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VIA HAND DELIVERY

The Honorable Ron Jones
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: Docket Nos. ~~03-00585~~ (consolidated)
00-00523

Dear Mr. Jones:

Enclosed is an original and fifteen copies of the Brief Of The Rural Independent Coalition In Response To Motions For Reconsideration Of The Hearing Officer's Order Dated May 6, 2004 Please return a stamped "filed" copy to us in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely,

Bill Ramsey

William T. Ramsey

/jm
enclosures

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING	)	**DOCKET NO. 00-00523**
RURAL UNIVERSAL SERVICE	)	
	)	
	)	

BRIEF OF THE RURAL INDEPENDENT COALITION IN RESPONSE TO MOTIONS FOR RECONSIDERATION OF THE HEARING OFFICER'S ORDER DATED MAY 6, 2004

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, Inc.
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

"The Rural Independent Coalition of Small LECs and Cooperatives"

June 7, 2004

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING	)	**DOCKET NO. 00-00523**
RURAL UNIVERSAL SERVICE	)	
	)	
	)	

BRIEF OF THE RURAL INDEPENDENT COALITION IN RESPONSE TO MOTIONS FOR RECONSIDERATION OF THE HEARING OFFICER'S ORDER DATED MAY 6, 2004

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents") respectfully files this Brief in response to the Motions filed by BellSouth Telecommunications, Inc. ("BellSouth") and the "CMRS Providers" on May 17, 2004 in which these parties seek reconsideration of the Hearing Officer's *Order Granting In Part The Petition For Emergency Relief And Request For Standstill Order By the Tennessee Rural Independent Coalition* (the "*May 6 Order*") issued in this proceeding on May 6, 2004.

I. Introduction and Incorporation of Prior Pleadings

The Coalition welcomes this opportunity for the full panel to review the *May 6 Order* on the expedited basis established at the May 24, 2004, Conference of the Authority. The matter before the Authority is neither as complex nor convoluted as the lengthy pleadings in this proceeding may otherwise suggest.

The facts are straight-forward: BellSouth has terminated traffic over a long period of time to the Independent networks. In the past BellSouth compensated the Independents for

traffic, including traffic originated on wireless carrier networks. The compensation to the Independents was provided in accordance with terms and conditions referred to in the *May 6 Order* as the "Interconnection Arrangements." These Interconnection Arrangements have been the subject of a prior Order in this proceeding which was affirmed by the Authority. BellSouth unilaterally decided to cease paying the Independents for the termination of this traffic, thereby disregarding the standing Order of the Authority.

The application of the law to these facts is equally straight-forward. BellSouth has attempted to justify its disregard for the Authority's standing Order on the basis that somehow the federal statutory rules and regulations regarding interconnection can automatically alleviate BellSouth from its continuing obligations to the Independents in Tennessee. No federal law or regulation, however, preempts the existing obligations of BellSouth. BellSouth has made similar attempts in other States to avoid its continuing obligations before those obligations are modified or terminated by appropriate statutory and regulatory processes. In these other States, the Independents and BellSouth have, often with the meditative assistance of the State regulatory authority, reached compromise resolution within a framework similar to that established by the *May 6 Order.*

In Tennessee, however, BellSouth has not elected to enter into a similar compromise. In the absence of compromise and agreement among the parties, the Coalition respectfully submits that the Authority's prior decision should be fully enforced and that BellSouth should be required to honor the terms and conditions of the Interconnection Arrangements in accordance with the standing Order of the Authority.

The *May 6 Order* addresses the long pending *Petition For Emergency Relief And Request For Standstill Order By the Tennessee Rural Independent Coalition* ("Coalition Petition"). The

need for the Coalition Petition arose as a result of BellSouth's disregard for a standing Order of the Authority. The Coalition respectfully asks that the Authority maintain the integrity of its processes and procedures by enforcing its standing Orders and, accordingly, granting the Coalition Petition. Pursuant to enforcement of the effective Order of the Authority, the Independents are rightfully entitled to payments withheld by BellSouth in an amount determined by the application of the terms and conditions in place prior to the issuance of the Hearing Officer's December 29, 2000 Order in this proceeding which was affirmed by the full Authority.[1]

The dispositive facts and applicable regulation and law relevant to the May 6 Order have been fully set forth on the record by the Coalition in the prior filings submitted in this proceeding. The Coalition respectfully seeks to balance administrative efficiency with a desire to ensure that all matters relevant to the Motions for Reconsideration are presented to the full panel of the Authority. Accordingly, the Coalition respectfully incorporates herein by reference and attaches hereto the following documents:

1) Attachment A - Brief of the Rural Independent Coalition filed February 27, 2004.

2) Attachment B - Reply Brief of the Independent Coalition filed August 16, 2002, and included as an attachment to the February 27, 2004, Coalition Brief. This Brief includes an attachment of the Initial Brief of the Rural Independent Coalition filed on November 9, 2000.

3) Attachment C – Reply Brief of the Rural Independent Coalition filed March 8, 2004.

In the Motions for Reconsideration of the *May 6 Order,* neither BellSouth nor the CMRS providers offer any new argument of fact or applicable law that is not fully addressed in the prior Coalition pleadings incorporated by reference and attached hereto. In addition to the discussions

1 *See, Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer* (May 9, 2001). *See also, May 6 Order,* p 12-13 where the Hearing Officer accurately states the status and applicability of the relevant standing Order of the Authority

of fact and law set forth in these attached pleadings, the Coalition offers a brief response below to the discussions set forth by BellSouth and the CMRS Providers in the Motions for Reconsideration.[2] Prior to responding to the Motions, however, the Coalition respectfully provides a summary of the single issue addressed by the *May 6 Order*, the compensation due to the Independents from BellSouth in accordance with the standing Orders of the Authority.

II. Background and Summary: The TRA Should Enforce Its Standing Orders in Full and Grant the Coalition Petition.[3]

A. The Coalition Petition was Filed to Address BellSouth's Disregard for the Authority's Effective Order.

The Coalition Petition was filed because BellSouth arbitrarily decided to cease payments due to the rural Independents associated with the termination of certain traffic. The traffic that is the subject of this dispute is traffic that originates on the network of a commercial mobile radio service ("CMRS") provider. On April 2, 2003, BellSouth transmitted a letter to Director Jones indicating that BellSouth would discontinue making payments to the Independents with respect to this "CMRS traffic." BellSouth had up until this point compensated Independents for the termination of the "CMRS traffic" in accordance with the terms and conditions of the

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2 The Coalition is obligated to point out the factual inaccuracies and the inaccurate application of law and regulation set forth by other parties In doing so, the Coalition respectfully notes the Hearing Officer's observation regarding "he-said-she-said type accusations hurled between the parties in the briefs " *May 6 Order*, p 15. This comment raises a perplexing question for the Coalition· what is the proper course of response when faced with inaccurate factual and legal attacks by other parties? The Coalition concludes that the interests of its members and the rural communities and subscribers they serve require a full and forceful response The Coalition respectfully takes exception to any suggestion or implication that the Coalition initiated any "he-said-she-said" accusation against any party The Coalition and its representatives stand ready, willing and able to discuss any matter or aspect of this proceeding with any member of the Authority or its Staff The Coalition did indeed initiate accusations based on fact and law in order to protect its members and to seek enforcement of their existing rights And, the Coalition has responded forcefully to inaccurate charges and innuendo. The Coalition respectfully urges that the Authority not confuse forceful arguments based on fact and law with "he-said-she-said" accusations based on misstatement or mischaracterization of fact and law

3 The Coalition offers this "Summary" to assist the Authority in its review. The relevant facts and applicable law and regulation are fully set forth in the prior pleadings submitted by the Coalition and attached hereto

Interconnection Arrangements that the Authority required BellSouth to maintain until modified or terminated by the Authority.

BellSouth's April 2, 2003, correspondence to Director Jones did not ask for Authority permission to modify its obligations; it merely set forth a pronouncement of the action BellSouth determined to take. At the time that BellSouth took this unilateral action contrary to existing Order of the Authority, the Coalition, through its representative members, had been engaged in an ongoing series of discussions and negotiations with BellSouth regarding potential changes in the interconnection arrangements between BellSouth and each Independent. As a result of those ongoing discussions, the Hearing Officer had, at the request of both BellSouth and the Independents, held the matters in this proceeding in abeyance.

B. The Independents have not had their "heads in the sand" with respect to any aspect of this proceeding. The Coalition has sought to protect individual Independent company rights while concurrently pursuing compromise.

When BellSouth took the unilateral measure of ceasing payment to the Independents, the Coalition faced a dilemma. Coalition members were concerned that BellSouth had successfully convinced the TRA that the Independents had their "heads in the sand" with respect to the need to modify existing interconnection arrangements. Whether this concern was warranted or not, the Coalition members were resolute with respect to their intent to demonstrate that any such characterization is false.[4] The Independents had, in fact, invested considerable effort and resources in the development of a new universal service rate design plan that would significantly modify BellSouth's existing interconnection obligations to the Independents. The Coalition had anticipated presenting this plan to the Authority on a joint basis with BellSouth, and continues to

4 Irrespective of the concern regarding any preconceptions formulated at the TRA, it did turn out that this theme is a recurring one in BellSouth's pleadings *See, e g , BellSouth Telecommunications, Inc 's Motion For Reconsideration of Hearing Officer's Order Dated May 6, 2004* (the "*BellSouth Motion*") , p 3 ("(T)he ICOs continue to steadfastly refuse to do what is necessary to operate in this new world "

be ready and willing to pursue this proposal.[5]

The Coalition sought both to protect the individual company rights of its members and to demonstrate to Director Jones and the entire Authority that their heads were "not in the sand." Accordingly, the Coalition filed the Coalition Petition, but concurrently indicated willingness to continue good-faith discussions with BellSouth. Beyond a willingness to continue to talk, the Independents "put their money where their mouths were." The Independents agreed with BellSouth that the Coalition Petition could be held in abeyance while negotiations continued for 90 days. And, the Independents agreed to reduce the compensation amount owed by BellSouth to 3 cents per minute for the last thirty days of that 90-day period.[6]

The Hearing Officer approved the agreement of BellSouth and the Independents to hold the Coalition Petition in abeyance in an Order issued May 5, 2003. In the May 5 Order, the Hearing Officer "directed the Coalition and BellSouth to send correspondence to CMRS providers that have effective meet-point billing agreements with BellSouth inviting them to participate in negotiations and to file reports on the status of their negotiations with the CMRS providers at regularly scheduled intervals."[7]

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5 See, e.g., Attachment C, p. 25.

6 BellSouth's claims that the Coalition has only tried to maintain current compensation rates under the existing Interconnection Arrangements is belied by the willingness of the Independents to compromise and the agreement to reduce significantly the compensation rate to 3 cents while negotiations continued BellSouth is simply incorrect when it tries to gain the sympathies of the Authority with statements such as "They (the Independents) are hopeful that as long as BellSouth is footing the bill, they will receive more money (approximately 7 cents per minute of use in access charges) . ." *BellSouth Motion,* p 6. Contrary to BellSouth's claim, the Independents demonstrated their willingness to move by more than 50% from the 7 cent rate to which BellSouth claims the Coalition has clung

7 *May 6 Order*, p 6 citing the Hearing Officer's May 5, 2003 Order The Coalition respectfully notes that the Hearing Officer's reference to "meet-point billing agreements" has been misused by parties in this proceeding and the Independent/CMRS Provider Arbitration proceeding in Docket 03-00585. *See,* Attachment C, pp 11-15 There exists throughout this proceeding an unsupportable suggestion by BellSouth and the CMRS Providers that the election of two parties to enter into a bilateral arrangement called a "meet-point billing arrangement" can somehow impose obligations on a third party For the convenience of the Authority, the Coalition provides an extract from industry guidelines regarding so-called

D. The Coalition agreed to maintain the Coalition Petition in abeyance anticipating in good faith that BellSouth would reach a settlement agreement similar to those reached in all other states where similar issues between rural Independents and BellSouth have arisen.

The Coalition thereafter continued in good-faith to attempt to reach accord with BellSouth. Consistent with the Hearing Officer's May 5, 2003 Order[8], the Coalition expected to undertake two negotiations: 1) one with both the CMRS Providers and BellSouth to establish new terms and conditions applicable to the termination of CMRS traffic to Independent networks on an indirect basis through BellSouth; and 2) a temporary resolution of the amount due to each Independent under the existing Interconnection Arrangements for the termination of the traffic until the existing terms are modified or terminated as a result of subsequent Authority approval of new terms and conditions established by the negotiation with the CMRS Providers and BellSouth.

The Coalition was disappointed with respect to both negotiations. With regard to the negotiation that included the CMRS providers, BellSouth and the CMRS providers decided that BellSouth would not participate in the negotiations, irrespective of the fact that the discussions focused on the indirect interconnection arrangement that the CMRS providers seek to maintain through BellSouth. With respect to the negotiation with only BellSouth that addressed BellSouth's intent to modify the existing interconnection arrangement by reducing the terminating rate applicable to the "CMRS traffic," the Coalition members were initially willing to continue to hold the Coalition Petition in abeyance. Their decision to do so was based on the

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"meet point billing arrangements " The extract demonstrates that such arrangements are not established in the absence of all parties to the multi-party connecting arrangement. This industry guideline is consistent with basic notions of contract law and fairness – agreements among multi-parties cannot be established and enforced by agreement between only two parties. The Authority should be aware that this fundamental concept was ignored in the interlocutory order issued on April 12, 2004 by the Pre-Arbitration Officer in the Arbitration proceeding, Docket No 03-00585

8 *May 5, 2003 Order of Hearing Officer*, p 5

fact that in other states in the region, BellSouth and the Independents reached settlement.[9] The Coalition offer to reduce the compensation rate to 3 cents per minute until new terms and conditions were established through negotiation or arbitration was, however, rejected. BellSouth offered to apply an even lower rate for a limited period of time that would terminate with respect to traffic carried after March 2004 irrespective of whether new terms and conditions were approved by the Authority. As a result of this impasse, neither BellSouth nor the Coalition reported to the Hearing Officer with a request to continue to hold the Coalition Petition in abeyance. The Hearing Officer established a briefing schedule and subsequently issued the *May 6 Order.*

E. The *May 6 Order* precisely sets forth BellSouth's continuing obligations pursuant to existing Authority decision. The Coalition respects the Hearing Officer's attempt to provide a resolution that is consistent with those reached by compromise in other States. BellSouth, however, should not be rewarded for its recalcitrance.

When the Independents agreed to continue to hold the Coalition Petition in abeyance in order to continue to pursue good-faith negotiations with BellSouth, they did so because they could not fathom why BellSouth would not reach similar accord in Tennessee. If anything, BellSouth's motivation for reaching accord in Tennessee should have been possibly greater in Tennessee than in any other state. To the knowledge of the Coalition, Tennessee is the only State where the state regulatory authority has previously addressed an attempt by BellSouth to dishonor existing arrangements on a unilateral basis. Accordingly, Tennessee is the only State with an Order like the *December 29 2000 Order of the Hearing Examiner* which clearly articulates the continuing obligations of BellSouth. The Coalition has no knowledge of why BellSouth would feel so empowered in Tennessee to ignore the standing decision of the

9 On information and belief, the Coalition respectfully notes for the full Authority its understanding that such agreements have now been reached in Alabama, Georgia, Kentucky, Louisiana, Mississippi and North Carolina. In many instances, active state regulatory participation in a meditative role assisted the parties in

Authority in contrast to the settlements that have been negotiated with rural Independents in other States.

The Coalition appreciates the efforts of the Hearing Officer to bring this matter to finality. The briefing schedule afforded all parties the opportunity to expound fully on the pending issues in Docket No. 00-00523, and the Coalition respectfully directs the Authority's attention to Attachments A and C, the Brief and Reply Brief of the Coalition filed in response to the Hearing Officer's Scheduling Order. The pleadings in this matter by all parties are long and detailed. As the Coalition has noted, the matter itself, however, is not complex.

The Coalition also appreciates the efforts of the Hearing Officer to issue a timely decision in this proceeding subsequent to the end of the briefing schedule. In the *May 6 Order,* the Hearing Officer provides a comprehensive review of the background and the positions of the parties. The Hearing Officer correctly reaches the inescapable conclusion that "the Interconnection Arrangements contemplated by the *December 2000 Order* require BellSouth to provide compensation to the Coalition members for all CMRS-originated traffic terminated to the Coalition's end users in the same manner that BellSouth provided compensation prior to the issuance of the *December 2000 Order* until that obligation is otherwise modified or terminated by the Authority."[10] The matter before the Authority is no more complex than that. The lengthy pleadings by the Coalition were necessary only to ensure that the record in this proceeding was replete with explanation and citation setting forth why BellSouth's arguments in support of its attempt to avoid its obligations were not legally sustainable.

Subsequent to addressing the legal issue raised by the Coalition Petition and setting forth

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reaching resolution

10 *May 6 Order,* p 13

the legal conclusion regarding BellSouth's existing and continuing obligations, the Hearing Officer next addresses "whether the obligations created by the Interconnection Arrangements should be modified or terminated."[11] The Coalition respectfully submits that this issue was not raised by the Coalition Petition and is not pending in this Docket. Nor has there been notice of this issue or opportunity to present facts addressing any appropriate modification to any aspect of the existing interconnection arrangements.[12] The only issue raised by the Coalition Petition is the enforcement of BellSouth's existing obligations. Consistent with the Hearing Officer's discussion regarding the BellSouth continuing obligations, the Coalition respectfully requests that the TRA enforce its standing decisions and require BellSouth to compensate the Independents in accordance with the existing terms and conditions of the Interconnection Arrangements addressed by the *December 2000 Order.*

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11 *Id*, p 14

12 The only issue raised that is pending and ripe for decision is the enforcement of the continuing legal obligations of BellSouth Accordingly, there was no basis or reason for the Coalition to present any universal service impact data within the confines of the matters briefed in response to the February 17, 2004, scheduling order of the Hearing Officer The issue to be addressed was not the measurement of the impact of BellSouth's wrongful actions; nor was there notice to consider modification of the rate or any other existing term of the Interconnection Arrangements In this regard, the Coalition is concerned that the Hearing Officer's remarks regarding rate levels and universal service (*May 6 Order, pp 14-16*) may be misconstrued by other parties to suggest wrongly that the Hearing Officer has already made a determination regarding future rate levels without consideration of all the facts. As discussed in III A below, Bellsouth has already taken shelter in these comments and uses them as authority for its position Data that establishes cost support for the application of reasonable rates in rural telephone service areas for the transport and termination of traffic is compiled by the National Exchange Carrier Association and is readily available. Moreover, the rates voluntarily agreed to by any single Independent, as referenced at p. 15v of the *may 6 Order,* may have no relationship to the appropriate rate for another company. The Coalition is equally concerned that the Hearing Officer's remarks regarding universal service may also be misused by other parties The Hearing Officer made reference to "(t)he Coalition's desire to seek asylum . . under the umbrella of universal service . " The Coalition has great respect for the Hearing Officer and understands the Hearing Officer's remarks to convey to the Independents that in subsequent aspects of this Generic Docket Addressing Universal Service, the Coalition should be prepared to provide quantifiable information regarding the universal service impact of proposed changes. In the instant proceeding, however, no proposed change is under consideration The *de facto* and unlawful change in compensation to rural Independents has resulted from BellSouth's disregard of the decision of the Authority and not from the Authority's formal consideration of modification to the existing Interconnection Arrangements The Coalition anticipates that opponents of universal service policies may "take asylum" in the Hearing Officer's remarks in a manner that was clearly not intended, using the phrase "seek asylum from this change under the umbrella of Universal Service" with attribution to attack Tennessee's universal service policies in

The Coalition is fully aware that the practical result of the *May 6 Order* is to establish a framework similar to the compromise settlement agreements reached by BellSouth and the Independents in other states. The Coalition has repeatedly indicated its willingness to reach accord on the basis of compromise. BellSouth, however, rejected the offer of compromise and, distinct from the results reached through compromise in other states, the Independents and the TRA have been required to engage in the investment of time and effort in this formal process. The Coalition respectfully submits that BellSouth should not be rewarded for its disregard of the *December 2000 Order* and its unwillingness to reach the same type of compromise agreement through December 31, 2004 and beyond that it has entered in other States. The Coalition respectfully requests that the Authority issue a final Order modifying the Hearing Officer's *May 6 Order* by requiring BellSouth to meet fully its continuing obligations and to compensate the Independents in accordance with those obligations on an unmodified basis.

III. The Motions for Reconsideration of BellSouth and the CMRS Providers Set Forth No Basis to Permit BellSouth to Ignore its Established Continuing Obligations.

A. BellSouth should pay the Independents in accordance with the rates established by the existing interconnection arrangements.

BellSouth contends that the rate required by the *May 6 Order* is incorrect. BellSouth's argument incorrectly presupposes that the issue lawfully before the Authority is the level of the rate BellSouth should pay. As correctly indicated by the Hearing Officer, the single issue addressed by the *May 6 Order* is the Coalition Petition.[13] The single issue raised by the Coalition Petition is enforcement of the existing orders of the Authority. No party, nor the Authority on its

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the future in a manner that may harm to rural Tennessee consumers and communities and the efforts of Tennessee's rural telephone companies

13 *May 6 Order*, Section II Outstanding Issues, p 7

own motion, has initiated formal consideration of the modification of the applicable rate to be applied in accordance with the existing Interconnection Arrangements.

The only discussion of a modified rate has taken place within the framework of compromise settlement discussions. No factual basis exists on the record before the Authority to modify the existing applicable rate, much less modify it on a retroactive basis. The single issue before the Authority raised by the Coalition Petition is the enforcement of the Authority's existing decisions

BellSouth's references to "market rates" and rates voluntarily negotiated with respect to interconnection under Section 251(b)(5) of the Act are not relevant to the consideration of enforcement of BellSouth's existing obligations under the Interconnection Arrangements.[14] The establishment of new terms and conditions to modify or terminate the existing BellSouth obligations was initiated by the *May 5, 2003* Order of the Hearing Officer and is, at present, the subject of the arbitration proceeding in Docket No. 03-00585.[15]

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14 *BellSouth Motion, pp 7-8* At most, BellSouth's discussion would be relevant to a proceeding initiated to consider modification of existing terms BellSouth, however, did not elect to seek any such proceeding BellSouth chose self-help, unilaterally informing the Hearing Officer of its decision to cease payments to the Independents The BellSouth arbitrary action gave rise to the request of the Coalition to the TRA to enforce its decision regarding the continuing BellSouth obligations under the existing Interconnection Arrangements

15 In this regard, the Coalition notes with concern BellSouth's attempt to support its position by reference to the Hearing Officer's remarks regarding rate levels established by voluntary agreements where the rate may be only one aspect of an overall bargain reached pursuant to Section 252 of the Act and without regards to the requirements of Section 251 of the Act BellSouth refers to the Hearing Officer's reference to these agreements as "recognition of important precedent approved by the Authority" *BellSouth Motion*, p. 8 Similarly, BellSouth attempts to build upon another statement by the Hearing Officer and states "**Further highlighting the problem, the Hearing Officer's order notes BellSouth's argument, based on existing agreements, the likelihood that a 3 cent rate would likely exceed the rate adopted in the arbitration.**" *Id* At pp 8 and 10 Contrary to the impression that may be conveyed, the remarks of the Hearing Officer cited by BellSouth simply presented facts (i e , the factual existence of voluntarily reached agreements, and the fact that BellSouth – not the Hearing Officer – argues that an arbitrated rate could be less than three cents per minute) The Hearing Officer's remarks obviously did not set forth a preconceived decision or prejudice regarding the appropriate level of rates that may be established in Docket No 03-00585

Ironically, BellSouth also argues that the 3 cent rate established by the *May 6 Order* is "out of line with rates being paid elsewhere in BellSouth's region under settlement agreements."[16] The Coalition has fully addressed the deficiencies in the "compromise" offered by BellSouth and the distinctions in the last BellSouth proposal to the Coalition from those agreed to in other States.[17] If this proceeding was one established to address a factual record to support a proposed modification of the existing Interconnection Arrangement with a replacement "compromise," the Coalition would be ready and able to provide a witness to explain that the Coalition offer to reduce the terminating rate to three cents provides a reduction of a greater magnitude than that which was arrived at by compromise in other States. That is, however, not the subject of this proceeding or the Coalition Petition.[18] This proceeding addresses the Coalition's request to the TRA to enforce its existing decision and require BellSouth to compensate the Independents in accordance with its existing obligations under the Interconnection Arrangements. Moreover, BellSouth should be required to maintain payment in accordance with the established rate until its obligations pursuant to the Interconnection Arrangements are modified or terminated by the Authority through an appropriate process established to address applicable facts and law. The Coalition respectfully asks that the Authority enforce its decision in full and require BellSouth to compensate the Independents on the basis of the established rate used in the Interconnection Arrangements.

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16 *BellSouth Motion*, p 8

17 *See,* Attachment C pp. 16-18

18 BellSouth complains that the *May 6 Order* imposes a "compromise" that is "unfair and one-sided " *BellSouth Motion*, p 12 The Coalition respectfully submits that the Authority should not simply impose a "compromise," but should enforce its prior decision. If anything is "unfair," it is the imposition BellSouth has forced on the Coalition to invest in this effort to enforce the Authority's standing decisions. BellSouth wrongfully claims that the indirect interconnection that exists is exclusively a matter between the Independents and the CMRS Providers *Id* at p 13 The Coalition has thoroughly addressed and demonstrated the fallacy of this BellSouth posturing *See*, Attachment C, pp 6-15

C. The *May 6 Order* is not in conflict with either the standing final orders of the Authority or with federal statute and regulation.

1. BellSouth's reliance on the April 12, 2004 Order *Denying Motion* (the "*Interlocutory Order*") issued by the Pre-Arbitration Officer in Docket 03-00585 is misplaced.

