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June 24, 2004

Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re. Coalition of Small Lec's
Docket Nos 03-00585

Dear Ms. Dillon:

Enclosed is an original and fifteen copies of the Rebuttal Testimony of Steven E Watkins On Behalf of the Coalition of Small LECs and Cooperatives. Please return one copy stamped "filed"

Thank you for your assistance.

Sincerely,

Bill Ramsey /jm

William T. Ramsey

/jm
enclosures

cc: All Counsel of Record

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

REBUTTAL TESTIMONY OF STEVEN E. WATKINS

on behalf of the

Coalition of Small LECs and Cooperatives

June 24, 2004

Q· **Please state your name, business address and telephone number.**

A· My name is Steven E Watkins. My business address is 2120 L Street, N W , Suite 520, Washington, D.C 20037 My business telephone number is (202) 296-9054

Q **On whose behalf are you testifying?**

A. I am testifying on behalf of the Coalition of Small LECs and Cooperatives (hereafter referred to as the "Coalition" or the "ICOs")

Q: **Have you previously submitted testimony in these proceedings?**

A· Yes I submitted direct testimony on June 3, 2004 in these dockets (to be referred to as "Watkins Direct")

Q **What is the purpose of your Rebuttal Testimony?**

A The purpose of this Rebuttal Testimony is to respond to the Direct Testimony filed by the five witnesses of the Commercial Mobile Radio Service ("CMRS") providers including Marc B. Sterling (Verizon Wireless), Billy H Pruitt (Sprint PCS), William H Brown (Cingular), Suzanne K Nieman (AT&T Wireless), and Greg Tedesco (T-Mobile).) I do not need to respond to the testimony of Craig Conwell because, for the reasons already set forth in the Coalition's Response filed on November 28, 2003 ("Response"), my direct testimony, and this rebuttal testimony, Mr. Conwell's comments are not applicable to the issues.

Q: **Do you have any initial comments relative to these dockets?**

A: Yes I would like to provide some general observations:

❖ The testimony of the five witnesses provides no substantive rebuttal of the arguments in the Coalition's Response that directly contradict the positions of the CMRS providers These five witnesses have simply chosen to the discussions initially set forth by the Coalition in its Response which demonstrate that the arbitration positions of the CMRS providers are not consistent with established statutory and regulatory standards and policy.

❖ The rules that apply with respect to the transport and termination of traffic and reciprocal compensation under Section 251(b)(5) of the Act are set forth solely and exclusively under the Federal Communications Commission's ("FCC") Part 51 Subpart H rules The specific provisions of these rules, the specific words in those rules, and the specific discussions of these rules by the FCC contradict many of the CMRS witnesses' claims about the application and scope of those rules The witnesses simply make bold, unsubstantiated statements and conveniently avoid the facts and full analysis that

contradict their positions

❖ In the guise of their notion of "equality," the CMRS providers actually seek arrangements whereby the CMRS providers would be allowed to impose interconnection obligations on the ICOs well beyond those required by the established interconnection standards under the Act and FCC rules. The terms and conditions that the CMRS providers seek go well beyond those that the ICOs provide for themselves or for their own services, and well beyond any semblance of equal treatment. In fact, the CMRS providers seek arrangements which would provide the CMRS providers with competitive advantages far beyond equality and well beyond those required by the interconnection requirements

❖ The Courts have made it clear, that the clear meaning of the interconnection requirements in Section 251 of the Act does not require an incumbent LEC to provide, at the request of another carrier, including CMRS providers, interconnection arrangements or interconnection services that are beyond those that the LEC provisions for itself and for its own services. In the context of almost every arbitration issue, the CMRS providers have attempted to distort the interconnection requirements in order to accommodate their objective to require the ICOs to provide arrangements that go well beyond what the ICOs provision for themselves and well beyond the manner in which they provide services for themselves These requests are not consistent with established interconnection requirements and policy

Q: Are there any other preliminary points that you would like to make before you turn to the specifics of the testimony of the CMRS witnesses?

A: Yes, there are several additional general points that I would like to make in order to ensure that there is no basis in this proceeding to suggest that the ICOs have waived any rights of failed to bring to the TRA's attention the appropriate framework for the consideration of the arbitration issues:

❖ The Coalition members have not waived any of the rights afforded to them under the Act, including significant rights under Section 251(f)(1) of the Act. The ICOs participation in discussions with the CMRS providers and their participation in this proceeding has been solely for the resolution of potential voluntary arrangements involving a three party traffic arrangement that would include BellSouth, outside of the actual interconnection requirements. The participation in this proceeding has been at the direction of the Hearing Officer in Docket No. 00-00523 requiring the parties to the three way interconnection arrangement to negotiate new terms and conditions for the already existing indirect interconnection. The ICOs have not agreed to arbitrate issues that go beyond the requirements and standards of the Act that actually apply to the ICOs To the extent that the arbitration issues raised in this proceeding can be resolved in the absence of BellSouth, any such resolution must not, under the Act, be inconsistent with those standards and requirements Many of the arrangements that the CMRS providers seek

are beyond those that are required under the interconnection rules for the Rural Telephone Company Coalition members and are therefore beyond those that can be lawfully arbitrated. Nonetheless, and in the spirit of compromise, the ICOs have repeatedly confirmed to the CMRS providers that the ICOs are willing to consider new terms and conditions on a voluntary and mutual basis. The ICOs, however, will not voluntarily accept the imposition of terms or conditions that are economically harmful and not required by or consistent with the established statutory and regulatory requirements For example, the ICOs will not accept the imposition of a requirement on them to transport traffic to the CMRS providers through a physical network arrangement dictated by the CMRS carriers Nor will the ICOs accept the imposition of a responsibility to transport traffic to CMRS carriers to a point of interconnection beyond the network borders of each ICO

❖ While I feel obligated to the Coalition to provide this rebuttal to address the testimony of the CMRS provider witnesses, the Coalition has fully addressed the issues and associated facts and policy considerations in its Response and in my Direct Testimony. I will utilize the opportunity of this rebuttal to address further several of the issues that the witnesses for the CMRS providers have portrayed in a manner that I believe is, at best, confusing and could be misleading if not challenged and addressed.

❖ Accordingly, this Rebuttal will not address all of the issues and discussions set forth in the testimony of the CMRS provider witnesses As demonstrated by the Coalition Response and my Direct Testimony, my decision not to address again each CMRS argument and position should not be construed to suggest that I agree with them on any of these issues or arguments.

❖ To the extent that this proceeding can lawfully resolve any issues, I recommend that the mutual interests of all parties will be best served by focusing on the resolution of general principles which should then be applied to the development of specific contract language The individual issues are very complicated, and the issues are necessarily interrelated such that the resolution of one issue depends on the resolution of others It would unnecessarily complicate this already burdensome proceeding to attempt to address specific language for individual pieces in resolution in the absence of the resolution of the issues applicable to the interrelated issues

Q: How will you organize the remainder of your rebuttal testimony?

A: The number of issues and the fact that five different CMRS provider witnesses have attempted to address various aspects of those issues makes it difficult to organize a response. I will proceed through some the issues as they are presented by the witnesses in their testimony

BILATERAL CMRS-BELLSOUTH MEET POINT BILLING ARRANGEMENTS

Q: At page 3-4 of Mr. Sterling's testimony, he explains what he means by "meet point billing." Do you have any comment?

A: Yes. Meet point billing arrangements are voluntary. There are no requirements that any carrier participate with another carrier in a meet point billing arrangement. The concept originally applied to billing of access to interexchange carriers ("IXCs") where two or more LECs provide access services to IXCs on a jointly provided service basis, but no LEC is required involuntarily to provision access to IXCs on a joint basis with another LEC Moreover, meet point billing arrangements include different potential options for billing mechanics and no specific option is mandatory for any carrier The CMRS providers have apparently established voluntary bilateral with BellSouth for purposes beyond the original IXC access application. They have labeled these agreements "meet point billing arrangements." The ICOs were not parties to the establishment of these so-called "meet point billing arrangements," but the CMRS providers have portrayed the establishment of these agreements as though they were an ordinary industry-wide event They are not. The physical indirect interconnection arrangement through BellSouth has long existed The CMRS providers contracted with BellSouth and paid BellSouth to carry traffic to the ICO networks for termination BellSouth, in turn, paid the ICOs One day, apparently, BellSouth and the CMRS providers decided to change the arrangement I am not aware of any situation where two parties are permitted by any legal authority to get together and arbitrarily affect the rights of a third party But, that's exactly what has happened here

For example, AT&T Wireless ("AWS")Witness Nieman at page 4 of her testimony describes an interconnection agreement between AWS and BellSouth which "includes provisions" for "so-called 'Meet Point Billing' provision." Ms. Neiman admits on page 4 that this provision is included in an AWS/BellSouth interconnection agreement.

