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August 4, 2004

VIA HAND DELIVERY

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 for filing is an original and fifteen copies of the Corrected Version of the Testimony of Steven E. Watkins with a Notice of Filing regarding same.

Thank you for your assistance.

Sincerely,

Sarah Martin McConnell

Sarah Martin McConnell
Paralegal

.bms
Enclosures

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
Petition of Cellco Partnership d/b/a Verizon Wireless	)	**Consolidated**
for Arbitration under the Telecommunications Act	)	**Docket No. 03-00585**
of 1996		

NOTICE OF FILING
OF CORRECTED VERSION OF TESTIMONY OF STEVEN E. WATKINS

The Coalition of Small LECs and Cooperatives (the "Coalition") hereby provides notice of the filing of a corrected version of the direct testimony of Steven E. Watkins. The previous version filed with the Tennessee Regulatory Authority contains typographical errors created by the conversion of the document from a WordPerfect to a Word format. The substance of Mr. Watkins' testimony has not been changed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I , the undersigned, hereby certify that on August 4, 2004, a true and correct copy of the foregoing was served on the parties of record via electronic mail:

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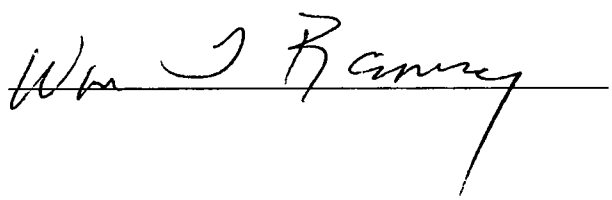

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
Petition of Cellco Partnership d/b/a Verizon Wireless	)	**Consolidated**
for Arbitration under the Telecommunications Act	)	**Docket No. 03-00585**
of 1996	)	
	)	

TESTIMONY OF STEVEN E. WATKINS
(Corrected Version)

on behalf of the

Coalition of Small LECs and Cooperatives

June 3, 2004

I. Introduction

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 phone number is (202) 296-9054.

Q: What is your current position?

A: I am Special Telecommunications Management Consultant to the Washington, D.C. law firm of Kraskin, Moorman & Cosson, LLC.

Q: What are your duties and responsibilities at Kraskin, Moorman & Cosson, LLC?

A: I provide telecommunications management consulting services and regulatory assistance to smaller local exchange carriers ("LECs") and other smaller firms providing telecommunications and related services in rural areas. My work involves assisting client LECs and related entities in their analysis of regulatory requirements and industry matters requiring specialty expertise; negotiating, arranging and administering connecting carrier arrangements; and more recently assisting clients in complying with the rules and regulations arising from the passage of the Telecommunications Act of 1996 (the "Act"). On behalf of over one hundred and fifty (150) other smaller independent local exchange carriers, I am involved in regulatory proceedings in several other states examining a large number of issues with respect to the manner in which the Act should be implemented in those states. Prior to joining Kraskin, Moorman & Cosson, I was the senior policy analyst for the National Telephone Cooperative Association ("NTCA"), a trade association whose membership consists of approximately 500 small and rural telephone companies. While with NTCA, I was responsible for evaluating the then proposed Telecommunications Act, the implementation of the Act by the Federal Communications Commission ("FCC"), and was largely involved in the association§s efforts with respect to the advocacy of provisions addressing the issues specifically related to rural companies and their customers.

Q: Have you prepared and attached further information regarding your background and experience?

A: Yes, this information is included in Attachment A following my testimony.

Q: On whose behalf are you filing this testimony?

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

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to supplement the positions and interconnection

proposals already set forth in the Response of the Rural Coalition of Small LECs and Cooperatives filed with the Tennessee Regulatory Authority ("TRA") on November 28, 2003 ("Response") in response to the above-captioned Petitions for Arbitration filed by five Commercial Mobile Radio Service ("CMRS") providers. The validity of the Coalition positions and proposals has already been demonstrated in the Response.

Q: Do you agree with the analysis and conclusions contained in the Response?

A: Yes. I adopt as my testimony herein, in its entirety, the analysis and conclusions set forth in the Response. There is no need to burden the record by repeating all of this analysis in my testimony. However, I will summarize and emphasize the points in the course of presenting this testimony.

The Response, in a comprehensive manner, already sets forth discussion of the controlling rules and the clarifications of the Federal Communications Commission ("FCC") which demonstrate that the ICOs' positions with respect to the arbitration issues are consistent with the established controlling requirements of statute and regulation.

Q: Why was it necessary for the Coalition to submit such a comprehensive response in its initial filing in this arbitration case?

A: The CMRS providers have attempted to stretch the rules, requirements, and law well beyond their explicit scope in an effort to create an unwarranted competitive advantage for themselves. For their sole benefit, the CMRS providers have also attempted to force obligations on the ICOs far beyond those that actually apply pursuant to statute and regulation. This tactic has resulted in what I conclude can be characterized, at best, as causing confusion with respect to the application of the FCC's rules and the requirements of interconnection. The Coalition's Response, therefore, was necessary to provide background regarding the arrangements between LECs and carriers providing service to mobile users, specific citations to FCC rules and policies that are directly contrary to the CMRS providers' claims, and a point-by-point rebuttal of the conceptual issues and confusion raised by their Petitions. The Coalition has already invested considerable resources in its Response in an effort to clarify these matters for the TRA.

I respectfully urge the TRA to review fully the background, rules discussion, and analysis set forth in the ICO's Response. If the CMRS providers' arguments were to be accepted and relied upon without question, it could lead the TRA to improper policy conclusions inconsistent with the controlling statutory and regulatory requirements. I understand that the CMRS providers gloatingly imply that the TRA should simply follow certain decisions made in Oklahoma. The fact that the tactics of the CMRS providers have prevailed in one or even a few states should not mislead the TRA which should, in fact, exercise its own judgment. When the TRA looks closely at the requirements the CMRS providers seek to impose on the ICOs, it will be apparent to all that these requirements are not consistent with established statutory and regulatory requirements. Accordingly, the requirements sought by the CMRS providers cannot lawfully be sustained as a standard applied in this arbitration Furthermore, the requirements, if applied improperly,

would impose economic burdens on the Coalition members and their rural customers contrary to the public interest and detrimental to Universal Service.

Q: Do you have any initial comments before moving on to the specific issues?

A: Yes. I want to emphasize a few key points:

1. In good faith, the ICOs have proposed a voluntary arrangement that would address new terms and conditions for the existing three-party interconnection arrangement among each ICO, BellSouth and the CMRS. The ICOs have not refused to negotiate new terms and conditions; they simply ask that any new contract include fair and equitable terms. The voluntary proposals by the ICOs offered outside of this arbitration already go well beyond that which is required of them by statute or regulation. Nevertheless, in order to resolve negotiations productively with BellSouth and the CMRS providers, the ICOs have been willing to enter into such extraordinary arrangements, again subject to equitable terms and other conditions that address and preserve basic ICOs rights such as ensuring that they are paid for service they provide; that they are able to discontinue service when an interconnection carrier defaults on its obligations, and that the ICOs are not forced to take responsibility for the transport of traffic beyond their respective networks The imposition of any result that is not consistent with these basic rights is patently inequitable and unsustainable

2. With respect to what the CMRS providers refer to as an "indirect" interconnection, it is a matter of fact that the terms and conditions between the CMRS providers and the ICOs are inextricably tied to the terms and conditions between BellSouth and each ICO under which each ICO and BellSouth interconnects their facilities and the manner in which those interconnection facilities are and will be used by BellSouth and the ICO for the transport and delivery of third party traffic. In fact, as discussed herein, some of the CMRS providers' arbitration issues are directly related to BellSouth's responsibilities and BellSouth's interconnection with the ICOs. The CMRS providers already have explicit agreements with BellSouth (agreements that BellSouth and the CMRS providers are attempting to use to deny the ICOs their rights to equitable terms), and these bilateral BellSouth-CMRS agreements address a set of terms between BellSouth and the CMRS providers for third party traffic that these parties seek to impose on the ICOs. The ICOs have been denied an opportunity to put in place terms and conditions for the interconnection that the ICOs have with BellSouth on the other side of the three-party traffic arrangement. The ICOs have no obligation to accept a BellSouth imposed arrangement for third-party traffic that goes beyond the applicable interconnection obligations Most, if not all, of the issues set for arbitration between the CMRS providers and the ICOs, involving three-party traffic arrangements, cannot be resolved until the terms with BellSouth upon which they depend have been established. I understand that Bellsouth, however, has not been made a party to this proceeding. As such, it is inevitable that this arbitration proceeding will necessarily be confused and incomplete. Any terms and conditions determined through arbitration of a three-way indirect interconnection cannot be implemented in the absence of clarity of the rights and responsibilities between the two parties that have the actual physical interconnection:

BellSouth and each ICO.

3. In any event, the terms and conditions between and among BellSouth (or any other third party intermediary), the ICOs, and the CMRS providers cannot provide BellSouth or the CMRS providers with an opportunity to impose anti-competitive terms on the small and rural ICOs. The current proposals of the CMRS providers (and apparently BellSouth) would impose just such anti-competitive conditions because those terms assume that the ICOs are forced to accept a subordinate network position relative to BellSouth which makes them dependent on BellSouth. There is no requirement for the ICOs to subtend a BellSouth tandem; BellSouth has no right unilaterally to commingle third party traffic with its own interexchange carrier ("IXC") traffic originated and terminated over access facilities (a right no other IXC has); and the requirements of so-called indirect interconnection do not impose business arrangements on the ICOs as BellSouth and the CMRS providers are attempting to impose.

Q: What attachments have you included with your direct testimony?

A: As an illustration of the positions of the ICOs, I am attaching draft generic agreement language which could be used for a multi-party agreement between and among BellSouth, the CMRS providers, and the ICOs (included as Attachment B) and a second generic agreement which could be used between the ICOs and the CMRS providers (included as Attachment C), in conjunction with other agreements between each ICO and BellSouth. I am also including (as Attachment D) an agreement reached in Kentucky among the small and rural LECs, BellSouth, and most of the major CMRS providers operating in Kentucky. This Kentucky agreement includes provisions that are relevant to the arbitration issues and the positions of the parties.

II. CMRS ISSUES

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

Q: How do the ICOs comply with the general duty to be interconnected directly and indirectly with other carriers?

A: The ICOs are already connected with other carriers. It is my understanding that all of the Coalition members connect with BellSouth either for access services provided to BellSouth, for the provision of jointly provided access services provided to other IXCs (where the ICO has not deployed its own tandem), or for the exchange of Extended Area Service ("EAS") calls between users in neighboring exchanges. For those ICOs that have deployed their own tandem and end office complex, these ICOs interconnect directly with IXCs, including BellSouth's IXC operation.

The ICOs have not refused to interconnect with any carrier, and the ICOs are willing to interconnect with any carrier that requests interconnection pursuant to the requirements of the Act. To the extent that BellSouth wants to interconnect with the ICOs for BellSouth's provision of transit services to CMRS providers for indirect interconnection, then BellSouth is required to request such arrangement, negotiate the terms, and put in place an agreement which sets forth the rights and responsibilities of each party, or BellSouth can appoint the CMRS providers as BellSouth's agent and the CMRS providers can put in place terms and conditions on behalf of BellSouth. It is my understanding that this proceeding was initiated simply because BellSouth wanted new terms and conditions to replace the already existing applicable terms pursuant to which it provided the CMRS providers with indirect interconnection. The indirect interconnection arrangement under consideration already exists and it functions. When the TRA looks closely at the facts, it cannot avoid observing that this arbitration is not about establishing interconnection or a specific physical interconnection arrangement. The arrangement exists. This proceeding is about an attempt of the CMRS providers and BellSouth to apply rules, without reference to statutory or regulatory standards, in a manner that provides them with unwarranted advantage. The indirect interconnection existed pursuant to existing terms and conditions. BellSouth and the CMRS carriers apparently entered into bilateral arrangements and agreed to change the existing terms - they now seek to use the processes of the TRA to impose their bilateral agreement on the ICOs.

Issue 1 is not a real issue at all. The ICOs have been indirectly interconnected to the CMRS providers. The requirements of Section 251(a) of the Act with respect to the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers creates an obligation that is no more than the simple words indicate. The requirements of Section 251(a) of the Act do not obligate the ICOs to accept the business terms and conditions that BellSouth and the CMRS providers have already imposed on the ICOs or the proposals of the CMRS providers in this proceeding. The simple requirement to interconnect does not bring with it the set of specific business and financial terms that the CMRS providers claim. Accordingly, the ICOs are already in

full compliance with the requirements of Section 251(a) and this issue should be dismissed because there are no "standards" to arbitrate beyond those already in place.

Q: Does Section 251(a) of the Act and the FCC's rules implementing this provision require any specific network or business arrangement between and among carriers for exchanging traffic?

A: No. Section 251(a) simply identifies the general duty of carriers to interconnect directly and indirectly with other carriers via the public switched network and to use standard equipment and technical approaches that are compatible with other network participants. *See* 47 U.S.C. § 251(a) and 47 C.F.R. § 51 100. This subsection of the Act and the FCC's associated implementation rules (which essentially only repeat the words contained in the Act) do not impose or even suggest any (a) specific standards of interconnection; (b) required hierarchical network arrangements (*e.g.*, there is no requirement under Section 251(a) for a carrier to subtend a Bell company tandem and receive traffic commingled with interexchange carrier traffic); (c) compensation arrangements, (d) business relationships between and among the three parties involved in a transit service arrangement; or (e) service obligations. The FCC has determined that interconnection, whether direct or indirect, is separate and apart from any traffic exchange. *See, e g.*, 47 C.F.R. § 51.5 definition of "Interconnection" which states "[t]his term does not include the transport and termination of traffic." Section 251(a) is a general statement separate and apart from the specific interconnection obligations and standards that are the subject of Sections 251(b) and (c) of the Act. The CMRS providers incorrectly want to attach some greater meaning than actually exists to the simple and straightforward requirements of Section 251(a) of the Act.

Q: Do CMRS providers have other statutory rights to interconnect with the networks of LECs?

A: Yes. Section 332 of the Act provides CMRS providers with the right to establish a physical connection with the network of a LEC. However, for the transit traffic arrangement in which BellSouth is the intermediary, the physical connection that is subject to the Section 332 provision of the Act is the physical interconnection that the CMRS providers have with BellSouth. *See, e.g., Second Report and Order*, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252. 9 FCC Rcd 1411 (1994). In adopting the rules on interconnection to implement Section 332, the FCC notes that the Act requires a carrier "to respond to the request of any person providing commercial mobile radio service, and if the request is reasonable, the [FCC] shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of the Communications Act." *Id.* at 1493 (para. 220), underlining added. *See also* 47 U.S.C. § 332(c)(1)(B) which provides the FCC with the authority to adopt these rules. The common carrier with which the CMRS providers have established physical connections, for purposes of the indirect transit service traffic, is BellSouth. For indirect traffic, the CMRS providers are not requesting any physical connection with the networks of the ICOs.

Accordingly, neither Section 251(a) nor 332 of the Act create requirements which provide the CMRS providers with the right to demand that the ICOs participate in the three-party arrangement that has been designed and imposed by BellSouth and the CMRS providers.

Q: How should the TRA resolve CMRS Issue No. 1?

A: The TRA should dismiss this issue because the obligations are already fulfilled, and there are no further standards to arbitrate.

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

Q: What section of the FCC's rules address the terms that define the scope of traffic exchanged between carriers that is subject to the provisions of Section 251(b)(5)?

A: Subpart H of the FCC's Part 51 rules are the rules that define the terms that apply to such traffic. *See* 47 C.F.R. Part 51, Subpart H, Sections 51.701 through 51.717.

Q: At what location do CMRS providers and LECs exchange traffic that is subject to the terms of Section 251(b)(5) of the Act?

A: The requirements establish that this exchange of traffic takes place at a point of interconnection at a technically feasible point on the network of the incumbent LEC.

> "Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange access, under the plain language of section 251(c)(2)." (underlining added)

First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at para. 1015. *See also*, *Id* at paras. 181-185. Sections 251(c)(2)(A)-(C) of the Act state:

> (2) Interconnection.-- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection . . . .

(Underlining added.)

Q: If an IXC establishes an interconnection point with an incumbent LEC, is the traffic that the IXC originates and terminates over the interconnection arrangement subject to the terms of Section 251(b)(5) and the FCC's Subpart H rules?

A: No. IXC traffic is not within the scope of the Subpart H rules or Section 251(b)(5) of the Act?

Q: Do the FCC's Subpart H rules or the discussion in the *First Report and Order* regarding these rules recognize the possibility of the three-party transit arrangement under review in this proceeding?

A: No. As set forth in the Response (*see* pp. 21-30):

1. Neither the Subpart H rules nor the discussion by the FCC allow for an IXC arrangement under which the IXC commingles CMRS provider traffic with the IXC's access traffic. Where an IXC commingles a CMRS provider's traffic with its own access traffic, the IXC is still responsible for compensation associated with its access arrangement. Traffic carried by an IXC is subject to the framework of access, not the framework of the Subpart H rules.

