will be made available for a period of time to allow either Party to request and/or to replace the arrangements set forth in this Agreement with alternate arrangements, to the extent that alternative arrangements are necessary, [OPEN ISSUE] but in no case will the existing service arrangements continue for longer than 12 months following the date on which notice of termination is provided by either Rural LEC or CMRS Carrier. All of the obligations set forth in this Agreement will continue to be in effect during the time the provisions of this Section 7.3 are applicable.

7.4 Upon termination of this Agreement in accordance with this Section 7.0:

(a) each Party shall comply immediately with its obligations set forth in this Agreement;

(b) each Party shall promptly pay all amounts owed under this Agreement;

(c) each Party's indemnification obligations shall survive termination or expiration of this Agreement.

7.5 *[OPEN ISSUE: Cure Period - requiring further discussion.]* In the event of Default by a Party, as defined below in this subsection, the non-defaulting Parties may terminate any and all terms and conditions of this Agreement provided that the non-defaulting Party seeking termination with respect to the defaulting Party notifies the defaulting Party and the other non-defaulting Party in writing of the Default and the defaulting Party does not cure the alleged Default within thirty (30) days after receipt of such written notice. With respect to a defaulting Party, Default is defined as: (a) that Party's material breach of any of the material terms of this Agreement, including the compensation terms; or (b) any aspect of a Party's operations or actions are determined by a court with proper jurisdiction or the TRA to be unlawful or not authorized.

7.6 *[OPEN ISSUE requiring further discussion, will depend on terms and conditions with Intermediary Provider and other terms and conditions of this Agreement. The following draft proposals are subject to change.]* If CMRS Carrier defaults by failure to comply with the compensation terms of this Agreement for compensation between CMRS Carrier and Rural LEC, Rural LEC may terminate this Agreement with respect to CMRS Carrier. For Intermediary Traffic, if Rural LEC is unable to effectuate discontinuance of the termination of Intermediary Traffic at Rural LEC's network or end offices, and following written notice of at least thirty (30) days to both the Intermediary Provider(s) and CMRS Carrier, Rural LEC will direct the Intermediary Provider(s) to take the necessary steps within its network that will allow for the disconnection of the Intermediary Services arrangement and the discontinuation of the delivery of all Intermediary Traffic to the network of Rural LEC. If Rural LEC defaults by failure to comply with the compensation terms of this Agreement for compensation between Rural LEC and CMRS Carrier, CMRS Carrier may terminate this Agreement with respect to Rural LEC.

For Intermediary Traffic, if CMRS Carrier is unable to effectuate discontinuance of the termination of Intermediary Traffic at CMRS Carrier's network or end offices, and following written notice of at least thirty (30) days to both the Intermediary Provider(s) and Rural LEC, CMRS Carrier will direct the Intermediary Provider(s) to take the necessary steps within its network that will allow for the disconnection of the Intermediary Services arrangement and the discontinuation of the delivery of all Intermediary Traffic to the network of CMRS Carrier.

7.7 Either Party to this Agreement shall have the right, at its discretion, to design and deploy its own network and facilities, upgrade its network, modify its end office and tandem switching hierarchy and/or architecture, modify trunking arrangements with other carriers, install new equipment or software, maintain its network, determine and designate the tandem switch(es) which its end offices will subtend for all traffic, or otherwise, including modifications that may alter or discontinue the arrangements that are the subject matter of this Agreement, including arrangements with Intermediary Providers for Intermediary Service arrangements. If a Party makes a change in its network which it believes will materially affect the arrangements which are the subject matter of this Agreement, the Party making the change shall provide at least one hundred and twenty (120) days advance notice to the other Parties regarding the nature of the change and when the change will occur. To the extent that notice of a network change pursuant to this Section 7.7 results in the termination of this Agreement by any Party, the post-termination provisions of Section 7.3 shall apply.

8. DISPUTE RESOLUTION PROCESS

[OPEN ISSUES: How can disputes be resolved when the dispute between CMRS Carrier and Rural LEC is the result of actions, errors, and/or obligations of the Intermediary Provider or disputes between the Intermediary Provider and Rural LEC or disputes between Intermediary Provider and CMRS Carrier? The terms and conditions between Rural LEC and Intermediary Provider, and between CMRS Carrier and Intermediary Provider must be consistent with, interdependent, and congruent with the provisions between CMRS Carrier and Rural LEC.]

8.1. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be resolved by the Parties according to the procedures set forth below.

8.2. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

8.3. At the written request of a Party, the other Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, format, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Prior to arbitration described below, and subject to agreement by all of the Parties, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations.

