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June 28, 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 Coalition of Small LECs and Cooperatives

REQUEST FOR RECONSIDERATION
OF "ORDER GRANTING MOTION TO COMPEL"
ISSUED JUNE 17, 2004
BY THE PRE-ARBITRATION OFFICER

Please return one copy to me stamped "filed". Thank you in advance for your assistance

Sincerely,

Bill Ramsey

William T. Ramsey

/jm
enclosures

cc All Counsel of Record

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:
Petition of Cellco Partnership d/b/a Verizon Wireless) Docket No. 03-00585
for Arbitration under the Telecommunications Act)

REQUEST FOR RECONSIDERATION OF "ORDER GRANTING MOTION TO COMPEL" ISSUED JUNE 17, 2004 BY THE PRE-ARBITRATION OFFICER

Crockett Telephone Company, Inc , Peoples Telephone Company, and West Tennessee Telephone Company, Inc. (hereafter collectively referred to as the "TEC Companies"), by their counsel, respectfully seek limited reconsideration of the "Order Granting Motion to Compel" (the "Order") issued on June 17, 2004 by the Pre-Arbitration Officer. Specifically, the TEC Companies seek reconsideration of that aspect of the Order that would compel provision of the companies' most recent two audited financial statements.

In this proceeding, the CMRS Providers issued a discovery request for the audited financial information of all of the rural independent telephone company members of the Rural Coalition including the TEC Companies. (This discovery request is hereafter referred to as "Interrogatory 37.") The Coalition, representing the interests of the TEC Companies responded to the Interrogatory 37 request stating, "The Coalition objects to this request as not seeking documents relevant to the issues before the Tennessee Regulatory Authority in the arbitration."

On May 14, 2004, the CMRS Providers filed a Motion to Compel. In lieu of litigating the Motion, the parties attempted to resolve the issues set forth in the Motion to Compel and reported to the Pre-Hearing Officer on May 25, 2004, June 8, 2004, and June 11, 2004. In the June 11, 2004 report, the CMRS Providers requested an expedited ruling on the unresolved issues including Interrogatory 37.

With respect to Interrogatory 37, the Coalition indicated on June 11, 2004 that a further response was forthcoming. In the absence of providing notice for an opportunity for the parties to be heard, and without even allowing for the seven day time period to pass within which parties are permitted to respond to preliminary motion requests, the Pre-Arbitration Officer issued the "Order."

With respect to Interrogatory 37, the "Order" provides no factual or legal basis for compelling the provision of audited financials by the TEC Companies or any member of the Rural Coalition The Order simply addresses this matter as follows: "The Coalition stated it would confer regarding its response to this request but has offered no objection to providing the requested information." In a manner unfortunately consistent with the resolution of other preliminary matters in this proceeding, the Order simply ignores facts and law to produce an outcome consistent with the position of the CMRS providers.

Contrary to the claim in the Order statement that the Coalition "has offered no objection," the fact is that the Coalition did provide a specific objection in its response to Interrogatory 37· "The Coalition objects to this request as not seeking documents relevant to the issues before the Tennessee Regulatory Authority in the arbitration." The objection is specific and consistent with the framework set forth in Rule 26.02 of the Rules of Civil Procedure which require that permissible discovery is limited to non-privileged information that is "relevant to the subject matter involved in the pending action."

The audited financials are not relevant, and the CMRS Providers made no attempt to demonstrate that audited financial information is "relevant to the subject matter involved in the pending action." Instead, the CMRS Providers simply provide general contentions that the private financial data of the Coalition members is "relevant to a number of pending issues in the

case, including those relating to the cost basis for the rates in the arbitration." In the absence of further inquiry into fact or law, the Order simply accepts the position of the CMRS Providers without discussion, analysis, or consideration of the applicable law.

The CMRS Providers essentially contend generally only that audited financials will provide them with data that is relevant to the establishment of interconnection rates set in accordance with the pricing standards relevant to the establishment of an interconnection agreement pursuant to Section 251(b)(5) of the Communications Act. Even assuming *arguendo* that this arbitration proceeding initiated by the CMRS Providers addresses Section 251(b)(5), the audited financials of the TEC Companies (or any Coalition member) are not relevant to the proceeding as a matter of law.[1] The Coalition has demonstrated that the Coalition members, including the TEC Companies, are not subject to the "Pricing Standards" set forth in Sec 252(d)