2. The Subpart H rules explicitly are defined in terms of the exchange of traffic at an interconnection point on the incumbent LEC's network "between the two carriers." An arrangement for two separate interconnection points involving three carriers is neither discussed nor consistent with the explicit terms. *Id.* at pp. 27-30.

3. While a CMRS provider may utilize the dedicated facilities of another carrier to establish the interconnection point on the network of the ICO pursuant to the Subpart H rules, it does not relieve the CMRS provider from establishing the interconnection "between the two carriers" for the framework of Subpart H to apply. *Id.* at p. 28.

4. The FCC has confirmed that its interconnection requirements do not even address the three-party transit service arrangement which is under review in this proceeding. *Id.* at p. 25. The FCC recently reaffirmed this conclusion. *Order on Reconsideration*, CC Docket Nos. 00-218, 00-249, and 00-251 released May 14, 2004 at para. 3 and note 11. In fact, in 700-plus pages, the FCC's original interconnection order never even mentions three-party arrangements (other than those with IXCs that are subject to the terms of access) or the concept of "transit."

5. The obligation to physically connect on a direct or indirect basis is separate from any wrongfully imposed suggested obligation that a terminating carrier must accept a business arrangement bilaterally agreed to by two other parties. This is a good example of where the attempt by the CMRS providers to apply rules without reference to statutory or regulatory standards may result in needless confusion. While the ICOs fulfill their obligation to connect indirectly, that obligation does not entail the acceptance of terms and conditions of a transit arrangement that BellSouth voluntarily put in place with the CMRS providers without agreement from the ICOs. The ICOs are not parties to the arrangements that BellSouth made with the CMRS providers. Nevertheless, the ICOs are prepared to enter into properly established voluntary arrangements that preserve their rights and guarantee equitable terms for the ICOs.

6. The ICOs have no involuntary obligation to subtend a tandem switch of BellSouth for the commingled transit traffic arrangement. Response at pp 26-27.

Q: Despite the fact that the ICOs are not required to participate in the transit arrangements according to the terms and conditions bilaterally designed by BellSouth and the CMRS providers, are they willing to arrange some new voluntary form of three party arrangement?

A: Yes. Where an ICO's end office continues to subtend a BellSouth tandem, provided that proper terms and conditions can be established that address the ICO's rights and equitable terms, including assurance that some carrier will always be clearly responsible for compensation to the ICO with respect to a multi-carrier arrangement, the ICOs have proposed an arrangement which will allow the CMRS providers to continue to utilize the BellSouth transit arrangement.

However, where an ICO has established its own tandem, or makes network modifications to subtend a different tandem other than BellSouth's tandem, that ICO has no obligation to continue to subtend the BellSouth tandem and accept third party CMRS provider traffic commingled with BellSouth's IXC traffic. No carrier other than BellSouth would have the technical ability to do this, and the TRA should not condone a competitive advantage to BellSouth.

An ICO's decision to establish its own tandem may specifically be for the purpose of removing itself from reliance on BellSouth. It would be anti-competitive for BellSouth and the CMRS providers to deny the ICOs of their right to establish their own network design and switch hierarchy and force them to be forever dependent on BellSouth, a potential competitor. *Id.* at pp. 26-27.

Q: For those ICOs that have not established their own tandem, why are they willing to establish a voluntary arrangement with the CMRS providers?

A: The CMRS providers have a right to demand a physical connection with the network of any ICO. The ICOs understand that a physical, direct connection to each ICO may not be efficient for each CMRS provider. Accordingly, as an alternative, these ICOs are willing to resolve a voluntary, fair, competitively neutral, non-discriminatory three-party arrangement under which all of the parties may otherwise avoid burdensome proceedings.

As I discuss the other arbitration issues below, the terms and conditions that the ICOs have proposed are designed to achieve the necessary terms for such voluntary arrangement. I must emphasize that these voluntary terms were put forth as part of good-faith voluntary negotiation. While parties may negotiate agreements voluntarily that go beyond established statutory and regulatory requirements, these negotiated terms are not open for further dilution in this arbitration. The arbitration decision must be confined to established statutory and regulatory standards in accordance with Section 252(c) of the Act. The specific terms offered voluntarily by the ICOs are necessary to ensure that the rights of the ICOs are protected to the same degree as those of BellSouth and the CMRS providers and that the terms will be equitable between and among the parties.

Q: How should the TRA resolve CMRS Issue No. 2?

A: The TRA should determine, consistent with statute and FCC rules, that Section 251(b)(5) reciprocal compensation is applicable and subject to arbitration only where the requesting carrier seeks to establish a point of interconnection on the other carrier's network. This is consistent with the SubPart H FCC rules discussed above. The TRA should also allow

the ICOs to establish the voluntary terms that they have proposed to BellSouth and the CMRS providers subject to all of the terms under which these voluntary offerings are conditioned *See* Attachments B and C to this testimony which are the draft agreements which reflect most of these proposals.

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

Q: What traffic originated by a LEC is subject to the compensation terms of the FCC's Subpart H rules and Section 251(b)(5) of the Act?

A: The Subpart H rules apply to local exchange service calls of the LEC where the LEC is the originating provider of service to the end user Response at 31-32 and note 33. Interexchange carrier traffic is "interexchange service," not local exchange service.

Q: Is traffic that an IXC originates on the network of a LEC subject to the terms of the Subpart H rules?

A: No. For several reasons set forth in the Response, the suggestion that IXC traffic is within the scope of the Subpart H rules is absurd. Response at 31-36. The Coalition has already set forth the definitive discussion demonstrating the absurdity of the CMRS providers' suggestion·

1. IXC traffic is subject to the framework of "access charges."

2. IXC traffic is not "local exchange traffic" and is not traffic between a LEC and a CMRS provider; it is interexchange service traffic between an IXC and a CMRS provider.

3. The CMRS providers have already asked the FCC to declare that when an IXC delivers traffic to a CMRS provider for termination to the CMRS provider's mobile end user, the IXC is responsible for payment of terminating access charges. And the FCC concluded that the framework of access, not reciprocal compensation, applies to this traffic, and that to the extent that proper contractual obligations exist between the IXC and the CMRS provider, the IXC is responsible for payment to the CMRS provider. No where in this decision by the FCC is there even the suggestion that a LEC is somehow responsible for IXCs' services.

4. It is nonsensical to suggest that the LEC is responsible for an IXC's service. The IXC is the service provider; it is the IXC that is the originating carrier; it is the IXC that bills and collects the revenue that it then uses to compensate other carriers that terminate the IXC's service traffic

The CMRS providers have attempted to distort the rules and the FCC's actual discussion of these rules to mislead state commissions I would note that Verizon Wireless did not participate in this absurd argument.

Q: Why do you think that the CMRS providers have pursued the absurd argument that the LECs should be responsible for reciprocal compensation to the CMRS providers for IXC service provider traffic?

A: The CMRS providers find themselves in arrangements with wireline LECs; *e.g.* with BellSouth, under which the wireline LECs deliver IXC traffic to the wireless carrier for termination, and the CMRS providers failed to put into place contractual terms which would allow them to bill and collect access charges from the IXCs. The CMRS providers have caused their own problem in that they agreed to terminate IXC traffic without compensation terms Failing to put in place terms which would allow them to bill IXCs, these CMRS providers have now "cooked up" a creative and devious argument in an attempt to make the ICOs responsible for IXC traffic.

Q: Do Bell companies provide reciprocal compensation to CMRS providers for traffic that the Bell company hands off to competing IXCs that, in turn, terminate such traffic to a CMRS provider?

A: No. For example, where BellSouth competes with other IXCs in the provision of intraLATA toll calling services, and the end user originates a call with a competing IXC and the called party is a mobile user of a CMRS provider located in the same MTA as the originating user, BellSouth does not pay terminating compensation to CMRS providers, as the CMRS providers suggests here with respect to this issue. The Bell company affiliates of the CMRS providers do not provide compensation as the CMRS providers suggest here. For example, the interconnection agreement between BellSouth and AT&T Wireless filed with the TRA for approval on February 7, 2002 defines Local Traffic that is subject to reciprocal compensation as only traffic that BellSouth "handed off directly to [AT&T Wireless] in the same LATA." See p. 4, Definitions section, "Local Traffic." That definition goes on to state that "Traffic delivered to or received from an interexchange carrier by either Party is not considered Local Traffic." Under the construction of this agreement, only that traffic defined in the agreement as "local" is subject to reciprocal compensation. The agreements that BellSouth has with: (a) NPCR, Inc submitted April 11, 2002; and (b) Verizon Wireless submitted October 31, 2002 also contain identical provisions.

Similarly, when an end user of BellSouth originates an interLATA call with some other IXC, BellSouth does not pay terminating compensation to the CMRS provider even though the mobile user may be located in the same MTA.

As I will explain below, this suggestion of the CMRS providers is more than absurd. Even if the rules were as the CMRS providers suggest - and they are not - their suggestion would be impossible to implement. It is impossible to identify which calls carried by IXCs are terminated intraMTA.

Q: Why does BellSouth have the provisions you reference in your last response in its agreements with CMRS providers?

A: As a policy analyst, it is logical that BellSouth concluded as I have. BellSouth knows that traffic carried by other IXCs is not within its responsibility to provide terminating compensation to CMRS providers I would also note that the reciprocal compensation terms with the CMRS providers in these agreements is confined to the traffic that is

delivered over the physical facilities between BellSouth and the CMRS provider and is handed off from one to the other over these facilities; that is, the agreement does not contemplate a third party intermediary between the CMRS provider and BellSouth. BellSouth knows that it cannot be responsible for some other carrier's traffic; BellSouth knows that traffic that an IXC delivers either to BellSouth or to a CMRS provider is not within the scope of the Subpart H rules and is not within the scope of the traffic subject to Section 251(b)(5) compensation obligations under the Act. However, these same CMRS providers want to impose a different and more onerous set of conditions on the ICOs, contrary to the plain application of the rules, common sense and fairness.

Q: What calling to mobile wireless users do wireline LECs include as part of their local exchange service provided to their LEC customers?

A: To answer this question, I must first explain some technical aspects of calling to mobile users.

LECs provide local exchange service calling to their own end users for calls that terminate with a specifically defined geographic area that constitutes the "local calling area." For calls to mobile users, there is no technically feasible way for the wireline LEC to know, on a real-time basis, whether the mobile user to which a wireline customer places a call is within the local calling area or even within the same MTA as that of the originating LEC end user. For the wireless mobile services provided by most large wireless carriers, all that the wireline carrier knows is that the called party is a mobile customer of the wireless carrier and that the mobile user may be located somewhere throughout the United States (and perhaps beyond).

Because it is technically infeasible to know the location of the mobile user when a wireline call is placed to that mobile users, some LECs, but not all, have adopted the use of an arbitrary surrogate convention, with conditions, for the treatment of calls to mobile users. The surrogate convention is to assume arbitrarily that the location of the mobile user is the same as the rate center point associated with the telephone number used by the mobile user While many LECs apparently use this convention (with the additional conditions I will identify below), I am aware of no regulatory requirement that mandates this surrogate treatment. To the extent that a wireline LEC wishes to apply this surrogate treatment, it means that calls to NPA-NXX codes that are associated with a rate center area to which the originating wireline end user normally has local calling are treated as local exchange service calls Calls to NPA-NXXs that are associated with rate center areas that are beyond the local calling scope of the originating wireline caller are treated an interexchange calls, carried by IXCs.

Q: What are the other conditions that you mentioned above?

A: Regardless of what surrogate convention a LEC may use, local calling to another carrier cannot be provided if there are no interconnection facilities (i.e., trunking) and other interconnection and business arrangements in place over which to route and complete a call on a local basis. Where the terminating carrier has not established any

interconnection arrangement with the originating carrier, the originating carrier cannot unilaterally establish some form of local calling service. This is similar to the establishment of Extended Area Calling between two LECs. The initiation of the EAS service requires the establishment of network and business arrangements between the two neighboring LECs. Where there are no established interconnection facilities and/or business arrangements in place to complete a call as a local service call, the only way that a small LEC can complete the call is by handing the call off to the presubscribed interexchange carrier of the originating end user for completion.

Therefore, for a LEC that applies the surrogate NPA-NXX rate center area approach for which a CMRS provider has established some form of interconnection and business arrangements with that LEC, calls to an NPA-NXX that appears to be within the local calling area may be treated as local exchange service. Regardless of the NPA-NXX rate center area, if the terminating carrier has no interconnection and business arrangements in place, the originating carrier will treat all such calls to that NPA-NXX as interexchange service. Calls to NPA-NXXs that are interexchange service, are not subject to the compensation terms of the Subpart H rules, and are outside the scope of this proceeding and interconnection arbitration.

I should add that a LEC originating a local exchange service call to an NPA-NXX that appears to be within the local calling area has no way of knowing the location of the mobile user or whether the mobile user is located within some defined geographic area; *i e.*, whether the mobile user is within the same MTA as the originating wireline end user, or within the area that is defined as the local calling area.

Q: How should the TRA resolve CMRS Issue No. 2b?

A: The TRA should rule in a manner consistent with established statutory and regulatory requirements and affirm that calls originated by a landline end user and transported through an IXC network (i.e., calls carried by the originating customer's presubscribed intraLATA or interLATA interexchange carrier) are not within the scope of traffic subject to the compensation obligations under 47 U.S.C. § 251(b)(5).

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

Q: Do the FCC's interconnection rules address a compensation mechanism between and among three parties when, for example, a CMRS provider makes arrangements with a Bell company for the Bell company to deliver the CMRS provider's traffic to a third party LEC, such as the ICOs?

A: No. As I stated above, the FCC has confirmed at least twice that its interconnection rules have not addressed the transit service situations and also confirmed that its rules have not established any obligation for such three-party transit arrangements. The only three-party arrangements recognized by the FCC in its interconnection decisions are ones in which an IXC is the intermediary carrier, and the arrangement is subject to the framework of access. *See First Report and Order* at para. 1034. The CMRS providers' proposition that there are interconnection standards that establish a "legal obligation" cannot stand when there are no interconnection standards, at all, for such transit interconnection arrangements. From the perspective of a policy analyst, it makes sense that the Act left open the possibility for carriers to negotiate voluntarily terms beyond the established standards. The key emphasis, however, is voluntary negotiation and not the imposition of one party's desires in the absence of established standards. The interconnection rules do not address these terms, and such arrangements are necessarily voluntary, in the first place. This makes sense for a policy perspective and it is consistent with Section 252(a) of the Act.

I must candidly address the fact that I am concerned with respect to the underlying impact of the interlocutory decision in this proceeding not to include BellSouth. I am troubled that BellSouth has persuaded the Hearing Examiner or TRA that it holds some special rights in the network hierarchy. This is especially ironic, given the fundamental reasons for the 96 Act. It is apparently too simple to lose sight of the fact that BellSouth's ability to provide transit service to the CMRS providers using its established interconnection with each ICO is merely a remnant of its role as an intraLATA IXC. Similarly, it is too simple to lose sight of the fact that BellSouth and the other regional Bell companies are the only entities that are permitted to utilize legacy Feature Group C connections to the ICOs It is this technical arrangement that enables BellSouth to deliver traffic to each ICO on a commingled basis. Under the existing terms and conditions that have governed the indirect interconnection arrangement enjoyed by the CMRS carriers, BellSouth is responsible for payment to the ICOs. These terms do not, and cannot, rationally change unless BellSouth puts in place some other arrangement with the ICOs. BellSouth has not put in place any new arrangement. Fundamentally, BellSouth has no right to send traffic to the networks of the ICOs in the absence of an agreement that provides authorization to BellSouth to do so and sets forth the terms and conditions under which BellSouth will deliver such traffic. Such agreement would necessarily establish responsibilities for compensation between and among the carriers, including BellSouth's role and responsibilities in its transit arrangement with other carriers.

Q: Why do the ICOs believe that a mechanism under which BellSouth remains the primary responsible party is preferable to one in which each ICO must seek payment from CMRS providers with which they have no direct relationship?

A: BellSouth voluntarily offered and provides the so-called transit arrangement to the CMRS providers; BellSouth should be responsible for the arrangement it unilaterally designed without the agreement of the ICOs; BellSouth can build its costs to the ICOs into the charges it assesses to the CMRS providers for this voluntary arrangement. This is not only possible - it is the way the indirect interconnection arrangement worked until BellSouth and the CMRS providers bilaterally decided to make a change. The ICOs have no obligation to participate in some voluntary BellSouth designed arrangement, but are willing, outside of an arbitration that can only be governed by established standards, to do so provided that they are assured payment. A method by which the ICO relationship is with BellSouth, and all of the traffic that BellSouth delivers to the networks of the ICOs is ultimately the responsibility of BellSouth (for which BellSouth will obtain compensation from those parties to which BellSouth offered and provides the transit service) assures that the ICOs will be able to account for and receive payment for all traffic that BellSouth delivers to their networks.

Q: Have CMRS providers and BellSouth put in place billing and compensation mechanics in other states that utilize a process under which BellSouth compensates the ICOs and the CMRS providers, in turn, compensate BellSouth?