Q: Did BellSouth establish any voluntary meet point billing arrangements with the ICOs for the CMRS providers' traffic?

A: No. Whether voluntary or not, there have been no meet point billing arrangements established with the ICOs by BellSouth with respect to the CMRS providers' traffic Moreover, the testimony of the CMRS witnesses demonstrates that the meet point billing arrangements that the wireless carriers cite have been established solely between the CMRS providers and BellSouth.

Q: Do other witnesses describe this as a "change" when BellSouth and the wireless carriers agreed to "meet point billing?"

A: Yes. Cingular witness Brown discusses on pages 4-5 how Cingular's "relationships

between Cingular, BellSouth and members of the Rural Coalition changed in the past year." However, he fully knows that his statement is wrong and misleading, because the Coalition members and I have reminded him of the facts on multiple occasions Cingular has made no changes with the ICOs; Cingular's changes were made solely and bilaterally with its own affiliate BellSouth And BellSouth has made no changes with the ICOs, although it has clearly attempted to avoid its obligations.

Mr. Brown also admits on page 4 of his testimony that the agreements in place between Cingular and its affiliate BellSouth, prior to July 31, 2003, included provisions between Cingular and BellSouth which required Cingular to "make certain payments to BellSouth, and BellSouth, under separate agreements with the ICOs, would make certain payments to the Coalition members."

Q: What are those "separate agreements with the ICOs" under which BellSouth makes certain payments to the Coalition members?

A: The only terms and conditions with BellSouth that constitute an agreement with the ICOs is BellSouth's ordering and receipt of interconnection services pursuant to the contractual terms and conditions that the TRA has required to be maintained until the TRA approves changes in those terms.. That is the only set of contractual terms that BellSouth has in place with the ICOs for the delivery of traffic.

Q: Has BellSouth changed those terms with the ICOs

A: No And that leads me to comment that one carrier cannot unilaterally create some form of interconnection with another carrier, yet that is what BellSouth and its wireless affiliate have attempted to suggest.

Q: Mr. Brown also suggests at page 5 that Cingular's agreement with BellSouth "implies" new conditions with the Coalition members. Is that possible?

A: No A bilateral agreement between BellSouth and its affiliate Cingular cannot have any implications, particularly not negative ones, with respect to a carrier that is not a party to that agreement No ICO has granted BellSouth or Cingular the right to act as an agent for the ICO. And BellSouth has no right to negotiate terms and conditions with other carriers on behalf of the ICOs It is this arrogant position on the part of BellSouth and its own affiliate (and the other CMRS providers) that leads to the denial of the ICOs' rights and the imposition of conditions on the ICOs that would afford BellSouth and its CMRS affiliate (and other CMRS providers) competitive advantages over the ICOs BellSouth and Cingular are attempting to deny the ICOs the same rights that BellSouth and Cingular exercised for themselves in their own bilateral agreements

I would note that to the extent that the agreement between BellSouth and its affiliate Cingular even suggested that it could impose conditions on the ICOs -- conditions that

would deny the ICOs of their rights to establish interconnection terms and conditions consistent with the Act -- then, if that were the case, that agreement should not have been approved in the first place Regardless, a bilateral agreement can have no effect on a carrier that is not a party If the agreement is construed to impose implications or the denial of some third party's rights, then the agreement should have been rejected Section 252(e)(2)(I) of the Act provides that it is grounds for rejection of an interconnection agreement by a State Commission if "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement " Congress included this provision because it was concerned that two carriers would conspire to enter into terms that could be used to the detriment of a third party It would completely undermine this Congressional policy if BellSouth and Cingular were allowed to do just that.

Regardless of this provision in the Act, the facts are that the bilateral agreement between BellSouth and Cingular cannot "imply" anything with respect to an ICO because no ICO is a party to the agreement that BellSouth has with a wireless carrier, and those agreements cannot bind a non-party. BellSouth has no voluntary meet point billing arrangement with the ICOs. Mr Brown's discussion illustrates the denial of rights that BellSouth and the wireless carriers have attempted to impose on the ICOs.

Q: Do other CMRS witnesses make similar observations about the "change" to meet point billing?

A: Yes Sprint PCS witness Pruitt explains at page 8 of his testimony that its original agreement with BellSouth included a provision under which Sprint PCS paid BellSouth for charges that BellSouth paid to a subtending ICO AWS witness Nieman also discusses at page 4 a new agreement with BellSouth for so-called "transit service "

Q: Did Sprint PCS change its arrangement with BellSouth?

A: According to Mr Pruitt on page 8, under an agreement between Sprint PCS and BellSouth dated September 20, 2002, Sprint PCS no longer compensates BellSouth for the charges that BellSouth pays to subtending ICOs

Q: Has BellSouth entered into new agreements with the ICOs for Sprint PCS traffic?

A: No.

Q: Were the ICOs parties to the new Sprint PCS-BellSouth agreement that Mr. Pruitt talks about?

A: No

MEASUREMENT OF INDIRECT TRAFFIC

Q: On page 5 of Mr. Sterling's testimony, he states that Verizon Wireless does not have the capability to identify indirectly delivered land-to-mobile traffic by originating carrier. Do other CMRS providers have the same position? And do you have any other comments about measurement?

A: Some wireless carriers claim that they can measure, some claim that they cannot Some recognize that the indirect traffic that is the subject of the potential voluntary arrangement with the ICOs arises under the CMRS providers' bilateral meet point billing arrangement with BellSouth Meet point billing is an arrangement where the parties jointly provide some service and it presumes that measurement of those services is performed with respect to the arrangement For example, Sprint PCS witness Pruitt discusses the new agreement with BellSouth (at p. 8-9) and then concludes that Sprint PCS is able to measure indirect terminating traffic "pursuant to the applicable interconnection agreement [Sprint PCS] may have with another telecommunications carrier " Of course, for indirect traffic, the only agreement that Sprint PCS has is with BellSouth. Mr Sterling states on page 4 of his testimony that Verizon Wireless' meet point billing implementation with BellSouth involves BellSouth identifying the specific carriers (Of course, some of the typical information that Mr Sterling lists on page 4 is information that only makes sense in the context of use by an IXC, *e g.*, 800 service, and percent interstate usage) Ms Nieman on page 4 of her testimony states that the "AWS/BellSouth interconnection agreement includes provisions relating to the exchange of billing data and call records for traffic transiting BellSouth's network, the so-called "Meet Point Billing" provision."

The very nature of the potential voluntary transit arrangement in which BellSouth is the intermediary would depend exclusively on BellSouth measuring traffic for the affected parties Therefore, there is no explanation as to why measurement would not be available because the arrangement will not exist unless BellSouth provides complete and accurate information about traffic In this regard, it is worthwhile to note once more that no established statutory or regulatory requirements exist that would require any carrier to enter into an arrangement under which BellSouth commingles traffic with its own IXC traffic. If a carrier voluntarily elects to participate in such an arrangement, I would recommend that it would only be under the condition that BellSouth is absolutely responsible for complete and accurate measurement and records of traffic and residually responsible for traffic that cannot be accurately identified as that of other carriers Therefore, there is no measurement issue with respect to any potential voluntary transit traffic arrangement.

Q: Mr Sterling on page 5 of his testimony notes that the ICOs have not provided any traffic data for land-to-mobile traffic. Do you have any comment?