In its *Motion* for reconsideration to the Authority, BellSouth places its heaviest reliance on the *Interlocutory Order* issued April 12, 2004 in the arbitration proceeding, Docket No. 03-00585.[19] The Coalition, while appreciative of the opportunity to comment to the Authority with respect to the *Interlocutory Order*, is surprised that BellSouth has taken the position that the *Interlocutory Order* constitutes a final order that addresses and resolves fundamental issues in Docket No. 03-00585. The subject matter of Docket No. 03-00585 is the consideration of new terms and conditions that would, with the approval of the Authority, be applied to the existing three-way physical indirect interconnection arrangement between the CMRS Providers and the Independents through BellSouth. In contrast, the subject matter of the Coalition Petition and the *May 6 Order* is the enforcement of the existing terms and conditions applicable to the termination of the CMRS traffic by BellSouth pursuant to the Interconnection Arrangements.

This proceeding is about the existing terms that BellSouth disregarded beginning more than a year ago and the resulting lack of compensation to the Independents. BellSouth is by order of the Authority required to maintain the existing terms until its obligations are modified or terminated by the Authority. Nonetheless, BellSouth maintains that the *Interlocutory Order* in the Arbitration proceeding not only constitutes a final order, but that *dicta* in the *Interlocutory Order* constitutes a final determination of a fundamental and crucial issue pending in the proceeding.

As the Authority would undoubtedly expect, many of the issues that are pending in

19 *See, e g , BellSouth Motion,* p 2 ("Perhaps most importantly . "), *See also, Id* at p. 11, Sec. IV

Docket No. 00-00585 address the rights and responsibilities of all the parties to the indirect three-way interconnection arrangement and the inter-relationship of each party with the other two parties to the arrangement. Although BellSouth and the CMRS Providers are all parties to this proceeding, BellSouth is not a party to Docket No. 00-00585. The Coalition respectfully submits that administrative efficiency, basic principles of privity of contract, and plain common sense make BellSouth an indispensable party to Docket No. 00-00585. Accordingly, the Coalition submitted a "Preliminary Motion" to seek to join BellSouth to the proceeding in accordance with the scheduling order set forth in Docket No. 03-00585 and TRA Rule 1220-1-2-.06.20. As the *Interlocutory Order* indicates, the Pre-Arbitration Officer did not agree that BellSouth should be brought into the Docket No. 03-00585 proceeding as a party.

Because the decision is an interlocutory decision on the Preliminary Motion, the Coalition's substantive rights were not affected by a final order. The Coalition views the *Interlocutory Order* decision of the Pre-Hearing Arbitration Officer as both incorrect and unfortunate from the perspective of efficiency of process. In the absence of BellSouth, the Coalition respectfully submits that it will not be possible to resolve fully many of the specific pending issues in Docket No. 03-00585, as the Coalition addressed in its Preliminary Motion.

BellSouth, however, has seized upon *dicta* in the *Interlocutory Order* as support for its incorrect proposition that it bears no responsibility for compensation to the Independents.[21]

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20 The *BellSouth Motion* attached the *Interlocutory Order* The Coalition attached the Coalition's Motion (Attachment E) and the Coalition's Reply to the responses of other parties to its Preliminary Motion for the convenience of the Authority.

21 The Coalition has addressed the flaws in BellSouth's position numerous times *See, e g* Attachment C, pp 9-11. The federal Act and the *December 2000 Order of the Hearing Officer* are consistent in this regard. The standing order of the Authority requires BellSouth to maintain its obligations and provide compensation to the Independents in the same manner that it did prior to the *December 2000 Order*. Prior to this order, BellSouth paid the Independents for the termination of the CMRS traffic in accordance with the Interconnection Arrangements (the "Toll Settlement Agreements " Continued enforcement of the existing obligations, until modified or terminated, is consistent with Section 251(g) of the Act which provides that a local exchange carrier may continue to provide exchange access service to an interexchange

BellSouth apparently believes that it can skip due process and rely on the *Interlocutory Order* to alleviate itself from responsibility. BellSouth asserts that the *Interlocutory Order* has established that BellSouth has no payment responsibility.[22] In contrast, the Hearing Officer noted in the *May 6 Order* that the matter of "Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO (Independent)" remains to be determined in Docket No. 03-00585.[23]

The *Interlocutory Order*, irrespective of BellSouth's utilization of *dicta*, only determined that BellSouth would not be a party to the Docket No. 03-00585 proceeding. Contrary to BellSouth's interpretation, the *Interlocutory Order* in response to a "Preliminary Motion" could not resolve fundamental substantive issues pending in the proceeding. The *May 6 Order* is not in conflict with any final order or established policy of the Authority. The *May 6 Order* does not pre-judge the open issues in Docket No. 03-00585 which will address new terms, conditions, rights and responsibilities with respect to the existing three-way indirect interconnection arrangement among the CMRS providers, BellSouth and the Independents. The *May 6 Order* is limited in scope to the enforcement of the existing rights and responsibilities between BellSouth and the Independents.

2. The *May 6 Order* is not in conflict with federal rules regarding "interim compensation."

The CMRS Providers ask for reconsideration based on a flawed argument, wrongly claiming that the May 6 Order conflicts with federal regulations regarding "interim

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carrier (a toll carrier) pursuant to the same terms (including compensation) until the terms are modified by the Federal communications Commission

22 *BellSouth Motion*, p 2

23 *May 6 Order*, p 17

compensation." The Coalition has fully addressed this claim on the record in this proceeding.[24] In their Petition for Reconsideration, the CMRS Providers fail even to attempt to rebut the discussion previously offered by the Coalition. In fact, the CMRS Providers cannot rebut either the Coalition's discussion or the plain meaning of the Rules and Regulations of the Federal Communications Commission ("FCC") which they incorrectly interpret.

The Coalition stated the following in the Reply Brief filed March 8, 2004 in this proceeding[25]:

> The concept of "interim compensation" is found only in Section 51.715 of the FCC's Rules and Regulations.[26] The Coalition is not aware of any instance where a carrier seeking new terms and conditions for an existing indirect interconnection arrangement has established interim compensation pursuant to these rules. The Section 51.715 rules, in fact, do 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." [27] The rules address circumstances where a carrier does not have any interconnection and it seeks to establish transport and termination on an incumbent LEC network. The interim arrangement rules established by Section 51.715 assure a requesting carrier that it does not have to wait to interconnect its traffic "pending resolution of negotiation or arbitration regarding transport and termination rates by a state commission under sections 251 and 252 of the Act."[28]

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24 BellSouth claims that the Pre-Arbitration Officer "ordered the parties to submit briefs on interim compensation " *BellSouth Motion*, p. 7 The Coalition is set forth the applicable facts and law in this proceeding, but it is not aware that the Pre-Arbitration Officer required briefing of this matter in Docket No 03-00585 The Scheduling Orders issued on March 2, 2004 and April 15, 2004 do not indicate any such requirement The Coalition will confer with the Pre-Hearing Arbitration Officer and offer to provide copies of the discussions regarding interim compensation set forth in this proceeding

25 *See*, Attachment C, p 19

26 47 C F R Sec 51 715

27 47 CFR Sec 51 715(a)(1)

28 47 CFR Sec 51 715(a) The rules also contemplate that the requesting carrier seeks transport "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." 47 CFR Sec. 51 701(c) The negotiation discussions between the Coalition representatives and the CMRS carriers focused only on the development of new terms and conditions applicable to the existing interconnection arrangement, and not to the establishment of any specific point of interconnection between any rural Independent with any CMRS carrier

> Under the given circumstances, the CMRS carriers do not require an interim arrangement to ensure that they can terminate traffic to each rural Independent through BellSouth; an arrangement already exists. The Section 51.715 rules are not needed to establish interconnection, and the indirect interconnection arrangement under consideration is already used. Accordingly, the Section 51.715 rules are not applicable.

The CMRS Providers are incorrect in their arguments regarding the application of the interim compensation rules established by the FCC. Even if they were correct – and they are not – the *May 6 Order* does not preclude the CMRS Providers from asserting and establishing any rights to which they are entitled pursuant to established standards and regulation within the context of the Docket No. 03-00585 arbitration proceeding. The CMRS Providers' Petition for Reconsideration fails to raise any arguable matter of fact or law that warrants reconsideration.

3. Contrary to the assertions of BellSouth and the CMRS Providers, the *May 6 Order* provides for "true-up" in the event that "true-up" is appropriate.

Both the CMRS Providers and BellSouth complain that the *May 6 Order* "fails to require true-up."[29] The *May 6* Order, however, specifically addresses the concerns that the parties raise, and, properly, does not pre-judge the outcome. Specifically, the CMRS Providers complain that the May 6 Order "disregards the (alleged) compensation due the CMRS Provider" and argues that the "adopted rates are not subject to true up."[30] The CMRS Providers and BellSouth each demand that the *May 6 Order* be modified to state that all payments made will be subject to the terms adopted in Docket No 03-00585.[31]

The Hearing Officer, however, has already addressed these arguments. The *May 6 Order* accurately observes that "This dispute arose out of the Interconnection Arrangements between BellSouth and the Coalition. Therefore, the Hearing Officer's resolution involves only those

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29 *Bellsouth Motion*, p 11, CMRS *Providers Motion*, p 5
30 *CMRS Providers Motion*, p 5
31 *Id*, p 8 *BellSouth Motion*, p 11

parties." [32] The dispute before the Hearing Officer addresses the existing terms and conditions consistent with the Interconnection Arrangements. The arbitration in Docket No. 03-00585 addresses the unresolved issues in the negotiation that was initiated to establish new terms and conditions to replace the Interconnection Arrangements with respect to traffic originated on the networks of the CMRS Providers and terminated by the Coalition members.

The Hearing Officer did not foreclose any rights of CMRS Providers which they may seek to establish in the Arbitration proceeding. Nor did the Hearing Officer foreclose any rights that BellSouth may subsequently establish as a result of the Docket No. 03-00585 proceeding. The Hearing Officer specifically recognized the possibility that the CMRS Carriers and the Coalition could reach an interim agreement in Docket No. 03-00585, and provided for a mechanism for BellSouth to request relief from the *May 6 Order* under those circumstances.[33]

IV. Contrary to BellSouth's Claims, the Independents Seek Resolution and Stability Regarding the Matter of the Indirect Three-Way Interconnection Arrangement.

BellSouth claims that the Independents seek to delay the establishment of new terms and conditions associated with the indirect interconnection of the CMRS Providers through BellSouth.[34] As discussed and demonstrated below, BellSouth is incorrect. The Independents seek resolution of these matters, but the Independents will not accept an imposed framework that denies their rights in accordance with established statutory and regulatory requirements.[35]

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32 *May 6 Order*, p 17

33 *Id*

34 *BellSouth Motion*, pp 9-11 The fact is that even if the Independents sought to employ delay tactics, they cannot unilaterally impede or change the statutory deadlines of an arbitration process that is conducted in a manner consistent with established statutory and regulatory standards

35 The Independents acknowledge that they are concerned about the protection of their established rights, and are determined that the outcome of the Docket No 03-00585 should be one that is consistent with established statutory and regulatory requirements, and consistent with the requirements of Section 252(c) of the Act. The concern of the Coalition has been increased as a result of the *dicta* set forth in the Pre-Arbitration Officer's *Interlocutory Order* and BellSouth's attempt to utilize that *dicta* in this proceeding

BellSouth's contention that the Independents seek delay amounts to nothing more than a blatant attempt by BellSouth to try to get the TRA to punish the rural Independents for seeking to protect their rights. Essentially, BellSouth wants the TRA to ignore the application of the *December 2000 Order of the Hearing Officer* or come up with some *post hoc* rationalization to free BellSouth from the application of the Order.

The *December 2000 Order* made good policy sense when it was issued and it makes good policy sense today. The Order was affirmed by the full Authority, but BellSouth wants the Authority to find a reason not to apply it because doing so will help BellSouth's bottom-line. BellSouth's arguments convey a sense of indignation that BellSouth has somehow been taken advantage of. No Independent or any party, however, has taken advantage of BellSouth. BellSouth freely entered into two-way agreements with the CMRS Providers and, for a fee, agreed to carry the CMRS traffic to the Independents with full knowledge that the *December 2000 Order* was in effect and with full knowledge that the CMRS Providers had not exercised their rights to request interconnection from the Independents.[36]

Contrary to the suggestions of BellSouth,[37] the Independents are well aware of changes in the industry and the lawful right of any party to modify or establish terms and conditions for interconnection in accordance with established statutory and regulatory requirements. That right is one that belongs not only to CMRS Providers and BellSouth, but also to each rural Independent. The Coalition cannot control the "he-said-she-said" attacks of other parties. The Coalition trusts, however, that the Authority's Directors and Staff will not view as "stall" or

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36 As if it were a stain against the integrity of the Independents, BellSouth again raises the question of why the Independents have not sought arrangements with the CMRS providers *See, BellSouth Motion*, p 5 And, again, the answer is found in the Act and the FCC's rules The establishment of Section 251(b)(5) termination on the networks of the Independents, through a Section 252 negotiation and arbitration process is subject to a request by the originating carrier to the incumbent LEC

37 *See, e g , BellSouth Motion*, p 3

"delay tactics" the concerted efforts of the rural Independents to protect their rights in order to maintain and foster their individual commitments to their rural Tennessee communities and the provision of universal service. While large companies may scoff at the genuine concern of the Rural Telephone Companies and Cooperatives for their communities, the members of the Coalition are confident that their rural customers and public representatives do not scoff.

The pleadings attached to this Reply reflect the extensive commitment of the Coalition to foster consensus toward a new rational universal service rate design proposal.[38] The Coalition's efforts to ensure that regulatory processes are meaningful, productive and efficient have continued throughout this proceeding. A review of the specific Coalition efforts in this regard demonstrates that the Independents do not seek to delay or stall, notwithstanding the continued claims to the contrary by BellSouth In fact, the good-faith efforts of the Coalition to resolve the issues raised in the Coalition Petition, and the Coalition's agreement to hold the Petition in abeyance for so long, only resulted in a "stall" of BellSouth's obligation to compensate the Independents.

If the members of the Authority read only the *BellSouth Motion*, they will be left with the impression that the Coalition has attempted to stop the Docket No. 03-00585 process and the establishment of new terms and conditions applicable to the three-way indirect interconnection arrangements among the CMRS Providers, BellSouth and the Independents. BellSouth suggests that the Coalition's "Preliminary Motion" (the subject of the *Interlocutory Order*) was an attempt to stop the process [39]

A review of the "Preliminary Motion," however, will reveal that the Coalition has not tried to stop the establishment of new terms and conditions related to the indirect interconnection

38 *See, e g*, Attachment C, pp 23-28
39 *See, BellSouth Motion*, p 4, fn 1

through BellSouth. The Coalition has tried, however, to ensure that the process is consistent with established statutory and regulatory requirements and legal principles. Specifically, the Coalition demonstrated that: 1) numerous issues related to a three-way interconnection arrangement cannot be addressed in the absence of one of the parties (i.e , Bellsouth), and 2) that the arrangement and requirements sought by the CMRS providers are not consistent with the established regulatory and statutory requirements and, therefore, cannot be resolved and sustained under the standards of Section 252 The Coalition, however, did not suggest that the process of establishing new terms and conditions should stop. The Coalition proposed, and continues to suggest, that the TRA utilize alternative dispute resolution to resolve all issues among all parties (including BellSouth) that are associated with the establishment of new terms and conditions applicable to the existing indirect interconnection of the CMRS Providers to the rural Independents through the BellSouth network.[40]

Conclusion

Neither the Motion filed by BellSouth nor the CMRS Providers provides any factual or legal basis for the Authority to permit BellSouth to avoid its established and continuing obligations consistent with the *December 2000 Order of Hearing Officer*. The *May 6 Order* properly articulates the existing and continuing obligations to which BellSouth is subject until the Authority modifies or terminates those obligations.

The Coalition fully respects the effort of the Hearing Officer to craft a resolution to the Coalition Petition that is consistent with the principles of the settlement agreements BellSouth

40 *See, e g* Attachment E, p 6 and Attachment F, p 2 -3 The Coalition respectfully suggests that the Authority may, on its own motion, review the "Preliminary Motion" of the Coalition and determine whether an alternative dispute resolution process may be in the public interest A "fresh look" at the "Preliminary Motion" and the *Interlocutory Order* may be appropriate in light of the awareness the Authority now has with respect to how the *dicta* in the *Interlocutory Order* may be used, as suggested by the *BellSouth Motion*, to demonstrate that a pending issue in arbitration proceeding has been pre-judged (in a manner contrary to Section 251(g) of the Act)

and other rural independents reached in other states. BellSouth, however, should not be rewarded for its reluctance to enter into a similar settlement (through December 31, 2004 or beyond) and its seizing an opportunity to deprive the Independents of compensation for more than a year.

The integrity of the processes and orders of the Authority should be upheld and enforced. Accordingly, the Coalition respectfully submits that, consistent with the request set forth in the Coalition Petition, the Authority should fully enforce its standing decisions and require BellSouth to compensate the Independents in accordance with the terms and conditions of the existing Interconnection Arrangements until those arrangements are modified or terminated by the Authority on the basis of applicable fact and law.

Respectfully submitted,

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June 7, 2004

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I , the undersigned, hereby certify that on June 7, 2004, a true and correct copy of the foregoing was served on the parties of record, via the method indicated below:

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Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING	)	DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE	)	
	)	
	)	

BRIEF OF THE RURAL INDEPENDENT COALITION

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, Inc.
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

"The Rural Independent Coalition of Small LECs and Cooperatives"

February 27, 2004

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING	)	**DOCKET NO. 00-00523**
RURAL UNIVERSAL SERVICE	)	
	)	
	)	

BRIEF OF THE RURAL INDEPENDENT COALITION

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents") respectfully files this Brief in response to the direction of Hearing Officer Ron Jones, Director of the Tennessee Regulatory Authority ("TRA" or "Authority"), at the Status Conference held in the above-referenced proceeding on February 17, 2004. The Coalition membership is comprised of 21 Independent telephone companies and cooperatives which collectively provide approximately 340,000 access lines to customers who reside and work within the more rural areas of Tennessee

At the February 17 Status Conference, the Hearing Officer requested that the parties address two matters

1. The Pending July 25, 2003, BellSouth "Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000" (the "BellSouth Motion")[1]; and

2. The Pending April 3, 2003 "Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition" (the "Coalition Petition").

In addition, the Hearing Officer asked the parties to identify any additional pending issues and to propose how to proceed

1 BellSouth originally filed a Motion on July 15, 2002 and subsequently filed this "Substitute Version "

I. Introduction, Summary and Background

In response to the requests of both BellSouth and the Coalition, the Hearing Officer has held the BellSouth Motion in abeyance since September 4, 2002, and the Coalition Petition in abeyance since May 5, 2003. In an effort to resolve by agreement the issues associated with each of these pleadings, the Parties have held numerous discussions and exchanged both correspondence and proposals. While it is regrettable that the parties have not resolved the underlying issues, the fact is that the most ardent of good faith negotiations does not always resolve disputed differences. The participation of a lawful decision-maker is sometimes required to ensure that order and integrity of process is maintained In this instance, the Coalition respectfully has concluded that the participation of the TRA is required to address both the pending BellSouth Motion and the Coalition Petition.

A. The pending BellSouth Motion and Coalition Petition are not affected by any changes in law or regulation that have become effective subsequent to the prior filings by the parties addressing these issues

Although the underlying dispute between BellSouth and the Coalition members involves certain disputed legal issues, neither the BellSouth Motion nor the Coalition Petition is complex. The parties have previously addressed the relevant facts and the relevant law, and the Coalition will not burden the record with repetitive argument [2] During the period of time that has elapsed while the BellSouth Motion and the Coalition Petition have been held in abeyance, the Coalition is aware of no change in law that is relevant to the resolution of either.[3]

B. No dispositive factual issues are in dispute

2 For convenience and ease of reference, the Coalition attaches hereto the August 16, 2002 Reply Brief of the Coalition in response to the BellSouth Motion Attached to this Reply Brief is the November 9, 2000 Brief of the Coalition in response to the Hearing Officer's request for briefing of Issues 1, 2, and 3 in this generic rural universal service proceeding The BellSouth Motion addresses only Issue 2 As noted below, BellSouth has previously appealed the decision of the Hearing Officer regarding Issue 1, and that decision was affirmed by the Authority

3 Should any party suggest in its Brief that any purported change in state or federal law or regulation is relevant to the determination of either the BellSouth Motion or the Coalition Petition, the Coalition will address any such contention in its Reply Brief

There are no factual disputes which could otherwise complicate the determination of the pending BellSouth Motion and Coalition Petition. The full record in this proceeding contains all of the facts necessary to the resolution of each In summary, the facts are as follows.

1. BellSouth has an established physical interconnection of its network with each Coalition member

2. The physical interconnection between BellSouth and each Coalition member is subject to terms and conditions set forth in agreements between the parties.

3. The physical interconnection of BellSouth to the networks of other carriers is subject to the jurisdiction of the TRA with respect to the transmission of telecommunications services (other than interstate interexchange service).

4 BellSouth wants to change the terms and conditions of the existing arrangements between BellSouth and each Coalition member The Coalition invested considerable time and effort in the development of new terms and conditions together with a proposed statewide plan to preserve and advance universal service in the areas of rural Tennessee served by the Coalition members.
Although the Coalition understood from the negotiations that BellSouth is in agreement with the proposal, discussions between BellSouth and the Coalition reached an impasse. The breakdown in the discussions has occurred because the Coalition members will not commit to alter existing interconnection terms or to request TRA authority to do so in the absence of the implementation of a comprehensive rate design and cost recovery proposal that preserves universal service in rural Tennessee without producing inordinate pressures to increase basic service rates

5 BellSouth formerly made payments to the Coalition members for the termination of traffic that BellSouth carried on a for-fee basis to the networks of each Independent Payments were made in accordance with the compensation terms and conditions of the existing contractual arrangements between each Independent and Bellsouth With the approval of the Hearing Officer, the amount of compensation was revised for a three month interim period ending on May 31, 2003 for that traffic that BellSouth identified as originating on a wireless carrier network With respect to traffic carried subsequent to May 31, 2003, BellSouth has refused to honor the existing arrangement and has made no payment to the Coalition members for the termination of this traffic.

C No relevant facts are in dispute, all applicable legal issues have been resolved The underlying issues raised by the BellSouth Motion and the Coalition Petition have been determined by prior Orders of the TRA and the Hearing Officer, enforcement of the Authority's decision is required

The prior pleadings and Orders in this proceeding fully document the origins of the dispute between BellSouth and the Independents BellSouth wants to alter the existing interconnection arrangements with the Independents; the Independents do not disagree with the notion that it is mutually advantageous to consider changes in rate design and other interconnection terms and conditions in light of the evolution of both technology and the competitive marketplace

The initial and fundamental difference between BellSouth and the Independents is with regard to the process and factors that should be considered and addressed in the implementation of any new interconnection arrangements. Within this proceeding, the Coalition has previously addressed the direct relationship of these arrangements and the ability of rural Independents to maintain and advance the objectives of universal service.[4] The Coalition has urged only that changes in the interconnection arrangements with BellSouth should not be undertaken without consideration of the impact on universal service and that no change should be implemented without TRA approval. It is the understanding of the Coalition that BellSouth would like to treat the terms and conditions of its interconnection with each Independent as a purely commercial contract matter as opposed to a matter that is subject to TRA's rights and obligations regarding the maintenance and fostering of universal service throughout the State of Tennessee.

4 In summary, rural Independent service areas generally have geographic and demographic characteristics that result in higher service costs per customer In order to ensure that the objectives of universal service are met, recognition has been given not only in Tennessee, but at the federal level and throughout the nation, to the fact that all customers benefit from the ability to send and receive telecommunications to and from rural areas This principle has traditionally translated into various forms of rate design mechanisms in order to ensure that the public interest of all ratepayers is preserved

BellSouth initially sought simply to cancel all existing interconnection terms and conditions with the Independents, and to continue utilization of the physical network interconnection to each Independent without any further financial compensation arrangement The Coalition argued and demonstrated that the existing terms and conditions of interconnection between BellSouth and each Independent exist under the authority of the TRA, and that the arrangements reflect a reasoned rate design and cost recovery mechanism for rural Independents and their customers that foster the preservation of universal service objectives

In the "Initial Order of Hearing Officer" issued on December 29, 2000, the former Hearing Officer determined that the TRA has jurisdiction over the Settlement Contracts "arrangements" between BellSouth and the Coalition members. In addition, the Hearing Officer ordered that the existing arrangement would remain in place "until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority "[5] BellSouth did not like the decision; it appealed to the Authority On May 9, 2001, the Authority, however, affirmed the Initial Order of the Hearing Officer, stating "BellSouth cannot rely on what it terms 'private' contractual provisions to circumvent or avoid its regulatory obligations "[6]

The Initial Order of the Hearing Officer and the Authority's Order affirming the Hearing Officer resolved the legal issues that are pertinent to the resolution of both the pending BellSouth Motion and the Coalition Petition

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5 Initial Order of Hearing Officer, Docket No 00-00523, p 12 It is significant to note that the Hearing Officer determined at footnote 28 of this Order that the arrangement between BellSouth and each Independent is ordered to be maintained "outside of the existing contract "

6 Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of the Hearing Officer, Docket No, 00-00523, p 11

1. The terms and conditions of the interconnection arrangements between BellSouth and each Independent remain in effect, and

2 These term and conditions are in effect by Order of the Authority – not as a matter of contract, but outside of the existing contract.

Neither of these statements is under appeal or review. The legal issues reflected by these statements were rendered by the Hearing Officer and affirmed by the Authority, and each is applicable to the resolution of the pending BellSouth Motion and Coalition Petition

II. The BellSouth Motion Is Moot and Should Be Dismissed

On June 28, 2002, the Hearing Officer issued an Order addressing "Legal Issues 2 & 3 Identified in the *Report and Recommendation of Pre-Hearing Officer* Filed on November 8, 2000." On July 15, 2002, BellSouth initially filed its Motion for reconsideration of this Order. The BellSouth Motion addressed only Issue 2: "Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding?"