8.4. If the negotiations or mediations do not resolve the dispute within sixty (60) days of the initial written request, then any Party may pursue any remedy available pursuant to law,

equity or agency mechanism; provided that upon agreement by the Parties such disputes may also be submitted to binding arbitration. Each Party will bear its own costs of these procedures. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

8.5. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the parties shall continue to perform their obligations, including making payments, in accordance with this Agreement.

9. THIRD PARTY BENEFICIARIES

[OPEN ISSUE: The following provision is inconsistent with the fact that the non-party Intermediary Provider will benefit by the terms of this Agreement and that this Agreement is inextricably conditioned on BellSouth placing its tandem operation between the parties to the benefit of BellSouth and the detriment of the Rural LECs, and potentially CMRS Carrier..]

This Agreement is not intended to benefit any person or entity not a Party to it and no beneficiaries other than the Parties are created by this Agreement.

10. GOVERNING LAW, FORUM, AND VENUE

To the extent not governed by the laws and regulations of the United States, this Agreement shall be governed by the laws and regulations of the State of Tennessee. Disputes arising under this Agreement, or under the participation in the arrangements under this Agreement, shall be resolved in state or federal court in Tennessee, the TRA, or the FCC.

11. FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, a Party shall not be liable nor deemed to be in default for any delay or failure of performance under this Agreement resulting directly from acts of God, civil or military authority, acts of public enemy, war, hurricanes, tornadoes, storms, fires, explosions, earthquakes, floods, government regulation, strikes, lockouts or other work interruptions by employees or agents no within the control of the non-performing Party.

12. ENTIRE AGREEMENT

This Agreement incorporates all terms of the Agreement between the Parties, and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. This Agreement may not be modified except in writing signed by all Parties, which modification shall become effective (30) thirty days after its execution, unless otherwise mutually agreed by the Parties. This Agreement is a result of a negotiation between the Parties, and it was jointly drafted by all Parties.

13. NOTICE

Notices given by one Party to another Party or to the other Parties under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service, or (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to

the following addresses of the Parties:

CMRS Carrier

Rural LEC

Bills and payments shall be sent to:

CMRS Carrier

Rural LEC

14. ASSIGNABILITY

A Party may assign this Agreement upon the written consent of the other Party , which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent shall be required for the assignment of this Agreement in the context of the sale of all or substantially all of the assets or stock of either Party. Notwithstanding the foregoing, a Party may assign this Agreement or any rights or obligations hereunder to an affiliate of such Party without the consent of the other Party.

15. MISCELLANEOUS

15.1 Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right, or privilege.

15.2 By entering into this Agreement, Rural LEC does not waive any rights afforded to it under the Act including, but not limited to, the rights afforeded Rural Telephone Companies under 47 U.S.C. Section 251(f) of the Act.

15.4 The Parties agree that this Agreement represents a voluntary resolution of terms and conditions between the Parties, including the terms and conditions for compensation, and any terms and conditions hereunder should not be construed as the agreement of either Party as to the appropriateness of such set of terms and conditions.

15.5 Nothing in this Agreement shall be construed to create legal or regulatory requirements for the Parties that do not otherwise apply. Nothing is this Agreement shall be construed as a waiver by any of the Parties of any of the rights afforded, or obligations imposed, by Sections 251 or 252 of the Act. The terms of the voluntary arrangements set forth in this Agreement shall not prejudice the outcome of any subsequent interconnection negotiations between the parties or any TRA arbitration.

15.6 The Parties enter into this Agreement without prejudice to any position they may take with respect to similar future agreements between the Parties or with respect to positions they may have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters including matters, related to the rates to be charged for Transport and Termination of IntraMTA Traffic or the types of arrangements prescribed by this Agreement. Moreover, nothing in this Agreement shall preclude either Party from participating in any TRA proceeding or proceeding before the Federal Communications Commission ("FCC") relating to any issue, including matters specifically related to or other types of arrangements related to the subject matter of this Agreement or from petitioning the TRA or the FCC to resolve any issue, including matters specifically related to, or other types of arrangements related to the subject matter of this Agreement.

15.7 CMRS Carrier is a corporation duly organized, validly existing and in good standing under the laws of the [STATE] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. CMRS Carrier represents and warrants to Rural LEC that CMRS Carrier has obtained full authorization and received all licenses from the FCC to provide CMRS in the MTA(s) in which Rural LEC operates its incumbent LEC network. Rural LEC is a corporation duly organized, validly existing and in good standing under the laws of the [STATE] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. Rural LEC represents and warrants to CMRS Carrier that Rural LEC is fully authorized as a Local Exchange Carrier to provide local exchange service within its incumbent local exchange carrier service area.