A: Yes Currently, there is no local exchange service traffic in the land-to-mobile direction

that needs to be measured by the ICOs. To the extent that circumstances arise where measurement of landline to mobile traffic interconnected indirectly through the indirect interconnection arrangement the CMRS providers have chosen to use is needed, I would expect that the CMRS providers' "meet point billing agreements" with BellSouth would be the source of information regarding what third party traffic BellSouth delivers to the CMRS providers The information that Verizon Wireless seeks can only come from BellSouth because only BellSouth measures this usage This is consistent with the expectation that the CMRS providers have that the ICOs should rely on data from BellSouth

More troubling, there is a trend throughout the CMRS provider witnesses' testimonies that I will discuss in more detail later, but I will introduce here The set of arguments goes like this· The CMRS providers claim not to know the traffic usage; only BellSouth knows the traffic usage; the ICOs do not know the traffic usage; therefore, because no one can provide data on the usage, the ICOs are just "out of luck" and will be subjected to a compensation result beyond their control because: 1) the CMRS carriers have elected to interconnect indirectly through BellSouth; 2) BellSouth has elected to terminate the traffic through its existing Feature Group C connection over a common trunk group· and 3) BellSouth and the CMRS carriers negotiated bilaterally to relieve BellSouth of its obligation to compensate the ICOs The irrational and unfounded suggestion in Mr Sterling's testimony is that the ICOs must produce data that they do not have; otherwise, they will be subjected to onerous consequences (*i e.*, no compensation) This argument is the ultimate "Catch 22 " The CMRS providers and BellSouth have designed an arrangement that only BellSouth has control of, and because the ICOs have no control (*i e.*, measurement) they cannot provide facts, therefore, the CMRS providers and the BellSouth argue that ICOs must go along with the BellSouth and CMRS providers' demands

It is revealing to observe how Verizon Wireless plays this Catch 22 game. Mr. Sterling claims that Verizon Wireless does not know the amount of traffic and that the ICOs have not indicated the amount of traffic, therefore, no one has any other choice but to conclude a no compensation, "bill and keep" approach should apply. Sterling at p. 5. Other CMRS witnesses pursue similar arguments.

Q: For purposes of determining the location of the cell site serving a mobile wireless user which is used to determine whether a call to or from a mobile user is intraMTA or interMTA, Mr. Sterling claims at pages 5-6 that Verizon Wireless does not have the technical ability to determine this information. Do you have any comment?

A: If Mr. Sterling is correct, it seems to me that we should apply his own Catch 22 logic If Verizon Wireless can't establish measurement capability to determine whether a call is intraMTA or interMTA, then we should by default treat the traffic as interMTA and charge for it in accordance with established FCC standards (i.e., access) I don't think, though, that Mr Sterling is correct about his company's measurement capability .

I am a customer of Verizon Wireless. When I travel across the country and make calls back to the Maryland/D.C area, the bill that I get details the wireline end users that I called and the locations at which I made these calls (at least a wireline switch location reasonably near the actual location at which I made the mobile phone call) But Verizon Wireless claims that it has no ability to determine relevant data regarding the location of mobile users The real answer is that they are unwilling because wireless carriers know that the facts will show a much greater relative amount of interMTA calls than the small percentages the wireless carriers claim There is an obvious reason for this arbitrage, the FCC permits the billing of interstate access charges for the origination and termination of interMTA calls

TRANSIT TRAFFIC IS NOT WITHIN THE SCOPE OF THE SUBPART H TRANSPORT AND TERMINATION RULES AND RECIPROCAL COMPENSATION

Q: Mr. Sterling at p. 7 and Mr. Pruitt at pp. 17-19 claim that the so-called reciprocal compensation rules must apply to the BellSouth designed three-party, transit traffic arrangements. Do you have any comment?

A: Yes. There is absolutely nothing in the FCC's Subpart H reciprocal compensation rules that addresses or ever even contemplates transit arrangements where an IXC commingles third party CMRS provider traffic or where a Bell company uses its access arrangement with rural LECs to commingle third party CMRS traffic The Coalition's Response and my testimony already set forth in the record detailed discussion of the actual words contained in the rules which apply to an interconnection point established on the incumbent LEC's network between the two carriers. There is absolutely no discussion or existing rules for a Subpart H arrangement where there are two interconnection points between three different carriers and the intermediary carrier commingles third party traffic with the intermediary's own traffic. The only discussion of such an arrangement is one in which an IXC is the intermediary, and in that case the IXC is responsible for access payments to the ICOs. There is no question that the issues regarding the treatment of transit traffic are unsettled and not subject to any established requirement that relieves the transiting provider of responsibility to the terminating carrier.

Furthermore, the FCC has previously decided against a requirement that would have allowed IXCs to mix third party traffic over a single access arrangement The CMRS provider witnesses simply make glaring general statements (which neglect the actual conditions stated in the rules) in order to support their positions. Their statements are tantamount to suggesting that because the FCC did not say anything about transit traffic arrangements not being part of the reciprocal compensation framework, then the transit traffic arrangements should be part of the reciprocal compensation mechanism. However, the Coalition has already provided discussion and testimony that shows how there are explicit rules and discussion which clearly do not incorporate the BellSouth

transit arrangement into the scope of an involuntary arbitrated Section 251(b)(5) arrangement. The CMRS provider witnesses conveniently neglect this discussion to the contrary. *See, generally*, Response at pp 21-30 and Watkins Direct at pp 9-13 I respectfully note once again the Subpart H rules that the CMRS providers want to apply to the indirect interconnection arrangement through BellSouth specifically apply the establishment of a point of interconnection between the networks of the two carriers As a policy and interconnection advisor to the ICOs, I am at a complete loss to explain to the ICOs why the CMRS carriers position in direct conflict with this specific standard has been or could be condoned

Yet, without regard for the established standards and requirements, the CMRS providers pursue arguments based on their own interpretations of their own reading of the rules Mr. Pruitt provides (at p. 19) his speculation about transit traffic arrangements, nowhere to be found in any interconnection rule On lines 5-9 on p 19, Mr Pruitt defines what he wants indirect interconnection to be, including an arrangement where an IXC like BellSouth would commingle Sprint PCS traffic with BellSouth's own IXC traffic by switching this traffic through the BellSouth tandem. There is absolutely no evidence anywhere of any such definition, much less an application of the Subpart H rules in a manner that disregards the specific reference to the requirment of a point of interconnection between the networks of the two carriers exchanging Section 251(b)(5) traffic In the lengthy *First Report and Order* and the FCC's Part 51 rules, the concepts of transit, the commingling of traffic switched through a tandem, and three-party arrangements with two interconnection points are never even mentioned, much less is a rule definition provided, as Mr Pruitt would suggest Mr Pruitt's proposed definition is nothing more than an explanation of the bilateral deal that BellSouth made with Sprint PCS to provide this arrangement and the unilateral decision by BellSouth to attempt to impose this arrangement on the ICOs Most incredible, Mr. Pruitt makes the self-serving claim at line 22 of page 19 that "the BellSouth arrangement is the classic means for providing indirect interconnection." Others might suggest, however, that the only thing "classic" is the attempt by l companies to impose their self-serving arrangements on smaller LECs.

The CMRS provider witnesses actually have it totally backwards. As I mentioned earlier, the issues associated with responsibilities related to "transit traffic" are far from settled, and there is clearly no application of the Subpart H rules which contemplate the establishment of a point of interconnection between the carriers exchanging Section 251(b)(5) traffic. The FCC has stated that so-called transit arrangements have been left out of the interconnection rules. The FCC confirmed this conclusion at least twice -- that its rules did not consider such transit arrangements, have not addressed such transit arrangements, and according to the FCC, the FCC has not even decided whether there is an interconnection requirement for such transit arrangements. Therefore, the CMRS providers cannot claim that they know that the FCC meant to include such arrangements in the reciprocal compensation scope when the FCC has stated specifically that it has not addressed these potential situations, is not sure that it will, and has not decided whether

such arrangements should be interconnection obligations at all *See, generally*, Response at 24-26 and Watkins Direct at p. 10.

The Coalition has already set forth its exhaustive discussion in its Response and my direct testimony setting forth the facts regarding this issue. The CMRS provider witnesses simply make bold unfounded statements, inconsistent with the evidence that the Coalition has provided, and simply and conveniently avoid addressing those arguments that are contrary to their unwarranted and presumptive conclusions.