In the June 28, 2002 Order addressing Issue 2, the Hearing Officer concluded that "it is lawfully incumbent upon the Authority to consider the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers in the Rural Universal Service Proceeding."[7] The Hearing Officer did not suggest that the Independents and BellSouth should view this determination as an indicator that they should cease discussions and negotiation of settlement arrangements, and the Independents certainly did not interpret the Order as any such indicator

Nonetheless, BellSouth filed its Motion regarding only Issue 2. The BellSouth Motion does not seek actual reconsideration of the Hearing Officer's determination of Issue 2 Instead,

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7 Initial Order of Hearing Officer, Docket No 00-00523, issued June 28, 2002, p 4

BellSouth sought "clarification" that this Order was not intended to suggest that the parties should not continue to negotiate. In its brief in support of its Motion, BellSouth stated that its "bottom line" is that it seeks relief to ensure "that nothing in this docket should delay or stand in the way of reaching a new agreement, and entering into a new contract, governing toll settlements" with the Independents [8]

In its Reply Brief filed on August 16, 2002, the Coalition noted that BellSouth had been informed by word and deed that each Independent fully understands that the Authority encourages the Independents and BellSouth to discuss, negotiate, and arrive at mutually agreeable terms and conditions [9] The subsequent events have demonstrated the factual reality of the Coalition's statement. Subsequent to the filing of the Coalition's Reply Brief, BellSouth requested on August 23, 2002 that the BellSouth Motion be held in abeyance to afford the parties the opportunity to negotiate. The request was granted on September 2, 2002.

Thereafter, a series of discussions together with the crafting of new proposals ensued The parties approached this process in good faith, jointly sought additional continuances of the Order holding the BellSouth Motion in abeyance, and reported continuously in accordance with the schedule established by the Hearing Officer

The members of the Coalition approached this process with openness and commitment The Coalition sought to develop consensus toward a new proposal that addresses the concerns of the parties and, most significantly, the overall public interest concerns regarding the maintenance of universal service in the areas of rural Tennessee served by the Independents The Coalition members are well aware that outside of formal processes and proceedings, other parties may

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8 Brief of BellSouth in Support of its Motion, August 2, 2002, p 4

9 Reply Brief of the Coalition in Opposition to the BellSouth Motion, August 16, 2002, pp 2-3

disparage rural independent telephone companies, boldly but unjustly suggesting that the Independents seek only to maintain existing interconnection arrangements for wrongful purposes.[10] Accordingly, the Coalition was intent to demonstrate a creative pro-active approach, and to dispel this false characterization and suggestion that the Independents were in any way slowing the process of implementing any changes that would be rational and serve the public interest

The Coalition achieved this objective The facts speak for themselves·

1 In the course of the negotiations that took place between BellSouth and the Coalition, the Independents agreed to implement a BellSouth proposal regarding changes in the terms and conditions pursuant to which private line services are offered.[11]

2 When BellSouth, contrary to the Authority's mandate to maintain existing interconnection arrangements and payments, arbitrarily ceased payment of termination charges to the Independents for traffic that BellSouth identifies as "CMRS traffic," the Independents strived to reach a compromise and agreed to accept significantly reduced compensation payments for an interim period

3 The Coalition invested considerable time, resources and effort to develop a consensus proposal incorporating significant reductions in interconnection rates charged to BellSouth, the Coalition understood that it had fully addressed BellSouth's objectives [12]

The details of the Coalition's proposal to establish new interconnection terms and conditions in a manner that serves the public interest and all reasonable interests of all parties may properly become the subject of future aspects of this generic rural universal service

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10 *See, e g ,* page 2 of the original BellSouth Motion filed on July 15, 2002 wherein BellSouth acerbically states its belief that the Independents have attempted to prevent BellSouth from terminating existing interconnection arrangements in order "to continue to benefit from an unintended 'gravy train' flowing from these outdated contracts "

11 .It is the understanding of the Coalition, however, that BellSouth has not yet elected to seek TRA approval to implement the changes BellSouth proposed and to which the Independents agreed

12 In the most recent discussions with BellSouth prior to the February 17 Status Conference, BellSouth representatives indicated a new demand, insisting that the Independents commit to a date certain by which they would reduce interconnection rates charged to BellSouth irrespective of whether or not other aspects of the Coalition proposal addressing universal service considerations were implemented The Coalition refused to agree to BellSouth's demand, and maintain that in light of the affirmed and standing Orders in this proceeding, they cannot and should not agree to this demand As a result, the parties reported accordingly to the Hearing Officer at the February 17 Status Conference, indicating the break-down of discussions

proceeding At present, however, consideration is focused only on the BellSouth Motion The relief sought by BellSouth is very limited. By its Motion, BellSouth sought only clarification that "the termination or renegotiation" of the contracts between BellSouth and each Independent "need not be postponed."[13]

The BellSouth request is moot. There is no need to clarify that the Initial Order of the Hearing Officer addressing Issue 2 was not intended to discourage the parties from negotiating The BellSouth Motion was held in abeyance, and the parties did negotiate Nor is there any need to address whether the contract may be terminated pending the conclusion of this proceeding Termination of the contract is no longer a relevant legal matter. BellSouth has already purported to terminate the contract As a matter of law, the Hearing Officer determined, and the Authority affirmed, that the terms and conditions set forth in the existing "terminated" agreements are to be maintained in the "arrangement, outside of the existing contract."[14] The matter has been decided The decision has been affirmed There is no need to decide whether BellSouth may terminate the contract. The matter is moot as a result of the enforcement of the standing and affirmed December 29, 2000, Order of the Hearing Officer which is not, and should not be, brought under review for a second time by the BellSouth Motion [15]

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13 BellSouth Motion, p 3

14 Initial Order of Hearing Officer, December 29, 2000, at fn 28

15 The BellSouth Motion also requests "clarification" of the Hearing Officer's statement at page 4 of the June 28, 2002 Initial Order of Hearing Officer that "the Tennessee Public Service Commission directed BellSouth Telecommunications, Inc ("BellSouth") to enter into toll settlement arrangements that were structured in a manner that enabled independent carriers to maintain their current revenue streams " BellSouth seeks reconsideration of "the portion of the order based on this presumption " This statement however is anecdotal, and not dispositive, the request is moot and should be denied No portion of the Order was based on the specific presumption in the quote cited out of context by BellSouth To the contrary, the Order was based on the irrefutable fact that there has been a "very strong connection between the contribution that the toll settlement arrangements provide to rural carriers and their ability to maintain affordable residential services " Initial Order of Hearing Officer, June 28, 2002, p 4 Whether or not a specific order of the former Tennessee Public Service Commission is identified that addresses this concept, the fact remains that the settlement arrangements have, with the Authority's knowledge and oversight,

III. The Coalition Petition Should be Granted; It Merely Seeks Enforcement of the Standing Orders Issued in this Proceeding.

The Coalition will not burden the record by repeating in total the facts and applicable law set forth in the Coalition Petition filed on April 3, 2003 In summary, BellSouth has decided that it no longer should have to pay the Independents for any traffic terminated by BellSouth on any Independent's network if BellSouth identifies the traffic as "CMRS" traffic Prior to implementation of this unilateral BellSouth policy decision, BellSouth purports that it did compensate the Independents for the termination of this traffic in accordance with the terms and conditions of the existing settlement agreements. No question of fact or law exists BellSouth did make payments to the Independents for this traffic pursuant to the terms and conditions of these agreements.[16] The terms of these settlement agreements (which are now maintained under "arrangements" outside the existing contract, as discussed above) are the only terms and conditions pursuant to which BellSouth operates in Tennessee with respect to its intrastate interconnection to each Independent [17]

In order both to demonstrate the willingness of the Independents to negotiate and compromise, and to avoid the expense of protracted legal proceedings, the Independents reached

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produced a portion rural independent cost recovery that, in turn, reduced pressures to otherwise increase the basic rates charged by the rural Independents to rural customers for basic service

16 The Coalition notes that with respect to several of the Independents, an issue exists with regard to whether BellSouth made full payments due to each Independent for the termination of this traffic Although the Independents understood that the negotiation discussions held while the BellSouth Motion and Coalition Petition were in abeyance would include negotiations to settle these claims, no meaningful responses to the Independent claims have taken place Each of the claiming Independents reserves its rights to pursue these claims in all appropriate forums

17 Contrary to any "red herring" argument any party may attempt to assert, the fact that the subject traffic carried by Bellsouth to the Independent networks for termination may be "CMRS" traffic is irrelevant with respect to existing arrangements, terms and conditions BellSouth has apparently entered into bi-lateral agreements with CMRS carriers to provide those carriers with indirect connectivity to the Independent networks BellSouth and the Independents have existing terms and conditions, originally set forth in the settlement agreements, which govern BellSouth's termination of traffic on Independent networks There exists no law or regulation, and no party can point to any order, that automatically overrides the established and effective terms Bellsouth could have come to the Independents and asked to negotiate new terms and conditions for this specific subset of traffic, it did not Bellsouth instead elected self-help in defiance of an existing Authority Order

an interim agreement with BellSouth pursuant to which BellSouth paid each Independent a significantly reduced interconnection fee with respect to traffic that Bellsouth identifies as "CMRS traffic." As the Hearing Officer is aware, the interim arrangement between BellSouth and the members of the Coalition ended on July 31, 2003

The parties have previously reported in jointly filed status reports that new interim offers have been exchanged and that the parties have discussed these offers The Coalition regretfully reports that it is unlikely that agreement or resolution of this matter can be reached between the parties in the absence of action by the TRA. Prior to May 1, 2003, the parties treated the subject interconnection arrangements and traffic in accordance with existing terms and conditions established between BellSouth and the Coalition members. The subject traffic may likely in the future become subject to new terms and conditions as a result of the negotiations and arbitrations that are ongoing pursuant to Sections 251 and 252 of the Telecommunications Act and in accordance with the Hearing Officer's directive in this proceeding The new terms and conditions will become effective as a result of agreement or arbitration consistent with the requirements of the Telecommunications Act, and consistent with the affirmed Initial Order of the Hearing Officer in this proceeding that all existing terms and conditions be maintained "until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority "[18]

In the spirit of additional compromise, the Coalition has proposed to agree to continue to utilize the interim arrangement until such time as the TRA has approved new terms and conditions applicable to the subject traffic and consistent with the processes established by Sec 252 of the Telecommunications Act This offer has been rejected

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18 Initial Order of Hearing Officer, Docket No 00-00523, December 29, 2000, p 12

As a result, the Coalition members should have every right to enforcement of the terms and conditions of the existing arrangements, the very relief initially sought in the April 3, 2003 Petition. The requested relief is consistent with applicable law and merely seeks enforcement of the prior order of the TRA affirming the Initial Order of the Hearing Officer issued on December 29, 2000.

The Coalition members remain willing to pursue the continuation of the prior compromise during the time period remaining through December 31, 2004 or until new terms and conditions are reached.[19] In the absence of agreement to continue this compromise arrangement, however, the Coalition members have not and will not waive their rights.[20] Accordingly, the Coalition members respectfully request that the TRA no longer hold the April 3, 2003 Petition in abeyance, and further request consideration of the Petition and grant of the relief requested. Finally, the Coalition respectfully urges that the Hearing Officer act expediently on this request. Since August 1, 2003, the Coalition members have received no compensation for the interconnection and termination services provided to BellSouth for CMRS traffic that BellSouth has elected to interconnect to the Coalition member networks.[21]

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19 The Coalition respectfully notes that the compromise it has proposed is similar to the terms and condition reached in other states in which BellSouth operates A copy of one such compromise settlement agreement was filed in this proceeding by the Coalition as an attachment to the Coalition's Response to the Petitions for Arbitration filed by several CMRS carriers For some unknown reason, BellSouth and the CMRS carriers refuse to enter into similar agreements with the Coalition members

20 The final offer to address this issue made by BellSouth incorporated a further reduced fee and insistence that BellSouth would not be responsible for payment to any Independent for the subject traffic carried after March 31, 2004 This proposal leaves the Independents in limbo and in a situation far short of those compromise arrangements reached in other States

21 The situation for the Coalition members is worse than it may at first appear In fact, payment has ceased with respect to the traffic that was interconnected to the networks of the Coalition members after May 31, 2003 The interim agreement applied only to "payments" made through July 31, and not to traffic sent through July 31

IV. CONCLUSION

During the period in which the BellSouth Motion and the Coalition Petition have been held in abeyance, the Coalition has actively committed resources to the resolution of all immediate and underlying issues. A review of the proposals that have been offered and discussed will demonstrate the substance of the commitment undertaken by the Independents Unfortunately, the discussions among the parties have not resulted in resolution. The Coalition respectfully requests that the TRA resolve both the BellSouth Motion and the Coalition Petition.

As discussed above, the Coalition asks that the BellSouth Motion be dismissed The relief requested was limited to clarification that the Authority encouraged continued negotiations among the parties and that BellSouth could terminate the subject settlement agreements The negotiations have continued, and pursuant to an affirmation by the TRA of the December 29, 2000 Initial Order of the Hearing Officer, the terms and conditions of the settlement agreements purportedly terminated by BellSouth are maintained by Authority Order outside of the contracts The BellSouth Motion is moot and should be dismissed.

The Coalition also requests that the Authority grant the Coalition Petition The Independents have not been paid for any of the subject traffic carried by BellSouth to the Independent networks after June 1, 2003. BellSouth's refusal to pay is in direct violation of the Authority's Order. The termination of the traffic is subject by Authority Order to the terms and conditions set forth initially in the settlement agreements, and pursuant to which BellSouth made payments for this traffic until May 2003 The Coalition members have offered to continue the now long ago expired interim settlement arrangement, but BellSouth has refused this offer Accordingly, the Coalition respectfully urges the grant of its Petition. The Authority should, indeed must, enforce its Orders and rulings issued in this proceeding. The Authority has spoken the existing terms and conditions of interconnection, including rates, between BellSouth and

each Independent are to be maintained until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority.

Respectfully submitted,

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Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:)
)
GENERIC DOCKET ADDRESSING) DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE)
)
)

REPLY BRIEF OF THE RURAL INDEPENDENT COALITION IN OPPOSITION TO THE BELLSOUTH TELECOMMUNICATIONS, INC. MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, CLARIFICATION OF THE INITIAL ORDER OF THE HEARING OFFICER FOR THE PURPOSE OF ADDRESSING LEGAL ISSUES 2 AND 3 IDENTIFIED IN THE REPORT AND RECOMMENDATION OF THE PRE-HEARING OFFICER FILED IN NOVEMBER 8, 2000

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents"[1]) respectfully files this Reply Brief in response to the above-referenced filing by BellSouth Telecommunications, Inc. ("BST") for reconsideration or clarification (the "BST Motion"). The Coalition submits, as demonstrated below, and by the attachments hereto, that the BST Motion should be denied. No basis exists in law or fact to warrant reconsideration of the

[1] The Coalition includes the following companies: 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., and Yorkville Telephone Cooperative.

prior determinations by the Hearing Officer in this proceeding.[2] Nor is action on the BST Motion required to clarify the Hearing Officer's determinations.

I. The BST Motion Should Be Denied. The Independents Have Expressed and Demonsrated Continued Willingness to Negotiate Interconnection Arrangements and Services with BST. Accordingly, the Requested Relief is Unnecessary.

BST emphatically states in its Motion that its "bottom line" is that it seeks relief to ensure

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[2] Subsequent to the November 9, 2000 filing of the Initial Brief of the Rural Independent Coalition (the "Independent November 9, 2000 Brief") in this proceeding, there has been no change in fact or law that would warrant or require reconsideration or clarification of the determinations by the Hearing Officer. As discussed above, clarification by the TRA is not necessary to encourage good faith negotiation by the Independents with BST. The Independents fully recognize, as should BST, that good faith negotiation may not yield mutually agreeable results, and that any party (i.e, BST or an Independent or group of Independents) may seek further guidance from the TRA in the context of the Authority's jurisdiction over BST's provision of intrastate toll services and intrastate interconnection with other carriers. The position of the Independents is consistent with the prior state regulatory decisions, statute and the determinations of the Hearing Office in this proceeding. The factual and legal support with respect to these matters are fully set forth in the Independent November 9, 2000 Brief. Rather than repeat these discussions, the Coalition incorporates them herein by reference and attaches a copy of the November 9, 2000 Brief for the Authority's reference. See Attachment A.

"that nothing in this docket should delay or stand in the way of reaching a new agreement, and entering into a new contract, governing toll settlements" with the Independents. (BST Brief at p. 4). Additional imposition on the processes of the Authority to reconsider or clarify this matter is wholly unnecessary. The Independents have informed BST by word and deed that each Independent fully understands that the Authority encourages the Independents and BST to discuss, negotiate, and arrive at mutually agreeable terms and conditions with respect to the provision of intraLATA toll services. The Independents have met with BST to discuss these matters and continue in their willingness to do so.

Accordingly, and to the extent that the intent of the BST Motion is simply the "bottom line" as articulated by BST and refenced above, there is no need for further action on the BST Motion. The Independents have reiterated their willingness to discuss and negotiate the issue raised by BST, and clarification of the Authority's intent in this regard is not required. The Coalition notes, for the information of the Authority, that on July 15, 2002, the very day that BST first filed its Motion, a meeting between BST representatives and many Independents had already been scheduled as a follow-up to a meeting held in May. Irrespective and contrary to this fact, BST wrongly averred in the initial rendition of its Motion:

the independent companies have been unwilling to renegotiate the arrangements...

(Initial BST Motion filed July 15, 2002, p. 2.)[3] The Independents assume that within the BST organization, information regarding the Independent willingness to continue to negotiate may not have been communicated. At this juncture, however, no question should exist. No reason in law

[3] While the Coalition recognizes that BST filed a "Substitute Version" of its Motion on July 25, 2002, the Coalition is not in receipt of any document or statement by BST that recants or addresses the incorrect impressions and unconscionable inflammatory language BST incorporated in the initial filing of its Motion.

or fact exists for action by the Authority on the BST Motion.

II. The Independents are Concerned that the BST Motion and Supporting Brief, in the Best Light, May be Characterized as Providing an Inaccurate Impression.

The Coalition respectfully raises for the Authority's consideration its concern that numerous statements in the BST Motion and the BST Brief provide what, at best, may be characterized as an incorrect portrayal of the historic and existing relationship between BST and the Independents. If the BST Motion is simply intended, as stated by BST, to ensure "that nothing in this docket should delay or stand in the way of reaching a new agreement, and entering into a new contract, governing toll settlements," the Coalition respectfully submits that BST can and should withdraw its request, as demonstrated in Section I, above. If, however, BST insists on pursuing its Motion, the Independents respectfully request that the Authority schedule a hearing and request testimony by BST to support the broad allegations and misleading factual statements incorporated into its Motion and Brief.

While no new matter of fact or law has arisen that warrants the BST requested reconsideration or clarification, the Coalition notes the existence of a non-dispositive fact that may provide context for BST's motivation in filing its Motion. Although the Independents had not heard officially from BST with respect to any discussion or consideration of changes in interconnection arrangements for a long period of time, on April 5, 2002, BST abruptly notified the Independents of its intent to change the existing arrangements and to act unilaterally in the event that change satisfactory to BST did not occur. (See Correspondence of April 5, 2002, from BST to Independents, Attachment B). The Independents were particularly surprised by the BST

pronouncements in consideration of the fact that BST had opposed the Independents in their attempt to facilitate additional consideration of all related issues by the industry and the Authority. (See, Coalition Letter of September 4, 2001 to Director Malone, Attachment C). Nonetheless, the Independents responded to BST, and offered to meet to discuss any and all issues. (See, Correspondence of April 27, 2002 from Independents to BST). As discussed above, the Independents subsequently met with BST and remain ready, willing, and able to do so.

The Independents are concerned, however, that the portrait painted by BST in its Motion and Brief are far different from these facts. The Independents are equally concerned with many of the statements set forth in the BST Motion and Brief which are presented as fact. The concern of the Independents reaches far beyond offense to the inflammatory and unnecessary language used by BST in its Initial Motion filed July15. The Independents are concerned that the BST documents do not accurately convey the historic or existing arrangements and relationship between BST and the Independents with respect to the provision of intraLATA toll services in the Independent areas.

The Independents have elected to not utilize this filing to identify each and every statement by BST that generates concern that the Authority be provided with a full and accurate picture. In fact, the Authority holds within its institutional knowledge an understanding of the inaccurate understanding of these matters that may be conveyed by the BST Motion and Brief. Rather than engage in what may be unnecessary debate, the Independents will refrain from further comment on this matter pending BST's decision regarding the Independent proposal that BST withdraw its Motion, and that all parties continue to discuss and negotiate the related matters, as the Independents have expressed willingness to do and as BST has expressed to be the objective of their filing. In the event that BST does not withdraw its Motion, the Independents respectfully

request the opportunity to supplement this Brief, and further request that the Authority establish a hearing on this matter and require BST to provide testimony in support of its Motion and Brief.

CONCLUSION

For the reasons set forth above, the Independents request that BST withdraw its Motion. ***The Independents have been and remain willing to discuss and to negotiate all issues associated with interconnection and other service arrangements with BellSouth.*** In the event that BST does not withdraw its Motion, the Independents respectfully request that the Authority dismiss the Motion. In the alternative, the Independents request the opportunity to supplement this Brief and request that the TRA establish a hearing on this matter and require BST to provide evidence and testimony in support of its Motion and Brief.

Respectfully submitted,

The Tennessee Rural Independent Telephone Company Coalition

By:

August, 16, 2002

Stephen G. Kraskin
John B. Adams

CONCLUSION

For the reasons set forth above, the Independents request that BST withdraw its Motion ***The Independents have been and remain willing to discuss and to negotiate all issues associated with interconnection and other service arrangements with BellSouth.*** In the event that BST does not withdraw its Motion, the Independents respectfully request that the Authority dismiss the Motion. In the alternative, the Independents request the opportunity to supplement this Brief and request that the TRA establish a hearing on this matter and require BST to provide evidence and testimony in support of its Motion and Brief.

Respectfully submitted,

The Tennessee Rural Independent Telephone Company Coalition

By: Stephen G. Kraskin

August, 16, 2002

Stephen G. Kraskin
John B. Adams

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Attachment A

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING RURAL UNIVERSAL SERVICE	)	DOCKET NO. 00-00523
	)	
	)	

BRIEF OF THE RURAL INDEPENDENT COALITION

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.
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

"The Coalition of Small LECs and Cooperatives"

November 9, 2000

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING	)	DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE	)	
	)	
	)	

BRIEF OF THE RURAL INDEPENDENT COALITION

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents") respectfully files this Brief in response to the direction established by the Tennessee Regulatory Authority ("TRA" or "Authority") at the Status Conference held in the above-referenced proceeding on October 31, 2000. The Coalition membership is comprised of 20 Independent telephone companies and cooperatives which collectively provide approximately 314,000 access lines to customers who reside and work within the more rural areas of Tennessee.

Introduction

The Authority has requested that the parties address three threshold issues:

1. Does the TRA have jurisdiction over the toll settlement arrangements between BellSouth and the Rural Local Exchange Carriers?

2. Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?

3. Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated companies, as such companies are defined under state law?

Meaningful consideration and understanding of these issues, on both an individual and collective

basis, is vital to each of the Independents and their respective abilities to sustain and foster the provision of universal service in the rural areas of Tennessee. In their Comments filed in this proceeding on September 5, 2000, the Independents addressed both the short and long term adverse impact on universal service that would result from the arbitrary and isolated termination of settlement agreements between the Independents and BellSouth.

From a policy perspective, universal service concerns for rural Tennessee ratepayers mandates an affirmative response to each of the issues set forth by the TRA. The Authority and all participating parties are well aware that the opportunity to recover the costs of providing universal service in rural Tennessee has traditionally depended significantly on the contribution to cost recovery that each Independent receives from the division of intrastate intraLATA toll revenues with BellSouth. While the Independents and BellSouth historically entered into negotiated division of revenue settlement arrangements, the TRA (and its predecessor) held ultimate authority to be utilized if and when necessary to ensure that the public interest was fully served in the establishment of through rates among the connecting carriers.

Because of the historic dependence on settlements as an integral part of overall cost recovery for the rural Independents, the proposed withdrawal of the toll settlements and the resulting impact on universal service cannot be ignored. Accordingly, in their September 5, 2000, Comments the Independents offered a comprehensive state rate redesign and universal service plan that would appropriately incorporate consideration of BellSouth's proposed termination of the settlement agreements. In addition, the Independents asked the Authority to take emergency action to continue the existing settlement agreements pending the consideration of the Independents' universal service and rate redesign proposal in this proceeding. Absent action by the Authority or significant increases in rural Independent service rates, BellSouth's unilateral

termination of the settlement agreements will severely impact the cash flow and continuing operational viability of rural Independents.

Accordingly, and as more elaborately discussed in the Coalition's September 5, 2000 Comments, public policy interests require: 1) that the TRA holds authority over BellSouth's settlement arrangements for through rates for intraLATA toll service that has been provided by BellSouth and the Coalition Members; 2) consideration in this proceeding of the significant impact of BellSouth's proposed termination of the settlement agreements on the provision of universal service; and 3) application, as a matter of policy, of the state Universal Service statute to the rural rate of return regulated companies in order to meet the objective of universal service in rural Tennessee. These three threshold issues require an affirmative response, however, not only as a matter of public policy, but also as a matter of law, as discussed below.

Issue I: Does the TRA has jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers?

The TRA has jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers. Several sections of Title 65 of the Tennessee Code Annotated confer general jurisdiction upon the TRA. The TRA's jurisdiction over toll settlement arrangements, which are a historical form of universal service cost recovery, is especially certain in the context of revising the Tennessee Universal Service mechanism.

The TRA's jurisdiction over toll settlement arrangements is not, however, derived solely from its consideration of appropriate Universal Service mechanisms. TCA 65-5-201 provides in part that:

The [TRA] has the power . . . to fix just and reasonable individual rates, *joint rates*,

> tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates, which shall be imposed, observed, and followed thereafter by any public utility.

TCA 65-5-201. The authority to regulate joint rates necessarily includes authority over the division of those rates between or among the jointly providing carriers as well as authority over the facilities those carriers use to provide the service. The TRA's jurisdiction over toll settlement arrangements is further evidenced by the last sentence of TCA 65-5-201, which states:

> In fixing such rates, joint rates, tolls, fares, charges or schedules, or commutation, mileage or other special rates, the [TRA] shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

An examination of the adequacy and efficiency of a jointly provided service necessarily includes an examination of the way the service is provided, the facilities used, and the compensation due each joint provider.