A: Yes. As I indicated, this is the mechanism that has been used. In other states where similar issues have arisen, the parties reached agreements of differing periods of duration to establish new terms and conditions that, however, maintain the mechanism whereby BellSouth, the party that actually connects to the ICO, is responsible for the traffic it terminates to the ICO. The Coalition previously attached to its Response a copy of an agreement in Mississippi under which this billing mechanism is applied. I am also attaching to this direct testimony another similar agreement (Attachment D) between and among several CMRS providers, BellSouth, and the independent LECs in Kentucky in which this form of billing method is also used. It is my belief that, along with BellSouth, all of the CMRS providers that are parties to this arbitration have agreed to these terms for a multi-year period in Kentucky.

Q: Where an ICO has established its own tandem, does an IXC have the right to commingle third party carriers' traffic with the IXC's traffic under conditions whereby the ICO must bill a third party?

A: No. According to the terms of access tariffs, IXCs have no right to deliver third party traffic to the network of a LEC unless the IXC is responsible for payment for the termination of that traffic The FCC has specifically decided not to impose what would be a "split billing" arrangement on LECs because it would burden smaller LECs in that they would have to seek payment from among many other carriers with which they do not have a direct relationship, and there would be no assurance that the total billed and collected revenues from the various parties would recover the total due for the services

since no single party would be responsible. *See* Response at pp. 54-55 and note 58.

Q: To the extent that the ICOs, BellSouth, and the CMRS providers were to agree to some voluntary three-party arrangement, are there any minimum standards which must apply for billing and the payment of compensation?

A: Regardless of what billing mechanics may be utilized, the ICOs cannot be left in a position under which they are terminating traffic switched by BellSouth and delivered by BellSouth to their networks without receiving compensation for the termination of that traffic. While I have no particular sympathy for BellSouth because it was BellSouth's decision unilaterally to offer transit services to the CMRS providers, it would also be my position that BellSouth should be assured that it receives payment from the CMRS providers for the traffic that BellSouth delivers to the ICOs and pays the ICOs. My understanding is that prior agreements between BellSouth and CMRS providers included recovery of this expense by BellSouth from the CMRS carriers. The more recent agreements do not include this provision because, apparently, of the bilateral agreement of BellSouth and the CMRS carriers to impose new onerous conditions on the ICOs. The historic record reflects that interconnection agreements

In this proceeding, the TRA should rule, with respect to issue 3, in a manner consistent with established statutory and regulatory requirements. In the absence of voluntary agreement, the party responsible for payment to the terminating carrier is the carrier that connects to the terminating carrier. In a separate proceeding, the TRA may elect to consider reopening the agreements between BellSouth and the CMRS providers to ensure that those agreements establish terms and conditions that are consistent with established standards with respect to the traffic that BellSouth transits for the CMRS carriers to the ICO networks.

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

Q: Does BellSouth have any right to send third party traffic to the ICOs over access facilities established under the terms and conditions for access services in the absence of some new agreement?

A: No. The Coalition's Response (at pp. 40-45) already demonstrates, as a matter of fact and simply logic, why there must be terms and conditions in place between the ICOs and BellSouth for any new transit service arrangement. If the only terms and conditions in place between BellSouth and the ICOs are the terms of conditions access underlying BellSouth's established interconnection arrangement, then those terms apply unless and until they are changed. This is nothing more than common sense. One party cannot unilaterally change or establish new terms.

Q: Has Bell established some new agreement with the ICOs for third party traffic?

A: No.

Q: Can the ICOs identify and measure for themselves third party traffic that BellSouth sends to their network commingled with all of BellSouth's other access traffic?

A: No.

Q: How would you restate this arbitration issue?

A: The issue should be rephrased: If BellSouth sends third party CMRS provider traffic to an ICO, must the interconnection agreement or interconnection agreements between and among the parties include terms under which BellSouth delivers such third party traffic to the ICO's network? And the answer would be yes.

There is also the mirror image issue: If BellSouth sends third party ICO traffic to a CMRS provider, must the interconnection agreement or interconnection agreements between and among the parties include terms under which BellSouth delivers such third party traffic to the CMRS provider's network? Again, the answer is yet, but there is a difference.

This difference is that the answer to the second question is that the CMRS providers already have in place agreements with BellSouth for such third party traffic. But the ICOs have been denied their right to do so with BellSouth with respect to the first question.

Q: Why do you say interconnection agreement or interconnection agreements?

A: As a matter of simply logic, because there must be coordinated and consistent terms and

conditions in place between and among an ICO, a CMRS provider, and BellSouth in order that all of the parties' relative obligations, rights, and responsibilities are established for what is a three-party dependent arrangement. This can be accomplished in one of two ways: (a) there can be a single agreement in which all three parties are included; or (b) there could be three separate agreements -- ICO-BellSouth, CMRS-BellSouth, and CMRS-ICO. Of course, with three agreements, all three agreements would have to be compatible and consistent with each other. As an administrative matter, this would be more difficult and more burdensome to achieve than a single agreement which requires all three-parties to agree to a single set of terms. For the three agreement approach, the agreements would have to be established (or modified to be consistent) at the same time, otherwise, two parties could put in place a two-party agreement and then attempt to force or demand consistent terms with the third party for the other two agreements. As discussed in the Response, this presents the potential for anti-competitive opportunities and is exactly what BellSouth and the CMRS providers are attempting to do. Response at pp. 43-45, and notes 46, 47 and 48. For these reasons, a single agreement in which all three parties to the three-party arrangement are included makes substantially more sense for all.

Q: Have BellSouth and the CMRS providers entered into three-party agreements for this transit traffic?

A: Yes. In addition to the Mississippi agreement attached to the Response, the Kentucky agreement that is included with this testimony as Attachment D also is an agreement which includes all three parties in the same agreement. I am also aware that there are three-party arrangements in place in other BellSouth states.

Q: Using Attachment B to your testimony, can you point to terms related to the interrelationship among the three parties and to terms that necessarily must be coordinated between and among all three parties?

A: Yes.

1. The third Whereas statement in the recitals section properly recognizes that agreements must be place between and among all of the parties.

2. The fifth Whereas statement recognizes that the transit arrangement is a voluntary approach not required by the interconnection rules.

3. Section 3.5 sets forth the recognition that the transit traffic will be delivered over specific facilities to be identified in the agreement (i.e. between BellSouth and each ICO).

4. The entire set of subsections under Section 4.2 relate to responsibilities of BellSouth with respect to the transit traffic.

a. Section 4.2.1 remains to be resolved with BellSouth as to the specific trunking arrangement to be utilized. The specific trunking determines whether the ICO can

properly determine whether it is being paid for all traffic that BellSouth delivers to its network, and determine which kinds of traffic it can measure in total.

b. Section 4.2 2 establishes the responsibility for BellSouth to provide "complete and accurate" industry standard format message and billing records on a timely basis. The entire transit traffic arrangement with BellSouth is dependent on the veracity and completeness of billing information. If the ICOs are to accept this voluntary arrangement, it is critical that they have absolute assurance that they will receive accurate and complete records. It is my experience that BellSouth has a track record of unreliable information provided to small and rural LECs. The facts will show that BellSouth sent CMRS provider traffic to the ICOs for a considerable amount of time without telling the ICOs and without including the usage in the monthly settlement with the ICOs I am aware of many small and rural LECs that have complaints about the lack of completeness and accuracy of tandem providers' billing information. For these reasons, this issue is critical to the ICOs.

c. Section 4.2.3 allows, with conditions, the CMRS providers and BellSouth to keep in place any bilateral agreement that those parties may have in place, "except as "required by this Agreement." This provision makes certain that BellSouth and CMRS providers cannot establish terms in their separate bilateral agreements that are inconsistent with the terms of the three-party agreement. A preferable approach would be for the CMRS providers to cancel the terms of their transit traffic arrangements in their bilateral agreement and set forth all of the terms in this three-party agreement or to set forth terms in the other agreement that are consistent with this agreement.

d. Sections 4.2.4 and 4.2.5 make BellSouth responsible for payment to the ICOs of traffic which cannot for any other reason be billed to a third party CMRS provider. Similarly, it makes BellSouth responsible to the CMRS providers for such traffic that cannot be billed. Because all of the components of traffic reported by BellSouth must total to the grand total of all measured usage over any trunk group, any traffic that cannot be billed to a third party (which would by the terms of the agreement only arise because BellSouth did not produce accurate and/or complete billing records) becomes the responsibility of BellSouth. This provision addresses the same issues that the FCC addressed when it declined to adopt split billing

5. Section 4.3.1 recognizes that the parties must depend on records created by BellSouth.

6. Section 4.3.2 sets in place a reconciliation process which assures that the grand total amount of traffic is accounted for among the billed parties.

7. Section 4.3.3 sets forth the terms and conditions under which both the ICOs and the CMRS providers may obtain information from BellSouth to assure that message and billing records are complete and accurate.

8. Section 7 recognizes that the three-party arrangement depends on two separate interconnections - one between BellSouth and an ICO and another between a CMRS provider and BellSouth. The terms of Section 7 recognize that any of the parties can terminate their specific arrangement which necessarily affects the overall arrangement. Specifically with respect to the ICOs, should the ICO no longer desire to subtend the BellSouth tandem for such purposes (including the possibility of reconfiguring its network), the ICO could terminate the terms of this agreement to allow it to alter its network to some new arrangement. However, these terms are not onerous because the right of any carrier to request interconnection consistent with its rights under the Act is preserved and there are provisions in Section 7.3 to keep in place the existing arrangement while the parties resolve some new arrangement, if any. In any event, changes to the arrangement necessarily involve all three parties.

9. Because under this proposed voluntary arrangement an ICO cannot unilaterally discontinue the provision of services for non-payment, it must depend on BellSouth. Section 7.6 sets forth the terms under which BellSouth would be responsible to the ICO for such compliance measures.

10. Section 7.7 recognizes that any one of the three parties has the right to reconfigure their network, and that such reconfiguration may affect the transit arrangement. It is my understanding that this provision is essentially the same as similar provisions that BellSouth has with the CMRS providers. Again, any change in the arrangement would allow the post-termination arrangements to apply.

11. Section 8 recognizes that any disputes will obviously involve the activities of all three parties. Any dispute between two parties will most often also depend on the actions and information of the third party or resolution by that other party. Accordingly, the resolution provisions recognize that dispute resolution will necessarily involve all three parties.

These are examples of terms and conditions which are, as a matter of fact, dependent on BellSouth's role and responsibilities in the three-party transit arrangement. For these reasons, any interconnection arrangement must include the proper terms which reflect BellSouth's obligations to the other parties.

With respect to this issue, the TRA should make a determination consistent with applicable statutory and regulatory standards. Accordingly, the TRA should rule that there is no mandatory standard requiring an ICO to establish a Section 251(b)(5) interconnection agreement with a carrier that interconnects indirectly. The arbitration should be dismissed and the parties should be directed to enter voluntary negotiations - as, I understood, was the initial intent of the Hearing Office in Docket 00-00523. I am fully aware that the Hearing Officer in this proceeding has issued an interlocutory order that does not make BellSouth a party to this three way interconnection arrangement proceeding. My intent in providing the information above is, in part, to demonstrate the impossibility of resolving fully the issues raised in this proceeding in the absence of BellSouth.

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

Q: Do you have any initial comments about this issue?

A: Yes. This is a complex issue that, in reality, represents at least two separate issues. For those issues related to the ICOs, the issues are:

1. What, if any, local exchange service traffic is the ICO obligated to send to a CMRS provider via BellSouth's intermediary network?

2. Under what conditions would an ICO be willing to send local exchange service traffic to a CMRS provider via BellSouth's intermediary network?

Q: Do the local competition interconnection rules, or any other regulation, require the ICOs to provision local exchange service calling to distant points beyond their own networks?

A: No. The Issue 5 set forth by the CMRS providers is premised incorrectly on the assumption that the ICOs have a requirement to provision their own local exchange services and transport calls to some distant point, beyond the ICOs' networks, for the convenience of the CMRS providers This is yet another example of where the CMRS providers attempt to apply a rule in a manner that is not consistent with established standards and, therefore, not subject to arbitration. For several reasons, the ICOs are not required to provision local exchange services for transport beyond their own networks, cannot be required by the CMRS providers to purchase services from other carriers such as BellSouth, and are not required to deliver local exchange carrier service calls to points of interconnection beyond their own networks:

- As explained in the Response at p. 46, the interconnection obligations established under the Act apply with respect to the service area of the incumbent LEC, not the service area of some other LEC:

> For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area . . . .

47 U.S.C. § 251(h), (underlining added)

- It is well established that the Act does not require an incumbent LEC to provision, at the request of another carrier, some form of interconnection arrangement that is superior or extraordinary to that which the LEC provisions for itself. The incorrect presumption contained in the CMRS providers' issue statement is that an ICO is somehow required to provision local exchange carrier services with transport to some distant point, or to

purchase services from some other carrier for transport of local exchange service traffic beyond the ICO's network (*e g.*, from BellSouth to transport the ICO's local exchange service traffic to the BellSouth tandem where the CMRS provider interconnects with BellSouth). This incorrect presumption would impose just such extraordinary arrangements that are not otherwise required of the ICOs by established standards. While an incumbent LEC may, at the incumbent LEC's sole discretion, voluntarily agree to extraordinary arrangements, the LEC would not do so unless the carrier requesting such extraordinary arrangement is prepared to be responsible for the extraordinary costs of any such superior arrangement. As I will explain below, the ICOs may be willing to accommodate the request of the CMRS providers, beyond that which is required of the ICOs, provided that the CMRS providers are responsible for these extraordinary costs.

Again, any such accommodation may, under the Act, be a product of voluntary negotiation, but not the product of an arbitration where established statutory and regulatory requirements must be applied.

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*"). In *IUB II*, the Eighth Circuit Court of Appeals reaffirmed its earlier conclusion, not affected by the Supreme Court's remand, that the FCC had unlawfully adopted and attempted to impose interconnection requirements on incumbent LECs that would have resulted in the incumbent LECs providing superior arrangements to that which the incumbent LEC provides to itself. It is now well established that an incumbent LEC is not required to provision some superior form of interconnection service arrangement at the request of another carrier, but that is what the CMRS providers are suggesting here. The Court concluded that "the superior quality rules violate the plain language of the Act." The Court concluded that the standard of "at least equal in quality" does not mean "superior quality" and "[n]othing in the statute requires the ILECs to provide superior quality interconnection to its competitors." 219 F.3d at 757-758.

It is noteworthy here also to point out that under the invalidated superior quality rules that the FCC had originally adopted, even the FCC in imposing the unlawful requirement to provide some superior form of interconnection had nevertheless also concluded that the LEC should not be responsible for the extraordinary costs associated with the superior interconnection arrangement; i.e. that the requesting carrier should be responsible of these costs Pursuant to CMRS providers' issue, not only would the ICO be required to provision a superior quality interconnection, but the ICO would be responsible for the extraordinary costs.

- The FCC's own interconnection rules addressing the exchange of traffic subject to the so-called reciprocal compensation requirements envision only that traffic exchange take place at an "interconnection point" on the network of the incumbent LEC, not at an interconnection point on some other carrier's network. *See* Response at pp. 47-52. "Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange

'access, under the plain language of section 251(c)(2)." (underlining added) *First Report and Order*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at para. 1015. *See also, Id* at paras. 181-185. Moreover, Sections 251(c)(2)(A)-(C) of the Act states:

> (2) Interconnection.-- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection (underlining added)

Therefore, it is the obligation of a CMRS provider to provision its own network or arrange for the use of some other carrier's facilities outside of the incumbent LEC's network as the means to establish that "interconnection point" on the network of the incumbent LEC. It is obviously not technically feasible for an incumbent LEC to establish an interconnection point on its network at a point where the incumbent is neither a service provider nor has any network. Accordingly, the requirement presumed in the CMRS providers' issue simply does not exist.

LECs such as the ICOs generally do not offer or provide any local exchange service calling service to their own customers that would involve transport to distant locations as suggested by the issue raised by the CMRS providers. Calls which involve transport to distant locations beyond the networks of the ICOs are interexchange toll services provided by interexchange carriers ("IXCs"), and these calling services are not local exchange carrier services. The Act does not require the ICOs to offer some new and extraordinary form of local exchange service calling to their own customers. The involvement of the ICOs in such calls to distant locations is simply the provision of access services to IXCs that are the service providers to the end users. As set forth in the Response, the FCC has recognized that an incumbent LEC, in delivering traffic to a CMRS provider at a point of interconnection on the incumbent LEC's own network, if that point of interconnection is beyond the points that the incumbent LEC normally transports local exchange service calls, then such calls can be treated as toll calls. The treatment of calls as toll for the ICOs means that the toll service is provided by an interexchange carrier toll service provider to the end user. (While there is an exception to the charging of end users, it is an exception that further demonstrates that a LEC is not required to treat a call to a CMRS network as "local." The exception is the offering by some LECs of so-called "reverse toll billing" in which, in lieu of the end user being assessed a toll charge for the interexchange service call in this example, the terminating CMRS provider pays for the toll charge.) *See* Response at pp. 48-52.

Accordingly, there can be no expectation that ICOs must transport local exchange service traffic to some distant point when the ICOs have no statutory or regulatory interconnection obligation to do so.