It bears repeating the ICOs are willing voluntarily and outside the scope of the interconnection requirements and arbitration to resolve a voluntary transit service arrangement provided that their competitive rights and business interests are addressed on a fair and equitable basis, but there are no rules that require the ICOs to do so, and there are no rules that make this traffic arrangement subject to the Subpart H rules. Where ICOs establish their own tandem-end office network hierarchy, they would have no mandatory obligation to continue to participate in the commingled traffic arrangement with BellSouth

The only indirect interconnection arrangement discussed by the FCC within the scope of the Transport and Termination Subpart H rules is one in which the CMRS provider may use dedicated facilities of a third party as the means to establish the single interconnection point on the network of the incumbent LEC between the two carriers. *First Report and Order* at para. 1039 As already stated, the FCC has explicitly rejected the adoption of any requirement that LECs allow IXCs to commingle third party traffic under some form of shared arrangement. The transit arrangement under which BellSouth commingles traffic with its own IXC traffic (and other parties' traffic) is not recognized as a possible Subpart H arrangement, and in any event, the ICOs have no involuntary obligation to accept traffic in this manner under the terms and conditions proposed by the CMRS providers

ALL OF THE ISSUES REGARDING A THREE-PARTY TRAFFIC ARRANGEMENT CANNOT BE RESOLVED WITHOUT ALL THREE PARTIES AGREEING TO THE PROPER TERMS AND CONDITIONS

Q: Mr. Pruitt on page 14 states that BellSouth is not required to be a party to the ultimate agreement, and other witnesses have similar observations. Do you have any comments?

A: Yes Mr. Pruitt answers a different question than he poses The question of whether BellSouth has been required to participate in the arbitration does not answer the question of whether all of the issues can be resolved without BellSouth's participation. The terminating indirect interconnection arrangement through BellSouth to the ICOs that is

under consideration in this proceeding already exists It exists because of previously established terms and conditions for interconnection between BellSouth and each ICO. It is not sufficient simply to cancel the existing terms and to establish new terms between the CMRS providers and each ICO while ignoring the very real concerns set forth in the arbitration issues that must be addressed with respect to the actual physical connection between BellSouth and each ICO. While individual Independents may have attempted in good faith to establish such agreements in the past, I have concluded and recommend that simply operating in "good faith" is not sufficient. There is no statutory or regulatory standard that alleviates BellSouth or any tandem provider from responsibility for the traffic that it delivers to a terminating network on a commingled basis through a common trunk As the Coalition has thoroughly discussed in its Response and in my Direct Testimony, there is good cause for concern on the part of the ICOs and good cause for the fact that there is no requirement to relieve the tandem provider of responsibility. Neither this arbitration proceeding, nor the ICOs working voluntarily with the CMRS providers can resolve the rights and responsibilities with respect to the role of BellSouth in its provision of the indirect interconnection through a common trunk group connection to each ICO.

The Coalition has already set forth at length the reasons why any voluntary three-party arrangement depends on obligations that only BellSouth can and must fulfill and the examples of proper terms and conditions that would apply to BellSouth in a three-party arrangement. *See, generally*, Response at pp. 10-13 and 40-45 and Watkins Direct at pp 20-23 If new terms with BellSouth are not established, then there will be no new terms and conditions that fully address all the aspects of the three-party arrangement which already exists under previously established terms between BellSouth and each ICO

IXC DELIVERED TRAFFIC IS SUBJECT TO THE FRAMEWORK OF ACCESS, NOT THE FRAMEWORK OF THE SUBPART H RULES FOR RECIPROCAL COMPENSATION

Q: On page 30, Mr. Pruitt continues to maintain that the ICOs should be responsible for payment to the CMRS providers for all intraMTA traffic, even interexchange service traffic that an IXC carries, delivers, and terminates to a CMRS provider. Is he right?

A: No As the Coalition explained in its Response and in my Direct Testimony, this argument is absurd and contrary to clear statutory requirements and FCC Orders *See, generally*, Response at pp 31-36 and Watkins Direct at pp 13-16. Mr Pruitt's testimony is internally inconsistent and inconsistent with the declaratory ruling that his own company Sprint PCS sought and received from the FCC where Sprint PCS sought to ensure that it could collect access charges from IXCs when it terminates calls carried by IXCs to its network

On page 17 of his testimony, Mr Pruitt quotes from the FCC's rules which clearly state that the traffic at issue is traffic between a Local Exchange Carrier and a CMRS provider, not traffic between an IXC and the CMRS provider It is difficult for me to understand how this concept can be confused by any party The CMRS providers suggest that the ICO is responsible for terminating charges to the CMRS provider irrespective of the fact that the call is carried by an IXC They apparently base their position on the fact that the call is originated by an end user of an ICO, the ICO's network is used to provide originating access to the customer's IXC who, in turn, carries the call. The FCC recognizes that calls carried by IXCs are subject to access charges collected from the IXC; the ICO is not the carrier of the call This concept is well established and hardly susceptible to confusion by any party familiar with the applicable regulatory framework. As the Coalition has already provided in its Response and my testimony, the Subpart H rules and the compensation requirements under those rules are confined to certain local exchange service traffic of LECs Interexchange service traffic is not within the scope of the Subpart H rules Interexchange service traffic is not even traffic of the LEC, it is the traffic of the IXC; *i e* , IXC service traffic is not local exchange service traffic, and IXC traffic is not traffic between a LEC and a CMRS provider.

On page 29, Mr Pruitt quotes from the FCC again He fails to recognize that the FCC in the cited quote states that traffic currently subject to access charges continues to be subject to access charges Calls originated by IXCs on the networks of the ICOs have always been, and are still, subject to access charges, and by Mr Pruitt's own testimony and cited reference to FCC discussion, calls originated by IXCs are not within the scope of reciprocal compensation With respect to calls "originated by IXCs" on the switched network, parties familiar with the applicable regulatory framework understand that the originating access service of the customer's LEC is used by the IXC in order to access the originating customer, but the use of the LEC's originating access does not change the fact that the termination of the call is the responsibility of the IXC, not the LEC. Originating calls that are subject to the framework of access cannot be, and are not, subject to the mutually exclusive framework of reciprocal compensation. That is what the paragraph cited by Mr Pruitt discusses (effectively, the FCC's discussion is based on the fact that Section 251(g) of the Act makes traffic subject to the access framework mutually exclusive from traffic subject to the reciprocal compensation framework).

Mr. Pruitt's quote on page 29 also states at least three times in the paragraph that the traffic that is subject to reciprocal compensation is between a LEC and CMRS provider, not interexchange service traffic between an IXC and a CMRS provider or traffic between an IXC and a LEC. Mr Pruitt is wrong - that is not my opinion That is a fact based on the application of the established access framework

Furthermore, it was Mr Pruitt's employer Sprint PCS that asked the FCC to declare that under the existing rules, traffic delivered to Sprint PCS (or any CMRS provider) for termination by an IXC is, and has always been, subject to the compensation framework under access, and the FCC confirmed that conclusion Response at pp 35-36 Sprint

PCS has no basis to claim that IXC traffic is not subject to the mutually exclusive framework of access Regardless, the FCC has explicitly stated that traffic carried by an IXC is subject to the framework of access, not reciprocal compensation. Response at pp 34-35 Mr Pruitt's inconsistent arguments cannot be squared with the facts, the statute, and the FCC's own statements and conclusions.

Once again, I would like to add that Verizon Wireless did not join in with the other wireless carriers on this issue because Verizon Wireless has previously recognized before the FCC that traffic carried by an IXC is not within the scope of the reciprocal compensation framework

A LEC HAS NO OBLIGATION TO DELIVER LOCAL EXCHANGE SERVICE TRAFFIC TO A CMRS PROVIDER AT DISTANT POINTS BEYOND THE LEC'S NETWORK, OR TO TRANSPORT ITS LOCAL EXCHANGE SERVICE TRAFFIC TO DISTANT POINTS, AT THE REQUEST OF THE A PROVIDER

Q: On page 11 of his testimony, Mr. Sterling states his "belief" that ILECs such as the ICOs are required to deliver local exchange carrier traffic "anywhere in the MTA in which the call originated." Is he right?

A: No, he is not right.. This is another absurd notion that the CMRS providers set forth as if it were established policy. They apparently rely on one unfortunate state decision where their tactics prevailed If this issue were referred to the FCC, or if anyone even informally asked the FCC if this CMRS position is an established requirement, I am confident that the answer is "No " The CMRS providers confuse this issue with the requirement that a Bell operating company permit the CMRS providers to connect to the Bell networks at a single point of interconnection in the LATA in which the Bell company operates The CMRS providers might reasonably take this determination and argue that they should be entitled to connect to any ICO's network at a single point of interconnection on that ICO's network But, that's not what the CMRS providers argue. Instead they leapfrog to the conclusion that they should be able to obtain a reciprocal compensation arrangement with the ICOs through the point of interconnection with the Bell company, and without establishing a point of interconnection between their network and the ICO's, as required by the Subpart H Rules.