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[1] The TEC Companies, as a member of the Coalition, demonstrated in the "Preliminary Motion to Dismiss" filed on March 4, 2004, that the terms and conditions sought by the CMRS Providers in this proceeding constitute an indirect interconnection arrangement pursuant to Section 251(a) of the Communications Act As a matter of fact and law, the new terms and conditions sought by the CMRS Providers for application to their existing indirect interconnection through BellSouth do not constitute a "reciprocal compensation" arrangement pursuant to Section 251(b)(5) of the Communications Act or the relevant associated regulatory requirements established by the Federal Communications Commission ("FCC") Accordingly, the Coalition demonstrated that the CMRS Providers are attempting to use this federal arbitration proceeding process to obtain TRA sanction to the imposition of requirements on the Coalition members that have not been established by statute or FCC regulations Consequently, resolution of the arbitration issues in a manner consistent with the positions of the CMRS Providers would not and cannot be consistent with the established requirements pursuant to which an arbitration proceeding must be resolved (See, 47 USC Sec 252(c)(1)) The Coalition requested dismissal of the arbitration proceeding and proposed that all parties to the indirect interconnection arrangement meet to establish new terms and conditions under the auspices of the Authority's alternative dispute resolution processes The Preliminary Motion to Dismiss was rejected in an interlocutory order issued by the Pre-Arbitration Officer on April 12, 2004 that did not address the legal basis set forth for the request to dismiss the arbitration Unfortunately, other parties characterized this interlocutory order as a final order dispositive of pending issues in the arbitration proceeding (See, BellSouth and CMRS Providers' May 17, 2004 Motions for Reconsideration of an Order issued by the Hearing Officer in Docket No 00-00523) Neither the Pre-Arbitration Officer nor the Authority have admonished or challenged these parties with respect to their characterization of the interlocutory order as a final order that determined pending issues Consequently, and in an abundance of caution to ensure the protection of the rights of all Coalition members, the April 12, 2004 "Order Denying Motion" is the subject of review pursuant to Section 252(e)(6) of the Communications Act The TEC Companies respectfully urge the Authority to act on its own to review this matter, to dismiss this arbitration proceeding, and to seek agreement by all parties to the three-way indirect interconnection arrangement to utilize alternative dispute resolution pursuant to Chapter 1220-1-3 of the TRA rules to establish new terms and conditions to replace the existing terms and conditions applicable to the indirect interconnection

of the Communications Act.[2] And, even if the "Pricing Standards" were applicable to the TEC Companies – and, as a matter of law, they are not – the audited financials would still not be relevant to this proceeding.

The pricing standard applicable to Sec. 251(b)(5) (and relied upon by the CMRS Providers) is based on the "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[3] The audited financials do not provide any of this cost data. The audited financials provide, in accordance with accounting rules, aggregate data relating to the companies' assets and liabilities, operating revenues and aggregate operational expenses.

While the information in audited financials does not provide disaggregated information regarding the costs of transport and termination, it does reveal many private aspects of a company that is not publicly traded. For example, the cash and debt positions of the companies are sensitive and potentially valuable information to a competitor. There is no basis to require the TEC Companies to provide copies of their financial audits under the pricing standards related to Sec. 251(b)(5) (i.e., pricing standards that are not even lawfully applicable to this proceeding or to rural telephone companies in general) or under any law.[4]

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[2] *See*, Coalition Response in this proceeding filed November 28, 2003, and Testimony of Steven Watkins filed on behalf of the Coalition in this proceeding on June 3, 2004

[3] 47 USC Sec 252(f)(2)(A)(1)

[4] The TEC Companies recognize that many of its colleagues in the Rural Coalition have elected voluntarily to provide this sensitive private company information under stringent confidentiality requirements, and that by doing so these Coalition Members may avoid another costly litigation battle imposed upon them by much deeper-pocketed large carriers As a matter of principle, however, the TEC Companies have elected to ask the TRA to review the Pre-Arbitration Officer's Order The TEC Companies respectfully submit that upon review of the relevant facts and law, the TRA will reject the Order to the extent it would require small companies to reveal private financial data If, however, it is the intent of the TRA to attempt to require small communications entities in Tennessee to provide this sensitive information to large competitive wireless carriers, the TEC Companies respectfully submit that any such requirement should be clearly articulated by the TRA in a final order in order to ensure all interested parties the opportunity to seek judicial and legislative challenge to the imposition of this requirement on small businesses operating in Tennessee

To the extent that any party suggests that the private financial condition revealed by the audited financials of any company is relevant in any way to this proceeding, let that individual answer how they can square their contention with the plain words of the Communications Act. The arbitration of interconnection rates established under Sec. 251(b)(5) of the Communications Act does not empower either the FCC or any state regulatory authority "to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."[5] The Congress has been specific. The audited financials requested by the CMRS Providers and required by the Order do not provide information regarding the costs of transporting and terminating traffic. These financial reports, with which the TRA is fully familiar, provide only aggregate company information that could only be potentially applicable to a rate regulation proceeding which this arbitrating proceeding is not and cannot be.

Conclusion

The Order is incorrect where it states that the Coalition did not provide an objection to the provision of audited financial data by the TEC Companies or any Coalition Member. The Coalition specifically objected to the provision of this information on the basis that it is not relevant to this proceeding. The CMRS Providers have offered no information, other than general claims, to substantiate the claim that their interest in reviewing private financial data is relevant to this proceeding. Moreover, their general claims to the information are contradicted by the statutory provisions related to the establishment of pricing standards. Even if these statutory provisions related to interconnection pricing standards were relevant to this proceeding and rural telephone companies, the provision of private small company audited financials has no

[5] 47 USC Sec 252(d)(2)(B)(ii)

relevance to those statutory pricing standards. To the contrary, the specific words of the Communications Act indicate that the audited financials, commonly used in rate regulation proceedings, are not relevant. Accordingly, the TEC Companies respectfully request that the TRA reconsider the Order issued by the Pre-Arbitration Officer and determine that small carriers operating in Tennessee will not be required to provide sensitive financial information to competitive large wireless carriers under the guise of a need to review the data for purposes of establishing rates in this arbitration proceeding.

Respectfully submitted,

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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 on this the ____ day of June, 2004.

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