The Authority's jurisdiction over the settlement arrangements between BellSouth and the Independents is further demonstrated by the responsibility assigned to the TRA by the state Universal Service statutory provisions. TCA 65-5-207 grants the TRA broad authority to craft a new universal service mechanism designed for a competitive market. After stating its goal of the continuation of Universal Service to all residential customers and the continuation of carrier-of-last-resort obligations,[4] the Legislature mandated that the TRA investigate existing and alternative Universal Service mechanisms.[5] As part of this investigation, the TRA is to "determine all current

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[4] TCA 65-5-207(a).

[5] TCA 65-5-207(b).

sources of support for universal service and their associated amounts."[6] Toll settlement arrangements have long been used as a means of recovering the cost of the operations of independent local exchange carriers (LECs) to ensure their continued provision of universal service and fulfilment of carrier-of-last-resort obligations. Thus, the TRA has jurisdiction over toll settlement arrangements.

TCA 65-5-207(c) explicitly supports this conclusion. It states in part that:

> The [TRA] shall create an alternative universal service support mechanism that replaces current sources of universal service support only if it determines that the alternative will preserve universal service, protect consumer welfare, *be fair to all telecommunications service providers, and prevent the unwarranted subsidization of any telecommunications service provider's rates by consumers or by another telecommunications service provider.*

TCA 65-5-207(c) (emphasis added). The italicized text highlights two essential points. First, the Legislature believes that some "unwarranted subsidization" may exist in the current mechanisms utilized to achieve universal service. Second, the Legislature intends that the TRA must consider existing inter-carrier service arrangements in crafting a new universal service mechanism. As addressed by the Independents in their September 5, 2000 comments, access charge levels and toll settlements are the two primary sources of inter-carrier revenues for the Independents. Subsection (c) makes clear that the TRA must consider these toll settlement arrangements in revising the Tennessee Universal Service mechanism and to end those inter-carrier arrangements that it may deem unwarranted. Implicit in this charge to the TRA is the understanding of the Authority's jurisdiction over the inter-carrier settlements.

The Legislature did not stop there, however. It went on in other portions of subsection (c) to further clarify its intent. Subsection (c)(5) provides for a rebalancing of rates to correct for the

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[6] TCA 54-5-207(b).

financial impact on a universal service provider of a change in the universal service support mechanism, such as the impact on the Coalition members of changes to their toll settlement arrangements with BellSouth. Subsection (c)(7) prohibits the TRA, however, from increasing rates for "interconnection services" as a part of rate rebalancing. Interconnection services are defined in TCA 65-4-101(f) as "telecommunications services, including intrastate switched access service, that allows a telecommunications service provider to interconnect with the networks of all other telecommunications service providers." According to TCA 65-4-101(c), "telecommunications service provider" includes incumbent local exchange carriers. Thus, toll arrangements between two incumbent LECs are included in the kinds of interconnection services over which the TRA has jurisdiction.

Even if the Legislature had not specifically contemplated TRA jurisdiction over the BellSouth settlement agreements with the Independents, the authority would, nonetheless, hold authority and responsibility for these arrangements. The very essence of the public utility nature of the intraLATA toll service provided by the Independents and BellSouth is precisely that which the Legislature has entrusted to the Authority. The TRA has "general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter." Thus, the TRA has jurisdiction over toll settlement arrangements to the extent necessary: 1) to regulate joint rates, including the adequacy and efficiency thereof, and the resulting settlement arrangements; and 2) to consider the toll settlement arrangements and proposed changes in the context of the Authority's investigation of the existing Universal Service mechanisms and the implementation of new Universal Service mechanisms for the Coalition members.

Issue II: Should the withdrawal of toll settlements agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?

The withdrawal of toll settlements agreements between BellSouth and the Independents not only should, but must, be considered in the Rural Universal Service proceeding. As discussed regarding Issue I, the TRA is required to identify all current sources of universal service funding and to determine the extent to which existing inter-carrier arrangements to support universal service should be continued.[7] The toll settlement arrangements at issue precisely meet the Legislative mandate for consideration in this proceeding. Toll settlements are a historical form of Universal Service support to the Independents, and take the form of inter-carrier payments. In this regard, toll settlements and the rate levels established for intrastate access charges are similar traditional universal service mechanisms that have been established as integral parts of traditional rate and cost recovery design for rural carriers. The objective of the rate design and universal service cost recovery mechanisms have been to promote universal service connectivity to rural subscribers. In accordance with both the statute and sound public policy, changes in toll settlement arrangements must be considered in revising the Tennessee Universal Service mechanism together with consideration of other inter-carrier arrangements, including access charge levels.

With respect to the issue of how toll settlement arrangements should be considered in this proceeding, the Coalition respectfully suggests that the TRA's consideration should, consistent with the statutory requirements, focus on the following objectives·

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[7] *See* TCA 65-5-207(b) and (c).

(1) Identifying toll settlements as a source of Universal Service cost recovery;

(2) Determining whether, and to what extent, continuation of those toll settlement arrangements as a form of Universal Service cost recovery is warranted; and

(3) Identifying an alternative form of Universal Service cost recovery mechanism to replace the Universal Service cost recovery provided by toll settlement arrangements if the TRA finds that continuation of those arrangements is not warranted.

The Independents have incorporated these objectives into the comprehensive state universal service and rate redesign plan set forth in their September 5, 2000 comments.

Issue III: Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated rural companies, as such companies are defined under state law?

From both a legal and policy perspective, the state Universal Service statute must apply to rate of return regulated rural companies. Consistent with both the state statute and the federal Telecommunications Act,[8] principles and policies relating to the provision of universal service must be applicable to all local exchange carriers that are designated as providers of universal service. Accordingly, no provision of TCA 65-5-207 suggests that it applies only to a particular class of carrier on the basis of the way in which a carrier is regulated. Instead, the opposite is true. The first sentence of the statute expresses the Legislature's intent to preserve Universal Service to all residential customers and to continue carrier-of-last resort obligations.[9] These goals cannot be

[8] 47 USC § 254.

[9] TCA 65-5-207(a).

achieved by applying universal service principles and policies only to carriers operating pursuant to a particular form of regulation (e.g., price regulation) and not to those operating pursuant to another (e.g, rate of return).

Further support for application of the Universal Service statute to all carriers can be found throughout the statute itself. Subsection (b) mandates that the TRA "determine all current sources of support for universal service," not just those for price-regulated companies. Similarly, subsection (c) requires fairness to "all telecommunications service providers." Subsection (8)(1) requires the TRA to consider the difference between the costs of providing services and the revenue received from providing services, including the cost associated with carrier-of-last-resort obligations, for both "high-density and low-density service areas." The reference to "low-density service areas" is clearly a direct reference to rural areas, which tend to have low population density and low customer density, and are generally served by the Coalition members. Further, this language is an alternative way of saying "all service areas" in that the phrase "high-density and low-density service areas" may be read to include the whole universe of service areas, with high density service areas and low-density service areas being subsets of the whole.

TCA 65-5-207 applies on its face to all carriers, including rural rate-of-return carriers. Any other reading is contrary to the clear meaning of the statute and to the clear legislative goals stated therein. An interpretation that would exclude any rural incumbent universal service provider would not be competitively neutral, and accordingly, any such interpretation would constitute a violation of both the statute itself [10] and federal law.[11]

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[10] TCA 65-5-207(c)(4).

[11] 47 U.S.C. § 254(f).

Conclusion

The Independents respectfully recognize that the Authority has identified three threshold issues that must be addressed and answered expediently in order to go forward in this proceeding. In the absence of clarity in the resolution of these issues, the Independents are concerned that the efforts of the parties and the Authority to address universal service concerns in the areas of the state served by the Independents could be exposed to misfocused, distracting, and otherwise unnecessary debate. From the perspective of both policy and law: 1) the TRA clearly has jurisdiction over BellSouth's settlement agreements with the Independents; 2) the toll settlements must be considered in any meaningful review of state universal service policies for the rural service areas; and 3) the state Universal Service statute must apply to all Tennessee providers of universal service, including the rural rate of return carriers.

Universal service cost recovery for the Independents has historically been achieved through rate design and cost recovery that balanced basic service rates with toll settlement and access revenues. Any change in any aspect of the design will impact the provision of universal service. The Independents respectfully request that the Authority take immediate action necessary to ensure the continuation of the existing balance pending its consideration of the comprehensive proposal set forth by the Coalition.

Respectfully submitted,

The Tennessee Rural Independent Telephone Company Coalition

By:

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618 Church Street, Suite 300

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615-726-1200

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ATTACHMENT B

BELLSOUTH

Jerry Hendrix

BellSouth Telecommunications, Inc.
Suite 34B91
675 West Peachtree Street, NE
Atlanta, Georgia 30375

April 5, 2002

Mr. Levoy Knowles
Ben Lomand Rural Telephone
P. O. Box 670
McMinnville, Tennessee 37110

Dear Mr. Knowles:

As you know, the IntraLATA Toll Settlements Contracts between our companies implemented some years ago intended that BellSouth would function as a primary carrier for IntraLATA toll traffic originated and terminated by your company. The agreement also contemplated that your company would bill and collect the intraLATA toll traffic at BellSouth toll tariff rates for toll calls originated by your end users. As you know, since that time, the environment in which we operate has changed dramatically as a result of the Telecommunication Act of 1996 and market forces.

Over the last several years BellSouth has discussed with a number of the Independent LECs in Tennessee the need to revise the intraLATA toll compensation arrangement. What BellSouth has proposed during those meetings is a change in the formula for compensation that more appropriately aligns with our existing competitive local and toll markets. As a part of that ongoing negotiation, you may recall that we reached agreement last year to update Billing and Collection rates that were contained in the agreement to be more in alignment with today's environment with the understanding that the remaining issues addressed in our letter of July 31, 2000 would be addressed this year.

While this issue has been discussed, no settlement has been reached as of this time. Meanwhile, the economic condition of the telecommunications industry and continuing competitive inroads require that we take some action to align our relationship to these realities. Our ongoing analysis of the intraLATA toll settlements between our companies continues to indicate an imbalance between the old access rates contained in the agreement that BellSouth pays to your company and the market based rates charged to competing toll providers. This was not the intent of the parties. This rate imbalance is precisely the type of material change against which the termination provision was designed to protect the parties. We are currently taking steps to address this issue throughout our nine-state region.

In light of the Tennessee Regulatory Authority's December 29, 2000 Order in Docket No. 00-00523, BellSouth is not invoking the termination provision that the agreement allows at this time. BellSouth is, however, hereby providing notice of its intent to pursue termination of this outdated agreement and negotiation of a new one. We strongly prefer that any new agreement be by negotiation. We, likewise, understand your issues and will support same whenever possible. However, we cannot agree to defer resolution of our overdue issues pending an uncertain resolution of yours. Therefore, in the event that negotiation does not move at an expedited pace toward resolution of this issue, BellSouth will be forced to seek relief from the TRA and any other forum available to us. The TRA's Order on this matter addressed the issue of whether BellSouth could unilaterally terminate certain arrangements without TRA involvement. The Order also stated that it should not be construed to interfere with continued negotiations. In fact, the Order specifically admonishes the parties that

> nothing stated [in the Order] should be construed to suggest that current efforts in developing or pursuing alternative interconnection compensation mechanisms should be relaxed, or that this decision extends beyond resolving the immediate questions or the TRA's jurisdiction and authority in this matter.

Initial Order of Hearing Officer, December 24, 2000, Docket No. 00-00523, p. 12-13. Accordingly, in the event we are unable to reach agreement within a reasonable time period regarding a new agreement, BellSouth will petition the TRA for permission to terminate the old agreement. Further, if the parties do not commence good faith negotiations by the later half of April 2002, BellSouth will dispute all charges billed to BellSouth that exceed the revenue reported to BellSouth and will pursue all available remedies. We believe, however, that such action will not be necessary.

We regret that the tone of this letter may be interpreted as harsh, but it merely raises issues we have all been aware of and discussed for some period of time. We must now act to address these inequities and establish an equitable arrangement for both of our companies. We look forward to establishing an equitable arrangement for both of our companies. A template agreement will be sent to you for review by April 12, 2002. BellSouth would like to schedule a meeting to discuss the proposed interconnection agreement with you during the week of either April 15th or April 22nd. Please let us know of your availability. We are also happy to negotiate these issues with you individually or collectively with other companies. If you have any questions, please contact Tim Watts at 205-321-2065.

Sincerely,

Jerry Hendrix

Jerry D. Hendrix

Attachment C

KRASKIN, LESSE & COSSON, LLP
ATTORNEYS AT LAW
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

TELEPHONE (202) 296-8890 TELECOPIER (202) 296-8893

September 4, 2001

Melvin Malone, Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: Impact of Federal Regulatory Developments on the Provision of Universal Service in Rural Telephone Company Service Areas

Dear Director Malone:

On behalf of the members of the Coalition of Small LECs and Cooperatives (the "Small Company Coalition;"see attached list of member companies), I am writing to you with respect to issues and concerns that affect the provision of universal service in rural areas of Tennessee. Although I am writing to you because of your role as hearing officer in the "Generic Docket Addressing Rural Universal Service," Docket No. 00-00523, this correspondence addresses matters that are outside of the scope of the issues presently under consideration in that pending proceeding.

Subsequent to the initiation of Docket No. 00-00523 and the filing of initial briefs and responses, the Federal Communications Commission (FCC) has undertaken or initiated action in several proceedings which may have direct and significant impact on the operations of rural incumbent Tennessee local exchange carriers. A common theme resonates through each of these proceedings: the consideration of changes in existing federal rules and regulations that determine how a rural LEC establishes its rates and recovers its investment and expenses related to the provision of universal service.

Set forth below is a brief identification of several of these proceedings and the matters under consideration:

1. Docket No. 96-45, "In the Matter of Federal-State Joint Board on Universal Service," wherein universal service funding of rural company service areas is under consideration.

2. Docket No. 00-256 "In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and

Interexchange Carriers" wherein the appropriate level of interexchange access charges and the recovery of rural LEC interstate costs is under consideration.

3. CC Docket No. 99-68, "In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic" wherein intercarrier compensation for termination of internet traffic and the recovery of associated costs is under consideration together with interim implications for all interconnection services.

4. CC Docket No. 01-92, "In the Matter of Developing a Unified Intercarrier Compensation Regime" wherein the elimination of intercarrier compensation for the provision of interconnection services is under consideration.

Individually and collectively, the outcome of these proceedings at the FCC will, in brief, likely place increasing pressures on rural companies to raise local basic service rates in order to offset the resulting losses in revenues that are presently derived from the provision of interstate interexchange access and interconnection services and federal universal service mechanisms. Pressures to reduce intrastate access charge levels will undoubtedly not only follow, but will likely be exacerbated by arbitrage opportunities resulting from regulatory changes (e.g., resulting disparity in interstate and intrastate access charges will encourage interexchange carriers to avoid intrastate access services).

From the perspective of the Coalition members, their service areas and customers, it appears that the proceedings under consideration in the Federal arena are geared to the facts and circumstances that surround large carriers and large customers. Accordingly, we are witnessing the emergence of a simplistic federal regulatory response that ignores both the historic foundation of the existing federal-state regulatory LEC cost recover system and the current and continuing conditions applicable to the provision of universal service in rural areas.

History taught - and both federal and state regulators traditionally recognized - that, as a matter of both sound public policy and law, the costs of providing universal service in rural areas could not reasonably be fully borne by rates charged directly to rural end user customers. As a constructive alternative, a rate design system evolved whereby a significant portion of these costs have been recovered through a series of mechanisms including access charges, interconnection service charges, and universal service funding. Each of these mechanisms is essentially based upon the recognition that a rural LEC's universal service network is of value not only to the rural customer that resides in the rural service area, but also to all individuals who utilize the public switched network and thereby have the ability to send and receive telecommunications to and from the rural subscriber.

The proposals under consideration at the FCC in the proceedings cited above generally overlook or set aside the public policy value of the existing rate design cost recovery mechanisms in order to address the issues of the larger carriers that do not focus service efforts on the customers residing in rural service areas. The objective of these carriers, with the implicit and explicit encouragement of the FCC, is to eliminate intercarrier charges irrespective of the impact on basic service rates.

On the basis of inquiries and comments from rural carriers throughout the country, our office is convinced that the FCC's consideration of these proposals is already producing a perverse result in rural America by discouraging infrastructure investment. Rural carriers are increasingly

concerned that the policies contemplated by the FCC will severely limit any reasonable opportunity to recover the investments and costs associated with the provision of advanced services in rural areas without inordinate increases in charges to rural subscribers.

Within Tennessee, prior issues and events (e.g., the primary carrier plan issues and changes in carrier settlements) have already established the reality of this concern for the rural LECs. In addition to the intrastate access service issues with which the Authority is already familiar, many of the Coalition members are investigating facts which support the conclusion that connecting carriers may presently engage in interconnection practices that enable them to obtain transport and termination on the rural LEC's network without taking responsibility for compensation of the rural LEC for the provision of its services.

These prior and developing situations, together with the pending FCC proceedings, have resulted in growing concern among the members of the Coalition. Accordingly, the Coalition respectfully requests that the Authority initiate a process to examine and act on these matters. Procedurally, the Coalition is uncertain whether it is most efficient to request the initiation of a new proceeding or to incorporate these issues into Docket No. 00-00523. Because of the nature of these issues and their potential impact on the provision of Universal Service in the rural areas of Tennessee, the Coalition recognizes that it may be appropriate for the TRA to consider the expansion of the scope of Docket No. 00-00523 to incorporate consideration of these matters. In this regard, an additional round of comments could be utilized to freshen the record and to develop proposals to ensure the provision of universal service in rural Tennessee at reasonable rates.

In addition, the Coalition offers to work with TRA staff and other parties to develop and conduct a workshop where all parties could meet in an informal setting to fully explore and consider these issues. While the workshop format would, at minimum, afford a non-adversarial opportunity for parties to fully communicate their concerns and positions, it may also provide a forum that could result in the development of a consensus position that could subsequently be brought to the Authority for approval and implementation in order to serve best the interests of all Tennessee telecommunications users and carriers. This workshop format has been utilized successfully by the TRA to address other matters in a manner that brings parties with various perspectives together to work efficiently on issues such as Docket 00-00873, "Regulations for Telephone Service Providers."

If you should have any questions or need for additional information regarding the federal proceedings addressed above or any other aspect of this letter, please call me at your convenience at 202-296-9055. In the event that you and the TRA elect to proceed with the workshop proposed above, the Coalition member representatives and I would be pleased to offer our assistance in any way that you and the Authority would deem useful. On behalf of the Coalition, your consideration of these matters is greatly appreciated.

Very truly yours,

Stephen G. Kraskin

"The Coalition of Small LECs and Cooperatives"

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.
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

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand [X] Mail [ ] Facsimile [ ] Overnight	Russ Minton, Esquire Citizens Communications 3 High Ridge Park Stamford, Connecticut 06905
[ ] Hand [X] Mail [ ] Facsimile [ ] Overnight	Charles B. Welch, Esquire Farris, Mathews, et al. 205 Capitol Blvd., #303 Nashville, Tennessee 37219
[ ] Hand [X] Mail [ ] Facsimile [ ] Overnight	Mr. David Espinoza Millington Telephone Company 4880 Navy Road Millington, Tennessee 38053
[ ] Hand [X] Mail [ ] Facsimile [ ] Overnight	Jon E. Hastings, Esquire Boult, Cummings, et al. P.O. Box 198062 Nashville, Tennessee 37219-8062
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N \Clients A-F\Coalition of Small LECs and Cooperatives 54354\Tennessee Regulatory Authority 11841\Pleadings\Certificate of Service doc

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING	)	DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE	)	
	)	
	)	

REPLY BRIEF OF THE RURAL INDEPENDENT COALITION

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, Inc.
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

"The Rural Independent Coalition of Small LECs and Cooperatives"

March 8, 2004

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

IN RE:	)	
	)	
GENERIC DOCKET ADDRESSING	)	**DOCKET NO. 00-00523**
RURAL UNIVERSAL SERVICE	)	
	)	
	)	

REPLY BRIEF OF THE RURAL INDEPENDENT COALITION

The Rural Independent Coalition (hereafter referred to as the "Coalition" or the "Independents") respectfully files this Reply Brief in response to the brief filed by BellSouth Telecommunications, Inc ("BellSouth") on February 27, 2004, and the "CMRS Carriers' Joint Comments Relating to February 17, 2004 Status Conference" ("CMRS Carriers' Comments") filed on the same date.

The BellSouth brief and the CMRS Carriers' Comments address two matters

1. The Pending April 3, 2003 "Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition" (the "Coalition Petition"); and

2. The Pending July 25, 2003, BellSouth "Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000" (the "BellSouth Motion").

BellSouth and the CMRS carriers' each rely selectively on only aspects of the applicable law and facts. Each attempts to use its selected pieces of law and fact to weave a tale to support their positions The result is a patchwork quilt that BellSouth and the CMRS Carriers apparently expect the Hearing Officer and the Authority to accept as the "whole truth" rather than whole cloth The resolution of the issues raised by both pending motions cannot ignore

dispositive facts and application of all applicable law, regulation and standing orders of the Authority [1] As set forth in the Coalition's Brief filed on February 27, 2004, the Coalition's Petition should be granted, the BellSouth Motion should be dismissed as moot.

I. The Coalition's Petition Should be Granted. The Rural Independents are Entitled to Compensation for Services Under Existing Terms and Conditions Until Those Terms and Conditions are Terminated, Replaced or Modified by the Authority.

The pertinent facts associated with the Coalition Petition are not in dispute:

1 BellSouth has an established physical interconnection with each rural Independent.

2 BellSouth terminates traffic to each rural Independent and compensates the Independent in accordance with the terms and conditions of "Annex I – IntraLATA Switched Toll Services "[2]

3. With respect to the traffic that is the subject of the Coalition Petition, no other terms and conditions exist today that govern the termination by a rural Independent of traffic originated on a CMRS carrier's network and carried by BellSouth to the rural Independent for termination through the existing physical interconnection between BellSouth and each Independent

4. Until May 1, 2003, BellSouth compensated, or should have compensated, the rural Independents for the termination of all traffic, including traffic originated on the network of a CMRS carrier (the "subject traffic") [3]

5 The rural Independents have received no compensation for the subject traffic terminated on their respective networks after May 31, 2003.

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1 The Coalition will address herein specific facts omitted by BellSouth and the CMRS Carriers The Coalition will also address the incorrect legal conclusions presented as "absolute truths" by BellSouth and the CMRS Carriers As a preliminary matter, however, the Coalition respectfully submits that numerous statements set forth in the BellSouth Brief appear to go far beyond the norm of acceptable zealous advocacy When the Coalition company management representatives that have been involved in the ongoing negotiations with BellSouth reviewed the BellSouth Brief, they responded that the BellSouth filing is "shameful," "misleading," and "full of inaccuracies and spin " To the extent that these circumstances raise issues beyond the scope of this proceeding, the Coalition, its members, and its individual representatives reserve their rights and express their expectation that the Authority will, on its own motion, also act to address these concerns to protect the integrity of the Authority's processes

2 *See*, Attachment to BellSouth Brief, Annex I – IntraLATA Switched Toll Services (herein referred to as the "Existing Terms and Conditions ")

3 In the Joint Motion filed with the Hearing Officer in this proceeding on April 25, 2003, BellSouth agreed to continue to compensate each rural Independent according to the same terms and conditions "as BellSouth was paying prior to February 28, 2003 " These terms and conditions are those very Existing Terms and Conditions that were referred to and required to be maintained by the former Hearing Officer in this proceeding in the "Initial Order of Hearing Officer" issued on December 29, 2000 As noted, at footnote 16 in the Coalition's February 27, 2004, Brief, "an issue exists with regard to whether BellSouth made full payments due to each Independent for the termination of this traffic Each of the claiming Independents reserves its rights to pursue these claims in all appropriate forums "

6 The Authority has not acted to terminate, modify or replace the Existing Terms and Conditions pursuant to which the rural Independents have been (or should have been) compensated for the termination of the subject traffic [4]

There is not and cannot be any dispute about these facts. In their respective Brief and Comments, BellSouth and the CMRS Carriers collectively craft three arguments in their apparent joint attempt to defeat the Coalition Petition: 1) BellSouth wrongfully argues that the Existing Terms and Conditions do not apply to the subject traffic, 2) BellSouth and the CMRS Carriers assert that the terms and conditions applicable to the termination of traffic on the networks of rural Independents can somehow be altered and governed by bilateral "meet-point billing" arrangements between BellSouth and the CMRS carriers, and 3) BellSouth and the CMRS Carriers argue that they have each offered settlements that they think should fully satisfy the rural Independents As discussed below, each of these arguments fail as a matter of law and equity. The Coalition Petition should be granted and BellSouth should be required to compensate the Independents for the subject traffic in accordance with the Existing Terms and Conditions.

A. The Existing Terms and Conditions are in effect and applicable.

BellSouth clearly does not like the December 29, 2000 *Initial Order of the Hearing Officer* in this proceeding BellSouth has long had lawful paths available to it to pursue changes in the Existing Terms and Conditions which otherwise remain in place until terminated, replaced or modified by the Authority The choices available to BellSouth, however, do not include self-help Yet, that is precisely the choice BellSouth has made with respect to the termination of the traffic that is the subject of the Coalition Petition

4 Pursuant to the May 5, 2003 Order issued by the Hearing Officer, the compensation rate was temporarily modified to 3 cents per minute applicable to the subject traffic terminated during May, 2003, in accordance with the Joint Motion filed by BellSouth and the Coalition on April 25, 2003

Instead of proposing a new terminating rate for this traffic, BellSouth simply and unilaterally announced that it would no longer compensate the rural Independents for the subject traffic [5] BellSouth apparently decided that its power was beyond the scope of the Authority decisions, and that it did not require the Authority's approval to modify or terminate the Existing Terms and Conditions. BellSouth's position is arbitrary, without basis in law or fact, and contrary to the decisions rendered in this proceeding.