The Coalition Response and my Direct Testimony already demonstrate why LECs do not have any interconnection obligations to deliver local exchange traffic to distant points well beyond their incumbent LEC networks *See, generally*, Response at pp 46-52 and Watkins Direct at pp 24-28

The lack of either a practical or a policy foundation for Mr. Sterling's "belief" is easily demonstrated by considering the Memphis MTA that includes the western portions of Tennessee. This MTA extends into Southern Mississippi beyond Jackson, Mississippi,

approximately three hundred miles from those portions of the MTA in western Tennessee. Under Mr Sterling's "belief," a small LEC in western Tennessee would be required (presumably, according to Mr. Sterling, because a CMRS provider requests) to provide local exchange service to its end user customers and deliver (or be responsible for the delivery) those local calls to a CMRS provider in Jackson, Mississippi, some three hundred miles away. And this may be for a local calling area that normally only is 25-50 miles in scope.

HOW WOULD THE PARTIES DEFINE THE SCOPE OF TRAFFIC THAT THE CMRS PROVIDERS WOULD DELIVER THROUGH BELLSOUTH THAT WOULD BE SUBJECT TO THE TERMS OF THE VOLUNTARY TRANSIT ARRANGEMENT?

Q: On page 8 of her testimony, AWS witness Nieman states that <u>all</u> traffic exchanged between a particular CMRS provider and specific LEC, regardless of where the traffic originates should be included in the agreement with the ICOs. And other CMRS witnesses suggest a similar concept. Do you have any comment?

A: Yes. In order to understand the importance of this matter to the ICOs, it would be arbitrary and unjustified to ignore the fact that, like it or not, the existing FCC rules provide various interconnection terms for traffic dependent on multiple factors including who carries the traffic and what are the originating and terminating points of the traffic. Outside the scope of interconnection requirements that are subject to arbitration, the ICOs continue to indicate their willingness to enter into a voluntary arrangement to accommodate the objectives of BellSouth and the CMRS Providers with respect to new terms and conditions for the existing indirect interconnection arrangement. What brought us to this arbitration process is the fact that the ICOs, while willing to negotiate a voluntary agreement, are not willing to expose themselves to abuse, including for example, the inability to collect the correct applicable charge for the traffic they terminate. This is the importance of the issue raised by Ms. Nieman's testimony - the ICOs want appropriate protection to ensure that a CMRS carrier does not deliver wrongfully deliver traffic in a manner that avoids applicable access charges. With all of the public press in recent years regarding wrongful routing schemes by large carriers to avoid lawful interconnection schemes, the ICOs deserve more than being scoffed at or disregarded for their concerns.

Witness Neiman's statement means that there would be no limits, whatsoever, to the scope of traffic that AWS would deliver pursuant to the presumed voluntary transit arrangement. However, her statements are contrary to the positions and the factual representations that the CMRS providers have taken in negotiations.

When asked if the CMRS provider intends to deliver traffic that is originated by one of its mobile users located in California, for example, over the BellSouth transit

arrangement, the CMRS providers scoff at the question and state, "Oh, no, we use traditional IXCs to complete traffic to Tennessee from California." Then we ask when the CMRS provider uses a traditional IXC to deliver traffic from California to the LECs, do the CMRS providers understand that the traffic is subject to an access arrangement between the IXC and the terminating LEC, and that the IXC pays the terminating LEC? And the answer we get is that the CMRS providers understand this to be the proper arrangement

The ICOs next ask at what point across the country as we get closer to Tennessee do the CMRS providers stop using traditional IXCs and start using the hypothetical BellSouth transit arrangement for the mobile traffic that originates from those other points? The CMRS providers cannot provide a specific answer to this question The ICOs are left with the answer "the CMRS providers deliver some traffic using traditional IXCs and some traffic through BellSouth, and we are not going to tell you what the scope of each type is " The ICOs deserve to know the relative scope of traffic for which the CMRS providers will use traditional IXCs and the scope for which the CMRS providers will use the BellSouth arrangement The ICOs should not be subjected to the arbitrary whim of the CMRS providers to claim one treatment or another The ICOs do not want to find out later that the CMRS providers decide unilaterally that all of that traffic that they claimed to be delivered by traditional IXCs has now been diverted to the BellSouth arrangement Without knowing the relative scope, there will be no way to say with certainty which scope of traffic is subject to which terms That is the confusion that BellSouth has already imposed upon the ICOs, and they do not intend for there to be confusion in the future.

(As a sidelight to the use of traditional IXCs, the CMRS providers current use of BellSouth is no different than the use of any other traditional interexchange carrier, only that BellSouth apparently has decided that it can unilaterally redefine itself It is common practice, still continuing now for eight years after the 1996 Act, for IXCs to terminate traffic originating from the networks of CMRS providers and other carriers. This creates no problems for the IXCs or for the ICOs because the IXCs are responsible for the compensation associated with the terminating traffic)

Witness Neiman agrees with me at p 11 that the geographic point at which a mobile user originates a call that will terminate to a wireline LEC "is a key factor in determining whether a call is interMTA or intraMTA and the appropriate compensation mechanism that would apply " Actually, her testimony is an understatement The geographic location of the cell site serving the mobile user is the sole variable factor to determine if a call between a LEC customer and a mobile CMRS provider customer because the location of wireline end user within the MTA is known, and does not change. While Ms Nieman agrees that the scope of the geographic area determines the relative amounts of interMTA and intraMTA that the parties would expect to be exchanged, witness Nieman nevertheless rejects this conclusion to suggest that the agreement should be silent about this parameter.

I already explained why the geographic area from which a CMRS provider will originate mobile service user calls is a fundamental factor in determining the application of proper terms and conditions *See* Watkins Direct at pp 40-42 Witness Neiman's observations support my conclusions To the extent that the ICOs may resolve some form of voluntary three-party arrangement with BellSouth and the CMRS providers, they do not intend to play "hide and seek" to determine what scope of the traffic is subject to the terms, or to be subjected to the abuse that BellSouth and the CMRS providers have applied in recent years where one carrier or another disclaims responsibility for compensation when that carrier clearly had previously assumed responsibility for compensation. Allowing the CMRS providers (and/or BellSouth) to do that would simply invite further abuse

SHOULD THE ARRANGEMENT INCLUDE BOTH DIRECT INTERCONNECTION AND INDIRECT TRANSIT ARRANGEMENTS

Q: The CMRS provider witnesses argue (e.g., Sterling at p. 9-10) that agreements should include both direct interconnection and the voluntary indirect transit arrangement with BellSouth. Do you have any comment?

A: The Coalition has already addressed this issue fully *See, generally*, Response at pp 58-61 and 87-89 and Watkins Direct at pp 32-34 and 49. The negotiations and interconnection requests were the product of the directive of the Hearing Officer in Docket No. 00-00523 specifically focused on the establishment of new terms and conditions for the established indirect interconnection arrangement In the course of the negotiations, the parties did not discuss specific direct connections between any ICO and any CMRS provider. The Coalition recognized that direct connection agreements may incorporate many standard terms, but the heart of the agreement requires company-specific negotiation and detail. When the CMRS providers were asked with which ICO they wanted to connect directly and where that interconnection would be, the CMRS providers never made such requests in the context of the collective negotiations.

Regardless, in the event that a CMRS provider requests to establish an actual interconnection point on the incumbent LEC network for traffic exchange purposes, then the two parties will establish direct trunks, and the inferior indirect transit arrangement will no longer apply and BellSouth's involvement will end. In such case, where a direct connection is established, the ICO would have no intention or reason to continue to maintain the inferior, anti-competitive arrangement which forces the ICO to be dependent on BellSouth. The CMRS provider, under a direct connection, can terminate its traffic over those direct trunks, and in accordance with the Subpart H Rules of the FCC. (The only minor exception would be in a network emergency when the direct trunks may be inoperable, in which case emergency routing through the indirect arrangement could be

available to provide redundant routing for short periods of time while the trouble is cleared.)

The point here is that to the extent that an ICO may be willing to establish a voluntary arrangement for new terms and conditions for the existing indirect interconnection arrangement through BellSouth, that matter is separate and distinct form the resolution of any matters addressing specific direct interconnection arrangements To the extent that any CMRS provider seeks a direct interconnection arrangement with a specific ICO, the CMRS provider should avail itself of the established statutory and regulatory processes pursuant to Section 252 of the Act to establish such agreements It does not suffice to state simply in a collective interconnection request to all of the ICOs that the CMRS carrier seeks a "direct" arrangement when the CMRS provider fails to follow-up and specify what if any direct arrangements its seeks Company-specific direct arrangements were not addressed in the collective negotiation and no such arrangement can lawfully be resolved in this proceeding

RATES AND COSTS

Q: The CMRS provider witnesses (*e.g.* Mr. Brown at pp. 17-27 and Mr. Pruitt at pp. 25-27) question what the proper compensation rates should be for the termination of traffic. Do you have any comment?