Q: With respect to the second sub-question you set forth above, under what conditions would an ICO be willing to send local exchange service traffic to a CMRS provider via BellSouth's intermediary network?

A: An ICO, at its discretion, may decide to send local exchange service calls for completion to CMRS providers via the BellSouth intermediary network arrangement, but an ICO's decision to do so would be dependent on whether the CMRS provider is willing to be responsible for the extraordinary costs or charges for the transport beyond that which is applicable to other local exchange service calls. Alternatively, if the ICO is to be subjected to additional costs, to provision some extraordinary local exchange service calling to a distant interconnection point, then the ICO will have to decide whether to subject such calls to interexchange carrier toll service treatment as the FCC already has recognized would be its right.

Q: How have you accounted for this possibility in your generic agreement?

A: Section 4.2.6 of Attachment B sets forth terms consistent with the applicable law and regulation and my testimony above:

> 4.2.6 This Agreement addresses the exchange of Telecommunications Traffic between CMRS Carrier and Rural LEC under circumstances where CMRS Carrier does not establish an interconnection point within the incumbent LEC network of Rural LEC, and accordingly, Traffic originated on the network of Rural LEC may be transported and switched by BellSouth beyond Rural LEC's incumbent LEC network. The Parties agree that Rural LEC's willingness to offer and provide local exchange services to its end users and to route such local exchange service Traffic to CMRS Carrier via BellSouth pursuant to the Intermediary Services arrangement set forth in this Agreement, beyond the incumbent LEC service area of Rural LEC, is conditioned on Rural LEC not incurring additional costs for transport and switching beyond that which Rural LEC incurs within its own network for other local exchange services. Therefore, for the Traffic that is within the scope of this Agreement, and to get Traffic to and from the interconnection point on the network of Rural LEC to the interconnection point that CMRS Carrier has established with BellSouth at a point outside of Rural LEC's network, CMRS Carrier will be responsible for compensation to BellSouth for all Intermediary Services provided by the BellSouth for the exchange of Traffic that is within the scope of this Agreement

There are other provisions in the attached agreements which also reflect on these issues. See Attachment B, Section 3 6 and Attachment C, Section 3.1.5:

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

provides to its respective end user customers.

Q: Do not some of the ICOs already send local exchange service calls through BellSouth for termination to CMRS providers?

A: Yes. This practice for some LECs was initiated long before the Act was passed. In some instances, the ICOs relied on the representations of BellSouth as to which NPA-NXXs should be programmed into switches to be included in the "local calling scope" without knowing that these NPA-NXXs were for calls to mobile users that may be located anywhere in the nation. Regardless, as the record shows, the willingness by the ICOs to send local exchange service calls under these arrangements was premised on the condition that the ICOs would incur no more costs for these calls than for any other local exchange service call. Furthermore, because only BellSouth has bilateral agreements with the CMRS providers, and the CMRS providers have willingly desired to have these calls delivered in this manner, it was the CMRS providers that agreed to this arrangement Finally, the ICOs willingness to continue these arrangements is premised on the condition that they continue not to incur additional associated costs.

Q: How should the TRA resolve CMRS Issue 5?

A: The TRA should determine, consistent with established statutory and regulatory standards, that a party is not involuntarily required to incur costs to transport traffic beyond its network. Separate and apart form the arbitration proceeding which must be determined on the basis of established standards in accordance with Section 252(c) of the Act, the ICOs remain willing to negotiate voluntarily to implement the provisions in the generic proposed agreement as I have set forth above.

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

Q: Do you have any initial comments about this issue?

A: Yes. As explained in the Response, the CMRS providers cannot maintain the position that there are no issues with BellSouth and also set forth an issue that has to be resolved with BellSouth. Response at pp. 53-57. This CMRS provider issue demonstrates their irrational position. At any rate, the issue as presented by the CMRS providers is an issue which must be resolved with BellSouth.

Q: Why is the manner in which third party traffic is trunked to and from the ICOs an important matter?

A: When BellSouth commingles the third party traffic with other access traffic, the ICOs do not have technically feasible methods to identify, measure, or switch, on a real-time basis, traffic based on whether the call has been originated by one of the CMRS providers. The ICOs are prevented in its switch from identifying the identity of the originating carrier on a real-time basis. This result is unique to the legacy interconnection arrangement that BellSouth has with each ICO. The commingling of traffic on the types of the trunks that BellSouth has provisioned with the ICOs, for BellSouth's access services, does not allow the separate treatment or identification of third party traffic within the commingled traffic. BellSouth enjoys a form of trunking for its interexchange service traffic that is disparate from the trunking that applies to all other IXCs. The ICOs' position is that it is time for BellSouth to discontinue its disparate arrangement. In any event, the current arrangement presents a greater business risk to the ICOs than BellSouth endures for itself. In contrast, it is my understanding that BellSouth has direct trunks with each CMRS provider and is in a position to identify and treat each CMRS provider's traffic separately and distinctly.

Q: How is the manner in which the trunking arrangement between BellSouth and the ICOs related to the ultimate arrangement between and among all of the parties?

A: Depending on the number and type of trunk groups, there will be different types of traffic combined on or separated into the individual trunk groups. The identity of the individual usage over each trunk group affects the mechanics of billing, the reconciliation of total usage, the treatment of carriers that have failed to provide compensation, and so on. I have already, in the context of CMRS Issue 4 above explained the necessity for these terms and conditions. The specifics of these terms will depend on the specific type of trunking.

Q: Has BellSouth conducted substantive discussions regarding any future trunking arrangement?

A: During the initial negotiations, when BellSouth participated in discussions with the ICOs related to potential three-party arrangements, the parties did have some preliminary

discussions about trunking arrangements. The ICOs presented several possible proposals for consideration. But BellSouth subsequently discontinued these discussions without any resolution.

Q: Will not BellSouth and the CMRS providers maintain that additional trunk groups will result in higher costs?

A: Yes. They are likely to argue that the arrangement the ICOs want with respect to trunking (again, these discussions have not yet taken place, so the possible options are not yet known) will result in a less efficient arrangement for them. However, what is arguably a less efficient arrangement for them will be a more efficient arrangement for the ICOs. There is no policy decision which grants BellSouth or the CMRS providers a superior position in the overall determination of efficiency among carriers.

Moreover, the current arrangement provides BellSouth with the ultimate competitive position: carriers use its transit arrangement and it gets paid; it decided unilaterally to commingle traffic and deliver it to the ICOs; and it now attempts to argue that it should have no responsibility, including whether some better trunking arrangement that accommodates measurement and billing for the ICOs should even be considered. And, as a result of the interlocutory order issued in this proceeding, BellSouth is exonerated from participation in this proceeding and addressing these issues, I am concerned that BellSouth is attempting to use its unilaterally created tandem position as the means to impose anti-competitive terms and conditions on other carriers for the sole benefit of BellSouth. By withholding of payment to the ICOs, BellSouth (with the CMRS providers) has imposed a form of duress on the ICOs to force them to accept terms that they would not otherwise accept and are not otherwise required of them by applicable law. I am also concerned that BellSouth's persistence in maintaining the unique Feature Group C interconnection arrangement, which does not provide the ICOs with the opportunity to accurately identify traffic, will be used by BellSouth to impose adverse business conditions on the ICOs and such actions may be designed to force the ICOs into some new intercarrier compensation scheme.

In this proceeding, the CMRS providers and the "absent" party, BellSouth, attempt inappropriately to impose the FCC's Subpart H rules for reciprocal compensation between connecting networks on an indirect interconnection arrangement. BellSouth and CMRS providers fail to acknowledge that when the FCC adopted its Subpart H rules (the very rules they want to use), the FCC recognized that the requirements may result in carriers incurring additional costs to measure traffic exchanged between carriers and that additional cost would be outweighed by the benefits of these arrangements. This was specifically with respect to its discussion of the interconnection of CMRS carriers to LECs *First Report and Order* at para. 1045. The BellSouth Feature Group C legacy interconnection arrangement does not permit the ICOs to measure the traffic. Different trunking arrangements may result in some additional costs for all parties, but may be necessary to accommodate a more accurate and effective measurement and billing approach to the multi-party traffic.

Q: Are these issues different for those ICOs that have established their own tandems?

A: Yes When an ICO deploys its own tandem switch, one of the primary objectives in doing so is to remove itself from dependence on billing information from BellSouth. *See* Response, note 22 regarding the actions of one LEC to remove itself from dependence on BellSouth. When BellSouth, nevertheless, continues to switch and commingle traffic of different types and from different carriers "in tandem with each other" on the same trunk group, (in violation of access tariffs) BellSouth effectively renders the ICOs right to deploy its own tandem meaningless. The ICOs, with possibly a small number of exceptions, would expect to have direct trunk groups to their tandem which would allow their own tandem to switch this traffic (in tandem with other traffic) to their individual end office and to measure the usage in each trunk group. BellSouth has no right to stand in the way of any ICO's design of its own networks any more so than the ICOs can demand that BellSouth configure its network to force BellSouth to depend on use of an ICO tandem.

It is important to emphasize that I am not suggesting that a CMRS carrier must deploy direct trunks to each ICO. To the extent that the CMRS providers do not want to establish an interconnection point with an ICO that has its own tandem, then they are free to obtain dedicated facilities from BellSouth or some other carrier to connect with the ICO's tandem. The use of dedicated facilities, consistent with industry practice among carriers connecting to tandems, enables the measurement of traffic that is not possible when BellSouth carriers traffic on a commingled basis. As stated above, there should be no expectation that BellSouth's tandem should be superior to an ICO's tandem or that BellSouth's tandem should deny the ICO the right to deploy its own tandem.

Q: Can you point out provisions in the attached agreements that depend on the resolution of the trunking arrangement with BellSouth?

A: Using Attachment B as the example draft agreement, the following terms are examples of those related to the trunking arrangements: (a) the terms of Section 4.2.1 specifically depend on the trunking facilities to be established for third party traffic; (b) the remainder of Section 4.2 regarding what records would be necessary for each trunk group; (c) the billing to both CMRS providers and BellSouth in Section 4.3; and (d) the ability to discontinue service to a carrier for non-payment.

Q: How should the TRA resolved CMRS issue 6?

A: The TRA should make a determination consistent with established statutory and regulatory standards. If BellSouth elects to carry CMRS traffic on a commingled basis over a trunk group, BellSouth should be responsible for the traffic absent voluntary agreement. In addition, the Coalition suggests that the TRA should open a separate proceeding to ensure that BellSouth establishes trunking arrangements, in the absence of voluntary agreement, that enable the ICOs to measure traffic terminated to their networks.

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

Q: Do you have any initial comments about this issue?

A: Yes. This issue is exclusively related to an actual direct physical interconnection point that the CMRS provider may establish pursuant to the Subpart H rules for the exchange of traffic. The indirect arrangement with BellSouth that is the subject of the negotiations and arbitration is not related to this issue. With the exception of any separate requests and discussions that any individual CMRS provider may have with an individual ICO, the CMRS providers have not requested any interconnection point on the networks of the ICOs in the context of these group negotiations. The origin of this arbitration proceeding is collective negotiation initiated by order of the Hearing Examiner in Docket 00-00523; the subject of that negotiation was specifically the establishment of new terms and conditions applicable to the existing indirect interconnection arrangement through BellSouth. If a CMRS provider seeks direct interconnection to any ICO, the terms and conditions would be dependent on the specific facts and circumstances of such request. Therefore, each ICO is willing to discuss direct arrangements to the extent that a CMRS provider requests an interconnection point on the network of the ICO. It is not productive to address what must be a company-specific arrangement in the context of a collective negotiation and arbitration proceeding.

Q: In general, for purposes of exchanging traffic subject to the FCC's Subpart H transport and termination rules, where does the incumbent LEC have to establish an interconnection point with the CMRS provider?

A: As I have already explained in detail above in response to CMRS Issues 1 and 2, the interconnection point must be on the existing network of the incumbent LEC, not the network of some other LEC.

Q: Do you have any initial comment about the (B) portion of CMRS Issue 7?

A: As with other CMRS issues, the CMRS providers have attempted to frame the issue in a manner that incorrectly presumes certain requirements that do not exist. The issue is more complex than their simple statement suggests.

Q: What do you think is the presumption in their issue statement?

A: That the ICOs are somehow required to be responsible for transport of local exchange service traffic to points well beyond their own networks and well beyond the local service area in which such calls are presumed to terminate.

As I explained above, under the voluntary surrogate NPA-NXX approach for establishing local calling by wireline end users to mobile users, this surrogate approach is analogous

to a situation where a wireline call originates and terminates within a specific geographic area that constitutes the local calling area. Therefore, the analogous wireline to wireline "local" calls terminate to end users located within some confined geographic area, and the transport responsibility of the ICOs for these calls is geographically limited by this area. For the wireline carrier to be willing to utilize this voluntary surrogate NPA-NXX method to establish a wireline to wireless call as "local" (which presumes that the called party in within the specific local calling area), the transport responsibility can be no more extensive than that which the ICO undertakes for wireline to wireline calls.

This is not as confusing or complex as the CMRS providers may attempt to make it. The facts are simple – from a policy and practical operational perspective, no LEC is required to transport traffic (or to take financial responsibility for such transport) beyond its network. There is no statutory or regulatory requirement that conflicts with this fact.

Unlike wireline to wireline connectivity within the same geographic local calling scope, wireless carriers deploy switches that are often located at great distance from the actual calling area in which the voluntary surrogate approach would assume that the end user is located. As such, the call is transported at great distance away and then back again to accommodate the wireless carrier's network design. The ICO has no responsibility to pay for transport to switches that are often hundreds of miles away, for a call that according to the NPA-NXX surrogate method is assumed to be to someone possibly across the street And for all of the other reasons that I have set forth above, if the ICO is to be responsible for transporting the call to a switch that is hundreds of miles away, then the ICO will treat the call as its does for any other call that must be transported to such points -- as an interexchange service toll call

Q: How have the ICOs proposed to resolve this issue if an actual interconnection point were requested and established on the network of an ICO?

A: To the extent that an interconnection point on the incumbent LEC network is established, and the ICO voluntarily agrees to send calls to a CMRS provider over dedicated facilities established within the incumbent LEC's network, then the ICO is willing to share in the costs, on a directional basis, for those facilities that connect the networks of the parties at a point of connection within the incumbent LEC's network and service area; i.e., in the area the two carriers are presumed to be competitors. The policy and operational logic of this approach is reflected by the FCC's Rules. The confinement of shared costs to those facilities that connect the networks within the ICO service area is also consistent with the realization that the calls to be exchanged over the facilities, with respect to wireline originating calls, are presumed to be terminated within the ICO's local geographic calling scope. For all of the reasons stated above, the ICOs are not going to share in any transport costs for facilities that go beyond their networks - there is no requirement for them to do so. The CMRS providers may have been successful at befuddling one or two other state regulatory authorities with respect to this issue The Tennessee rural ICOs will not and cannot accept the imposition of costs to carry traffic beyond their respective network borders. Any attempt to require them to do so will raise a quagmire of policy and operational issues. Section 4.3.2 of the Attachment C draft agreement sets forth a

proposal of terms that the ICOs proposed on a voluntary basis outside of the scope of arbitration

Q: How should the TRA resolve CMRS issue 7?

A: The TRA should defer the resolution of this and any other issue that addresses direct interconnection. Direct interconnection was not the subject of the negotiations undertaken by the parties, and the resolution of direct interconnection issues requires the consideration of company-specific facts. The voluntarily proposed terms set forth in Section 4.3.2 of Attachment C are, however, consistent with all established statutory and regulatory requirements.

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

Q: Do you have any initial comment about this issue?

A: Yes. As set forth in the response, the so-called economic and incremental costing methodology that the FCC applies to companies like BellSouth does not apply to the smaller, rural carriers Moreover, these rules do not under any circumstances address voluntary transit three-party arrangements. Nor do any rules or standards require that any specific pricing rules apply to such transit arrangements. *See* Response at pp. 62-70.

Nevertheless, the ICOs have voluntarily proposed rates which are more than reasonable given their status and their network costs. The ICOs have proposed to utilize the per-minute rates for identical transport and termination as they use and apply for interstate access purposes. The rates for these functions are based on the costs of transport and switching that are the same costs to be considered under the FCC's pricing methodology. Moreover, the fact is that their actual costs (no matter what theoretical approach one applies) are likely to be much higher than these rates would indicate for at least two reasons: (1) the FCC has removed some actual traffic sensitive costs from interstate access rates; and (2) not all of the ICO's actual costs are even considered in the development of these rates because some of those costs are assigned and recovered through Universal Service sources. The recent decisions by the FCC have resulted in much lower interstate access rates for the ICOs than were the case in 1996 when the FCC adopted its initial interconnection rules As a result of these dynamics, the interstate access rate levels can be expected to be below any reasonable determination of their actual per-minute costs.

Q: Can you explain the voluntary rate proposals of the ICOs?