1. BellSouth's reliance on a paragraph in a 1996 FCC decision is misplaced, and ignores subsequent contradictory FCC authority.

BellSouth's rationalization for its position is simplistic and misleading BellSouth maintains that the "passage of CMRS-originated traffic" to the rural Independent networks is not subject to the Existing Terms and Conditions.[6] BellSouth maintains that somehow, and apparently somewhat magically, it has no obligation to compensate the rural Independents pursuant to the Existing Terms and Conditions BellSouth's need for magic arises because its only source of authority for its contention is paragraph 1036 of the FCC's August 8, 1996 decision in CC Docket No 96-98. BellSouth maintains that this paragraph supports the contention that the subject traffic "has been deemed local by the FCC," and that "BellSouth certainly has no obligation to pay access charges to the ICOs for termination of such traffic."[7]

The FCC issued a subsequent decision, ignored by BellSouth, which modified the paragraph of the 1996 FCC Order relied upon by BellSouth Subsequent FCC decisions not only contradict BellSouth's argument that the subject traffic is "local," but specifically support the

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5 The full history is recounted full in the Coalition Petition and the Brief filed on February 27, 2003 BellSouth's unilateral decision to dishonor the Existing Terms and Conditions resulted in the filing of the Coalition Petition

6 BellSouth Brief at p 5

7 BellSouth Brief at pp 3-4

fact that the application of access charges, as provided for in the Existing Terms and Conditions, may apply to the subject traffic.

The subsequent and effective authority is found in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9167, para. 34 (2001) ("*Order on Remand*") In the *Order on Remand*, the FCC determined that all traffic to and from a CMRS carrier within an MTA is not necessarily "local," as BellSouth would have the Authority believe The FCC acknowledged that its decision on remand "differs from our analysis in the Local Competition Order, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all 'local' traffic We also refrain from generically describing traffic as 'local' traffic because the term 'local,' not being a statutory defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g) "[8] BellSouth failed to disclose the subsequent, conflicting and overriding authority [9]

2. No federal authority exists that prohibits the application of the Existing Terms and Conditions to the termination of a call originated on a CMRS network carried by BellSouth and terminated on a rural network.

In the *Order on Remand*, the FCC addressed the fact that pursuant to Section 251(g) of the Telecommunications Act, access charges may be applied to a CMRS call that is transported by an interexchange carrier ("IXC") and terminated utilizing exchange access services [10] The

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8 *Order on Remand,* para 34, footnotes omitted, underlining added Text without footnotes provided at Appendix 1, Item 2

9 The CMRS Carriers also rely on the same authority and fail to disclose the relevance of the Order *on Remand* CMRS Carriers' Comments, p 3 at fn 3 The Coalition anticipates that these parties may attempt to respond with post hoc rationalization for this omission No rationalization can change the facts

10 "We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (251) (g) from the reciprocal compensation requirements of subsection (251)(b)(5) Thus, the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers " *Order on Remand* at para 34 The Coalition

Telecommunications Act of 1996, together with the related implementation decisions of the FCC, provided CMRS carriers with an array of choices regarding how they may choose to interconnect their networks. No question exists that CMRS carriers may establish reciprocal compensation arrangements pursuant to Section 251(b)(5) of the Act and Section 51.701 of the FCC Rules and Regulations. Reciprocal compensation arrangements, however, are not automatically applied to pre-existing indirect interconnection of a CMRS carrier through another carrier A reciprocal compensation arrangement, and any interconnection service or network element provided pursuant to Section 251 of the Act, can only be established in response to a request [11]

Although reciprocal compensation arrangements have now long been available to CMRS providers upon request, only more recently have CMRS carriers made purported requests for Section 251(b)(5) to the rural Coalition members [12] Where it is in the interests of a CMRS

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anticipates that BellSouth may contend that under the Existing Terms and Conditions, it provides service as a "toll carrier" rather than as an "IXC " This is a semantic distinction without a difference The term of art "IXC" is more commonly referred to as the toll carrier or long distance carrier, the very role that BellSouth undertook pursuant to the Existing Terms and Conditions with respect to intraLATA interexchange traffic CMRS carriers have long used the services of IXCs or toll carriers to transport and terminate their traffic No regulation prevents a CMRS carrier from electing this choice in lieu of establishing interconnection terms and condition with each local exchange carrier to which it directs traffic The choice of available transport and terminating arrangements is left to each carrier

11 *See*, 47 U S C Sec 252(a) The Coalition is unaware of any lawful interconnection that occurs in the absence of a request and the establishment of associated terms and conditions The existing indirect interconnection of CMRS carrier to rural networks through BellSouth occurs because a physical interconnection exists between BellSouth and each rural Independent subject to the Existing Terms and Conditions The CMRS carriers apparently made a request of BellSouth to provide LATA-wide termination including the rural Independent networks BellSouth and the CMRS carriers negotiated two way agreements to establish terms and conditions applicable to each of them BellSouth never made a discrete request to utilize the existing physical interconnection with each rural Independent to terminate this traffic Instead, BellSouth apparently assumed that it had the right to use the existing interconnection arrangement pursuant to the Existing Terms and Conditions Until June 1, 2003, BellSouth purportedly conducted itself in accordance with the Existing Terms and Conditions, as modified by mutual agreement and approval of the Hearing Officer with respect to traffic terminated in May, 2003 Under these undisputed factual circumstances, it is odd for BellSouth to contend that the Existing Terms and Conditions did not apply to the subject traffic because of a paragraph in a 1996 FCC decision that has been superceded by a subsequent FCC decision If BellSouth's contention that its carriage of CMRS traffic throughout the LATA was never subject to the Existing Terms and Conditions was correct (and, it is not) an additional issue would be raised under what rights, terms, and conditions did BellSouth utilize the termination services of the rural Independents?

12 These requests are currently the subject of petitions for arbitration in Docket No 03-00585 The Coalition utilizes the term "purported request" in the text above because the Coalition maintains that no established

carrier to elect to utilize the services of an interLATA or intraLATA carrier to transport and terminate its traffic to the rural Independents or any local exchange carrier, the CMRS carrier has every right to do. By maintaining an indirect interconnection arrangement through an interLATA or intraLATA carrier to terminate its traffic in this manner, the CMRS carrier is not required to engage in negotiations or enter into any agreement with the terminating carrier. Instead, the CMRS carrier enters into a bilateral agreement with the interLATA or intraLATA carrier which, in turn, terminates the traffic through the exchange access service it receives from the terminating local exchange carrier [13]

The Coalition members are not parties to the negotiations and resulting agreements between BellSouth and CMRS carriers pursuant to which BellSouth carries CMRS traffic to the rural Independents for termination. In fact, when the CMRS traffic is delivered by BellSouth, the rural Independent cannot technically identify the traffic as distinct from any other traffic BellSouth delivers pursuant to the Existing Terms and Conditions

The fact that the traffic originates on the network of a CMRS carrier and terminates within the same MTA is certainly relevant to the array of interconnection arrangements available to the CMRS carrier, and the fact that the CMRS carrier may request a reciprocal compensation arrangement pursuant to Section 251(b)(5) of the Telecommunications Act This fact, however, is not relevant to the arrangement that exists between BellSouth and the rural Independents. It is relevant only to the future terms and conditions that may be applied. Pursuant to the Existing Terms and Conditions, BellSouth provides services as an intraLATA interexchange carrier and

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interconnection standards apply Section 251(b)(5) reciprocal compensation arrangements to the Section 251(a) indirect interconnection arrangement the CMRS carriers seek to maintain through BellSouth The FCC rules addressing reciprocal compensation anticipate the establishment of a point of interconnection between the requesting carrier and the incumbent LEC The Petitions for Arbitration are the subject of a Motion to Dismiss filed by the Coalition on March 3, 2004

13 *See* fn 10

utilizes the terminating services of each rural Independent Contrary to the outdated 1996 FCC Order cited by BellSouth, the traffic originated on the CMRS networks and carried by BellSouth is not automatically deemed either "local" or subject to Section 251(b)(5) Consistent with both Section 251(g) of the Telecommunications Act and the FCC's *Order on Remand,* the Existing Terms and Conditions remain applicable until they are modified, replaced or terminated by the Authority, as may occur as a result of the arbitrations in Docket 03-585.

3. BellSouth's self-styled role of "transit provider" does not exonerate it from its responsibilities under the Existing Terms and Conditions.

BellSouth contends that "as the middle transit provider, it has no legal obligations to pay intercarrier compensation of any kind for the traffic originated by another party . . ."[14] BellSouth's only cited authority for its position is that same paragraph 1036 in the August 8, 1996 FCC decision in CC Docket No. 96-98 which, as discussed above, was superceded by the *Order on Remand* While BellSouth points out that it has asserted its position "consistently and repeatedly," the fact remains that BellSouth's argument becomes no more believable or sustainable irrespective of how many times BellSouth says it![15]

No law or regulation required BellSouth to carry the traffic of a CMRS carrier to a rural Independent network for termination through the existing access arrangement provided to BellSouth under the Existing Terms and Conditions. In an FCC arbitration of interconnection agreements between another large regional incumbent carrier (Verizon) and three CLECs in

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14 BellSouth Brief, p 3

15 And, no matter how many times they say it, BellSouth apparently is not too certain itself *See, eg , Ex Parte* of BellSouth in CC Docket 01-92 before the FCC where BellSouth states, "Neither the Act nor any Commission precedent obligates Bellsouth to provide transit service the Commission should clearly articulate these responsibilities in the context of these proceedings " At the outset of this *Ex Parte*, BellSouth expresses the "need for the Commission to issue rules relating to intercarrier compensation associated with indirect interconnection and transiting functions " BellSouth has filed numerous *Ex partes* in this FCC proceeding, which similarly demonstrate that the applicable law and regulation is not settled in the manner BellSouth has portrayed in its Brief at p 3

Virginia, the FCC arbitrator concluded 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."[16]

Accordingly, when BellSouth decided to provide so-called transit services to the CMRS carriers, it did so voluntarily outside the scope of the interconnection rules and obligations.[17] BellSouth's voluntary decision to provide transport and termination services to the CMRS carriers gave rise to no unilateral right for BellSouth to dishonor the Existing Terms and Conditions or to impose alternative terms and conditions on the rural Independents While the rural Independents may have the duty to terminate traffic that a CMRS provider sends through BellSouth, no rural Independent is involuntarily obligated to terminate the traffic in accordance with terms and conditions dictated by BellSouth or any other party

The CMRS providers arranged for BellSouth to carry their traffic to the rural Independent networks BellSouth did so voluntarily pursuant to its agreements with the CMRS carriers BellSouth carried the traffic over its trunk connections and purportedly compensated the Coalition Members pursuant to the Existing Terms and Conditions[18] through May 31, 2003 Subsequent to that date, BellSouth has dishonored the Existing Terms and Conditions apparently on the asserted, but wrongful, basis that it has no obligation to pay the Independents for the subject traffic [19] To the contrary, and consistent with Section 251(g) of the Act, the *Order on Remand*, and the *Initial Order of Hearing Officer* issued in this proceeding on December 29,

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

17 BellSouth has also recognized and agreed with these FCC conclusions *See, 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

18 The terms and conditions were modified by agreement approved by the Hearing Officer with respect to the subject traffic terminated during May, 2003

19 BellSouth Brief, p 2

2000, BellSouth has no basis to dishonor the Existing Terms and Conditions that govern its interconnection to each rural Independent until such terms are terminated, replaced or modified with the approval of the Authority

B. The execution of a "meet-point billing" arrangement by BellSouth and a CMRS Carrier does not affect the Existing Terms and Conditions between BellSouth and each rural Independent.

BellSouth claims that its decision to disregard the Existing Terms and Conditions "has arisen due to the implementation (footnote omitted) of Meet-Point Billing with CMRS Carriers "[20] BellSouth proceeds to present a tale that simply does not hold together against the applicable facts and law. A face-value reading and acceptance of the BellSouth brief would leave the reader wondering "What is wrong with the rural Independents? Why don't they follow the industry guidelines?"

After all, if the reader accepts BellSouth's premises at face-value, the conclusions are easy: BellSouth and the CMRS carriers must have a right to go to "Meet-Point Billing" and affect the rights of the rural Independents because BellSouth says it is so And, once the move to "Meet-Point-Billing" by agreement of the CMRS carriers and BellSouth takes place, the rural Independents must have an obligation to relieve BellSouth of responsibility for payment for the

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20 *Id* BellSouth prefaces the words quoted above with, "As the Hearing Officer is aware " The Coalition is concerned that BellSouth may attempt wrongfully to utilize the Hearing Officer's words in the May 5, 2003 *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions* (the "May 5, 2003 Order") as an imprimatur of its position regarding the efficacy of bilateral agreements between CMRS carriers and BellSouth on the rural Independents In the May 5, 2003 Order there are multiple references to these purported "meet point billing arrangements " For example, the Hearing Officer stated that he "understands that the traffic that is the subject if the dispute includes only CMRS-originated traffic transiting BellSouth's network and terminating on a Coalition member's network where Bellsouth has entered into a meet point billing agreement with the CMRS carrier that originated the traffic " (May 5, 2003 Order at pp 5-6) Undoubtedly, this and other references by the Hearing Officer to "meet point billing arrangements" are intended to convey nothing more than recognition of Bellsouth's claim that agreements referred to as "meet point arrangements" exist between BellSouth and the CMRS carriers The Coalition is confident that the Hearing Officer did not intend to convey to BellSouth any endorsement of BellSouth's apparent theory that it is empowered to enter into bilateral contracts with CMRS carriers that affect the rights of rural Independents who were not parties to those contracts The Coalition trusts that BellSouth will not be so brazen as to suggest that the Hearing Officer would, within the May 5, 2003 Order, overturn hundreds of years of well recognized common law (i e, that two parties to a contract cannot by their agreement impose obligations on a non-party)

termination of the subject traffic because BellSouth says it is so [21] And, if BellSouth saying so is not sufficient, the CMRS carriers also say it is so![22]

Other than claiming "it is so," neither BellSouth nor the CMRS carriers provide any authority or basis for their claim that they can bilaterally enter into so-called "Meet-Point-Billing" arrangements and thereby affect the rights of the rural Independents. Neither BellSouth nor the CMRS carriers provide any such authority Nor could they provide any authority for their claim - no such authority exists [23]

"Meet-Point-Billing" is a term of art originated in the telecommunications industry to describe a billing arrangement where two or more carriers provide interexchange access to another carrier. The Coalition respectfully suggests that the issue raised by the contention of BellSouth and the CMRS carriers is not whether at some future time a "Meet-Point-Billing" arrangement may be an appropriate replacement for the Existing Terms and Conditions The issue raised by BellSouth and the CMRS carriers is whether their bilateral agreements to utilize a "Meet-Point-Billing" arrangement can impose obligations on a rural Independent that is not a party to the BellSouth - CMRS carrier so-called "Meet-Point Billing" agreement. The answer to this issue is a most definite "No "

The ultimate demonstration that no substance underlies the position of BellSouth and the

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21 BellSouth Brief, p 2

22 *See, e g*, CMRS Carriers' Comments at pp 4-5

23 In fact, the only legal authority cited anywhere in the BellSouth Brief or the CMRS Carriers' Comments in support of any of their arguments is the FCC's August 8, 1996 decision in CC Docket No 96-98 As discussed *supra,* those aspects of that Order cited (i e , para 1036) as support by BellSouth and the CMRS Carriers have been modified by the *Order on Remand* From the perspective of professional responsibility it is, at minimum, odd that counsel for both BellSouth and the CMRS Carriers each cite only the August 8, 1996 Order and that neither party discloses knowledge of the *Order on Remand* Familiarity with the *Order on Remand* would appear to be a prerequisite to conduct good-faith negotiations of Section 251 interconnection In addition, and as discussed at fn 15, *supra*, BellSouth must know that there is no legal authority that sustains its claim of no responsibility when it carries traffic and proclaims the traffic to be "transit traffic" and subject to an automatic "meet point billing arrangement "

CMRS providers is found in a review of the industry standards applicable to the establishment of "meet-point billing arrangements." These are the very guidelines referred to by BellSouth in its Brief[24] In pertinent part, these industry guidelines establish the following overall principle at the outset of the statement of the guidelines:

> **"When all involved providers agree to a meet-point Billing arrangement, these guidelines are used** "(Emphasis added)[25]

It is hardly surprising that industry guidelines would recognize a basic principle of contract law all parties to any interconnection meet-point billing arrangement should be in agreement prior to implementing the arrangement This concept simply reflects the general common law notion that two parties to an agreement cannot impose obligations and responsibilities on a non-party

Instead of addressing this fundamental and critical principle, BellSouth chooses to hurl a gratuitous vituperative characterization, asserting that the rural Independents "bury their heads in the sand."[26] Once again, however, the words of BellSouth cannot change the facts or law No

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24 *See, e g ,* BellSouth Brief at footnotes 2, 3 and 4 The Coalition respectfully brings to the attention of the Hearing Officer that BellSouth indicates at fn 2 and fn 3 that it utilizes "Meet-Point Billing" arrangements with CLECs in Tennessee The Coalition members are not parties to any such agreements The information disclosed by BellSouth in its Brief, however, appears to relate to additional concerns regarding whether BellSouth has violated the Existing Terms and Conditions as a result of actions other than those under consideration in the Coalition Petition Coalition members report that they have received invoices labeled "access bills" from various CLECs purporting to charge the rural Independent for the termination of intraLATA interexchange traffic that is the responsibility of BellSouth pursuant to the Existing Terms and Conditions The fact that BellSouth has disclosed the existence of these agreements with CLECs is indicative of *prima facie* evidence that BellSouth is not abiding by the *Initial Order of the Hearing Officer* issued December 29, 2000 with respect to matters beyond the scope of the Coalition Petition The Coalition respectfully asks the Hearing Officer, on his own motion, to take action to ensure that BellSouth's conduct does conform to the standing Orders of the Authority

25 *See*, Attachment – extraction of Section 2 from the ATIS/OBF-MECAB industry guidelines, the very standards often referenced by BellSouth and the CMRS providers

26 BellSouth Brief at fn 3 It is interesting to note that this BellSouth character attack on the rural Independents is in the context of what BellSouth calls the refusal of the rural Independents "to use the industry standard form used in Meet-Point Billing Arrangements " The Coalition claims no knowledge of whether BellSouth's head is buried in the sand or elsewhere, but does respectfully ask why BellSouth has never addressed the fact that "industry standard" meet-point billing arrangements are only implemented by the agreement of all participating parties

effective "Meet-Point-Billing" arrangement has been established among all the necessary parties. the rural Independents, BellSouth, and the CMRS carriers [27] The indirect interconnection arrangement utilized by the CMRS carriers to terminate their traffic in the rural networks has long been in place The CMRS carriers and BellSouth apparently have bilateral arrangements whereby BellSouth transports the CMRS traffic for a fee to the rural Independent networks BellSouth terminates the traffic through the established interconnection arrangement that BellSouth utilizes for the termination of all (non-EAS) traffic that it carries to the rural Independent networks

As discussed *infra*, this interconnection arrangement is utilized by BellSouth subject to the Existing Terms and Conditions Until June 1, 2003, BellSouth's purported practice was to provide compensation to the rural Independents for the traffic it carried for the CMRS carriers in accordance with the Existing Terms and Conditions.[28] In its Brief, BellSouth never specifically addresses the fact that this was its long-standing practice. Instead, BellSouth claims, "In the past, BellSouth provided payment to the ICOs for CMRS transit traffic as an accommodation

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27 In accordance with the directives of the Hearing Officer set forth in the May 5, 2003 Order in this proceeding, the Coalition did attempt good-faith negotiations to determine whether mutually agreeable terms and conditions of such an arrangement could be established The Coalition invested considerable time and resources, including the development of a three-party agreement for use as a starting point for discussions among all parties BellSouth and the CMRS carriers, however, refused to participate in three party discussions As a result, the negotiations initiated by the May 5, 2003 Order have resulted in the filing of petitions for arbitration now consolidated in Docket 03-585 wherein the Coalition filed on March 3, 2004, a "Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party " (The "Coalition March 3 Motion ") The subject matter of the Coalition March 3 Motion is clearly related to the issues in this proceeding, consequently, the Coalition also filed the March 3 Motion in this proceeding In the CMRS Carriers' Comments, the CMRS providers accurately anticipated the filing of the March 3 Motion *See*, CMRS Carriers' Comments, Section III, pp 6-7 To the extent the CMRS Carriers have addressed the issues raised by the March 3 Motion, those issues are beyond the immediate scope of the consideration of the two pending motions· the Coalition Petition and the BellSouth Motion The Coalition Motion addresses only the enforcement of BellSouth's obligations until the Authority terminates, replaces or modifies the Existing Terms and Conditions with respect to the termination of traffic carried by BellSouth that it has designated "CMRS traffic " The Coalition accordingly reserves its right to respond to those aspects of the CMRS Carriers' Comments that anticipated the March 3 Motion in accordance with the appropriate procedural schedule

28 *See*, fn 3, *infra*

because no billing record was provided to the ICOs (footnote omitted) "[29] The claim is not correct No Coalition member is aware of any discussion or document wherein any reference was made that BellSouth would "gratuitously" compensate the rural Independents as an accommodation with respect to the lack of available "billing records."[30]

No question of fact exists that BellSouth recognized that the subject traffic should be governed by the Existing Terms and Conditions. The Existing Terms and Conditions between BellSouth and each rural Independent cannot be modified by a so-called "Meet-Point Billing" agreement between a CMRS carrier and BellSouth. The Coalition Petition should, accordingly, be granted BellSouth should be required to compensate the rural Independents for the termination of all subject traffic retroactively and going forward until the Authority replaces, modifies or terminates the applicability of the Existing Terms and Conditions to the subject traffic

29 BellSouth Brief, p 3

30 BellSouth suggests that the provision of what it calls "EMI 1101-01" records for the billing of traffic carried by BellSouth to a rural Independent is common accepted industry-wide practice It is not The rural Independents were not involved in the establishment of this self-proclaimed standard, and they have raised significant issues regarding the sufficiency and auditability of these records While these issues are beyond the scope of this proceeding with respect to consideration of the Coalition Petition, they are before the authority in the arbitration proceedings in Docket No 03-585

C. The "settlement" offers proposed by BellSouth and the CMRS Carriers are neither equitable nor sufficient.

1. The BellSouth Settlement Offer

In a good-faith effort to resolve the issue raised by the Coalition Petition, the rural Independents participated in settlement discussions It is important to note that these settlement discussions addressed issues that are separate and distinct from the negotiations related to the establishment of new terms and conditions applicable to the existing indirect interconnection arrangement The matter of negotiating new terms and conditions was brought within the scope of a Section 251 interconnection request and the Section 252 negotiation and arbitration process by the Hearing Officer's May 5, 2003 Order

As a matter of fact and law, the initiation of a Section 251 request for new terms and conditions applicable to an existing interconnection arrangement did not have any impact on the application of the Existing Terms and Conditions to the existing interconnection arrangement New terms and conditions arrived at lawfully pursuant to a Section 252 negotiation and arbitration process may replace the Existing Terms and Conditions when the new terms and conditions become effective The transmission of a request for new terms and conditions, and the subsequent negotiation and arbitration, however, does not, under any statute or regulation, displace existing terms and conditions

Notwithstanding the fact that negotiations to establish new terms and conditions for the existing interconnection arrangement were underway, BellSouth elected to continue to dishonor the Existing Terms and Conditions. The Coalition did not immediately request action on the Coalition Petition because the rural Independents hoped that resolution could be achieved through negotiation and without additional formal processes [31] The Coalition was aware that

31 BellSouth suggests that the Coalition's agreement to hold the Coalition Petition in abeyance while the

BellSouth, the CMRS carriers and the Independents had reached agreements effective through December 31, 2004, in other states where similar issues arose as a result of BellSouth's decision to cancel existing arrangements [32] The Coalition members expressed willingness to reach a similar compromise that would be effective through December 31, 2004 or until such time as lawful new terms and conditions are approved by the Authority, consistent with both the Authority's jurisdiction under the Telecommunications Act and the *Initial Order of Hearing Officer* issued on December 29, 2000

In response, BellSouth proposed a settlement offer to provide compensation "through May, 2004." [33] BellSouth suggests that this offer "should provide the ICOs ample time to resolve this issue with no gap in payment, particularly in light of the proposed arbitration schedule for Docket No. 03-00585 "[34] Once again, BellSouth is less than candid. An offer of payment through May, 2004 only covers traffic delivered through March 31, 2004.

If BellSouth intends in good faith to offer a compromise settlement that will remain in place until it is replaced by new terms and conditions approved by the Authority, BellSouth should so state The Coalition, however, believes that BellSouth's offer of settlement is conditioned upon agreement by the rural Independents to alleviate BellSouth of responsibility for the terminating compensation irrespective of whether the Authority has approved new terms and conditions applicable to the existing interconnection arrangement. With all due respect, why

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Coalition participated in good faith settlement negotiations should somehow be viewed as detracting from the Coalition's position BellSouth Brief, p 6 BellSouth's position is reprehensible and an affront both to the Coalition's choice to participate in good faith negotiations and to the Hearing Examiner who encouraged negotiated resolution in the May 5, 2003 Order

32 *See,* the Brief of the Coalition filed on February 27, 2003 at fn 19, BellSouth Brief, p 4 *See also*, the Coalition's "Response to the Petitions for Arbitration" filed on December 1, 2003 in both this proceeding and Docket 03-585, pp 13-14, and to which a copy of such a settlement is attached

33 BellSouth Brief, p 4

34 *Id* , at fn 5

would the rural Independents agree to this BellSouth-imposed condition when all parties are aware that issues regarding the responsibility for the traffic have not been resolved by the FCC?[35] No law or regulation alleviates BellSouth of its responsibilities to compensate each rural Independent for the traffic it carries to the rural Independent networks for termination unless and until new terms and conditions applicable to the traffic are established and approved by the Authority.