A: Yes. As I have already explained in my Direct Testimony and will further discuss below, the rates that the ICOs proposed to the CMRS providers for the voluntary establishment of new terms and conditions of the termination of traffic through the existing indirect interconnection arrangement are more than reasonable and fair, particularly when the ICOs have no obligation to participate in such voluntary arrangement for traffic commingled with BellSouth's IXC traffic. The proposed rates actually are beneficial to the CMRS providers

While Mr. Brown goes on at length to discuss all of the FCC's economic theory pricing rules and makes various threatening conclusions with respect to the consequences for the ICOs, his discussion fails to recognize sufficiently that the FCC's form of costing and pricing, as reflected in those rules, do not apply. Not only do these pricing rules not apply to the indirect "transit" arrangement that already exists, but these pricing rules do not even apply in the scope of establishing a lawful exchange of traffic at an interconnection point between two carriers where one carrier is a Rural Telephone Company The FCC has repeatedly declined to impose these pricing rules on Rural Telephone Companies largely because of the concerns for universal service in rural areas as reflected by the protections afforded these smaller LECs pursuant to Section 251(f)(1) of the Act All of the ICOs are Rural Telephone Companies *See* Response at pp 63-64

The requirement to apply the specific pricing rules based on the "standards" set forth in Section 252 of the Act (and on the FCC's rules which implemented these standards) arise

under Section 251(c)(1) of the Act It is Section 251(c)(1) that establishes the requirement to apply the standards in Section 252 with respect to fulfilling interconnection requests pursuant to the requirements of Section 251(b) and (c) 47 U S C. Section 251(c)(1). I would note that the words in the Act only apply these particular standards of Section 252 with respect to the fulfillment of the duties under Sections 251(b) and (c), but not under Section 251(a), providing further evidence that the general duty to interconnect under Section 251(a) does not bring with it some onerous set of specific pricing or other business terms that arise under Section 251(c) or the standards of Section 252 *See* 47 U.S.C. Section 251(c)(1) "The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) [*i e* , 251(b)] and this subsection [*i e* , 251(c)]." As the FCC has stated, because Rural Telephone Companies are exempt by Section 251(f)(1) of the Act from the interconnection duties that arise under Section 251(c), the standards in Section 252 (including the specific pricing rules) do not apply to Rural Telephone Companies.

The ICOs have voluntarily proposed rates that are more than reasonable, even compared to rates that would be derived under the standards that do not apply The ICOs have no interest in pursuing costly, resource intensive and complicated economic cost studies, particularly when the requirements do not apply, there would be no productive use for such studies, and there are other more reasonable alternatives to establish rates The burden of preparing such studies would be contrary to the Congressional policy that Rural Telephone Companies should be protected from under economic burdens. It simply does not make sense to suggest that the parties can lawfully ignore the fact that the FCC has repeatedly stated that these pricing rules do not apply to Rural Telephone Companies. Moreover, if the rules actually applied, for reasons discussed below, the rates that would result could just as likely be higher than those that the ICOs have already proposed, certainly not the levels that the CMRS providers apparently have in mind As small carriers, the ICOs have voluntarily proposed rates that avoid the preparation of additional, very complicated and costly studies, which by their very nature would be burdensome to produce, in favor of rates that are already justified by FCC accepted cost studies and data that underlie the same functional network elements as provided for the transport and termination of interstate traffic.

Q: Does Mr. Brown acknowledge that the specific FCC pricing and costing rules do not apply?

A: Yes. On page 27, he acknowledges that Section 251(f)(1) exempts Rural Telephone Companies from the FCC's specific pricing and costing rules (as the FCC also concluded), but he then goes on to misquote and distort the statements contained in the Coalition's Response Contrary to anything different that Mr Brown may infer, for an exemption to be removed for a Rural Telephone Company, there would have to be a showing in a separate proceeding that demonstrates that the fulfillment of specific requirements would not result in undue economic burdens on users or the rural carrier

and would not result is circumstances inconsistent with Universal Service principles *See* 47 U S.C Section 251(f)(1) Mr. Brown incorrectly states on page 27 that the exemption is something for the rural LECs to "claim." However, the exemption is statutorily granted under the Act and exists until removed. In fact, my understanding is that the Rural LEC would not even have the right to voluntarily waive the exemption The exemption is intended not just to protect the rural LEC, but to protect consumers, and it cannot be removed in the absence of a determination by the state regulatory authority made in a manner consistent with the requirements of the Act,

All of the discussion by the CMRS providers' witnesses about onerous forward looking cost studies, traffic studies, and potential bill and keep approaches is needless rhetoric and counterproductive The ICOs have voluntarily proposed reasonable rates

The Eighth Circuit Court of Appeals has reflected on these issues in vacating prior FCC rules which would have limited the protections that Congress afforded Rural Telephone Companies. On July 18, 2000, on remand from the United States Supreme Court, the United States Court of Appeals for the Eighth Circuit issued its opinion in *Iowa Utilities Board v Federal Communications Commission*, 219 F 3d 744(8th Cir. 2000) ("*IUB II*"), which, *inter alia*, vacated Section 51 405(a), (c) and (d) of the FCC's rules *IUB II* establishes the proper standards for the evaluation of exemptions, suspensions and modifications pursuant to Sections 251(f)(1) and (2). The Court confirmed that the FCC had unlawfully attempted to limit the provisions of the Act that would have "impermissibly weakened the broad protection Congress granted to small and rural telephone companies " 219 F 3d at 761. In no uncertain terms, the Court went on to say that the FCC's initial interpretation would have frustrated the policy underlying the statute and stated "[t]here can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in § 251(b) or § 251(c)." *Id.*

I would also note in this context that Mr Sterling of Verizon Wireless makes an incorrect assertion on page 10 of this testimony in that he cites Section 251(c)(2) of the Act as the relevant interconnection duty under which Verizon Wireless may seek interconnection But the ICOs are not subject to Section 251(c)(2); the interconnection they provide that is under consideration is "indirect" and, therefore, pursuant to Section 251(a) of the Act. Moreover, as I have previously explained, even where the Section 251(c)(2) form of interconnection applies, it is limited to the establishment of an interconnection point on the network of the incumbent LEC. The CMRS providers have attempted to stretch this specific requirement to suggest that the interconnection point where traffic is exchanged is somehow at some point beyond the LEC's network on the network of some other LEC and not "an interconnection point between the two carriers," as required by the plain words of the Subpart H Rules.

The testimony of the CMRS witnesses contains other confusing (and, perhaps, misleading) reliance in the use of regulatory authority. For example, Mr. Pruitt on page 17 of this testimony suggests that interconnection obligations arise under Section 20.11

of the FCC's rules. However, the Section 20 rules are the result of the FCC's implementation of Section 332 of the Act, and the interconnection authority under Section 332 of the Act applies specifically to a physical connection between a CMRS provider and a LEC: " Upon reasonable request of any person providing commercial mobile service, the [FCC] shall order a common carrier to establish physical connections with such service. . . " 47 U S C. 332(c)(1)((B). With respect to the existing indirect interconnection t arrangement with BellSouth and the desire of the CMRS providers and BellSouth for new terms and conditions, the only physical connection is the one between the CMRS provider and BellSouth Therefore, contrary to any inference of Mr Pruitt's testimony, the provisions of Section 20 11 only apply in the case where the CMRS provider may actually seek a physical connection with the ICO.

Q: Mr. Brown suggests at p. 17 that the ICOs are required to produce forward looking cost studies. Do you agree?

A: No. As I discussed earlier, that requirement would apply to a carrier that is subject to Section 251(c)(1) and the referenced standards in Section 252 of the Act and is inconsistent with his testimony that recognizes that the ICOs are not subject to these pricing rules

Q: Mr. Brown also suggests that the ICOs are required to produce balance of traffic studies. Is he correct?

A: No Those rules also arise under Section 251(c)(1) of the Act and the referenced Section 252 standards and do not apply to a Rural Telephone Company that is exempt from the requirements of Section 251(c).