A: Yes. I must first, however, reiterated two predicates: 1) First, the statutory and regulatory requirements for pricing reciprocal compensation are applicable to a direct connecting arrangement, and not the three-way indirect interconnection arrangement that already exists among the parties, and 2) Second, the specifics of the voluntary rate proposal should be treated as confidential in this proceeding. The ICOs propose to apply the same transport and local switching elements as the National Exchange Carrier Association ("NECA") has calculated and filed with the FCC for interstate access purposes. The ICOs recognize that access charges *per se* may not be applicable to an agreement to exchange traffic pursuant to Section 251(b)(5) of the Act. That, however, is distinct from the fact that an applicable, reasonable and cost supported rate applied either to a 251(b)(5) arrangement or an indirect interconnection arrangement (like the arrangement that is the subject of this proceeding) may be equivalent to certain access rate elements that reflect the same functionalities and are based on appropriate and accepted cost data. The transport and local switching elements are, in fact, the very service elements used in the transport and termination of the CMRS traffic. As I referenced above, these rates are, if anything, understated with respect to any costing methodology because the development of these rates is achieved in a manner that removes some of the relevant costs of service

and assigns those costs to recovery through universal service sources. If so-called "forward-looking" cost studies were applicable to the rural ICOs – and they are not – I respectfully submit that no forward-looking pricing methodology could assume universal service cost recovery and that the rate for termination in the rural ICO areas would be higher than the voluntarily proposed rates. Any suggestion (such as that which I have read in a recent Order) that a rate at a 3 cent a minute level to transport and terminate traffic of any type is high in rural areas may reflect a misunderstanding or lack of familiarity with established rural ICO cost data that has been sanctioned by the FCC, Moreover, the FCC's open proceeding on intercarrier compensation contemplates the value of providing a unified rate; i.e , a rate that is not subject to arbitrage as a result of the use of different termination rates applicable on the basis of the technology used by the originating end user.

Q: How does NECA establish these rates?

A: There are two different types of LECs that participate in the NECA tariff -- Cost Study Companies and Average Schedule Companies.

For Cost Study Companies, each company that participates in the NECA process submits a cost study pursuant to Parts 36 and 69 of the FCC's rules that establishes its costs for various interstate access elements. NECA takes these cost studies, combines them with the demand units for various access functions (i e., transport mileage and minutes, switched minutes) and develops the per-mile and per-minute rates for these functional service elements. Based on the individual cost characteristics of each Cost Study Company, NECA also establishes various stratifications of rates in a set of bands of rates, and assigns each company to a specific band based on that company's costs. Accordingly, each company's actual and individual cost levels and demand determines its use of specific banded rates. Lower per-unit cost companies are assigned to lower banded rates, and higher cost companies are assigned to one of the higher bands. NECA periodically files tariffs that reflect this process and results, and the filings are subjected to public and FCC review. These filings are a matter of public record before the FCC.

For Average Schedule Companies, these LECs do not prepare or submit Part 36 and 69 cost studies. Instead, NECA gathers statistical data from a representative group of sample Average Schedule Companies, develops costs for these companies that parallel the same Part 36 and 69 costing approach used for the Cost Study Companies, and develops various statistical formulas using variables that relate the sample companies to the universe of Average Schedule Companies. In this manner, using sampling techniques and statistical analysis, NECA calculates a cost result for each Average Schedule Company that is representative of the same result had the company actually performed a cost study. NECA files new studies and updates to the formulas annually. These filings are a matter of public record.

The formulas are used by NECA to develop access function element rates for the Average Schedule Companies just as NECA does this for the Cost Study Companies. And each Average Schedule Company is assigned to the appropriate applicable band of rates.

During the course of the negotiations, even though the FCC's pricing rules do not apply to the rural ICOs and do not apply to indirect arrangements, the ICOs voluntarily offered rates based on the principles set forth above. This voluntary offer was outside of the scope of the arbitration proceeding and offered in good-faith as a compromise position in an effort to resolve the issues with the CMRS providers and BellSouth. I am attaching these rates to this testimony as Attachment E, subject to confidential protected treatment. The rural ICOs have been criticized in these proceedings, both directly and by innuendo, with false claims. The ICOs have not "buried their heads;" they do not seek to establish unreasonable rates. By providing the TRA with the voluntary rate offers set forth in Attachment E together with the voluntary terms the ICOs proposed to accommodate the CMRS providers and BellSouth, I trust that the TRA will see for itself that the ICOs have not "buried their heads." The ICOs voluntarily proposed a set of rationally based rates that reflect significant reductions form the rate they receive (or should lawfully receive) for the termination of the traffic through BellSouth under existing terms and conditions.

Q: How should the TRA resolve CMRS Issue 8?

A: The TRA should determine that the established statutory and regulatory requirements regarding the pricing standard for Section 251(b)(5) interconnection do not apply to Section 251(a) indirect interconnection arrangements including the existing indirect interconnection arrangement among the parties through BellSouth. The ICOs remain willing to utilize the proposed rates set forth in Attachment E in conjunction with the other voluntary terms I have discussed that both accommodate the objectives of the CMRS providers and BellSouth while protecting the fundamental rights of the ICOs.

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

Q: Do you have any comments about CMRS Issue 9?

A: Yes. I do not have much to add beyond that which is already included in the Response. If it is the CMRS providers' position that the use of factors (as described in CMRS Issue 9) is a voluntary option for the parties to consider, then the ICOs do not disagree. For any ICO that wants to consider factors, that is an option for its individual consideration and voluntary negotiation. The use of factors is not, however, a statutory or regulatory requirement. If it is the CMRS providers' position that they have the right to impose a factor approach on the ICO, then the ICOs do not agree.

The very nature of the indirect arrangement under discussion is one in which BellSouth should be obligated to provide accurate and complete measurement to any party to which BellSouth transits traffic. Therefore, it does not make sense that the parties would need to utilize factors. As I stated above, the FCC recognized that carriers, including CMRS providers, may incur additional costs in an effort to accurately identify and measure traffic that would be subject to termination compensation between carriers. The major obstacle that prevents the ICOs from measuring traffic is the passive permission to BellSouth to maintain its now unique Feature Group C connection to the ICOs.

Q: How should the TRA resolve CMRS Issue?

A: The TRA should acknowledge that factors are an option but not a requirement, and, as such, should not be imposed in an arbitration.

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

Q: Do you have any comment about CMRS Issue 10?

A: Yes. This issue is frivolous. If the amount to be billed is small, then it will be in the mutual interest of both parties not to incur needless costs by billing immaterial amounts. The parties can voluntarily and mutually agree to defer billing to periods when the amounts would be material. In such instances, it would be in their mutual interests to agree. It is a provision that does not need to be arbitrated. In any event, there is no interconnection requirement for "de minimis" traffic billing, and this issue should not be subject to arbitration.

Because it makes no sense to arbitrate this issue, I have questioned why the CMRS providers insisted on maintaining this as an open issue. I suspect that the CMRS providers are motivated by a financial objective that goes beyond the wording of Issue 10. For example, the CMRS providers may seek TRA sanction of some higher level of usage to be considered "de minimis" so as to avoid compensation to the ICOs, thereby denying a very small carrier an amount of revenue that would be substantial to that small carrier.

The mutually beneficial motives that exist for both parties to defer billing in situations where there is actually little to be billed fully addresses this issue, and there is no real issue for the TRA to resolve, nor is there any established requirement or statutory right to treat any amount of traffic as "de minimis."

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

Q: What is the ICOs' position with respect to CMRS Issue 11?

A: While parties may voluntarily establish a factor, there is no requirement or statutory right to impose any factor. Under existing statutory and regulatory requirements, the ICOs have the right to insist that all traffic that is interMTA will be treated as interMTA. As set forth in the Response at pp. 75-77, the establishment of a voluntary "interMTA factor" is dependent on the establishment of a factor that is reflective of the accurate representation of the actual amount of traffic that is truly interMTA. The amount of traffic that is interMTA will vary with respect to each ICO, the geographic scope of the CMRS provider's service area from which it originates and terminates traffic to mobile users, and the proximity of the LEC's service area to an MTA boundary.

Q: How does the interMTA vary with respect to each ICO?

A: The nature of calls to and from the end users of each wireline carrier differs based on the type of customers it serves; *i.e.*, residential or business. More importantly and more significant, a wireline carrier serving an area that is very close to a MTA boundary, and/or with a significant community of interest to a business district just on the other side of the MTA line, can expect to exchange much more interMTA calling than a LEC with a service territory in the center of a large MTA. Furthermore, the degree to which the mobile users travel to distant locations and have a community of interest with the end users of the wireline LEC also affects the amount of interMTA traffic.

Q: How does the geographic scope of the CMRS providers operation and its switching and delivery of traffic affect the relative amount of interMTA traffic?

A: I can best answer this question by providing an illustration. If a CMRS provider were to commit that the only traffic that it will deliver to an ICO over the facilities that are the subject of the agreement and are subject to the terms of the agreement is, for example, traffic originated by mobile users located in Tennessee and Kentucky, then there would be one representative answer based on how often mobile users are located in interMTA locations in those two states and make calls to the ICO's end users. Let's say that answer is 15 percent of the calls. But if the CMRS provider changes this arrangement, and instead, decides to deliver traffic subject to the agreement that originates in any of 10 states (or in any of all 50 states, or beyond), the percent of interMTA traffic would be greater. Therefore, the geographic scope of this CMRS operation with respect to the terms of the agreement is relevant to the determination of an accurate percentage of interMTA traffic.

The CMRS providers claim that mobile user calls, for example, that originate in California, are delivered to the ICOs by IXCs and are not within this scope of the subject interconnection arrangement. Under this explanation, the CMRS providers contend that the ICOs are compensated by the IXCs (Of course, this indirect interconnection

arrangement with interLATA IXCs is exactly the same arrangement that the ICOs have with BellSouth when it delivers traffic to the ICOs over its intraLATA toll facilities.) But there is nothing to prevent the CMRS providers from discontinuing their use of IXCs for this California traffic and instead delivering this California originated traffic over the existing indirect interconnection facilities through BellSouth. This modification would change the percentage of interMTA traffic. Accordingly, the ICOs want to be certain that the CMRS providers commit to the proper scope of traffic delivered through the indirect interconnection arrangement and the application of rates in accordance with established requirements.

My point here is that the percentage of interMTA traffic should be accurate, should be tied to a specific geographic area of the CMRS provider's wireless service operation, and should change in a manner that reflects actual usage. A factor approach voluntarily agreed to must be representative of all of these considerations.

Q: Have the CMRS providers provided any information to substantiate what a reasonable interMTA percentage should be?

A: No. They make evasive claims that they do not have or know this information. However, I am a customer of Verizon Wireless. When I travel across the country and make calls back to my home, the bill that I receive indicates the location at which point I placed the call, and when I call a wireline end user, the bill indicates the called party's telephone number. This information is, at minimum representative of variables among companies and reflects that the CMRS carriers do have knowledge regarding whether calls are interMTA. But the wireless carriers refuse to acknowledge that they have this information

Q: Why would you expect that the CMRS providers would avoid providing information that would reflect on this actual amount of interMTA traffic?

A: I think that the actual amount is much larger than they claim, and that the amount of interMTA as a percentage of total traffic is growing. *See* Response pp. 75-77.

Q: Why is the amount of interMTA traffic important to the ICOs?

A: InterMTA traffic that a CMRS provider carries to another MTA or interMTA traffic that a CMRS provider terminates to an ICO is subject to intrastate and interstate access charges. In either case, the CMRS provider is acting as an interexchange carrier and is obtaining either originating or terminating access services from the LEC. Therefore, the CMRS provider must pay intrastate or interstate access charges to the LEC for the origination and termination of interMTA traffic *See First Report and Order* at para. 1043 and note 2485.

Q: How does the Coalition's voluntary generic draft proposal address this issue?

A: The Attachment B draft agreement, at Section 3.2 expects the CMRS provider to affirm

the geographic area from which it will originate mobile calls and deliver them to the ICO subject to the terms of this agreement. The affirmation is necessary so that changes can be made when that geographic area may change.

Q: Are there additional issues for arbitration that are related to this issue?

A: The ICOs' additional issues 5 and 6 are related to the designation of the specific CMRS provider service area and the imposition of intrastate and interstate access charges to interMTA traffic in accordance with established statutory and regulatory requirements.

Q: How should the TRA resolve this issue?

A: The TRA should not mandate the use of any factor. In the absence of agreement of the parties to use a factor, the TRA should apply established standards to any and all agreements. The TRA should require the CMRS providers to produce credible information that would establish the proper level of interMTA traffic for each ICO. The TRA should affirm that the CMRS providers will be assessed intrastate and interstate access charges by the ICOs for interMTA traffic in accordance with established requirements.

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

Q: Do you have any initial comments about this issue?

A: Yes. This is another example of an issue presentation by the CMRS providers that includes presumptions that are wrong, creating confusion that diverts focus form facts.

Dialing parity is a concept related to the dialing of local calls and toll calls, not what a carrier charges its end users As stated in the Response, the interconnection rules do not dictate what service a LEC or a CMRS provider offers to its own customers, what they charge these customers, or the manner in which the LEC or CMRS provider provisions such services.

The CMRS providers have no more right to dictate to the ICOs what the ICOs should charge for their services than the ICOs can dictate to the CMRS providers what they should charge their mobile users. The CMRS providers offer services based on usage, while the ICOs generally offer local services on an unlimited basis, at a fixed rate. What the CMRS providers actually seek here is not parity. They seek a favorable and disparate arrangement under which the ICOs are forced to provide calling for their wireline end users to make unlimited calls to mobile wireless users that may be located anywhere in the nation, and to pay the CMRS providers for doing so, while the CMRS providers continue to charge their customers a usage based charge for calls in both directions. What a carrier charges its end users is not an interconnection issue for arbitration. *See* Response at pp. 78-82.

Q: Does the NPA-NXX used by a mobile user determine the location of the mobile user or the jurisdiction of a call.

A: No. In fact, much of the needless confusion arises because of the attempt to mix the concept of the geographically static assignment of a landline number with the concept of a number assigned to a mobile service. Because the wireless customer is mobile and the service areas of CMRS providers are very large, with many providing as their service area the entire nation, the NPA-NXX of a mobile user does not determine the mobile user's geographic location. And with respect to jurisdiction, it is the actual location of the mobile user and the other party to a call that determines the jurisdiction of a call, not the telephone number. With landline service, the static location of the number enables association of the number with a specific location Accordingly, the landline number accurately can be used to determine the geographic terminating or originating point of the call for purposes of determining the jurisdiction of a point to point landline call. That is not true, however, with respect to a call that is placed to or from a wireless number. The wireless number is not an indication of the geographical location of the wireless end user.

Q: Did you not explain earlier in your testimony that some LECs voluntarily utilize a surrogate approach for the location of the mobile user that utilizes the NPA-NXX of

the mobile user?

A: Yes. But this surrogate is not required, and it is conditioned on mutual agreement of the parties As I stated above, the Courts and the FCC have concluded that LECs may treat as toll calls any call to a mobile user that must be delivered to an interconnection point beyond the normal local calling area regardless of the NPA-NXX and regardless of whether the surrogate approach is applied, and that incumbent LECs have no obligation to provision some superior form of local exchange service calling to CMRS networks. *See* discussion of CMRS Issue 5, above. I also explained the conditions that would be necessary for the LEC to be willing voluntarily to treat a call as a local call under the NPA-NXX surrogate approach in an indirect interconnection, three-party arrangement. If these conditions are satisfied; *i e* , the service requires no more from the LEC for local calls to CMRS providers than what the LEC does for itself for similar calls and does not subject the LEC to extraordinary costs, then the LEC may be willing to treat these calls as local calling under this voluntary surrogate method.

If these conditions are not met, the LEC is totally within its rights to treat these calls as toll calls. And toll calls are not subject to local dialing parity; toll calls are subject to toll dialing parity. The CMRS providers are apparently attempting to use some confused application of dialing parity in an attempt to get around what the FCC and the Courts have already concluded about the rights of LECs to treat calls as toll.

Q: Have the CMRS providers defined what they mean as dialing parity as it applies to mobile users which can be located anywhere across the nation?

A: I presume that the CMRS providers mean that they want to apply the concept of "local dialing parity" in a manner that requires an ICO to add calls to the CMRS networks to the ICOs' local calling scopes. The adoption of this notion, which is not consistent with any established statutory or regulatory requirement, would result in yet another quagmire of issues. Moreover, the CMRS providers' presentation of Issue 12 suggests that local dialing parity depends on telephone numbers when that is not the case. Local dialing parity is a concept that applies to a specific geographic area, not telephone numbers; *i e.*, "within a defined local calling area." *See Second Report and Order and Memorandum Opinion and Order*; In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois; CC Docket Nos. 96-98, 95-185, 92-237, and 94-102; and NSD File No. 96-8, and IAD File No. 94-102, released by the FCC on August 8, 1996 at para. 71, underlining added. The telephone number used by the mobile user does not conform to a specific and defined geographic area as that which the LEC uses for local exchange service calls. I can find no logical discussion of what dialing parity means with respect to a "defined area" in the context of mobile service where the defined area is the entire nation. There can be no requirement that forces a wireline LEC to treat as "local" a call to a mobile user that is located in California just

because the telephone number appears to be a number that would only be used at a location in Tennessee if it was assigned to landline service. And a LEC's willingness to apply the surrogate approach depends on their being reasonable interconnection and business terms in place so as not to subject the LEC to costs beyond those that apply for any other local call.