2. The CMRS Carriers' Settlement Offer.

The CMRS carriers state that they "made an interim compensation offer as contemplated by the statutory process The intent of that offer was to address a presumed desire that Coalition members would want to receive compensation for CMRS Meet Point billed traffic until a final interconnection agreement was implemented."[36]

This statement is misleading and inaccurate in several respects. The characterization of the traffic as "CMRS Meet Point billed traffic" is, of course incorrect No meet point billing arrangements have been established among all the parties. The CMRS carrier are correct in their assumption that the Coalition members want to be paid for the CMRS originated traffic carried to their networks for termination by BellSouth. Until such time, however, as the existing interconnection arrangement is subject to new terms and conditions, the Coalition members seek to enforce their rights to payment in accordance with the Existing Terms and Conditions

The CMRS carriers do not specifically argue that their Section 251 request to negotiate new terms and conditions for the existing interconnection arrangement through BellSouth gave rise to an obligation on their part to pay the rural Independents in lieu of BellSouth This

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35 *See*, fn 17, *infra* *See, generally*, the *ex partes* filed by BellSouth at the FCC in Docket 01-92

36 CMRS Carriers' Comments, p 4

suggestion is implied, perhaps, by their incorrect statement that their interim offer is "contemplated by the statutory process." There are, however, no words in the Telecommunications Act that support this statement

The concept of "interim compensation" is found only in Section 51.715 of the FCC's Rules and Regulations [37] The Coalition is not aware of any instance where a carrier seeking new terms and conditions for an existing indirect interconnection arrangement has established interim compensation pursuant to these rules The Section 51.715 rules, in fact, do 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." [38] The rules address circumstances where a carrier does not have any interconnection and it seeks to establish transport and termination on an incumbent LEC network The interim arrangement rules established by Section 51.715 assure a requesting carrier that it does not have to wait to interconnect its traffic "pending resolution of negotiation or arbitration regarding transport and termination rates by a state commission under sections 251 and 252 of the Act."[39]

Under the given circumstances, the CMRS carriers do not require an interim arrangement to ensure that they can terminate traffic to each rural Independent through BellSouth, an arrangement already exists The Section 51.715 rules are not needed to establish interconnection, and the indirect interconnection arrangement under consideration is already used Accordingly, the Section 51.715 rules are not applicable

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37 47 C F R Sec 51 715

38 47 CFR Sec 51 715(a)(1)

39 47 CFR Sec 51 715(a) The rules also contemplate that the requesting carrier seeks transport "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 " 47 CFR Sec 51 701(c) The negotiation discussions between the Coalition representatives and the CMRS carriers focused only on the development of new terms and conditions applicable to the existing interconnection arrangement, and not to the establishment of any specific point of interconnection between any rural Independent with any CMRS carrier

The Coalition rejected the settlement offer of the CMRS carriers because no basis exists in fact or law for the rural Independents to waive their existing rights to receive compensation from BellSouth pursuant to the Existing Terms and Conditions pending the Authority's modification, replacement or termination of the application of those terms and conditions to the subject traffic The CMRS carriers incorrectly interpreted the rejection of their settlement offer as an indication "that the Coalition has no intention of establishing a 'reciprocal compensation arrangement' as required by the Act, so long as it expects to receive compensation at access rates "[40] To the contrary, no Coalition member has the ability to impede the establishment of a lawful reciprocal compensation arrangement consistent with the requirements of the Telecommunications Act and the FCC Each rural Independent has willingly participated through Coalition representation both in the negotiations initiated as a result of the Hearing Officer's May 5, 2003 Order and in the resulting arbitrations in Docket 03-585.[41]

D. Conclusion: The "Stake Date" Proposed by the CMRS Carriers has already been established. The Coalition Petition should be granted and BellSouth should conform to the Existing Terms and Conditions until those terms are changed with the approval of the Authority.

Contrary to the claims of both BellSouth and the CMRS carriers,[42] the Coalition members have taken no action to impede any party from pursuing a lawful orderly process to establish new terms and conditions applicable to the termination of traffic originated on a CMRS network and carried by BellSouth to the rural Independent networks. The Coalition members have actively attempted to resolve the issues raised by the Coalition Petition:

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40 CMRS Carriers' Comments, p 5

41 The Coalition notes that its March 3 Motion filed both in Docket No 03-585 and in this proceeding demonstrates that the interconnection terms and conditions that the CMRS carriers have sought in arbitration to impose on the rural Independents are obligations far beyond those required by statute or FCC regulations

42 *See, e g*, CMRS Carriers' Comments, pp 2-5, BellSouth Brief pp 5-6

1. The Coalition agreed to accommodate BellSouth with a reduced rate effective during an interim period approved by the Hearing Officer in the May 5, 2003 Order The Coalition refrained previously from asking for action on the Coalition Petition because it anticipated that the issues could be resolved through good-faith negotiation

2. The Coalition adhered to the directive of the Hearing Officer's May 5, 2003 Order regarding the participation in good faith negotiations to establish new terms and conditions applicable to the subject traffic The Coalition was informed by both BellSouth and the CMRS carriers that they would not negotiate new terms and conditions for the three-way indirect interconnection arrangement on a three-way basis The proposed agreement offered by the Coalition was set aside. The Coalition nonetheless continued efforts to negotiate in good faith with the parties

3 The Coalition offered to enter a settlement with similar terms and conditions (including an effective term through December 31, 2004) to those settlements that have been executed by BellSouth, the CMRS carriers and rural telephone companies in other states BellSouth rebuffed the efforts of the Coalition

The single focus of the Coalition Petition is enforcement of the Existing Terms and Conditions until such time as the application of those terms and conditions to the termination of the subject traffic is modified, replaced or terminated by the Authority The Coalition respectfully submits that the Hearing Officer established a process to enable the parties to arrive at new terms and conditions in accordance with the May 5, 2003 Order Until new terms and conditions are established, BellSouth has not cited any authority, nor does any authority exist in law, that alleviates BellSouth of its responsibilities under the Existing Terms and Conditions

BellSouth could have approached the rural Independents to negotiate a rate reduction for the termination of traffic BellSouth carries for the CMRS carriers to the rural Independent networks. Had such negotiations failed, BellSouth could lawfully have filed a petition with the Authority to seek a reduction in the applicable rate. Instead, however, BellSouth chose self help BellSouth created a fiction and unilaterally changed the name of the existing indirect interconnection arrangement and labeled it a "Meet-Point Billing" arrangement BellSouth then unilaterally alleviated itself of financial responsibility to the rural Independents pursuant to the Existing Terms and Conditions

As discussed herein, however, no "Meet-Point Billing" arrangements arise in the absence of agreement of all participating parties Neither declaring a BellSouth-CMRS carrier arrangement to be "Meet-Point-Billing," nor instigating negotiation and subsequent arbitration can alleviate BellSouth of its responsibilities pursuant to the Existing Terms and Conditions.

It is odd that the CMRS carriers are very anxious "that the TRA should affirmatively state that CMRS originated Meet-Point billed traffic is not subject to the PCP and that no further payment is due from BellSouth to the Coalition for such traffic as of a specified 'Stake Date' " [43] While it is easy to see how this request serves the interests of BellSouth, it is interesting to observe that the request was made by the CMRS carriers

The lawful concerns and objectives of the CMRS carriers will be addressed in the arbitration proceeding, Docket 00-585 If the CMRS carriers have negotiated in good faith and arbitrated in accordance with lawful applicable standards, the arbitration process established by their petitions will address their requests and their concerns There is no apparent reason for the CMRS carriers to seek a "Stake Date" to "serve the further purpose of finality, with it being understood that no Party may make claims against another for additional compensations or reimbursement prior to such date."[44] Inasmuch as the Coalition Petition seeks only action to enforce rights against BellSouth pursuant to the Existing Terms and Conditions, the CMRS should have no concern unless they expect BellSouth to turn to them for reimbursement of the fees that BellSouth owes the rural Independents. According to BellSouth, however, the CMRS carriers need not worry: "Prior to Meet Point Billing, CMRS providers contracted with BellSouth and those contracts contemplated that BellSouth would provide payment to the ICOs

43 CMRS Carriers' Comments, p 5

44 *Id*

and collect payment from the CMRS providers."[45] BellSouth has suggested that it has entered agreements with the CMRS carriers whereby it no longer looks to the CMRS providers for repayment of charges paid to the rural Independents [46]

Establishing a "Stake Date" in the manner proposed by the CMRS carriers is not appropriate A "Stake Date" has already been established by the standing orders in this proceeding The "Stake Date" is that date on which the Existing Terms and Conditions are modified, replaced or terminated by the Authority Until that date arrives, BellSouth is obligated to conform to the Existing Terms and Conditions and to pay the rural Independents for the termination of all the traffic, including the CMRS carrier traffic carried by BellSouth to the rural Independent networks for termination. Accordingly, the Coalition respectfully requests that its Petition be granted.

II. The Bellsouth Motion Should be Denied. It is Moot.

The BellSouth Brief confirms the conclusions set forth by the Coalition in its February 27, 2003 brief·

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45 BellSouth Brief, p 2

46 The Coalition was under the impression from its discussions with BellSouth that BellSouth aggressively dishonored the Existing Terms and Conditions because it had executed agreements with the CMRS carriers that prevented BellSouth from seeking reimbursement for charges paid to the rural Independents While the Coalition concluded that BellSouth may have made a "bad deal" with the CMRS carriers, the Coalition would not waive its rights against BellSouth under the Existing Terms and Conditions Consequently, the Coalition Petition was filed The CMRS carriers' desire for a "Stake Date" gives rise to the possibility of a different factual scenario whereby BellSouth and the CMRS carriers may have acted in concert to develop the "meet-point billing" fiction as a wrongful basis for depriving the rural Independents of their compensation rights pursuant to the Existing Terms and Conditions Separate and distinct from the Coalition Petition which is only directed at seeking enforcement of the Existing Terms and Conditions against BellSouth, the Coalition members have not waived any rights that have arisen against either the CMRS Carriers or BellSouth as a result of either their independent actions or actions in concert that are related in any way to the subject matter of the Coalition Petition Accordingly, the Coalition members have reserved their rights to pursue all additional appropriate actions before the Authority or any other forum with appropriate jurisdiction

The BellSouth request is moot There is no need to clarify that the Initial Order of the Hearing Officer addressing Issue 2 was not intended to discourage the parties from negotiating The BellSouth Motion was held in abeyance, and the parties did negotiate Nor is there any need to address whether the contract may be terminated pending the conclusion of this proceeding Termination of the contract is no longer a relevant legal matter. BellSouth has already purported to terminate the contract [47]

A. The Rural Independents have not delayed any process in this proceeding or suggested that the Existing Terms and Conditions cannot be lawfully terminated.

BellSouth states that it "merely seeks an order clarifying the June 2002 Order in light of the ICOs' apparent perspective that the TRA has, in that Order, granted them the right to retain the PCP until a state Rural USF process is implemented, a perspective that has stalled the negotiations " [48] In support of its pleading BellSouth creates a tale that omits important facts, overlooks important aspects of the standing Orders in this proceeding and, in its best light, may lead to inaccurate conclusions

The Coalition has never maintained that its members have a right to retain the PCP until a state Rural USF process is implemented The Coalition does maintain that, in accordance with the *Initial Order of the Hearing Officer* issued on December 29, 2000, and affirmed by the Authority on May 9, 2001, the Existing Terms and Conditions will remain in place "until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority." The Coalition fully appreciates that it has no right to determine if and when the Authority will terminate, replace or modify the existing terms and conditions Action by the Hearing Officer on the BellSouth Motion was not required for the Coalition to negotiate with BellSouth and to develop a new proposal to reduce access charges and maintain universal service in the rural areas of Tennessee served by the rural Independents.

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47 Coalition Brief filed February 27, 2004, p 10

48 BellSouth Brief, p 12

It is simply disingenuous for BellSouth to claim that the negotiations have "stalled" because the Coalition perceives it has a right "to retain the PCP until a state Rural USF process is implemented."[49] Contrary to these inaccurate statements, the Coalition never suggested that the PCP had to be retained, or that it was a "permanent surrogate" for a Rural Universal Service plan. The facts are fatal to BellSouth's inaccurate accusations and inappropriate attacks [50]

If a factual hearing is held on the BellSouth Motion, the incontrovertible facts will demonstrate that:

1 The Coalition took on the burden of developing a full proposal for reduced access charges and creating a new rate design structure to preserve universal service.

2 The Coalition expended considerable resources in the analysis of various rate designs responsive to BellSouth's objective.

3. The Coalition agreed to implement a new proposal by BellSouth regarding the treatment of intrastate private lines. Subsequent to the agreement, BellSouth did not implement its proposal.

4 No member of the Coalition ever "stalled" the negotiation process or claimed that the PCP could be maintained indefinitely as a result of the December 2000 Order.

5. The Coalition representatives understood that BellSouth agreed with the proposal that the Coalition crafted

The Coalition has acted in good faith and remains ready, willing and able to pursue adoption of the plan that it has developed

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49 *Id* BellSouth laces its Brief with this claim "ICOs have throughout the negotiations held up that *Order* as if it were a TRA mandate requiring the out-dated PCP to remain in place **forever.**" BellSouth Brief, p 7 "The reality is the ICOs have relied on the December 2000 *Order* to delay indefinitely The ICOs have treated the PCP as a permanent TRA-approved surrogate for a Rural Universal Service Program " *Id*, p 8 None of these statements are supported by the facts

50 BellSouth's attack on the Coalition and its suggestion that the Coalition "stalled" in any way is both an inaccuracy and a professional affront to the Coalition member company representatives that have worked diligently to create a new proposed rate design It is interesting to note that when BellSouth addresses the Coalition Petition, it characterizes the Coalition's decision to seek "several agreed stays" as somehow demonstrating that BellSouth's failure to pay terminating compensation is not an "emergency " BellSouth Brief, p 6 Beginning a page later in its Brief, and in the context of the BellSouth Motion, BellSouth initiates its attack on the Coalition, never candidly acknowledging that BellSouth joined with the Coalition in seeking continued stays of the BellSouth Motion!

B. Until January 14, 2004, the Coalition understood in good faith that BellSouth was in agreement with the proposal developed by the Coalition.

It is simply incredulous that the BellSouth Brief suggests that the rural Independents have not acted diligently or proposed a plan that addresses both BellSouth's objectives and the universal service needs of the rural areas of Tennessee served by the Coalition members. In the wake of BellSouth's inflammatory diatribe, the Coalition is particularly concerned that the Hearing Officer or a member of the Authority might be left with the mistaken impression that the picture painted by BellSouth is accurate Contrary to BellSouth's suggestions and assertions, the Coalition members have acted diligently [51]

As early as September, 2001, the Coalition unilaterally sought to bring attention to these issues and suggested convening workshops to address these matters [52] BellSouth did not support the effort.[53] Subsequent to the filing of the BellSouth Motion, the Coalition met its commitment to negotiate with BellSouth and to develop a new proposal. The Coalition devoted significant resources to the development and analysis of alternative rate designs. The Coalition provided an initial plan to BellSouth last summer, and provided a final draft of the full proposal to BellSouth in November. In fact, the Coalition member company representatives understood that Bellsouth agreed to and supported the proposal

The "stall" in the negotiations occurred at a meeting on January 14, 2004 when BellSouth representatives made it clear (for the first time) to the Coalition that BellSouth would not proceed to support the Coalition proposal unless the Coalition members promised to reduce access charges by a date certain irrespective of whether or not the proposed plan is adopted The

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51 The BellSouth Brief is full of vitriolic innuendo wrongly suggesting that the rural Independents have failed to act For example, "(T)he ICOs have had a four-year opportunity to work with BellSouth, both to re-negotiate the PCP and to make proposals regarding Rural USF in Tennessee " Bellsouth Brief, p 8-9

52 *See,* Coalition Letter of September 4, 2001 to Director Malone

Coalition informed BellSouth that its members cannot make such a commitment. The Coalition respectfully submits that it is not appropriate for the rural Independents to commit to rate reductions for BellSouth in order to "buy" BellSouth's support of the proposal that the Coalition and BellSouth have worked on Contrary to BellSouth's apparent misunderstanding, changes in the existing terms and conditions are subject to approval by the Authority, and not private "deals" with BellSouth.

This relatively new BellSouth demand is the single basis for the "breakdown" in the Coalition's discussions with BellSouth Action on the BellSouth Motion will not address this "breakdown " Irrespective of BellSouth's claims, the rural Independents fully understand that the PCP is subject to termination by the Authority Grant of BellSouth's Motion is not required to reinforce any such understanding Nor is the grant of the BellSouth Motion necessary to "re-start the negotiations "[54] The Motion is moot

BellSouth apparently believes that grant of its Motion will somehow provide a signal to the Coalition members to acquiesce to the BellSouth January 14, 2004 demand for the rural Independents to "buy" BellSouth's support for the Coalition proposal [55] BellSouth overhangs this proceeding with the threat that it will alternatively "terminate the PCP by a date certain "[56] Once again, BellSouth overlooks the fact that it is only the Authority, and not BellSouth, that can

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53 *See,* BellSouth Letter of October 22, 2001 to Director Malone

54 BellSouth Brief, p 11

55 BellSouth asserts that the "clarification" it seeks "will be helpful in moving the ICOs away from their position that the PCP has been TRA-mandated to remain in place as a substitute for state Rural USF " BellSouth Brief, p 12 But, BellSouth is fully aware that this is not the position of the rural Independents In BellSouth's possession is the Coalition's proposal that demonstrates this fact BellSouth apparently believes that the grant of its Motion will "motivate" the Coalition "to discuss a date certain by which BellSouth could expect to receive access reductions " *Id*, p 8 The Coalition respectfully submits that the most efficient path to the "date certain" BellSouth seeks is to move forward with the presentation of the Coalition proposal that has been the subject of the discussions between BellSouth and the Coalition for many months

56 BellSouth Brief, p 8

terminate the existing terms and conditions.[57] BellSouth, however, apparently believes it can more quickly bully its way to its objective of obtaining reduced access charges

The BellSouth Motion was initiated by BellSouth's original July 15, 2002 Motion which was replete with gratuitous invective directed at the Rural Independent industry in Tennessee In an apparent effort to assuage the Coalition's response to the July 15, 2002 filing, BellSouth submitted a "substitute motion" on July 25, 2002, from which it removed some of the incendiary language incorporated into the original filing The BellSouth Brief filed on February 27, 2003 represents a disappointing reversion to its July 15, 2002, tactics Granting the BellSouth Motion will not convince the rural Independents that good faith negotiation means that the Coalition must agree with the January 14, 2004 demand by BellSouth The BellSouth Motion was not needed to initiate the development of new rate design proposals and related negotiations and workshops in this proceeding The rural Independents are on record advancing this course in September, 2001 Grant of the BellSouth Motion is not necessary to clarify that the PCP may be terminated, modified or replaced by the Authority. Nor is the grant of the BellSouth Motion required as a catalyst to undertake negotiations and to develop new proposals – this has been done The BellSouth Motion is moot and should be dismissed.

III. Conclusion and Procedural Recommendations

A. The Coalition Petition

The Coalition members have not been compensated for any of the subject traffic carried to their respective networks since June 1, 2003 The Coalition agreed to hold the Coalition Petition in abeyance in the hope that resolution would be reached, but the settlement discussions

57 In asserting that it can "cancel" the contract, BellSouth apparently overlooks the fact that the Hearing Officer determined that the existing arrangement between BellSouth and each Independent is ordered to be maintained "outside of the existing contract " Initial Order of Hearing Officer, Docket No 00-00523, p 12, fn 28

have not been successful. BellSouth's right to utilize the existing physical interconnection with each Independent remains subject to the Existing Terms and Conditions

BellSouth's unsupportable claim that it is alleviated from responsibility to compensate the rural Independents is based on one citation to a paragraph in a 1996 FCC that has been modified by subsequent FCC decisions BellSouth's own *ex parte* presentations to the FCC in Docket No. 01-92 demonstrate that BellSouth is well aware that no statute or regulation alleviates its responsibilities BellSouth's attempt to escape its obligations on the basis of the establishment of so-called "meet point billing arrangements" violates fundamental principles of contract law and the very specific industry guidelines on meet-point billing that BellSouth cites in support of its cause

BellSouth knows or certainly should know that the FCC has modified the 1996 Order upon which it relies. BellSouth knows or certainly should know that, under the very industry guidelines it relies upon, "Meet-Point Billing Arrangements" can be established only when all providers agree to the arrangement BellSouth's arguments in support of its position raise questions of propriety and good faith

No question of good faith, however, exists with respect to the willingness of the Coalition to hold the Coalition Petition in abeyance while it sought to resolve the underlying issues through negotiation BellSouth's intransigence has worn down the patience of the Coalition. The rural Independents fully recognize that the Existing Terms and Conditions are subject to the modification, replacement or termination by the Authority, and that the establishment of new terms and conditions for the existing indirect interconnection arrangement are the subject of the arbitrations in Docket 03-585 Until such time, however, as new terms and condition are approved by the Authority, the Existing Terms and Conditions are applicable The Coalition

respectfully requests that the Hearing Officer grant the Coalition Petition and direct BellSouth to compensate the rural Independents retroactively for all traffic that should have been subject to the Existing Terms and Conditions; and further direct BellSouth to abide by the Existing Terms and Conditions with respect to all subject traffic until such time as the Authority modifies, replaces or terminates the Existing Terms and Conditions

B. The BellSouth Motion

BellSouth has made representations to the Hearing Officer which are, in their best light, misleading The Coalition members have never suggested that the PCP, or any aspect of the Existing Terms and Conditions, "has been TRA-mandated to remain in place as a substitute for rural USF " Contrary to the picture portrayed by the BellSouth Brief, the Coalition has acted to develop a new rate design and universal service proposal. Grant of the BellSouth Motion was never necessary to encourage the Coalition either to negotiate or to develop a new proposal Accordingly, the BellSouth Motion should be dismissed as moot

The Coalition and BellSouth are in agreement, however, with respect to the subsequent course that should be taken in this proceeding BellSouth "suggests that some process, whether workshops or the invitation of comments, be re-started to move the Authority closer to the development of a Rural USF plan."[58] The Coalition has long been on the record proposing and endorsing this approach The Coalition respectfully looks forward to the opportunity to work together with all parties in interest to ensure that any and all changes in the Existing Terms and Conditions are undertaken in a manner that truly serves the interests of rural consumers and the preservation and advancement of universal service in the rural areas served by the Coalition members

Respectfully submitted,

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58 BellSouth Brief, p 14

2. GENERAL

2.1 Scope

These guidelines are for billing access and interconnection services provided by two or more providers or by one provider in two or more states within a single LATA. It is to the mutual benefit of both customers (customers and end users) and providers that bills be accurate and auditable. This document addresses the concept of MPB and revenue sharing as detailed in the December 8, 1988 Report. As stated previously, access and interconnection services include Usage Sensitive and Flat Rates Services. Where intrastate tariffs and contracts permit, these guidelines are used for access and interconnection services. The determination of implementing a meet-point Billing arrangement between providers, which operate in the same territory, is based upon Provider-to-Provider negotiations where the regulatory environment permits. When all involved providers agree to a meet-point Billing arrangement, these guidelines are used.

2.2 MECAB Revision

2.2.1 Reason for Revision

OBF Issue 472 (the MECAB Change Management Document) recommends that the MECAB be updated to incorporate all resolved OBF issues affecting the MECAB document. This is the **sixth revision** to the MECAB based on OBF Issue 472. This revision contains updates to industry guidelines to reflect the resolution of the following OBF Issues:[1]

Issue 1548 - Billing Verification Process in an Unbundled Environment
Issue 1667 - Exchange of Billing Information
Issue 1690 - Notification of Interconnecting Billing Information to the ULEC.
Issue 2056 – For Facility-Based LECs/CLECs & CMRS, Enhance the Meetpoint/Meetpoint-like Record Exchange to be Consistent with Unbundled Processes
Issue 2138 – Redefine and Evaluate the Need for Existing MECAB Data Elements
Issue 2162 – Eliminate Pass Through meet-point Billing Options in MECAB

The following issues were reviewed but no changes were made to the document.

Issue 1284 - Long Term LNP Billing and Verification
Issue 1287 - Billing For Unbundled Network Elements
Issue 1528 - The Billing Impact Resulting From Access Reform
Issue 1593 - Guidelines Do Not Exist For Providing Historical PICC Detail Data to Verify PICC Charges

2.2.2 Change Management

MECAB standards represent policy guidelines approved by the OBF, the Billing Committee of the OBF is responsible for the MECAB document. MECAB is changed through the incorporation of resolved OBF issues. Proposed changes to MECAB are reviewed and approved by the OBF Billing Committee and the OBF General Session. In accordance with the MO&O in CC Docket No. 86-104, released July 31, 1987, the FCC will have the opportunity to review any revisions to the standards (MECAB) to the extent that further tariff revisions are necessary.

[1] A record of resolved OBF Issues incorporated in MECAB revisions is contained in Section 11 - OBF Issues Included in MECAB Revisions.

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JOHN D CLARKE

February 27, 2004

VIA HAND DELIVERY

Hon. Kim Beals, Pre-Arbitration Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

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

Dear Ms Beals.

Enclosed please find two originals and fourteen copies of the "Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party" to be filed in each of the above-referenced proceedings.

Copies of the "Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party" 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,

Bill Ramsey

William T. Ramsey

cc: Hon Ron Jones, Director

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

PRELIMINARY MOTION OF THE RURAL COALITION OF SMALL LECs AND COOPERATIVES TO DISMISS OR, IN THE ALTERNATIVE, ADD AN INDISPENSABLE PARTY

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

March 3, 2004

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter to be referred to as the "Coalition" or "rural Independents") submits this "Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party." The Coalition respectfully submits that the Petitions for Arbitration filed by the CMRS providers in this proceeding should be dismissed as a matter of law. The unresolved issues presented by the CMRS providers in each of their respective Petitions reflect the desire of the CMRS providers to establish interconnection terms and conditions that are required neither by Section 251 of the Telecommunications Act nor the regulations prescribed by the Federal Communications Commission ("FCC") pursuant to Section 251. Accordingly, the relief sought by the CMRS providers is inconsistent with the Telecommunications Act , and the Petitions for Arbitration should be rejected and dismissed.