Regardless, Mr Brown's suggestion that traffic may be in balance, and that a "no compensation" approach should therefore apply, lacks credibility *See* Response at pp 67-70

As I stated above, there is no Section 251(b)(5) reciprocal compensation arrangement in place today and there is no traffic subject to such terms Therefore, the parties have not measured any traffic regardless of what traffic would be within the scope of Section 251(b)(5), if any, in the future. Furthermore, it is BellSouth and the CMRS providers that have bilaterally designed a so-called transit traffic arrangement which has made it impossible for the ICOs to identify and measure traffic, for themselves. Notwithstanding the inapplicability of the rules the CMRS providers seek to apply, BellSouth and the CMRS providers have no right to put the ICOs in a position where the ICOs cannot identify and measure traffic, and then say, because the ICOs cannot provide traffic information, the ICOs must accept an unconscionable result whereby they do not deserve any compensation. However, that is exactly what the CMRS providers claim in one breath through the testimony of Mr Brown, while in another breath the CMRS providers argue that the ICOs should rely on data supplied by BellSouth. Moreover, the wireless

carriers are unwilling to tell the ICOs what traffic the wireless carriers will commit to be within the scope of some new transit arrangement, instead simply claiming that all traffic (whatever that may be) is included BellSouth has placed the ICOs in a disadvantaged position by sending the traffic through a common trunk connection and then disclaiming responsibility. The CMRS providers and BellSouth then want to use the resulting disadvantage to the ICO's ability to measure and control its interconnection as the reason why the ICOs should be further denied their rights It makes no sense to claim that the ICOs have the burden of proof to show traffic volumes when, without the ICOs' agreement, BellSouth and the CMRS providers have put in place indirect interconnection arrangements with the ICOs that prevent the ICOs from both determining what traffic should be measured and the ability to measure that traffic. The Oklahoma decision Mr Brown cites on page 25 of his testimony is an isolated example of just such an irrational conclusion

If the ICOs and CMRS providers had direct connections, and all of the traffic that is exchanged and to be measured flowed over those direct trunk connections (as is the case with the BellSouth arrangements with the CMRS providers), then the facts would show that the traffic is not in balance For some ICOs, there would be no "local exchange traffic" delivered to a CMRS provider for termination, and the traffic volumes would be 100 percent mobile-to-land and zero percent land-to-mobile

Q: Did the ICOs propose rates to the CMRS providers?

A: Yes. As set forth in the Response at pp. 62-67 and in my Direct Testimony at 35-37, the ICOs proposed rates The ICOs explained to the CMRS providers the derivation of those rates and the cost basis that underlies those rates I also explained that cost basis in my Direct Testimony at pp 35-37 The cost basis is a matter of public record. In any event, the discussion with the CMRS providers only addressed new terms and conditions for voluntary indirect transit traffic arrangements outside the scope of the interconnection requirements established by statute and regulation There have been no discussions in the context of the discussions that lead to this proceeding under which the pricing and costing rules identified by Mr Brown would appl.

It is my understanding that members of the Coalition that do have cost studies are providing those studies to the CMRS providers on a voluntary basis and without waiving their rights to object to the use of these studies in this proceeding. Again, the rates proposed by the Coalition are consistent with rates approved by the FCC for the same functional elements of service provided in the termination of traffic; and, these rates are based on data required by and subject to the scrutiny of the FCC. Many of the Coalition members are referred to as "average schedule" companies and, as such, they do not perform individual company cost studies. The very basis upon which these companies do not perform individual cost studies is the FCC's determination that it would be unduly burdensome and not serve the public interest to require these companies to perform studies The FCC has determined that the underlying cost data upon which these

carriers' rates are established is sufficient to ensure reasonable rates and protect the public interest. It, of course, makes no sense and would appear readily arbitrary to determine through proper rulemaking on the one hand that these companies should not be required to perform studies, and then without rulemaking require studies The rates proposed voluntarily by the Coalition are reasonable, based on FCC accepted underlying cost data, and consistent with effective rates for functional equivalent services

Q: Did the CMRS providers respond to the ICOs proposed rates?

A: Yes They reviewed the rates, and in the context of the establishment of voluntary new terms and conditions for the existing indirect transit arrangement under discussion, it was my understanding that the CMRS Providers thought that the rate proposals were generally reasonable in the context of the negotiation discussions. I understood that the CMRS Providers would, in good-faith, make a counter-proposal for any rate they did not think reasonable.

Q: Why are the rates that the ICOs have proposed reasonable?

A: (1) The rates proposed by the ICOs are in fact understated for the functions of transport and termination because the interstate rates that form the basis of the proposals do not include all of the actual transport and termination costs of the ICOs Some of the actual transport and the termination costs of the ICOs are not included in the calculation of these rates because some of the costs are treated separately under universal service recovery. Some of the actual transport costs of the ICOs are not included in these rates because the FCC has arbitrarily move some traffic sensitive costs to common line for access purposes In a fundamental study of costs, the transport and termination costs that are recovered through universal service and the transplanted traffic sensitive costs would be included because those components are actually a cost of transporting and terminating telecommunications. They would not be removed from a forward looking cost study.

(2) The rates for transport and termination are based on the same network functions provided for the transport and termination of interstate traffic that also relate to the transport and termination of all other traffic

(3) While the FCC, in 1996, may have concluded that access rates <u>at that time</u> were too high to be used for local transport and termination purposes (a conclusion still debated by the LEC industry), and because the rates of 1996 still included recovery of a portion of common line costs, the FCC has subsequently ordered dramatic reductions in the access rates for the ICOs to the point that the observations that the FCC made in 1996 no longer apply. It is my understanding that the FCC believes that the current interstate access rates are cost justified and any improper subsidies having been removed -- a conclusion that did not apply in the FCC's view in 1996. For these reasons and others, many smaller LECs believe that interstate access rates are actually lower than rates that would be based on the actual costs of the LECs And for these reasons, they are more than reasonable here to be used on a voluntary basis with respect to the existing indirect interconnection

arrangement I believe that if a proper 251(b)(5) arrangement, consistent with the FCC's Subpart H Rules was under consideration (and it is not because the connecting arrangement is not "an interconnection point between the two carriers"), these proposed rates would be equally reasonable for any such arrangement

DIALING PARITY HAS NOTHING TO DO WITH END USER RATES

Q: AWS Witness Nieman claims at p. 6, in comments about dialing parity, that the obligations of the ICOs include "end user rate parity," and Mr. Pruitt at pp. 31-33 also questions the application of dialing parity. Do you have any comment.

A: Yes Ms. Nieman's comment is reflective of the confusion that the wireless carriers have created. Interconnection requirements, including dialing parity, have nothing to do with the concept of what rates are charged to end users for services and the dialing of different types of services The interconnection rules do not create any obligations regarding what intrastate service a carrier decides to offer to its own end users, what the LEC decides to charge for services it offers to its own end users, or the provisioning of the LEC's own services to its own end users *See* Response at pp. 78-82 and Watkins Direct at pp. 43-46. Dialing parity does not impose some form of ratemaking and rate structure requirements. An interesting problem would arise if anyone suggested that t a call from a CMRS customer to a landline customer is not subject to any rate regulation while the same call in the other direction is subjected to rate regulation by the interconnection requirements and rules.

There is no regulatory requirement, nor could there be, for a LEC to provide an intrastate local exchange service to its end users for calling mobile users that are located anywhere across the entire United States *Id.* Mr. Pruitt's comments about dialing parity demonstrate my point Mr Pruitt observes at p. 31 that "local" dialing parity is defined and conditioned in the rules based on a specific "local calling area," not telephone numbers. And as I explained in my Direct Testimony, the FCC has recognized at least twice that telephone numbers of mobile users do not determine whether the user is "within a specific local calling area " Watkins Direct at pp. 43-36 Mr Pruitt seems to think incorrectly that the assignment of NPA-NXX numbers determine whether end users are "within a specific local calling area " As the FCC has explained, and Mr Pruitt refuses to acknowledge, NPA-NXXs do not determine the location of mobile users, do not determine the jurisdiction of calls to mobile users, and do not determine whether a call is interMTA or intraMTA. The NPA-NXX, as the FCC has explained, does not determine the location of a mobile user For jurisdictional purposes, the relevant determination is the actual location of the mobile user; for intra and interMTA purposes, the relevant fact is the cell site serving the mobile user at the beginning of the call. The NPA-NXX of a mobile user does not correspond to either of these facts

To the extent that a CMRS provider provisioned some form of local exchange service whereby the wireless user's service is defined in the context of Mr. Pruitt's own cited definition; *i e* , "within a local calling area," then the concept of dialing parity could be applied on an equal basis But wireless carriers' local calling areas for mobile users now include the entire United States. As I have stated, there is no local dialing parity rule that requires a LEC to allow its wireline end users to make local wireline calls to mobile users anywhere in the entire nation. *Id* It is my view that it does not make policy or operational sense for either the FCC or the TRA to require a LEC in Tennessee to provide an intrastate service subject to local dialing parity for calling a mobile customer that is within a local calling area that includes, for example, California. The concept of a confined local calling area is not applicable to mobile service where the service area in the entire United States or some very large portion of the United States.