Q: What do you base your conclusions on?

A: The FCC's own statements and conclusions.

Q: Are LECs required to rely on rate center information of other carriers contained in industry databases in their provisioning of intrastate local exchange carrier services?

A: No. I am aware of no federal regulatory requirement which requires LECs, including the ICOs, to utilize a specific NPA-NXX as the sole means to determine the scope of local exchange services to be offered to their own customers. This is particularly significant today as carriers, including some wireline LECs, are using questionable methods of assigning numbers without regard to the actual location where end users receive service.

Of particular note, the FCC has concluded that NPA-NXX information is generally meaningless with respect to mobile wireless service. The industry's NPA-NXX assignment guidelines, endorsed by the FCC, which include the administrative processes for the association of a rate center area with an NPA-NXX code, also recognize that not all carriers utilize this information for the definition and billing of services; *i.e.* not all carrier utilize the surrogate NPA-NXX method. Many small LECs do not depend solely, nor are they required to do so, on the unsupervised information that other carriers submit for inclusion in the industry database as the means to provision their local exchange services. These LECs may, however, refer to this information as a tool to identify other carriers and their apparent operations.

In summary, I am unaware of any federal regulatory requirement that carriers must determine the jurisdiction of a call, or must provision specific local exchange carrier services, based on NPA-NXXs, particularly when those NPA-NXXs do not determine the jurisdictional location of the end user.

In fact, the FCC has concluded just the opposite. The FCC has used the example of callers in the multi-state area surrounding the District of Columbia to illustrate this fact. Because wireless mobile users often cross state lines and are mobile, a cellular customer with a telephone number that appears to be associated with Richmond, Virginia may travel to Baltimore, Maryland. A call between the mobile user in Baltimore and, for example, a wireline end user in Alexandria, Virginia might appear to be an intrastate call "placed from a Virginia telephone number to another Virginia telephone number, but would in fact be interstate . . . ." 11 FCC Rcd 5020, 5073, In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile *Radio Service* Providers, and Equal Access and Interconnection Obligations Pertaining to Commercial

Mobile Radio Service Providers, CC Docket Nos 95-185 and 94-54, (1996) at para. 112, underlining added. Similarly, while a call between a wireline end user in Richmond to the same mobile user in Baltimore might also appear to be an intrastate call because the call is placed from a "Virginia telephone number" to another number that also appears to be associated with Virginia, this call would also in fact be an interstate call. When one end of the call is in Maryland and the other is in Virginia, the call is interstate. The telephone numbers assigned to the users do not determine the jurisdiction and any reliance on the telephone number is an arbitrary practice.

Q: Do others share your views about the lack of any geographic relationship between rate center areas and mobile users?

A: Yes. My views are exactly consistent with the FCC's recent conclusions. In its October 7, 2003 number portability order related to wireless-wireless porting, the FCC concluded (at para. 22) that "[b]ecause wireless service is *spectrum-based and mobile in nature, wireless carriers do not utilize or depend on the wireline rate center structure to provide service*: wireless licensing and service areas are typically much larger than wireline rate center boundaries, and wireless carriers typically charge their subscribers based on minutes of use rather than location or distance." (emphasis added). The FCC's conclusion confirms that the specific geographic areas known as rate center areas for wireline LECs have no relevance to the services offered to, or provided to, the typical mobile user of the large wireless carriers. The "defined local calling area" that is the criterion for local dialing parity is not the entire United States.

Q: How should the TRA resolve this issue?

A: This issue should be dismissed as beyond the scope of interconnection arbitration and beyond any standards for arbitration. I would note that no where in the interconnection agreements that BellSouth has with wireless carriers in Tennessee do the wireless carriers dictate to BellSouth what calls BellSouth will treat as part of BellSouth's local exchange service and what calls will be treated as toll calls. BellSouth's agreements are silent on this issue because this is not an interconnection requirement and not an issue for interconnection arbitration. The CMRS providers are attempting improperly to use their interpretation of dialing parity to suggest improperly that the ICOs are required to provision local service calls, deliver them through BellSouth, and subject themselves to costs beyond the costs that apply to any other local exchange service call. As such, the TRA should reject the CMRS providers' backdoor approach to impose requirements that do not exist

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

Q: What is the position of the ICOs on this issue?

A: The terms and conditions applicable to any three-way indirect interconnection arrangement must require the availability of accurate and complete records. Accurate billing records are an indispensable requirement for this arrangement.
This issue, like so many raised by the CMRS Providers, illustrates why three-way interconnection arrangements are not subject to the rules and standards established for Section 251(b)(5) reciprocal compensation arrangements between connecting carriers. If any regulator, state or federal, looks beyond the confusing rhetoric and misplaced rule interpretations set forth by the CMRS providers, the issues at hand are straight-forward. Contrary to the business desires of BellSouth and the CMRS Providers, I do not understand why any regulator would consider requiring an ICO or any carrier to allow BellSouth or any other carrier to connect to its network free from responsibilities.

Q: Are there provisions in the Attachment B draft agreement that address this issue?

A: Yes. Traffic that is within the scope of the agreement is defined as traffic for which BellSouth provides accurate and complete information Sections 4.2.4 and 4.2.5 make BellSouth responsible for compensation for any traffic not identified by accurate and complete billing information If no carrier is ultimately responsible, as BellSouth should be, there would never be any assurance that the ICOs would be able to bill and receive revenue for the traffic components or have assurance that the total amount of traffic has been addressed.

This issue, presented by the CMRS providers, is another example of an issue for which the resolution is dependent on BellSouth. If BellSouth is responsible for traffic without accurate and complete records, then the CMRS providers have no concern. Their concern with this issue is with what BellSouth will do to the CMRS providers in the event of inaccurate or incomplete records. Again, the CMRS providers cannot claim that BellSouth is not an indispensable party to the resolution of the interconnection agreements with the ICOs for three-party transit arrangements and then present an issue related to BellSouth's role. While BellSouth may have been excused from this proceeding by an interlocutory order, I can not understand how this issue, raised by the CMRS providers, can be resolved with any semblance of common notions of equity in the absence of BellSouth.

Q: How should the TRA resolve this issue?

A: The TRA should not impose any requirement that forces the ICOs to maintain the existing Feature Group C interconnection arrangement with BellSouth while alleviating BellSouth from all responsibility for traffic it carries to the ICO networks through that arrangement.

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

Q: What response do you have to this issue?

A: It is the position of the ICOs that a transit service arrangement cannot be enacted unilaterally by a tandem provider such as BellSouth. No carrier has the right to establish interconnection unilaterally for it with other carriers. BellSouth is the only transit provider which is the subject of the negotiations and arbitration even though BellSouth has not yet established a transit interconnection arrangement with the ICOs. These arrangements are necessarily voluntary. BellSouth is the only carrier that claims to be a transit provider Therefore, there is no basis and no need to arbitrate terms and conditions under the speculation that there may be other carriers. The ICOs view any continuation of the transit arrangement with BellSouth to be a "grand-fathered" voluntary arrangement. And as set forth in their Response and herein, where an ICO establishes its own tandem, it does not intend to render it useless by continuing to subtend some other carrier's tandem. Accordingly, the subject of this proceeding should be limited to the specific indirect interconnection arrangement through BellSouth that was the origin of the negotiations. It is impractical to address terms and conditions that would be applicable to an unidentified third party carrier.

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

Q: What is the ICO position on this issue?

A: As I stated earlier in this testimony, the subject of the discussions with the CMRS providers has been the indirect transit arrangement with BellSouth. To the extent that any CMRS provider seeks a specific direct connecting arrangement with any ICO, it is my understanding that separate discussions have taken place. As previously discussed, direct connection arrangements are, by necessity, company-specific. While boiler-plate commercial terms could be addressed in a collective arena, matters related to specific point of interconnection, provision of facilities, and other voluntary discussions pursuant to Section 252 of the Act cannot be achieved in a collective discussion.

Q: How should the TRA resolve this issue?

A: The TRA should conclude that this proceeding should be limited to consideration of the terms and conditions applicable to the indirect interconnection arrangement through BellSouth Moreover, as I have discussed and the ICOs have previously maintained and demonstrated, an indirect interconnection arrangement is not and cannot be the subject of a Section 251(b)(5) reciprocal compensation arrangement.

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

Q: Do you have any response to this issue?

A: No. The CMRS providers have not indicated what terms and conditions different from those contained in the Coalition's generic draft that they seek.

Q: How should the TRA resolve this issue?

A: There is no issue to resolve. In the alternative that the TRA utilizes this proceeding to establish new terms and conditions applicable to the existing indirect interconnection arrangement through BellSouth, the TRA should adopt the Coalition's voluntarily proposed commercial terms and conditions.

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

Q: Do the ICOs have any interconnection terms and conditions in place with other carriers that permit them to block traffic or disconnect service?

A: Yes. As an example, the ICOs have established interconnection terms and conditions with IXCs since 1984 that incorporate provisions to terminate service in the event of default or misuse

Q: How do the terms and conditions with IXCs address provisions that would apply if a carrier fails to pay access charges?

A: The provisions set forth procedures under which a LEC provides notice to the IXC for failure to pay and notice of pending discontinuation of service, and there are other provisions which allow the local exchange carrier to discontinue access service to the non-paying IXC.

Q: Has the FCC allowed discontinuance of service for non-payment provisions in these access tariffs which establish the interconnection terms with IXCs?

A: Yes.

Q: Do CMRS providers terminate some traffic that is identical to that which an IXC terminates?

A: Yes.

Q: Do local exchange carriers have provisions in their local exchange tariffs that allow, after proper notice and the opportunity for end users to make payment, the LECs to discontinue service to non-paying customers?

A: It is my understanding that the ICOs have such provisions in their local service tariff offerings in Tennessee, and it is my experience that these terms are routine across the country.

Q: Do you believe that it is common practice for businesses in the United States to discontinue services to another business when that other business fails to pay for previous services already rendered?

A: Yes. It is commonplace and common sense for businesses to have such practices.

Q: If the ICO could not discontinue service, what would happen if a CMRS provider were allowed to continue to obtain services from an ICO without payment?

A: The ICO would continue to incur costs, would be denied revenues, and would be forced

to seek costly and burdensome remedies that go beyond those that it is required to utilize with other carriers. And if the enforcement method of discontinuation of service that applies to IXCs did not apply to other carriers, it is likely that the other carriers would be motivated to withhold payment, knowing that the ICO would be powerless to discontinue services. The threat of withheld payments can be used against ICOs, which are dependent on the revenues, to force reductions in rates. The TRA has borne witness to this as the ICOs have had payment for the termination of traffic originated on the CMRS networks withheld for almost a year. Similarly, other larger carriers could use these tactics to harass smaller carriers by withholding payment because the impact of the lost revenues to a small carrier is much greater than any impact on a carrier such as BellSouth. As a matter of fairness and common equity, I respectfully suggest that neither the TRA nor any regulatory authority should condone or permit this situation.

Q: How should the TRA resolve this issue?

A: The TRA should not in this proceeding or any proceeding adopt any practice that would require an ICO to provide any carrier with direct or indirect connectivity without compensation. The TRA should not impose any requirement that deprives an ICO of its ability to enforce its rights by terminating service in the event of default. In the alternative that the TRA utilizes this proceeding to establish new terms and conditions applicable to the existing indirect interconnection arrangement through BellSouth, the TRA should adopt the Coalition's voluntarily proposed provisions in Section 7.6 of the Attachment B voluntary draft agreement.

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

Q: Do you have any initial comments about this issue?

A: Yes Once again, the CMRS providers misrepresent the issue. The position of the ICOs is that they have the same right to reconfigure their network as any other carrier, and that each carrier will bear its own costs that arise as a result of any such reconfiguration. The CMRS providers portray this issue as one in which the ICOs are attempting to impose the ICOs' costs on the CMRS providers The ICOs have not proposed that the CMRS providers be responsible for the ICOs costs; the ICOs propose only that each carrier is responsible for its own costs.

Q: In a competitive world, are the ICOs required to subtend a BellSouth tandem?

A: No. As I have already explained, it would create a chilling effect on the industry if a CMRS provider, or BellSouth itself, could dictate to an ICO that it must subtend a BellSouth tandem. It would create the opportunity for BellSouth to force other carriers to utilize its transit services. No carrier can be forced to participate in this arrangement.

The network design and competitive choices of the ICOs cannot be limited just because the CMRS providers choose to interconnect with BellSouth. The ICOs are not required to maintain a tandem arrangement with BellSouth, and the ICOs are not responsible for the costs that other carriers may incur if and when an ICO makes a change in its network.

The ICOs would be willing to commit to relatively long term arrangements where the CMRS providers connect directly with the ICO's network. This direct connection arrangement avoids any dependence on BellSouth and is one that may properly be treated under Section 251(b)(5) with respect to the establishment of a reciprocal compensation arrangement.

Q: Do the terms proposed by the ICOs on a voluntary basis nonetheless commit the ICOs to time periods to maintain existing arrangements prior to making a change in the tandem arrangement?

A: Yes. For example, Section 7.7 of the Attachment B agreement sets forth the rights and terms that would apply if an ICO were to modify its network arrangement. This provision refers back to the post-termination provisions of Section 7.3 which would keep the existing arrangement in place for an additional year. This notice provides more than sufficient time for a CMRS provider to put in place alternative arrangements or to establish direct connections with an ICO.

Q: How should the TRA resolve this issue?

A: The TRA should not adopt any requirement that limits the right of any ICO to modify its network or imposes any financial burden or cost associated with changes to the networks

of other carriers. Consistent with existing industry practice and subject to any voluntary agreements among the parties, all carriers should bear their own costs in the event of any network change.

Q: Does that conclude your direct testimony?

A: Yes. Consistent with its purpose, this direct testimony supports the positions taken by the Coalition with respect to each of the issues raised by the CMRS providers in their arbitration petitions In the Coalition's Response, the Coalition set forth additional issues. I will review the discussion by the CMRS providers in their direct testimony with respect to both the issues they have raised and their response to the issues raised by the Coalition, and reserve the right to provide reply testimony as appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I , the undersigned, hereby certify that on August 4, 2004, a true and correct copy of the foregoing was served on the parties of record via electronic mail:

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SUMMARY OF WORK EXPERIENCE AND EDUCATION

Steven E. Watkins

May 2004

My entire 28-year career has been devoted to service to smaller, independent telecommunications firms that primarily serve the small-town and rural areas of the United States.

I have been a consultant working with the firm of Kraskin, Moorman & Cosson, LLC since June, 1996 (formerly known as Kraskin, Lesse & Cosson, LLC). The firm concentrates its practice in providing professional services to small telecommunications carriers. My work at Kraskin, Moorman & Cosson, LLC, has involved assisting smaller, rural, independent local exchange carriers ("LECs") and competitive local exchange carriers ("CLECs") in their analysis of a number of regulatory and industry issues, many of which have arisen with the passage of the Telecommunications Act of 1996. I am involved in regulatory proceedings in several states and before the Federal Communications Commission on behalf of small LECs. These proceedings are examining the manner in which the Act should be implemented. My involvement specifically focuses on those provisions most affecting smaller LECs.

I have over the last seven years instructed smaller, independent LECs and CLECs on the specific details of the implementation of the Act including universal service mechanisms, interconnection requirements, and cost recovery. On behalf of clients in several states, I have analyzed draft interconnection agreements and conducted interconnection negotiations and arbitrations pursuant to the 1996 Act.

For 12 years prior to joining Kraskin, Moorman & Cosson, LLC, I held the position of Senior Industry Specialist with the Legal and Industry Division of the National Telephone Cooperative Association ("NTCA") in Washington, D.C. In my position at NTCA, I represented several hundred small and rural local exchange carrier member companies on a wide array of regulatory, economic, and operational issues. My work involved research, analysis, formulation of policy, and expert advice to member companies on industry issues affecting small and rural telephone companies

My association work involved extensive evaluation of regulatory policy, analysis of the effects of policy on smaller LECs and their rural customers, preparation of formal written pleadings in response to FCC rulemakings and other proceedings, weekly contributions to association publications, representation of the membership on a large number of industry committees and task forces, and liaison with other telecom associations, regulators, other government agencies, and other industry members. I also attended, participated in and presented seminars and workshops to the membership and other industry groups too numerous to list here.

For those not familiar with NTCA, it is a national trade association of

approximately 500 small, locally-owned and operated rural telecommunications providers dedicated to improving the quality of life in rural communities through advanced telecommunications. The Association advocates the interests of the membership before legislative, regulatory, judicial, and other organizations and industry bodies

Prior to my work at NTCA, I worked for over eight years with the consulting firm of John Staurulakis, Inc., located in Seabrook, Maryland. I reached a senior level position supervising a cost separations group providing an array of management and analytical services to over 150 small local exchange carrier clients. The firm was primarily involved in the preparation of jurisdictional cost studies, access rate development, access and exchange tariffs, traffic analysis, property records, regulatory research and educational seminars

For over ten years during my career, I served on the National Exchange Carrier Association's ("NECA") Industry Task Force charged with reviewing and making recommendations regarding the interstate average schedule cost settlements system. For about as many years, I also served in a similar role on NECA's Universal Service Fund ("USF") industry task force.