In the event that the Authority should nonetheless decide to consider the underlying issues, the Coalition submits that BellSouth Telecommunications, Inc. ("BellSouth") is an indispensable party and must be joined to this proceeding, or the petitions should be dismissed pursuant to TRA Rule 1220-1-2-.03. The interconnection arrangements under consideration are three-way indirect interconnection arrangements. Each CMRS provider seeks to establish terms and conditions applicable to its indirect interconnection to each rural Independent through a connection to the BellSouth network (i.e., each CMRS carrier connects to BellSouth which in turn connects to each rural Independent). As a matter of both law and logic, the terms and conditions applicable to this three-party arrangement cannot be established in the absence of one of the three parties. Therefore, BellSouth is indispensable to this proceeding.

I. Background

Although a Section 252 Arbitration proceeding is not the appropriate statutory forum to address the interconnection terms and conditions sought by the CMRS providers, the Coalition members are anxious to resolve, to the extent possible, matters related to the interconnection of the CMRS providers to the rural Independent networks. The Petitions for Arbitration each address CMRS interconnection indirectly to each rural Independent through the BellSouth network. The fact is that each of the CMRS carriers enjoys the use of this specific terminating network arrangement today, but the rural Independents have not been compensated for any of the termination they have provided since June 1, 2003.[1]

The events leading up to the filing of the Petitions for Arbitration are relevant to the determination of the Coalition's Motion to Dismiss.[2] The petitioning CMRS providers each seek the establishment of new terms and conditions applicable to an interconnection arrangement they already utilize. Each CMRS carrier interconnects to each rural Independent indirectly through BellSouth. This interconnection arrangement has long been utilized, and the establishment of the arrangement did not require negotiations or an agreement between each CMRS carrier and each rural Independent. The three-way arrangement that is in place and working today exists because of the long ago established physical interconnection between BellSouth and each rural Independent.

The existing physical interconnection between BellSouth and each rural Independent is subject to terms and conditions originally set forth in contractual agreements between the

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[1] In order to address the immediate concerns regarding this issue, the Coalition filed a brief with the Hearing Examiner in Docket No. 00-00523 on February 27, 2004, requesting grant of the Coalition's *Petition for Emergency Relief and Request for Standstill Order* (the "Coalition's Emergency Petition") which was originally filed in that proceeding on April 3, 2003

[2] The Coalition respectfully refers the Hearing Officer to the Coalition's Response to the arbitration petitions for a more complete description of the background and history of this proceeding at pp 3-9

parties.[3] Pursuant to those agreements,BellSouth compensates each rural Independent for the traffic BellSouth carries to the rural Independent network for termination

At some point, BellSouth apparently negotiated a separate arrangement with each CMRS provider. No rural Independent was involved in or privy to the establishment of the arrangements between BellSouth and each CMRS carrier. Bellsouth apparently agreed to transport traffic for each CMRS provider to the network of each rural Independent, and BellSouth delivered that traffic through the existing physical interconnection between BellSouth and each Independent. BellSouth paid each rural Independent in accordance with the existing terms and conditions that govern this physical interconnection, and each Independent relied on the fact that BellSouth acted in accordance with these terms and conditions in the transmission of all traffic it delivered to the rural Independent networks.

On April 2, 2003, however, BellSouth provided notice to the Authority that it would discontinue payments for the traffic after April 2003. In response, the rural Independents filed the Coalition's Emergency Petition As a matter of compromise, the rural Independents and BellSouth agreed, on an interim basis, that the rural Independents would reduce the charges assessed to BellSouth for the termination of CMRS traffic delivered to the Independent networks through the indirect interconnection arrangement. The Hearing Officer approved this compromise arrangement as part of an *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions* issued in Docket No. 00-00523 on May 5, 2003. (The "*Conditional Stay Order*")

In an effort to encourage settlement of the issues, the Hearing Officer required

[3] These terms and conditions remain in place today by Order of the Authority and "outside of the existing contract" in accordance with the Initial Order of Hearing Officer in Docket 00-00523 issued on December 29, 2000, at fn 28

BellSouth to identify the CMRS providers with which BellSouth has agreements to transport traffic to the rural Independent networks, and further required the Coalition and BellSouth to notify these CMRS carriers of the opportunity to participate in collective negotiations.[4]

As a result, a series of negotiations and exchanges of documents took place initially among the parties The Coalition and its members joined with the other parties in an effort to identify all issues and the parties' respective positions. The "collective" negotiation required by the Hearing Officer was far different than the negotiations contemplated by Section 252 of the Telecommunications Act between a requesting carrier and an incumbent local exchange carrier. Throughout the negotiations, the rural Independents maintained their right to negotiate individually if circumstances warranted.

The Coalition members endeavored in good faith to comply with the Hearing Officer's encouragement to resolve the issues: "[S]ettlement of this disputed issue is clearly in the best interest of all parties involved in this docket "[5] In every appropriate instance, the Coalition maintained an important balance. The Coalition remained open to compromise throughout the negotiations. At the same time, however, the Coalition consistently reminded the other parties that they are seeking to impose terms and conditions that are not established by federal statute or regulation In the midst of the negotiations, both BellSouth and the CMRS providers pronounced that the negotiations would not include BellSouth. The Coalition noted that this violated the Hearing Officer's expectation of collective negotiations. The Coalition also questioned how the open issues could be resolved in the absence of BellSouth.

The Coalition reluctantly, and in good faith, continued to participate in the negotiations after BellSouth's departure. The negotiations inevitably failed and the Petitions for Arbitration

[4] *Id* at pp 8-9

were filed. This outcome was inevitable because the CMRS providers insist on imposing terms and conditions on the rural Independents that have not been established as interconnection standards and, therefore, cannot be imposed in a Section 252 arbitration. Although the issues presented by the CMRS providers cannot be resolved by an arbitration, the issues surrounding three-way interconnection of the CMRS providers through the BellSouth network to the rural Independents can be resolved by the Authority. The Coalition respectfully submits, however, that resolution of these matters cannot be achieved in the absence of BellSouth.[6]

II. Because the CMRS Providers Seek To Impose Terms and Conditions that are not Established Statutory or Regulatory Standards, the Petitions for Arbitration should be Dismissed.

The statutory framework governing a Section 252 arbitration proceeding is very specific. The Telecommunications Act delegates to the state regulatory authorities the right, but not the duty, "to arbitrate any open issues" in those instances where a carrier requesting Section 251 interconnection and an incumbent local exchange carrier have not reached agreement. The statute specifically prescribes the standards pursuant to which the state commission may resolve open issues and impose conditions on the parties Thus, a state regulatory authority conducting an arbitration proceeding is empowered to "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the commission pursuant to section 251." The Telecommunications Act does not, however, authorize state regulatory authorities to to determine Section 251 interconnection policies or standards. A state regulatory authority thus cannot resolve an open issue by imposing a term or condition that is not an

[5] *Id.* at p 5

[6] The Coalition respectfully refers the Hearing Officer to page 14 and footnote 12 of the Coalition's Response to the arbitration petitions In many other states where similar issues have arisen among the CMRS providers, BellSouth

established requirement of Section 251.

The arbitration petitions before the Hearing Examiner each seek to utilize the resources of the TRA to determine unsettled interconnection matters that are pending before the FCC.[7] In brief, there are no established standards for interconnection on an indirect basis that even remotely approach the terms and conditions sought by the CMRS providers. No requirement mandates that a rural LEC must permit BellSouth to utilize a physical interconnection to deliver traffic from CMRS providers over a common trunk group under terms and conditions that alleviate BellSouth from any financial liability for the termination service. No requirement exists that mandates that a rural LEC must transmit traffic to a CMRS provider through an indirect arrangement dictated by the CMRS provider. The Section 251 requirements establish terminating rights. These requirements do not establish a right to dictate how an incumbent local exchange carrier transmits traffic to a CMRS provider or any other carrier.

The CMRS providers have attempted to get the FCC to establish requirements to achieve these objectives. The FCC has not acted, as the CMRS carriers are aware. The CMRS providers apparently believe that the Authority will ignore Section 252(c) (1) of the Telecommunications Act and establish regulatory interconnection policy through this arbitration proceeding. With respect to this proceeding, the CMRS providers visited the FCC on December 10, 2003, and delivered copies of both their arbitration petitions and the Coalition's Response. The CMRS providers reported that the purpose of the meeting was to "update" the FCC Staff on the status or

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and rural Independents telephone companies, the parties have arrived at interim settlement arrangements The Coalition fails to understand why similar arrangements are not appropriate in Tennessee

[7] The Coalition respectfully refers the Hearing Officer to the complete Response of the Coalition A summary addressing this matter is set forth at p 9 See also, pp 21-30 wherein the Coalition addresses in detail the underlying basis for this Motion to Dismiss Throughout its Response, the Coalition has, with respect to each issue presented, addressed with specificity the applicable interconnection standards, referenced the applicable rules and regulatory decisions, and requested dismissal of each issue

negotiations with rural Independents including the arbitration before the Authority. The CMRS providers, in reporting on their meeting with FCC staff, acknowledged that "the matters in the state proceedings are similar to some of those at issue in CC Docket 01-92."[8] There is no question that the issues raised before the Authority are the same issues that are pending before the FCC Irrespective of whether the FCC eventually establishes the interconnection requirements the CMRS providers seek, the fact is that these requirements are not established today. The requests of the CMRS providers in Docket 01-92 are pending, but these carriers have filed their arbitration petitions with the hope that the Authority will act in their favor and in the absence of requirements established by statute or FCC regulation. For these reasons, the arbitration petitions should be dismissed

III. BellSouth is an Indispensable Party Whose Presence is Required to Resolve the Pending Issues.

As discussed in Section I, the negotiation process that resulted in the arbitration petitions was initiated by the *Conditional Stay Order* issued in Docket No. 00-00523. In that decision the Hearing Officer noted that both BellSouth and the Coalition agreed "to engage in good faith negotiations with CMRS providers in order to establish contractual terms governing payments between CMRS provider and [the Coalition] of an appropriate rate for termination of CMRS traffic."[9] BellSouth, however, subsequently decided that it did not want to participate in the negotiations. The CMRS carriers agreed with BellSouth and also insisted that BellSouth's participation was not necessary to effectuate new terms and condition for an indirect

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[8] See Attachment A, *Notice of Ex Parte* in Docket 01-92 filed by Davis Wright Tremaine LLP on behalf of AT&T Wireless, Sprint PCS and Verizon Wireless

[9] *Conditional Stay Order*, p 4-5

interconnection through BellSouth

The Coalition protested and provided substantive examples of the issues that required BellSouth's participation. These issues are identified and addressed with specificity in the Response of the Coalition to the arbitration petitions.[10] In summary, if BellSouth and the CMRS providers seek new terms and conditions with respect to an indirect interconnection arrangement through common BellSouth trunks, the terms and conditions cannot be established in BellSouth's absence.

The issues raised by the positions of the CMRS providers do not arise under the existing terms and conditions pursuant to which BellSouth carries CMRS traffic to the rural Independent networks. BellSouth utilizes a common trunk group for transporting the CMRS traffic to each Independent. Under the only existing agreements, BellSouth is supposed to compensate the Independent for the termination of the traffic. The CMRS carriers have an arrangement with BellSouth and BellSouth has its arrangement with each Independent pursuant to which the traffic is terminated. As a result, under the existing terms and conditions, the rural Independents are not concerned with how much traffic came from any specific carrier because BellSouth has elected to utilize its common trunk group to transport the traffic for the third party carriers, and agreed to take responsibility for payment to the rural Independents in accordance with the only existing terms and conditions.

If BellSouth and the CMRS providers insist on pursuing new terms and conditions whereby BellSouth would be alleviated of financial responsibility for the traffic it delivers to an Independent through a common trunk group, the Coalition is rightfully concerned with determining how each rural Independent will be able to audit and verify the amount of traffic

[10] *See*, Coalition Response at p 10-13, the discussion of the Coalition's Response to CMRS Issues 3,4,5,6,13 and

carried through the common trunk group for each CMRS carrier In an economic environment in which the rural Independents have experienced revenue loses resulting from bankruptcies of interconnecting carriers that did not pay their debts, the Independents are rightfully concerned with ensuring that BellSouth is subject to obligations regarding the treatment of traffic transported by BellSouth on behalf of a defaulting CMRS carrier.

In its Response to the arbitration petitions, the Coalition summarized the essential need for the presence of BellSouth or any transiting carrier in the establishment of new terms and conditions for a three-way indirect interconnection arrangement. Specifically, the Coalition noted that the following list, while not exhaustive, includes some of the essential issues that must be addressed with BellSouth before an indirect connection agreement with the CMRS carriers can be finalized (1) establishment of trunking facilities and a physical interconnection point with the ICOs, (2) responsibility to establish proper authority for either BellSouth or the ICOs to deliver traffic of third parties to the other, (3) responsibility not to abuse the scope of traffic authorized by the arrangement (*i e.*, the transmission of unauthorized traffic); (4) provision of complete and accurate usage records; (5) coordination of billing and collection and compensation (as discussed above in the previous issue); (6) 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); (7) responsibilities to act to implement network changes which alter or terminate the voluntary arrangement between the ICOs and BellSouth; and (8) responsibilities to coordinate appropriate actions in the event of default and non-payment by a carrier transiting traffic through BellSouth

BellSouth's unilateral decision not to participate in the negotiations with the Coalition

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18, and the additional rural Independent ("ICO") Issues 1, 2, 3, 8 and 9

and the CMRS providers is contrary to the pledge BellSouth made to the Hearing Officer in Docket No 00-00523. The fact that BellSouth and the CMRS providers strategically decided that BellSouth should not participate in the collective negotiations is not surprising, however based on their prior conduct. Contrary to all established precepts of contract law, BellSouth and the CMRS carriers apparently do not believe that all parties to an interconnection agreement or arrangement need to be present when two parties determine rights and obligations that affect the absent party.

In fact, the entire foundation of BellSouth's contention that, irrespective of existing interconnection terms and conditions, it no longer has to pay the rural Independents for interconnection involving CMRS traffic is the purported "fact" that it has entered into "meet point billing arrangements" with the CMRS carriers. In the prosecution of the Coalition's Emergency Petition, the rural Independents have pointed out how ludicrous it is to suggest that an existing arrangement between BellSouth and the rural Independents can be altered by BellSouth's decision to enter into a "meet point billing agreement" with a CMRS carrier. The BellSouth position is even more strained when considered in the context of the order of the Hearing Officer in Docket 00-00523 that requires all existing terms and conditions between BellSouth and the rural Independents to be maintained

It is ironic that BellSouth and the CMRS providers repeatedly point to "industry standards" regarding meet-point billing guidelines to support the positions they have each taken in opposition to the rights of the rural Independents. They have asserted that the bilateral establishment of a so-called "meet-point billing arrangement" sustains their infringement on the rights of the rural Independents even though the Independents were not parties to their

arrangement.

The ultimate proof that no substance underlies the position of BellSouth and the CMRS providers is found in a review of the very industry standards applicable to the establishment of "meet-point billing arrangements " In pertinent part, these industry guidelines establish the following overall principle at the outset of the statement of the guidelines:
"When all involved providers agree to a meet-point Billing arrangement, these guidelines are used."(Emphasis added.)[11]

It is hardly surprising that industry guidelines would recognize the basic principles of contract and incorporate the principle that all three parties to any interconnection meet-point billing arrangement should have the opportunity to be involved in the related negotiations and come to agreement prior to implementing the arrangement. This concept simply reflects the common law notion that two parties to an agreement cannot establish obligations and responsibilities on a non-party.

What is surprising is that neither the CMRS providers nor BellSouth recognize the concept. They did not recognize the necessity of having all indispensable parties present when they established a so-called "meet-point billing arrangement." Nor do they recognize that the presence of BellSouth is required to establish new terms and conditions for the indirect interconnection arrangement that already exists.

The Authority's own rules provide that "failure to join an indispensable party" is a defense to a complaint or petition in a contested case. TRA Rule 1220-1-2-.03. BellSouth is an indispensable party to this proceeding If BellSouth not added to this proceeding, the petitions must be dismissed.

[11] *See*, Attachment B – extraction of Section 2 from the ATIS/OBF-MECAB industry guidelines, the very standards

Rule 19.01 of the Tennessee Rules of Civil Procedure defines the classes of parties who are indispensable parties

> 19 01 Persons to Be Joined if Feasible
> Persons to Be Joined if Feasible. - A person who is subject to the jurisdiction of the court shall be joined as a party if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person properly should join as a plaintiff but refuses to do so, he or she may be made a defendant, or in a proper case, an involuntary plaintiff.

If BellSouth is not added as a party: (1) "complete relief cannot be accorded among those already parties; or (2) the Coalition's members will be subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of [BellSouth's interest]." As described throughout the Response of the Coalition to the arbitration petitions, BellSouth is unquestionably an indispensable party to the establishment of new terms and conditions for interconnection between CMRS carriers and rural Independents because the CMRS carriers have elected to interconnect indirectly through BellSouth. Accordingly, the Coalition respectfully requests that BellSouth be made a party to this proceeding, or, if BellSouth is not joined, this proceeding must be dismissed

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often referenced by BellSouth and the CMRS providers

IV. Conclusion

The Coalition does not maintain that there can be no new terms and conditions applicable to the indirect interconnection of a CMRS carrier to a rural Independent through BellSouth. The rural Independents have invested considerable resources in pursuing good-faith negotiations with all parties. As a demonstration of willingness to compromise and resolve issues through settlement, as encouraged by the Hearing Officer in Docket No. 00-00523, the rural Independents agreed to a substantial interim reduction in the charges applicable to the termination of traffic through the already existing indirect interconnection arrangement.

As discussed in the Coalition's Response to the arbitration petitions, the rural Independents remain willing to negotiate compromise solutions with all parties in accordance with terms and conditions that both BellSouth and the CMRS providers have entered in other States.[12] Instead, BellSouth has insisted on exiting this proceeding and the CMRS providers have insisted on pursuing an attempt to convince the Authority to impose interconnection terms and conditions that are not consistent with the interconnection requirements established by federal statue and FCC regulation.

The imposition of any such terms and conditions is beyond the scope of the standards pursuant to which the Authority is authorized to resolve an arbitration. Accordingly, the arbitration petitions should be dismissed. The Coalition respectively proposes that subsequent to the dismissal of the Section 252 arbitration petitions, the unresolved matters should be referred to the Hearing Officer in Docket No. 00-00523, the proceeding in which the underlying issues arose In the alternative, if BellSouth is not made a party to these proceedings, the petitions must be dismissed.

[12] Coalition Response, pp 13-15

Respectfully submitted,

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ATTACHMENT A

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December 12, 2003

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communication Commission
445 12th Street, SW
Washington, D.C 20554

Re: CC Docket 01-290

Dear Ms. Dortch:

This is to notify you that on you on Wednesday, December 10, 2003, Charles McKee of Sprint PCS, Elaine Critides of Verizon Wireless, and I (representing AT&T Wireless) met with Commission staff to update them on the status of wireless carriers' interconnection negotiations with rural independent telephone companies and related state PUC proceedings in the Southeast, including the pending arbitration proceeding before the Tennessee Regulatory Authority. (Copies of AT&T Wireless' Tennessee arbitration petition and the rural carriers' response thereto are attached hereto.) Commission staff in attendance were Jay Atkins, Steve Morris, Jane Jackson, Stacy Jordan and Tamara Preiss of the Wireline Competition Bureau and Joseph Levin, Peter Trachtenberg, Won Kim and Jared Carlson of the Wireless Telecommunications Bureau.

Although we did not discuss any issues of substance with regard to the above-referenced docket, because the matters in the state proceedings are similar to some of those at issue in CC Docket 01-92 we are filing this ex parte out of abundance of caution

Pursuant to Commission rules, please include this notice and attachments in the record of this proceeding identify above.

Very truly yours,

Davis Wright Tremaine LLP

/s/

Suzanne Toller

cc: Jay Atkins
Steve Morris
Jane Jackson
Stacy Jordan
Joseph Levin
Peter Trachtenberg
Won Kim
Tamara Priess
Jared Carlson

2. GENERAL

2.1 Scope

These guidelines are for billing access and interconnection services provided by two or more providers or by one provider in two or more states within a single LATA. It is to the mutual benefit of both customers (customers and end users) and providers that bills be accurate and auditable. This document addresses the concept of MPB and revenue sharing as detailed in the December 8, 1988 Report. As stated previously, access and interconnection services include Usage Sensitive and Flat Rates Services. Where intrastate tariffs and contracts permit, these guidelines are used for access and interconnection services. The determination of implementing a meet-point Billing arrangement between providers, which operate in the same territory, is based upon Provider-to-Provider negotiations where the regulatory environment permits When all involved providers agree to a meet-point Billing arrangement, these guidelines are used.

2.2 MECAB Revision

2.2.1 Reason for Revision

OBF Issue 472 (the MECAB Change Management Document) recommends that the MECAB be updated to incorporate all resolved OBF issues affecting the MECAB document. This is the **sixth revision** to the MECAB based on OBF Issue 472. This revision contains updates to industry guidelines to reflect the resolution of the following OBF Issues:[1]

Issue 1548 - Billing Verification Process in an Unbundled Environment
Issue 1667 - Exchange of Billing Information
Issue 1690 - Notification of Interconnecting Billing Information to the ULEC.
Issue 2056 – For Facility-Based LECs/CLECs & CMRS, Enhance the Meetpoint/Meetpoint-like Record Exchange to be Consistent with Unbundled Processes
Issue 2138 – Redefine and Evaluate the Need for Existing MECAB Data Elements
Issue 2162 – Eliminate Pass Through meet-point Billing Options in MECAB

The following issues were reviewed but no changes were made to the document.

Issue 1284 - Long Term LNP Billing and Verification
Issue 1287 - Billing For Unbundled Network Elements
Issue 1528 - The Billing Impact Resulting From Access Reform
Issue 1593 - Guidelines Do Not Exist For Providing Historical PICC Detail Data to Verify PICC Charges

2.2.2 Change Management

MECAB standards represent policy guidelines approved by the OBF; the Billing Committee of the OBF is responsible for the MECAB document. MECAB is changed through the incorporation of resolved OBF issues. Proposed changes to MECAB are reviewed and approved by the OBF Billing Committee and the OBF General Session. In accordance with the MO&O in CC Docket No. 86-104, released July 31, 1987, the FCC will have the opportunity to review any revisions to the standards (MECAB) to the extent that further tariff revisions are necessary.

[1] A record of resolved OBF Issues incorporated in MECAB revisions is contained in Section 11 - OBF Issues Included in MECAB Revisions

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.

Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act	)))	Consolidated Docket No 03-00585
Generic Docket Addressing Rural Universal Service	)	Docket No 00-00523

REPLY OF THE RURAL COALITION

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

March 17, 2004

REPLY OF
THE RURAL COALITION

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to be referred to as the "Coalition" or "rural Independents") respectfully submits this Reply to the Responses of the CMRS Providers (the "CMRS Providers' Response") and BellSouth Telecommunications, Inc (the "BellSouth Response") to the "Rural Coalition of Small LECs and Cooperatives' Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party" (the "Coalition Motion")

INTRODUCTION AND BACKGROUND

In both the "Coalition Motion" and the "Response of the Rural Coalition" (the "Coalition Response" filed on December 1, 2003 in this proceeding), the Coalition addressed two preliminary and fundamental matters.

1) The fact that the CMRS providers focused both their negotiations and their arbitration petitions in an effort to impose interconnection conditions that are not consistent with established interconnection standards and related rules and regulations. In fact, as discussed in both the Coalition Motion and the Coalition Response, and as recognized by the CMRS providers in an *ex parte* before the Federal Communications Commission (the "FCC"), many of the issues raised by the arbitration petitions are the subject of pending FCC proceedings.

2) The CMRS Providers do not seek a new network arrangement to terminate traffic to the rural Independents. They seek the establishment of new terms and conditions applicable to the existing terminating traffic arrangement whereby each CMRS carrier delivers traffic to BellSouth which, in turn, terminates the traffic through the long-existing physical interconnection established between BellSouth and each rural Independent. The Coalition, in both the Coalition Motion and the Coalition Response, set for the specific issues that must be addressed and resolved in order to establish new terms and conditions applicable to the existing terminating arrangement that the CMRS providers utilize. These issues cannot be resolved in the absence of BellSouth.

Accordingly, the Coalition requested that the TRA dismiss the arbitration and, instead, utilize alternative dispute resolution to resolve all issues among all parties (including BellSouth)

that are associated with the establishment of new terms and conditions applicable to the existing indirect interconnection of the CMRS Providers to the rural Independents through the BellSouth network [1]

I. The Coalition Seeks Resolution of the Issues in a Manner Consistent with Established Statutory Requirements and Rules Prescribed by the FCC.

Both the CMRS Providers and BellSouth complain that the Coalition is trying to "stop the process."[2] To the contrary, the purpose of both the Coalition Motion and the Coalition Response is to seek resolution of the issues that surround the establishment of new terms and conditions applicable to the indirect interconnection of the CMRS providers to the rural Independents through the BellSouth network The Coalition has not suggested that the TRA dismiss the arbitration and maintain the *status quo* in perpetuity, as the CMRS Providers and BellSouth wrongly suggest [3]

The CMRS Providers and BellSouth mischaracterize the Coalition Motion They assert (often without any support whatsoever) that the Coalition has taken positions it has not taken and has mad arguments that it has not made The Coalition respectfully asks that these inaccurate characterizations not be permitted to misdirect the focus from the very specific and legitimate issues raised by the Coalition Motion and the Coalition Response

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1 *See,* Coalition Motion, p 6, Coalition Response, pp 13-15, and 98

2 *See e g* , CMRS Providers' Response at p 4, BellSouth Response at p 5

3 *See,* CMRS Providers' Response, p 7, BellSouth Response at fn 3

A. The Coalition has not, and does not, oppose arbitrating interconnection in accordance with established statutory requirements and regulations prescribed by the FCC.