16. NONDISCLOSURE OF PROPRIETARY INFORMATION

[OPEN for further discussion]

The Parties agree that it may be necessary to exchange certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Communications Act of 1934, as amended, and the rules and regulations of the FCC and similar information ("Confidential Information"). Confidential Information shall include (i) all information delivered in written or electronic form and marked "confidential" or "proprietary" or bearing mark of similar import; or (ii) information derived by the Recipient from a Disclosing Party's usage of the Recipient's network including customer account data and CPNI. The Confidential Information is deemed proprietary to the Disclosing Party and it shall be protected by the Recipient as the Recipient would protect its own proprietary information. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement. For purposes of this Section 16, the Disclosing Party shall mean the owner of the Confidential Information, and the Recipient shall mean the Party to whom Confidential Information is disclosed.

Information shall not be deemed Confidential Information and the Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by Recipient, (iii) after it is rightfully acquired by Recipient free of restrictions on the Disclosing Party, or (iv) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential information had not been

previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency provided the Recipient shall give at least thirty (30) days' notice (or such lesser time as may be sufficient based on the time of the request) to the Disclosing Party to enable the Disclosing Party to seek a protective order. Each Party agrees that Disclosing Party would be irreparably injured by a breach of this Agreement by Recipient or its representatives and that Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this paragraph. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

17. COMPLIANCE WITH SECTION 252(i)

In accordance with Section 252(i) of the Act and only to the extent required by controlling law, Rural Carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to CMRS Carrier upon the same terms and conditions as those provided in the agreement.

18.0 Indemnification

18.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorney's fees (collectively, a "Loss"), (a) whether suffered, made, instituted or asserted by the other party or person, relating to personal injury to or death of any person, defamation or for loss, damage to or destruction of real and/or personal property, whether or not owned by others, arising during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this such Section 18.0 shall affect or limit any claims, remedies or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s) regulations or laws for the indemnified Party's provision of said services.

18.2 The indemnification provided herein shall be conditioned upon:

(a) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.

(b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.

(c) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not unreasonably withheld.

(d) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs or customer contracts that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.

(e) The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

18.3 In addition to its indemnity obligations under Section 18.1 and 18.2, each Party shall provide, in its Tariffs or customer contracts that relate to any Telecommunications Service or network services provided by one Party to the other Party under this Agreement, or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any consequential damages (as defined in Subsection 19.2, below).

19.0 Disclaimer of Representation and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

20.0 No License

20.1 Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

20.2 Neither Party shall have any obligation to defend, indemnify or hold harmless or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand or proceeding by any party not a party to this Agreement that may allege or assert that the use of any circuit, apparatus or system, or the use of any software, or the performance of any service or method or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right of either Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

20.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NO PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY ANY PARTY OF ANY OTHER PARTY'S FACILITIES, ARRANGEMENTS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY PARTY NOT A PARTY TO THIS AGREEMENT OF INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH OTHER PARTY THAT IS NOT A PARTY TO THIS AGREEMENT.

21.0 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

22.0 Modification, Amendment, Supplement or Waiver.

No modification, amendment, supplement to or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

23.0 Entire Agreement.

This Agreement and any Exhibits, Appendices, Schedules or tariffs which are incorporated herein by reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and no Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of all of the Parties to be bound thereby.

24.0 Changes in Law.

Notwithstanding any provision in this Agreement to the contrary, if any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in applicable law (collectively "Change in Law") materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. Notwithstanding anything in this Agreement to the contrary, if as a result of any Change in Law, Rural LEC is not required by applicable law to provide to CMRS Carrier a service, arrangement, payment, or benefit otherwise required to be provided hereunder, then Rural LEC may discontinue the provision of any such service, payment or benefit, provided that if Rural LEC intends to terminate its provision of any service under this Agreement, Rural LEC will provide sixty (60) days prior written notice to CMRS Carrier of any such discontinuance of a service unless a different notice period or different conditions are required by applicable law for termination of such service, in which event such specified period and/or conditions shall apply. Changes in Law will not affect retroactively any payments previously made between the Parties pursuant to this Agreement unless the Change in Law explicitly requires retroactive adjustment.

By: Rural LEC

_____ _____

Signature (date)

_____

Printed name and title:

By: CMRS Carrier

_____ _____
Signature (date)

_____
Printed name and title:

Signature Page dated _____, 2003 to Interconnection Agreement between Rural LEC and CMRS Carrier.