I graduated from Western Maryland College in 1974 with a Bachelor of Arts degree in physics. As previously stated, I have also attended industry seminars too numerous to list on a myriad of industry subjects over the years.

During my career representing small telecommunications firms, I estimate that I have prepared formal written pleadings for submission to the Federal Communications Commission on behalf of NTCA member and Kraskin, Lesse & Cosson client LECs in over two hundred proceedings. I have also contributed written comments in many state proceedings on behalf of Kraskin, Moorman & Cosson client LECs. I have provided testimony in proceedings before the Georgia, Pennsylvania, Indiana, Kentucky, Missouri, Nebraska, Minnesota, Montana, Tennessee, Kansas, South Carolina, New Mexico, West Virginia, and Louisiana public service commissions. Finally, I have testified before the Federal-State Joint Board examining jurisdictional separations changes.

MULTI-PARTY AGREEMENT FOR THE EXCHANGE OF CMRS TRAFFIC TENNESSEE

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

RECITALS

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

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

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

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

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

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

1. DEFINITIONS

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

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

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

1.3 "FCC" means the Federal Communications Commission

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

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

1 6 "InterMTA Traffic" is CMRS Carrier wireless to Rural LEC wireline and Rural LEC wireline to CMRS Carrier wireless calls that are within the scope of this Agreement which do not originate and terminate within the same MTA based on the location of the cell site serving the CMRS Carrier's mobile wireless subscriber at the beginning of the call and the central office for the landline end-user.

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

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

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

1 10 "TRA" means the Tennessee Regulatory Authority.

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

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

2. INTERPRETATION AND CONSTRUCTION

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

successor provision).

2 2 The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by and federal or state government authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the Parties agree to negotiate in good faith toward an agreement to modify, in writing, any affected term and condition of this Agreement to bring them into compliance with such law, rule, regulation or guideline.

2 3 The Parties enter into this Agreement without prejudice to any position they may take with respect to similar future agreements between the Parties or with respect to positions they may have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters including matters, related to the rates to be charged for Transport and Termination of IntraMTA Traffic or the types of arrangements prescribed by this Agreement.

3 SCOPE OF AGREEMENT

3 1 This Agreement sets forth the terms and conditions between and among the Parties for the exchange of Telecommunications Traffic under circumstances where CMRS Carrier does not establish an interconnection point within the incumbent LEC service area of Rural LEC and Intermediary Services of BellSouth are utilized for the exchange of Traffic between CMRS Carrier and Rural LEC The terms and conditions of this Agreement apply solely to Traffic utilizing BellSouth's Intermediary Services that is either (1) originated by CMRS Carrier, delivered to Rural LEC over the BellSouth-Rural LEC interconnection facilities pursuant to the terms of this Agreement, and terminated by Rural LEC or (2) originated by Rural LEC, delivered to BellSouth over the BellSouth-Rural LEC interconnection facilities pursuant to the terms of this Agreement, and terminated by CMRS Carrier. Traffic that is within the scope of this Agreement is specifically limited to Traffic for which BellSouth provides to both CMRS Carrier and Rural LEC accurate and complete industry standard 110101 format message, call detail, and billing records identifying the originating carrier, terminating carrier, and the minutes of use of such Traffic.

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

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

3.4 This Agreement applies solely to Telecommunications traffic specifically defined as within the scope of this Agreement Telecommunications traffic that either Party originates to, or terminates from, any other carrier or Telecommunications traffic carried by any other carrier other than the carriers that are the Parties to this Agreement is not within the scope of this Agreement. Interexchange traffic originated by Rural LEC that is subject to equal access presubscription is not within the scope of this Agreement Telecommunications traffic for which BellSouth does not provide complete and accurate industry standard 110101 format message, call detail, and billing records identifying the originating carrier, terminating carrier, and the minutes of use is not within the scope of this Agreement.

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

3 6 This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement has no effect on the end user services that either Party offers or chooses to offer to its own end users, the rate levels or rate structures that either Party charges its end users for services, or the manner in which either Party provisions or routes the services either Party provides to its respective end user customers

4. TRAFFIC EXCHANGE AND COMPENSATION

4.1 Terms and Conditions Between CMRS Carrier and Rural LEC

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

4 1.2. For intraMTA Traffic within the scope of this Agreement, CMRS Carrier and Rural LEC agree that the originating Party will pay compensation to the terminating Party pursuant to the rates, measurement methods, minutes of use calculation, and percentage traffic values set forth in Appendix X. Compensation for both Parties will be based on a single, combined, per-minute rate, as specified in Appendix X, which encompasses total compensation for Transport and call Termination.

4.1 3 InterMTA Traffic is subject to treatment under Rural LEC's intrastate and interstate access tariffs For InterMTA Traffic, CMRS Carrier will provide compensation to Rural LEC for Inter-MTA Traffic originated and terminated on the network of Rural LEC according to the terms and conditions of Rural LEC's applicable federal and state access tariffs that apply to access usage. Access charges wil be calculated pursuant to the measurement methods, minutes of use calcuation, and percentage traffic values set forth in Appendix X

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

4.1 5. [TO BE DISCUSSED AND MODIFIED BASED ON INDIVIDUAL CIRCUMSTANCES] CMRS Carrier and Rural LEC recognize that InterMTA Traffic may be both Interstate and Intrastate in nature. For the InterMTA Traffic, CMRS Carrier and Rural LEC

will develop mutually acceptable percent Interstate and Intrastate factors The percentages are specified in Appendix X

4 2 Terms and Conditions With BellSouth

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

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

4.2 3 Except as required by this Agreement, BellSouth and CMRS Carrier will treat CMRS Carrier's Traffic, including Traffic within the scope of this Agreement, consistent with the terms of the interconnection agreement between BellSouth and CMRS Carrier and all effective Annexes and Attachments thereto, including. but not limited to, the network provisioning, transport, termination, and biling and collection of such traffic.

4 2 4 For CMRS Carrier traffic terminating to Rural LEC that could otherwise be subject to this Agreement but for which BellSouth fails to meet the administrative requirements set forth in Section 4.2.2 above, such Traffic will be subject to the same intrastate access charges that apply to other BellSouth terminating intrastate interexchange services, to be paid by BellSouth to Rural LEC. For Rural LEC traffic terminating to CMRS Carrier that could otherwise be subject to this Agreement but for which BellSouth fails to meet the administrative requirements set forth in Section 4.2.2 above, such Traffic will be subject to charges equal to the charges that apply to other BellSouth terminating traffic pursuant to the interconnection agreement between BellSouth and CMRS Carrier, to be paid by BellSouth to CMRS Carrier

4 2.5 BellSouth is responsible for compensation to Rural LEC for all traffic that BellSouth delivers to the network of Rural LEC over the interconnection facilities set forth in Appendix X except for Traffic for which BellSouth satisfies its administrative requirements set forth in Section 4 1 2 and such traffic is billed, collected, and accounted for pursuant to Section

4 3.2.

4 2.6 This Agreement addresses the exchange of Telecommunications Traffic between CMRS Carrier and Rural LEC under circumstances where CMRS Carrier does not establish an interconnection point within the incumbent LEC network of Rural LEC, and accordingly, Traffic originated on the network of Rural LEC may be transported and switched by BellSouth beyond Rural LEC's incumbent LEC network The Parties agree that Rural LEC's willingness to offer and provide local exchange services to its end users and to route such local exchange service Traffic to CMRS Carrier via BellSouth pursuant to the Intermediary Services arrangement set forth in this Agreement, beyond the incumbent LEC service area of Rural LEC, is conditioned on Rural LEC not incurring additional costs for transport and switching beyond that which Rural LEC incurs within its own network for other local exchange services. Therefore, for the Traffic that is within the scope of this Agreement, and to get Traffic to and from the interconnection point on the network of Rural LEC to the interconnection point that CMRS Carrier has established with BellSouth at a point outside of Rural LEC's network, CMRS Carrier will be responsible for compensation to BellSouth for all Intermediary Services provided by the BellSouth for the exchange of Traffic that is within the scope of this Agreement

4.3. 'Billing.

4.3 1 Billing Between CMRS Carrier and RLEC

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

4 3.2 Billing to BellSouth

4.3.2.1. (Subject to discussion related to trunk groups and traffic, Total usage needs to be reconciled among multiple providers. Reconciliation will depend on what traffic may be commingled.) Reconciliation of Total Terminating Usage Rural LEC shall bill BellSouth (or if Rural LEC does not bill BellSouth, BellSouth will account for compensation to Rural LEC through the monthly settlement process) and BellSouth shall be responsible for compensation to Rural LEC for all minutes of use delivered over the interconnection facilities as set forth in Appendix X according to intrastate access rates that apply to intrastate intraLATA interexchange service usage except that Rural LEC will reduce the amount billed to BellSouth (or BellSouth will reflect a reduction in the settlement due Rural LEC if Rural LEC does not bill BellSouth) to reflect those revenues billed to and collected from CMRS Carrier pursuant to Section 4.3.1. Rural LEC will issue an invoice on a monthly basis to BellSouth (or BellSouth will

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

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

4 3 3 Audits (Subject to discussion based on trunk groups and type of commingled traffic)

4.3 3 1 Both Rural LEC and CMRS Carrier have a right to assurance, and BellSouth has an obligation for such assurance, that the records that BellSouth creates and provides to Rural LEC and CMRS Carrier pursuant to Section 4.2.2 are accurate and complete and that the total usage (including Traffic subject to this Agreement and any other traffic that BellSouth may switch and transport over the same facilities in combination with Traffic that is the subject of this Agreement) to and from either Rural LEC or CMRS Carrier utilizing BellSouth Intermediary Services is accurate and that all components of traffic are accurate and complete with respect to the total usage over the facilities. Accordingly, Rural LEC and CMRS Carrier may audit, examine, and verify the relevant records, systems, procedures, recording mechanisms, measurement methods, data processing methods, and any infomration or documents pertaining to BellSouth's provision of Intermediary Services for Traffic subject to this Agreement and for any other traffic that BellSouth delivers or receives over the interconnection facilities in combination with the Traffic subject to this Agreement between BellSouth and Rural LEC and between BellSouth and CMRS Carrier

4 3 3.2 Audits may be performed no more frequently than once per six (6) month period to evaluate the accurate of the records and billing data provided by BellSouth. Audits shall be performed following at least fifteen (15) days prior written notice to BellSouth and subject to reasonable scheduling BellSouth will maintain all records for a minimum of twenty-four (24) months that establish the accuracy and completeness of the information provided to Rural LEC and CMRS Carrier pusuant to Section 4.2 2

4 3 3.3 All compensation to Rural LEC and to CMRS Carrier to account for adjustments and corrections shall be the responsibility of BellSouth. Audit findings may be applied retroactively for no more than twenty four (24) months from the date the audit began. Interest shall be applied to compensation adjustments and corrections not to exceed the highest interest rate allowable by law for commercial transactions and shall be computed by compounding daily, from the time of the error. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution procedures described in §xx0 of this Agreement

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

4 3 3 5 For purposes of conducting an audit pursuant to this Agreement, Rural LEC and CMRS Carrier may employ other persons or firms for this purpose (so long as said Parties are bound by this Agreement)

4.4. Taxes.

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

5 INDEPENDENT CONTRACTORS

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

6 LIABILITY

6 1 No Party nor any of its affiliates shall be liable for any incidental, consequential or special damages arising from any other Party's use of service provided under this Agreement. Each Party shall indemnify and defend the other Parties against any claims or actions arising from the indemnifying Party's participation in the arrangements set forth in this Agreement, except to the extent of damages caused by the negligence or willful misconduct of an indemnified Party

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

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

7. TERM OF AGREEMENT

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

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

7 3 Except in the case of termination as a result of a Party's default, the following post-termination provisions shall apply in the event of termination by BellSouth or Rural LEC (1) for those service arrangements made available to CMRS Carrier under this Agreement and existing at the time of termination, those arrangements may continue without interruption for CMRS Carrier, provided that CMRS Carrier requests such continuing arrangements; and (2) the continuing arrangements will be made available for a period of time to allow CMRS Carrier to replace the arrangements set forth in this Agreement with alternate arrangements, to the extent that alternative arrangements are necessary, but in no case will the existing service arrangements continue for longer than 12 months following the date on which notice of termination is provided by either BellSouth or a Rural LEC. All of the obligations set forth in this Agreement will continue to be in effect during the time the provisions of this Section 7.3 are applicable.

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

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

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

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

7.5 In the event of Default by a Party, as defined below in this subsection, the non-defaulting Parties may terminate any and all terms and conditions of this Agreement provided that the non-defaulting Party seeking termination with respect to the defaulting Party notifies the

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

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

7 7 Notwithstanding the voluntary arrangements between the Parties as set forth in this Agreement, each Party to this Agreement shall have the right, at its discretion, to design and deploy its own network and facilities, upgrade its network, modify its end office and tandem switching hierarchy and/or architecture, modify trunking arrangements with other carriers, install new equipment or software, maintain its network, determine and designate the tandem switch(es) which its end offices will subtend for all traffic, or otherwise, including modifications that may alter or discontinue the arrangements that are the subject matter of this Agreement. If a Party makes a change in its network which it believes will materially affect the arrangements which are the subject matter of this Agreement, the Party making the change shall provide at least one hundred and twenty (120) days advance notice to the other Parties regarding the nature of the change and when the change will occur. Each Party shall be solely responsible for the cost and activities associated with accommodating such changes within its own network including, but not limited to, the migration of traffic routing. To the extent that notice of a network change pursuant to this Section 7.7 results in the termination of this Agreement by any Party, the same post-termination provisions of Section 7.3 shall apply.

8. DISPUTE RESOLUTION PROCESS

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

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

8.3. At the written request of a Party, the other Parties will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising

under this Agreement. The location, format, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Prior to arbitration described below, and subject to agreement by all of the Parties, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations.

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

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

9 THIRD PARTY BENEFICIARIES

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

10. GOVERNING LAW, FORUM, AND VENUE

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

11. FORCE MAJEURE

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

12 ENTIRE AGREEMENT

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

13 NOTICE

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

BellSouth

CMRS Carrier

Rural LEC

Bills and payments shall be sent to.

BellSouth

CMRS Carrier

Rural LEC

14. ASSIGNABILITY

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

15. MISCELLANEOUS

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

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

15 3 Nothing herein shall affect any Party's right to seek interconnection with any carrier, including with a carrier that is a Party to this Agreement, or preclude any Party from negotiating an interconnection agreement with another Party consistent with Sections 251 and 252 of the Act Moreover, in the event that CMRS Carrier and Rural LEC subsequently execute an interconnection agreement, such agreement may supercede the rights and obligations set for in this Agreement only to the extent that the Parties specifically set forth such intent within the terms and conditions of any such new agreement.

15 4 The Parties agree that this Agreement represents a voluntary resolution of terms and conditions between and among the Parties, including the terms and conditions for compensation, and any compensation terms hereunder should not be construed as the agreement of any Party as to the appropriateness of such level of compensation

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

15 6 Nothing in this Agreement shall preclude any Party from participating in any TRA proceeding or proceeding before the Federal Communications Commission ("FCC") relating to any issue, including matters specifically related to or other types of arrangements related to the subject matter of this Agreement or from petitioning the TRA or the FCC to resolve any issue, including matters specifically related to, or other types of arrangements related to the subject matter of this Agreement

15.7 BellSouth is a corporation duly organized, validly existing and in good standing under the laws of the [STATE] and has full power and authority to execute and deliver this

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

16. (OPEN) NONDISCLOSURE OF PROPRIETARY INFORMATION

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

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

17. COMPLIANCE WITH SECTION 252(i)

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

18.0 Indemnification

18.1 Each Party agrees to release, indemnify, defend and hold harmless the other Parties from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorney's fees (collectively, a "Loss"), (a) whether suffered, made, instituted or asserted by any other party or person, relating to personal injury to or death of any person, defamation or for loss, damage to or destruction of real and/or personal property, whether or not owned by others, arising during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted or asserted by its own customer(s) against another Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement Notwithstanding the foregoing indemnification, nothing in this such Section 18 0 shall affect or limit any claims, remedies or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s) regulations or laws for the indemnified Party's provision of said services.

18 2 The indemnification provided herein shall be conditioned upon:

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

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

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

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

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

18 3 In addition to its indemnity obligations under Section 18.1 and 18 2, each Party shall provide, in its Tariffs or customer contracts that relate to any Telecommunications Service or network services provided by one Party to the other Party under this Agreement, or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any consequential damages (as defined in Subsection 19.2, below)

19 0 Disclaimer of Representation and Warranties

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

20.0 No License

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

20 2 No Party shall have any obligation to defend, indemnify or hold harmless or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, any other Party or its customers based on or arising from any claim, demand or proceeding by any party not a party to this Agreement that may allege or assert that the use of any circuit, apparatus or system, or the use of any software, or the performance of any service or method or the provision of any facilities by any Party under this Agreement, alone or in combination with that of any other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim

20 3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NO PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY ANY PARTY OF ANY OTHER PARTY'S FACILITIES, ARRANGEMENTS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY PARTY NOT A PARTY TO THIS AGREEMENT OF INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH OTHER PARTY THAT IS NOT A PARTY TO THIS AGREEMENT.