Both the CMRS Providers and BellSouth wrongly contend that the Coalition has reversed its prior position and now argues that a Section 252 arbitration is inappropriate [4] The CMRS Providers and BellSouth are incorrect. The rural Independents did not and do not object to participation in a Section 252 arbitration proceeding Agreement to participate in an arbitration proceeding in accordance with statutory requirements and FCC regulation, however, should not be confused with agreement to voluntarily arbitrate the imposition of terms and conditions sought by the CMRS Providers, where the terms and conditions are not subject to statutory requirement or FCC regulations

Both the CMRS Providers and BellSouth wrongly characterize the Coalition Motion as an attempt to walk away from a prior commitment to arbitrate the open issues in this proceeding The fact is, however, that the Coalition has participated in good faith negotiations and in this arbitration process The Coalition did not and will not waive the rights of its members to request dismissal of the arbitration issues raised by the CMRS providers to the extent the CMRS providers would seek to impose interconnection conditions that go beyond the requirements of statute and FCC regulation. At every step in the negotiations, the Coalition has reserved its rights in this regard. The rural Independents have attempted to negotiate terms and conditions to settle the issues in this proceeding The Coalition's voluntary negotiation of terms "without regard to the standards set forth in subsections (b) and (c) of section 251" was undertaken in good faith and consistent with Section 252(a)(1) of the Act.[5] The Coalition did not agree to voluntarily arbitrate the resolution of issues that are outside of the established interconnection

[4] CMRS Providers' Response, pp 3-5, BellSouth Response, pp 4-5

[5] 47 U S C §252(a)(1)

requirements, and thereby outside of the statutory standard for arbitration.[6]

As if the Coalition had argued that it will not arbitrate, the CMRS Providers and BellSouth each point to the comments of the Coalition's Counsel at the April 22, 2003 Status Conference in Docket No. 00-00523 to support their contention that the Coalition members agreed to arbitrate [7] No need exists for either BellSouth or the CMRS Providers to argue against an argument that the Coalition has not made The issue is not whether the Coalition will arbitrate The threshold matter raised by the Coalition Motion is whether the issues raised by the arbitration petitions of the CMRS providers should be dismissed because they attempt to impose interconnection conditions that exceed established statutory and FCC requirements

The Coalition respectfully submits that it will serve the mutual interests of all parties to dismiss the arbitration issues raised by the CMRS Providers that attempt to impose conditions beyond the established requirements. Pursuant to the standards of arbitration set forth in section 252(c) of the Act, the only lawful outcome is the eventual rejection of the terms proposed by the CMRS Providers that exceed the existing requirements. Contrary to the claims of the CMRS Providers and BellSouth, the Coalition has not argued explicitly or implicitly to leave the issues in "limbo " Instead, the Coalition has respectfully proposed an alternative dispute resolution [8]

The rural Independents are not reluctant to arbitrate Section 251(a) and (b) interconnection requirements with the CMRS providers in accordance with the standards

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6 *See*, 47 U S C §252(c)

7 CMRS Providers' Response, p 4, BellSouth Response, p 4 It is interesting to note that the CMRS Providers extract the comments of the Coalition's counsel out of context, and omit the prefatory comment in which the Coalition acknowledges that "any wireless carrier has every right to, under the rules that exist, establish an interconnection point with the independents and seek transport and termination under Section 251(b)(5) of the Telecommunications Act As described briefly below in Section I B, and more extensively in the Coalition Response, the CMRS carriers did not want to establish an interconnection point with the Independents Although the CMRS Providers omit this aspect of the remarks of the Coalition Counsel at the April 22, 2003, Status Conference, the full remarks reflect the consistent willingness of the Coalition members to negotiate and arbitrate under the rules that exist The Coalition never agreed or indicated that issues beyond the existing rules – issues in fact pending at the FCC – should be subject to Section 252 arbitration

8 *See*, Coalition Response, pp 13-15

established pursuant to Section 252(c) of the Telecommunications Act. The CMRS Providers, however, are attempting to utilize the arbitration process to impose terms and conditions that are not the subject of statutory requirements or FCC regulation. The CMRS Providers wrongly claim that they "merely seek, in simplified terms, reciprocal compensation and interconnection agreements with members of the Coalition for direct and indirect interconnection in accordance with Sections 251 and 252 of the Act."[9]

B. No party has refuted the fact that the terms and conditions the CMRS Providers seek to impose exceed established requirements and are the very subject of pending FCC Proceedings.

The CMRS Providers state that the "central areas of dispute in these consolidated proceedings are what the appropriate compensation rate is and to what traffic it will be applied "[10] What the CMRS Providers seek, however, goes far beyond the statutory requirements of the Act and the associated FCC regulations

For example, the CMRS Providers seek to apply the reciprocal compensation requirements of 47 U.S C §251(b)(5) to traffic terminated indirectly by a CMRS provider to an Independent through an established BellSouth intraLATA toll trunk.[11] The FCC regulations prescribed pursuant to §251(b)(5), however, specifically contemplate that reciprocal compensation for transport and termination of traffic exchanged by two carriers is available "from the interconnection point between the two carriers." [12] Where a carrier elects to terminate

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[9] CMRS Providers' Response, p 11

[10] *Id*

[11] *See*, CMRS Arbitration Issue 2 Although the CMRS Providers included "direct interconnection" in their arbitration Petitions (CMRS Issues 7, 14 and 15), the CMRS Providers did not choose to discuss "direct interconnection" within the scope of the collective negotiations The Coalition respectfully notes that it may not be useful to utilize collective negotiations among multiple parties to address the specifics involved in the establishment of points of interconnection and reciprocal compensations arrangements in accordance with the FCC's Subpart H Rules

[12] 47 C F R §51 701(c) *See, also* Coalition Response pp 21-30

traffic to a rural Independent, or any carrier, through a Section 251(a) indirect interconnection arrangement, there is no "interconnection point between the two carriers" and the requirements of the FCC's rules do not apply.[13]

Another example of the manner in which the CMRS Providers attempt to utilize the arbitration process to impose conditions that are not established by statute or regulation is demonstrated by the issues the CMRS Providers raise regarding landline originated traffic [14] The CMRS Providers want the TRA to impose non-existent requirements on the rural Independents and dictate the manner in which they direct traffic originated on the landline network and destined to a CMRS network. Several of the CMRS Providers have advocated that the FCC declare as interconnection requirements the very conditions that they seek to impose on the rural Independents.[15] Apparently not content to wait for the outcome of the pending proceedings at the FCC, the CMRS carriers seek an inappropriate opportunity in the arbitration proceeding to convince the TRA to impose these conditions irrespective of the fact that they are not requirements established by statute or FCC regulation. These are requirements the CMRS carriers are seeking to impose in the pending FCC proceedings Obviously, the interconnections the CMRS carriers are seeking before the FCC are not now required by the FCC.

Throughout their response, the CMRS Providers do not attempt to refute the fact that the terms and conditions they seek to impose on the rural Independents exceed established requirements The CMRS Providers do not even acknowledge the existence of the pending

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[13] In fact, the conditions the CMRS Providers want the TRA to impose not only are beyond existing statutory requirements and FCC regulations, but they are the subject of pending FCC proceedings (*See, e g* , Coalition Response p 9 at fn 8 and Coalition Motion pp 7-8)

[14] *See, e g* , CMRS Issue 2b, 5, and 12 The Coalition Response thoroughly addresses each CMRS Issue and describes in detail how the terms and conditions the CMRS Providers seek to impose are not consistent with established statutory requirements or FCC regulation

[15] *See*, fn 10

issues in FCC Docket 01-92, their participation in that FCC proceeding, or their attempts in that proceeding to obtain a declaration from the FCC that the conditions they seek to impose here are required The CMRS Providers, instead, skirt these facts by stating "Every issue raised by the CMRS Providers, save for the limited state contract issues in the Joint Matrix, arises under existing FCC regulations or the Act itself "[16] An issue that "arises" under the statute and regulations is not an established requirement under the statute and regulations

Once again, the CMRS Providers have created "straw men" and countered arguments that the Coalition has not made and has no need to make. The Coalition does not dispute that the issues "arise" under the Act The Coalition, however, does contend that, in accordance with the Act, the resolution of the policy issues and the establishment of interconnection requirements is subject to FCC regulation and not an arbitration proceeding The CMRS Providers incorrectly suggest that the parties "simply disagree about what the regulations and/or the Act requires, and these disputes are precisely within the statutory authority vested by Section 252(c) of the Act to the TRA " The CMRS Providers are incorrect. The issue is not one of "simple" disagreement of interpretation between the CMRS Providers and the rural Independents – such disagreements are certainly left to the TRA to decide. While this might be the case under other circumstances where interconnection requirements are established, it is not the case in this instance where the very conditions that the CMRS Providers seek to impose are the subject of pending consideration in proceedings before the FCC.

Instead of addressing the specific arguments set forth in the Coalition Response,[17] the CMRS Providers focus on a non-issue. The CMRS Providers suggest that the "requirements for indirect interconnection" is an example of the disagreement of the parties with respect to the

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[16] CMRS Providers' Response, p 6

[17] *See, e g*, Coalition Response, CMRS Issues 1, 2, 2b, 3, 4, 5, 6, and 12

requirements of the Act The CMRS Providers state that "[t]he Coalition disagrees" with the fact that "both the Act and FCC regulations require the Coalition to provide indirect interconnection "[18] The CMRS Providers wrongly attribute this position to the rural Independents in the absence of any citation or reference No citation or reference exists because the Coalition has never suggested that rural Independents are not required to interconnect indirectly to other carriers

In fact, rural Independents connected "indirectly" to other carriers long before the passage of the 1996 Telecommunications Act and the adoption of Section 251(a).[19] The rural Independents have long provided the CMRS Providers with indirect interconnection through BellSouth pursuant to precisely that physical indirect interconnection arrangement that is the subject of this proceeding. There is no basis for the assertion of the CMRS Providers that the Coalition "disagrees" that rural Independents are required to connect indirectly Once again, the CMRS Providers avoid the real issue by focusing on a non-issue. The real issue raised by the dispute over what new terms and conditions are applicable to the existing interconnection arrangement through BellSouth is what standards and requirements apply to that specific arrangement. The fact is that no standards or requirements exist that require the rural Independents to accept the terms and conditions that the CMRS Providers seek to impose The CMRS Providers have offered not a single citation or reference to any such requirements or standards because no such citation or reference exists, other than the references in the record in FCC Docket 01-92 which demonstrate that these matters are pending before the FCC.

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18 CMRS Providers' Response, p 7

19 47 U S C §251 (a)

C. The cases cited by the CMRS Providers support the position of the Coalition: the resolution of open issues must be in accordance with established statutory requirements and FCC regulations.

The CMRS providers cite Section 252(b) of the Act as support for their statement that the "Act requires the TRA to arbitrate 'any open issues'."[20] The CMRS Providers left out an important part of the Act The Act states that "The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement . "[21] The reference to "subsection (c) is the "Standards for Arbitration" which require that the "conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251 "[22] The CMRS Providers, however, do not want the TRA to apply the existing requirements because no requirements exist for the conditions they seek to impose on the rural Independent The appropriate resolution of the "open issues" in accordance with the existing requirements is the dismissal of the CMRS Issues that seek to impose non-existent requirements [23]

The CMRS Providers, nonetheless, hope to convince the TRA to establish new interconnection policy requirements within the arbitration proceeding In support of their position, the CMRS Providers argue that "[v]arious Circuit Courts of Appeal that have reviewed state arbitration decisions have established a two-tiered standard for questions decided pursuant to the Act and for questions decided pursuant to *state law*." (footnote omitted) [24] On the basis of

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[20] CMRS Providers" Response, p 5 citing 47 U S C §252 (b)

[21] 47 U S C §252 (b)(4)(C)

[22] 47 U S C §252 (c)

[23] Because these issues are those that the CMRS Providers have correctly characterized as "central areas of dispute" (CMRS Providers' Response, p 11), the Coalition has respectfully proposed that subsequent to the dismissal of these issues, the arbitration proceeding should be referred back to Docket 00-523, and that all parties, including BellSouth, should participate in alternative dispute resolution similar to that which has taken place in other States where CMRS carriers interconnect indirectly to rural telephone companies through BellSouth

[24] CMRS Providers' Response, p 5

these cases, the CMRS Providers once more argue against a position that the Coalition has not taken. The CMRS Providers suggest that the Coalition believes that "all state law questions would be beyond the purview of a Section 252 arbitration "[25] That is not the position of the Coalition. The Coalition does not dispute that the TRA may resolve all state law issues in accordance with state law. The Coalition does, however, dispute any suggestion that the Section 251 interconnection issues can be resolved in any way other than in accordance with existing statutory and FCC requirements. Those requirements are set forth in the standards for arbitration set forth in Section 252(c) of the Act The decisions of the Courts of Appeals cited by the CMRS Providers support the position of the Coalition·

> Those courts have held that the federal judiciary should first review *de novo* whether a state public service commission's orders comply with the requirements of the Telecommunications Act [26]

In an attempt to bolster their contention, the CMRS providers also point to two state arbitration decisions, one in Iowa and the other in Oklahoma. The CMRS Providers apparently hope that the TRA will elect to follow the course laid out in these two states irrespective of the Section 252(c) statutory standard [27] Neither the Coalition member company representatives nor Coalition Counsel participated in either of these state proceedings. The CMRS providers do not indicate whether the rural Independent company participants in these proceedings voluntarily submitted all issues to arbitration or whether they objected to the arbitration of issues that address the imposition of interconnection conditions beyond the scope of established statutory and FCC requirements

The CMRS Providers also attach a March 5, 2004, Order issued by the United States

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25 CMRS Providers' Response, p 6

26 Michigan Bell Telephone Company v MFS Intelenet of Michigan, Inc , 339 F 3d 428 at 433 (6th Cir 2003)

27 CMRS Providers' Response, pp 7-8

District Court for the Western District of Oklahoma which upholds the arbitration decision of the Oklahoma Corporation Commission. The CMRS Providers state that the "issues in that case were virtually identical to the issues raised in this proceeding "[28] A review of the District Court Order, however, does not indicate that the Court addressed the fact that the interconnection conditions imposed by the Oklahoma Corporation Commission exceed the established statutory requirements and FCC regulations Nor does this Order address the fact that the imposed interconnection conditions are the subject of pending FCC consideration The Coalition does not know whether these facts were or were not raised before the District Court. Nor does the Coalition know if these facts were raised, but ignored in error. Contrary to the urging of the Authority by the CMRS Providers to follow the course of two other state commissions, the Coalition respectfully suggests that the facts and circumstances of those proceedings are not before the TRA or relevant to this proceeding

The CMRS Providers claim that the "clearest repudiation" of the position of the Coalition position is found in an FCC arbitration decision, In re Petition of WorldCom, Inc , 17 FCC Rcd 27 (July 17, 2002) (the "Virginia Arbitration Order").[29] The CMRS Providers rely on paragraph 3 of this decision to support their claim that a state regulatory authority can determine interconnection requirements within an arbitration proceeding when the issues are pending before the FCC.[30]

A review of the Virginia Arbitration Order, however, further demonstrates that the FCC actually rejected the position of the CMRS Providers. In fact, the very paragraph of the Virginia Arbitration Order quoted by the CMRS Providers reiterates the requirement of Section

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[28] CMRS Providers' Response, p 7 Again, neither the Coalition member company representatives nor Coalition Counsel participated in this litigation

[29] CMRS Providers' Response, p 8

252(b)(4)(C) [31] The CMRS Providers conveniently omitted the last sentence of paragraph 3 of the Virginia Arbitration Order.

> Accordingly, in addressing the issues that the parties have presented for arbitration – the only issues that we decide in this order – we apply current Commission rules and precedents, with the goal of providing the parties, to the fullest extent possible, with answers to the questions that they have raised [32]

The FCC also notes in the Virginia Arbitration Order that "Section 252(c) sets forth the standard of review to be used in arbitration by the Commission and state commissions in resolving any open issue and imposing conditions upon the parties in the interconnection agreement "[33]

The Coalition maintains that both the CMRS Providers and the Coalition were free to negotiate voluntarily to reach mutually acceptable terms and conditions irrespective of the established requirements of Section 251 of the Act and FCC regulations The Coalition negotiated in good faith, but agreement was not reached. In this arbitration, resolution of the open issues is not subject to the imposition of terms and conditions that exceed the existing established requirements. In the Virginia Arbitration Order, the FCC addresses this very circumstance in speaking to the rights of the parties to an arbitration.

> Similarly, they may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act. However, if the parties have not reached such an understanding and have asked the Commission to arbitrate their dispute, we will do so based on existing law and expect that any change in that law will be reflected in the contract [34]

The Virginia Arbitration, relied so heavily upon by the CMRS Providers, supports the Coalition Motion The CMRS carriers are fully aware that the terms and conditions they seek to

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30 *Id*, p, 9

31 *See*, p 10 at fn 21, *infra*

32 Virginia Arbitration Order, para 3 (underscoring added)

33 *Id*, at para 29

34 *Id*, at para 34 (Underscoring added)

impose on the rural Independents are not existing interconnection requirements, and that their proposed terms and conditions are the subject of pending FCC proceedings. Consistent with the existing law, the Authority may resolve the "open issues" raised by the CMRS Providers through dismissal because the terms that the CMRS Providers seek exceed established statutory and FCC requirements Accordingly, the Authority should grant the Coalition Motion.

II. BellSouth is an indispensable party to any proceeding establishing new terms and conditions applicable to the existing indirect interconnection of the CMRS Providers to the Rural Independents.

The Coalition has thoroughly and specifically identified a multitude of issues in this proceeding that cannot be resolved in the absence of BellSouth [35] In the Coalition Motion, the Coalition noted that the Authority's own rules provide that "failure to join an indispensable party" is a defense to a complaint or petition in a contested case TRA Rule 1220-1-2- 03 The Coalition also supported its Motion to join BellSouth by reference to Rule 19 01 of the Tennessee Rules of Civil Procedure. This Rule requires joinder of a party whose absence would "leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest " The rural Independents respectfully submit that BellSouth's participation in this proceeding is very much required to ensure both that all issues can be resolved, and that the rural Independents do not

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[35] "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 " *See*, Coalition Response at pp 42-43, Coalition Motion, p 11

incur multiple or inconsistent obligations

In response to the Coalition Motion to add BellSouth as an indispensable party, BellSouth and the CMRS Providers fail to address either the substantive issues raised by the Coalition or the applicable state law. Instead, and most ironically, both the CMRS Providers and BellSouth argue that the Telecommunications Act does not establish a "process to negotiate/arbitrate 3-way agreements "[36] The irony is the fact that both parties recognize that neither the Act nor FCC regulations have established standards or requirements applicable to the negotiation of indirect interconnection arrangements. The CMRS Providers and BellSouth fail to recognize this fact in the context of their intent to impose non-existent Section 251 requirements on the rural Independents.[37] Yet, they apply this fact in their opposition to the joinder of BellSouth where the argument is inapposite

As the CMRS Providers have recognized, those matters raised in an arbitration that are not the subject of Section 251 requirements may be resolved by the state regulatory authority pursuant to *state law* The fact that the Act does not address who should be the parties to an indirect interconnection negotiation and arbitration does not preclude the application of state law regarding joinder of parties.[38]

Neither BellSouth nor the CMRS Providers address the applicable state law set forth in TRA Rule 1220-1-2-.03 and Rule 19 01 of the Tennessee Rules of Civil Procedure. Instead,

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36 CMRS Providers' Response, p 9 *See also*, BellSouth Response, p 10

37 Section I, *infra*

38 The Coalition respectfully suggests that the absence of any reference in the Act or FCC regulations to the requirements and standards for an indirect interconnection arrangement is indicative of the fact that neither the Act nor the FCC contemplated the establishment of terms and conditions sought by the CMRS Providers with respect to the existing indirect physical interconnection arrangement There is no basis to suggest that either the Act or the FCC would silently override state law and basic common law principles regarding joinder of parties It is far more likely that the Act and the FCC contemplate that an indirect interconnection arrangement would involve one agreement between the originating carrier and the intermediary carrier, and a second agreement between the intermediary carrier and the terminating carrier This is precisely the current framework that governs the already existing indirect interconnection of the CMRS Providers to the rural Independent networks through BellSouth

both parties misplace their focus and reliance on TRA Rule 1220-1-3- 10. [39] This rule, however, addresses "petitions for intervention," and not the joinder of an indispensable party Similarly off the mark is the reliance of BellSouth and the CMRS Providers on a September 11, 1996, TRA Order in Docket No 96-01152 in which the Authority denied the petition of the Consumer Advocate to intervene in an interconnection arbitration.

That Order addressed the intervention of the Consumer Advocate. It did not address a request to join a necessary party involved in an interconnection arrangement In Docket No. 96-01152, the Consumer Advocate sought to intervene in a negotiation and arbitration process to convene a contested case in order to protect its interests In denying intervention, the TRA concluded that the Consumer Advocate's interests could "be protected at the proper time (which may include at the time any completed interconnection agreement between BellSouth and AT&T is submitted for approval) "

The circumstances here are far different. Neither "intervention" nor TRA Rule 1220-1-3- 10 is relevant BellSouth clearly does not seek to intervene in this proceeding BellSouth is one of the three telecommunications carriers involved in the existing indirect interconnection arrangement The CMRS Providers seek to establish new terms and conditions applicable to this three-way indirect interconnection, and the Coalition has identified specific related issues that cannot be resolved in the absence of BellSouth. The Coalition respectfully submits that, consistent with applicable state law, BellSouth is an indispensable party to this proceeding If BellSouth not added to this proceeding, the petitions must, in accordance with Tennessee law, be dismissed.[40]

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[39] CMRS Providers' Response, p 10, BellSouth Response, p 6

[40] Both BellSouth and the CMRS Providers reference existing interconnection agreements and suggest that a

III. The Coalition Motion is timely and should be granted.

The CMRS Providers and BellSouth, having failed to rebut the Coalition Motion on the basis of the applicable facts and law, attempt to obtain dismissal of the Motion on the basis that it is "untimely."[41] The CMRS Providers stridently argue that the Coalition should have raised the Coalition Motion issues in the Coalition Response to the arbitration petitions.[42] That is precisely what the Coalition did.[43]

The CMRS Providers ignore this fact and dig in deeper, chiding the Coalition for not previously moving to dismiss pursuant to TRA Rule 1220-1-2.03 and Rule 12.02 of the Tennessee Rules of Civil Procedure. The Coalition did, however set forth a prayer for relief in the December 1, 2003, Coalition Response to the arbitration petitions:

> **Consistent with this Response, the ICOs respectfully request that the Tennessee Regulatory Authority:**
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> - **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.**[44]

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rural Independent and a CMRS Provider may enter into two-party indirect interconnection agreements without requiring the intermediary party to be a party. (CMRS Providers' Response, p. 11, BellSouth Response, p. 3.) The fact that two parties may enter such a two-party agreement voluntarily does not establish a requirement that a party must do so involuntarily.

[41] CMRS Providers' Response, pp. 12-13, BellSouth Response, p. 5.

[42] CMRS Providers' Response, p. 12.

[43] *See, e.g.*, Coalition Response, Section I, pp. 3-15. Throughout the entire Coalition Response, specific references are made to: 1) CMRS Issues that should be dismissed because they propose non-existent interconnection requirements, and 2) issues that require the participation of BellSouth.

[44] Coalition Response, p. 98. The Coalition respectfully notes that an arbitration procedure combines the procedural requirements of Section 252 of the Act with applicable state procedural requirements. Cognizant of all

Having first set forth its request for relief in the Coalition Response filed on December 1, 2003, the Coalition reiterated its request in the Coalition Motion filed in accordance with the procedural schedule established by the Pre-Hearing Officer The Coalition has sought relief on a timely basis, and supported its request on the basis of irrefutable law and fact.

CONCLUSION

The Coalition does not seek to avoid an arbitration of new terms and conditions for interconnection of CMRS providers to the rural Independent networks if such terms and conditions are established on the basis of statutory and regulatory requirements consistent with the standards of arbitration set forth in Section 252 of the Act. The terms and conditions sought by the CMRS Providers, however, are not consistent with these requirements Dismissal is the appropriate resolution of the "open issues" the CMRS Providers have raised

Moreover, the Coalition has not sought to avoid the orderly establishment of lawful new terms and conditions applicable to the existing indirect interconnection of the CMRS Providers to the rural Independents through BellSouth The Coalition respectfully maintains that the lawful and orderly establishment of new terms and conditions precludes the "self-help" actions of BellSouth that are the subject of a pending petition in Docket 00-523.[45] The Coalition respectfully submits that new terms and conditions among all of the carriers participating in the indirect interconnection arrangement (including BellSouth) may be reached through alternative dispute resolution under the auspices of the Authority in a manner similar to those agreements

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of these requirements, the Coalition incorporated the relief its seeks in the Coalition Motion into the Coalition Response, anticipating the procedural argument now incorrectly raised by the CMRS Providers The Coalition also expected that the Authority would assign the arbitration proceedings to a Pre-Hearing Officer, as it has done, and that the Pre-Hearing Officer would establish a schedule that included an opportunity to file a preliminary motion, as the parties subsequently agreed

[45] In this regard, the Coalition respectfully notes that BellSouth has utilized the opportunity presented to respond to the Coalition Motion in this proceeding as an additional opportunity to respond further to the recent March 8, 2004 Coalition Reply Brief addressing the Coalition Petition pending in Docket No 00-523 This aspect of the BellSouth Response is not pertinent to the Coalition Motion in this proceeding The Coalition will reserve its rights to respond appropriately in Docket No 00-523

reached in several other states where the CMRS Providers utilize an indirect interconnection to the networks of rural telephone companies through BellSouth The Coalition respectfully proposes that after the dismissal of the Section 252 arbitration petitions, the unresolved matters should be referred to the Hearing Officer in Docket No 00-00523 (the proceeding in which the underlying issues arose) wherein all parties may have the opportunity to participate in alternative dispute resolution and establish new terms and conditions applicable to the existing indirect interconnection arrangement In the alternative, if BellSouth is not made a party to these proceedings, the arbitration petitions must be dismissed

Respectfully submitted,

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