If federal interconnection rules existed that require carriers to rely on the NPA-NXX as the determinant of whether the call to a mobile user is "within the local calling area," then I am sure that the wireless carriers would have cited those rules But none exist The rules they cite only define the boundary within which they are entitled to seek termination of traffic on a 251(b)(5) basis consistent with the FCC's Subpart H Rules. In fact, the available discussion of location of mobile user and NPA-NXX by the FCC confirms just the opposite conclusion -- there is no correlation between a mobile user's NPA-NXX and the fact of whether the user is geographically located at a point within the local calling scope of a landline carrier

Q: Did you not in your Direct Testimony describe a voluntary, surrogate approach to the treatment of calls based on NPA-NXXs?

A: Yes *See* Watkins Direct at pp 15-16 and 43-44 But this is a voluntary surrogate not required by any regulatory rules. It is a surrogate I have recommended to rural companies as one that can be used to address not the demands of a wireless carrier, but the interests of their companies and rural customers. Significantly,, a LEC's ability and willingness to treat calls to mobile users pursuant to this surrogate approach is dependent on there being conditions in place with the mobile user carrier such that the LEC can complete calls as local calls under conditions that are no more costly or burdensome than the conditions that apply to the LEC's other local calling services Even where a LEC may voluntarily utilize the surrogate approach, LECs have no requirement to do so I advise rural LECs that they are not required and should not be willing to provision some superior form of local calling scope if that would require additional costs for the transport of traffic to some distant point beyond their own network, or if it would require the LEC involuntarily to purchase services from BellSouth at additional cost. From a traditional regulatory perspective, a regulator may best understand this concept by considering the change of a call from a toll call to EAS, the change is not undertaken without consideration of underlying costs and the opportunity to recover those costs The voluntary willingness of ICOs to include calls as part of their local exchange service offering and to send local traffic via the BellSouth transit arrangement with wireless

carriers is conditioned on the fact that the LECs do not incur any additional costs.

There are several issues like this one that the CMRS providers have brought before the TRA that would require, if accepted, the LEC to provide, at the request of the CMRS provider, some superior form of interconnection arrangement beyond that which applies to established r local traffic There are no requirements under the Act for a LEC to provision such superior arrangements If an arrangement involves some extraordinary costs to accommodate the superior arrangements requested by the CMRS provider, then those extraordinary costs are not the responsibility of the LEC; these costs should be the responsibility of the CMRS provider See Watkins Direct at p. 25

Q: Mr. Sterling notes at page 13 of his testimony that some states have ruled on services and rates based on rate center NPA-NXX numbers. Would you comment on this?

A: Mr Sterling does not provide specific references to these referenced actions but his testimony indicates that his citations are related to landline CLECs use of telephone numbers Landline to landline calling is factually distinct from landline to mobile. In many states, I understand that a local calling scope is defined by a specific geographic area description and that calls between the networks of any landline carriers that are originated and terminated within the local calling scope are required, as a matter of rate regulation, to be treated as local This requirement is based from both a policy and legal perspective on the fact that the originating and terminating points of the call are specifically within the defined geographic local calling scope Landline CLEC service to end users is physically static and fixed at a specific location, while mobile service is not With respect to the referenced New York proceeding, I was personally involved The New York Commission's order confined the geographic location of the end user in relation to the rate center area associated with the NPA-NXX, and specifically concluded that the incubment rural LECs in the state have no obligation to transport local service traffic beyond their own borders Also, the New York Commission did not and could not require a LEC to provide local calling to an end user that may be using a NPA-NXX that appears to be in New York but the end user is actually located in another State My understanding is that the conclusion was based on the fact that State commissions do not have authority to require a LEC to provide a regulated intrastate service for calling to interstate locations There may be numerous decisions across the country that attempt to deal with conditions related to the physical location of wireline end users related to the rate center associated with the telephone number. Regardless, there is no decision that I am aware (nor do I believe there could be) where a state commission decided, for example, that just because a CLEC assigns a telephone number to a customer located in California and that telephone number appears to be associated with New York, the LECs in New York must provide an intrastate local exchange service to their own customers for calling that customer in California. Regardless of what actions some states have taken, the FCC has concluded that the jurisdiction of calls is not related to the telephone number of users that are mobile

THE CMRS PROVIDER MAY BE REQUIRED TO PAY ORIGINATING AND TERMINATING ACCESS CHARGES TO THE LEC FOR INTERMTA CALLS -- THERE IS NO SUCH REQUIREMENT AS RECIPROCAL ACCESS CHARGES.

Q: On page 35 if his testimony, Mr. Brown makes statements that appear to suggest that somehow the ICOs may have to pay access charges to CMRS providers. Does that make sense?

A: No This is the first time that the Coalition has heard this suggestion The Coalition already set forth the FCC conclusion that access charges are paid to LEC -- LECs do not pay access charges. *See* Response at p 96, and note 93. If a toll carrier transports a call to a CMRS network, the CMRS carrier may enter into an arrangement to assess access charges to that carrier The ICOs do not transport IXC traffic to the CMRS providers

When a CMRS provider originates a call for one of its mobile users that is located in a different MTA than the LEC to which the call is to be terminated, and the CMRS provider delivers that call for termination, the CMRS provider is acting as an interexchange carrier and must pay terminating access charges.

Similarly, when a LEC end user originates a call to a telephone number of a CMRS provider, the LEC delivers that call to the CMRS provider, and the CMRS provider transports that call to a different MTA for termination of its mobile user that may be "roaming" in that distant location, the CMRS provider is the interexchange carrier that is "carrying" the call to the other MTA In such case, the CMRS provider owes originating access to the LEC.

The FCC explained this latter situation in footnote 2485 of the *First Report and Order*:

> [S]ome cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over facilities when the customer is 'roaming' is a cellular system in another state In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge . .

There is no such concept or requirement as reciprocal access charges as suggested by Mr Brown

EXISTING INTERCONNECTION AGREEMENTS WITH THE ICOs

Q: On page 3 of his direct testimony, Mr. Sterling states that Verizon Wireless has interconnection agreements with the TDS companies. Do you have any comment?

A: Yes It is my understanding that TDS has provided notice to Verizon Wireless that the agreement(s) with TDS are to be terminated pursuant to the termination provisions in the Agreement(s).

Q: On page 3 of this direct testimony, Mr. Sterling notes that Verizon Wireless has a "facilities leasing" agreement with Ben Lomand Rural Telephone Cooperative. Is that observation relevant to this proceeding?

A: No The arrangement with Ben Lomand that Mr. Sterling references is one for an arrangement known as "reverse toll billing" or "wide area calling" in which the wireless carrier agrees to pay the toll charge that would otherwise be assessed to the wireline end user for calling to the mobile users of the wireless carrier. This arrangement is not required by the interconnection requirements in the Act or FCC rules and is beyond the interconnection requirements of Section 251 of the Act. LECs are not required to offer reverse billing arrangements, and the observation about Ben Lomand is not relevant to these proceedings To the extent Mr. Sterling attempts to imply some relevance, there is none *See* Response at pp 50 -51

MISCELLANEOUS ISSUES

Q: On page 36, Mr Brown dicusses a new issue he calls "net billing option." Was this an issue previously presented by the CMRS providers for resolution?

A: No. Mr Brown admits that it is a new issue. However, the proceeding is limited to those issues presented for arbitration

In any event, to the extent that any ICO resolves a voluntary arrangement with a CMRS provider and BellSouth for the establishment of new terms and conditions applicable to the established indirect interconnection arrangement through BellSouth, then the parties are free to consider this proposal Howeer, it is not necessary or appropriate to address or resolve this new issue here.

Q: Does this conclude your testimony?

A: Yes.

Respectfully submitted,

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