21.0 Counterparts.

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

22.0 Modification, Amendment, Supplement or Waiver.

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

23 0 Entire Agreement.

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

By: Rural Telco

_____ _____
Signature (date)

_____
Printed name and title.

By: CMRS Carrier

_____ _____
Signature (date)

_____
Printed name and title.

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

CMRS-LEC AGREEMENT
TENNESSEE

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

1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1.x "Direct Traffic" is Telecommunications traffic within the scope of this Agreement that either Party delivers to the other Party at the Interconnection Point(s)

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

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

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

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

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

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

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

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

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

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

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

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

1.x "TRA" means the Tennessee Regulatory Authority

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

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

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

2. INTERPRETATION AND CONSTRUCTION

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

2 2 The Parties acknowledge that some of the services, facilities or arrangements described herein may reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Appendix hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this Agreement shall prevail

3 SCOPE OF AGREEMENT

3 1 General Scope

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

3 1.2 With respect to CMRS Carrier, the scope of Telecommunications Traffic to be exchanged between the Parties is specifically limited to its CMRS services. With respect to Rural LEC, Telecommunications Traffic is specifically limited to its local exchange services

3 1 3 This Agreement applies solely to Telecommunications Traffic that is specifically defined as within the scope of this Agreement. With the exception of those Intermediary Carriers specifically referenced by this Agreement, traffic that either Party originates to, or terminates from, any other carrier or traffic carried by any other carrier other than the Parties or those Intermediary Carriers specifically referenced by this Agreement is not within the scope of this Agreement. Traffic that Rural LEC delivers to or receives from a third party carrier over facilities or service arrangements that the third party has obtained pursuant to

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

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

3 1.5 This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement has no effect on the end user services that either Party offers or chooses to offer to its own end users, the rate levels or rate structures that either Party charges its end users for services, or the manner in which either Party provisions or routes the services either Party provides to its respective end user customers.

3 2 Scope of Direct Traffic

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

3 2.1 CMRS Carrier to Rural LEC IntraMTA Traffic that is: (a) originated on the network of CMRS Carrier, (b) delivered to the Rural LEC network over the Direct Traffic connecting facilities and Interconnection Point(s) established pursuant to this Agreement; and (c) terminated on the incumbent LEC network of Rural LEC;

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

3 2.3 InterMTA Traffic that is: (a) originated by CMRS Carrier on its network, (b) transported, for termination, by CMRS Carrier to a different MTA than the MTA in which the traffic originated; (c) delivered by CMRS Carrier over Direct Traffic connecting facilities and Interconnection Point(s) established pursuant to this Agreement; and (d) terminated on the incumbent LEC network of Rural LEC;

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

3 3 Scope of Intermediary Traffic

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

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

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

3 3.3 InterMTA Traffic that is: (a) originated by CMRS Carrier on its network; (b) transported, for termination, to a different MTA than the MTA in which the traffic originated, (c) delivered to Rural LEC by an Intermediary Provider over interconnection facilities established between the Intermediary Provider and Rural LEC for Intermediary Traffic; and (d) terminated on the incumbent LEC network of Rural LEC,

3 3.4 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* InterMTA Traffic that is: (a) originated on the network of Rural LEC; (b) delivered to CMRS Carrier by an Intermediary Provider over the interconnection facilities established between the Intermediary Provider and CMRS Carrier for Intermediary Traffic; (c) transported by CMRS Carrier to a different MTA than the MTA in which the traffic originated; and (d) terminated by CMRS Carrier on its CMRS network.

3.3.5 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* Intermediary Traffic that is within the scope of this Agreement is specifically limited to Intermediary Traffic for which the Intermediary Provider provides to both CMRS Carrier and Rural LEC accurate and complete industry standard

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

4. TRAFFIC EXCHANGE, SERVICE ARRANGEMENT, AND COMPENSATION

4 1 Traffic Exchange and Service Arrangement Terms

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

4 2 Service Arrangement -- Direct Traffic

4.2.1 For Direct Traffic purposes, the Parties agree to interconnect their respective networks within the incumbent LEC service area of Rural LEC at one or more IPs as agreed to by the Parties. For Direct Traffic terminating on the network of Rural LEC, interconnection and termination of Direct Traffic will be provided through a Rural LEC tandem switching office or a Rural LEC end office. The IP(s) will be set forth in Appendix X. The Parties will establish Direct Traffic connecting facilities to the IP(s) over which either Party may deliver to the other Party Direct Traffic as described in Subsections 3.2.1, 3.2 2, 3.2.3. and 3 2 4 By mutual agreement, the Parties may interconnect a trunk group on a bi-directional basis using two-way trunks between the Parties' networks All interconnecting facilities will be at a DS1 level, multiple DS1 level or DS3 level and will conform to industry standards.

4.2 2 For Direct Traffic terminating on the network of Rural LEC via an interconnection through a Rural LEC tandem switching office, CMRS Carrier may terminate Direct Traffic to end users of Rural LEC with valid NXX codes associated with Rural LEC's end offices that subtend the specific Rural LEC tandem office to which the interconnection is made. For Direct Traffic terminating on the network of Rural LEC through an end office interconnection, CMRS Carrier may terminate Direct Traffic to end users of Rural LEC served by that end office.

4 2.3 Connecting facilities established for Direct Traffic pursuant to this Agreement shall not be used by either Party to deliver any traffic not specifically authorized under this Agreement as described in Section 3.2. It will constitute a Default of this Agreement for a Party to deliver, over the connecting network facilities, any traffic other than the Direct Traffic that is within the scope of this Agreement as specifically identified in Section 3 2.

4.3 Compensation - Direct Traffic

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

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

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

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

4 3.4 InterMTA Traffic. The specific compensation arrangements set forth in this Agreement for IntraMTA Direct Traffic are not applicable to Direct Traffic that is InterMTA Traffic ("InterMTA Direct Traffic") described in Sections 3 2 3 and 3.2 4. CMRS Carrier will provide compensation to Rural LEC for all InterMTA Direct Traffic originated and terminated on the network of Rural LEC according to the terms and conditions of Rural LEC's applicable federal and state access tariffs that apply to access usage

4.3.4 1 *[OPEN -- To be discussed and modified based on individual circumstances]* Because Rural LEC cannot determine the location of CMRS Carrier's mobile end users at the time a call is made and consequently whether Section 3 2.2. and 3 2.4 traffic originated on the network of Rural LEC is IntraMTA or InterMTA, the Parties will develop mutually acceptable percent usage factors for the relative amounts of InterMTA Direct Traffic and IntraMTA Direct Traffic.

4.3.4 2 *[Open -- To be discussed and modified based on individual circumstances]* The Parties recognize the InterMTA Direct Traffic (defined in Sections 3.2.3 and 3 2.4) may be both Interstate and Intrastate in nature. For the InterMTA Direct Traffic, the Parties will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix X. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of InterMTA Direct Traffic that is interstate in nature, intrastate access charges will apply to the percentage of InterMTA Direct Traffic that is intrastate in nature.

4.4 Service Arrangement - Intermediary Traffic

4 4 1 *[OPEN -- Subject to Change and the resolution of other terms and conditions with Intermediary Provider]* For Intermediary Traffic, the Parties agree to terminate Intermediary Traffic in accordance with the interconnection and contract terms and conditions

that each Party has in place with the specific Intermediary Provider which delivers Intermediary Traffic to each Party's network for termination. For Intermediary Traffic terminating on the network of Rural LEC, termination of Intermediary Traffic will be provided in accordance with the interconnection and contract terms and conditions with the Intermediary Provider for delivery of traffic either through a Rural LEC tandem switching office or a Rural LEC end office. The interconnection arrangement between each Intermediary Provider and Rural LEC will be set forth in Appendix X. The Intermediary Traffic arrangement between the Parties may be used to deliver to the other Party, via the Intermediary Provider, Intermediary Traffic described in Subsections 3.3.1, 3.3.2, 3.3 3. and 3 3.4.

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

4.5 Compensation - Intermediary Traffic

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

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

4.5.3 *[TO BE DISCUSSED AND MODIFIED BASED ON INDIVIDUAL CIRCUMSTANCES]* Because Rural LEC and CMRS Carrier cannot determine the location of CMRS Carrier's mobile end user at the time a call is made and consequently whether Section 3 3 2 and 3 3.4 traffic between CMRS Carrier and Rural LEC is IntraMTA Intermediary Traffic or InterMTA Intermediary Traffic, CMRS Carrier and Rural LEC will develop a mutually acceptable percent usage factors for the relative amounts of interMTA Intermediary Traffic and intraMTA Intermediary Traffic that is representative of the actual nature of the traffic. The percent usage factors are set forth in Appendix X.

4.5.3.1 The Parties recognize the InterMTA Direct Traffic (defined in Sections 3.3.2 and 3.3 4) may be both Interstate and Intrastate in nature. For the InterMTA Direct Traffic, the Parties will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix X. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of InterMTA Direct Traffic that is interstate in nature; intrastate access charges will apply to the percentage of InterMTA Direct Traffic that is intrastate in nature.

4 5.3.2 *[TO BE DISCUSSED AND MODIFIED BASED ON INDIVIDUAL CIRCUMSTANCES]* The Parties recognize that InterMTA Intermediary Traffic may be both Interstate and Intrastate in nature. For the InterMTA Intermediary Traffic, CMRS Carrier and Rural LEC will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix X. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of InterMTA Intermediary Traffic that is interstate in nature; intrastate access charges will apply to the percentage of InterMTA Intermediary Traffic that is intrastate in nature.

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

4.6 Signaling

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

4.7. Billing.

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

4 4. Taxes.

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

5 INDEPENDENT CONTRACTORS

The Parties to this Agreement are independent contractors Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind any other Party. *[OPEN ISSUE: CMRS Carrier apparently has already entered into bilateral agreement with BellSouth (a potential future Intermediary Provider) under which BellSouth and CMRS Carrier now attempt to bind the Rural LECs to arrangements for*

which the Rural LECs have no legal obligation and to force network arrangements on the Rural LECs not required of the Rural LECs.] This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between any of the Parties or to impose any partnership obligation or liability upon any Party.

6 LIABILITY

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

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

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

7. TERM OF AGREEMENT

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

7.2 Termination -- Arrangements with Third-Party Intermediary Provider

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

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

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

7 4 Upon termination of this Agreement in accordance with this Section 7.0.

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

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

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

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

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

days to both the Intermediary Provider(s) and CMRS Carrier, Rural LEC will direct the Intermediary Provider(s) to take the necessary steps within its network that will allow for the disconnection of the Intermediary Services arrangement and the discontinuation of the delivery of all Intermediary Traffic to the network of Rural LEC. If Rural LEC defaults by failure to comply with the compensation terms of this Agreement for compensation between Rural LEC and CMRS Carrier, CMRS Carrier may terminate this Agreement with respect to Rural LEC. For Intermediary Traffic, if CMRS Carrier is unable to effectuate discontinuance of the termination of Intermediary Traffic at CMRS Carrier's network or end offices, and following written notice of at least thirty (30) days to both the Intermediary Provider(s) and Rural LEC, CMRS Carrier will direct the Intermediary Provider(s) to take the necessary steps within its network that will allow for the disconnection of the Intermediary Services arrangement and the discontinuation of the delivery of all Intermediary Traffic to the network of CMRS Carrier.

7.7 Either Party to this Agreement shall have the right, at its discretion, to design and deploy its own network and facilities, upgrade its network, modify its end office and tandem switching hierarchy and/or architecture, modify trunking arrangements with other carriers, install new equipment or software, maintain its network, determine and designate the tandem switch(es) which its end offices will subtend for all traffic, or otherwise, including modifications that may alter or discontinue the arrangements that are the subject matter of this Agreement, including arrangements with Intermediary Providers for Intermediary Service arrangements. If a Party makes a change in its network which it believes will materially affect the arrangements which are the subject matter of this Agreement, the Party making the change shall provide at least one hundred and twenty (120) days advance notice to the other Parties regarding the nature of the change and when the change will occur. To the extent that notice of a network change pursuant to this Section 7 7 results in the termination of this Agreement by any Party, the post-termination provisions of Section 7.3 shall apply

8 DISPUTE RESOLUTION PROCESS

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

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

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

8 3. At the written request of a Party, the other Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, format, frequency, duration and conclusion of these

discussions will be left to the discretion of the representatives. Prior to arbitration described below, and subject to agreement by all of the Parties, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations.

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

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

9 THIRD PARTY BENEFICIARIES

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

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

10 GOVERNING LAW, FORUM, AND VENUE

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

11 FORCE MAJEURE

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

12. ENTIRE AGREEMENT

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

13. NOTICE

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

CMRS Carrier

Rural LEC

Bills and payments shall be sent to·

CMRS Carrier

Rural LEC

14 ASSIGNABILITY

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

15. MISCELLANEOUS

15 1 Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right, or privilege.

15 2 By entering into this Agreement, Rural LEC does not waive any rights afforded to it under the Act including, but not limited to, the rights afforeded Rural Telephone Companies under 47 U.S.C. Section 251(f) of the Act.

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

15.5 Nothing in this Agreement shall be construed to create legal or regulatory

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

15 6 The Parties enter into this Agreement without prejudice to any position they may take with respect to similar future agreements between the Parties or with respect to positions they may have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters including matters, related to the rates to be charged for Transport and Termination of IntraMTA Traffic or the types of arrangements prescribed by this Agreement Moreover, nothing in this Agreement shall preclude either Party from participating in any TRA proceeding or proceeding before the Federal Communications Commission ("FCC") relating to any issue, including matters specifically related to or other types of arrangements related to the subject matter of this Agreement or from petitioning the TRA or the FCC to resolve any issue, including matters specifically related to, or other types of arrangements related to the subject matter of this Agreement.

15 7 CMRS Carrier is a corporation duly organized, validly existing and in good standing under the laws of the [STATE] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. CMRS Carrier represents and warrants to Rural LEC that CMRS Carrier has obtained full authorization and received all licenses from the FCC to provide CMRS in the MTA(s) in which Rural LEC operates its incumbent LEC network. Rural LEC is a corporation duly organized, validly existing and in good standing under the laws of the [STATE] and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. Rural LEC represents and warrants to CMRS Carrier that Rural LEC is fully authorized as a Local Exchange Carrier to provide local exchange service within its incumbent local exchange carrier service area.

16 NONDISCLOSURE OF PROPRIETARY INFORMATION

[OPEN for further discussion]

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

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

17. COMPLIANCE WITH SECTION 252(i)

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

18 0 Indemnification

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

18 2 The indemnification provided herein shall be conditioned upon:

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

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

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

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

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

18.3 In addition to its indemnity obligations under Section 18 1 and 18.2, each Party shall provide, in its Tariffs or customer contracts that relate to any Telecommunications Service or network services provided by one Party to the other Party under this Agreement, or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any consequential damages (as defined in Subsection 19.2, below).

19 0 Disclaimer of Representation and Warranties

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

20.0 No License

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

20 2 Neither Party shall have any obligation to defend, indemnify or hold harmless or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand or proceeding by any party not a party to this Agreement that may allege or assert that the use of any circuit, apparatus or system, or the use of any software, or the performance of any service or method or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right of either Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim

20 3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE

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

21.0 Counterparts.

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

22 0 Modification, Amendment, Supplement or Waiver.

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

23 0 Entire Agreement.

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

24.0 Changes in Law.

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

By: Rural LEC

_____ _____
Signature (date)

_____
Printed name and title:

By: CMRS Carrier

_____ _____
Signature (date)

_____
Printed name and title:

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

ATTACHMENT D

BELLSOUTH

BellSouth Telecommunications, Inc
601 W Chestnut Street
Room 407
Louisville KY 40203

Dorothy Chambers@BellSouth.com

Dorothy J Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

April 23, 2004

Mr Thomas M Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Petition of BellSouth Telecommunications, Inc.
Seeking Resolution of Third Party Transit Traffic Issues
KPSC 2003-00045

Dear Mr. Dorman:

The parties, including BellSouth Telecommunications, Inc., ("BellSouth"), the rural independent local exchange carriers ("Rural LECs"), and the Commercial Mobile Radio Service ("CMRS") providers, after more than a year of negotiations, have been successful in negotiating the rates and the term of a three-party settlement agreement regarding third party CMRS transit traffic. The original and ten (10) copies of the Agreement are enclosed for filing in this case. All parties have reached agreement but we are awaiting receipt of the signatures of certain CMRS providers (Verizon Wireless and Comscape) and Alltel and we will file those signature pages as soon as we receive them.

The parties respectfully request expedited treatment of this matter with approval of the Agreement, with signatures attached, by April 30 so that the Agreement will have an effective date of May 1, 2004.

All parties appreciate the Commission's consideration and patience in this process.

Very truly yours,

for Dorothy J Chambers

Enclosures
cc: Parties of Record

536054