NEAL & HARWELL, PLC
LAW OFFICES
150 FOURTH AVENUE, NORTH
SUITE 2000
NASHVILLE, TENNESSEE 37219-2498

TELEPHONE
(615) 244-1713

FACSIMILE
(615) 726-0573

September 10, 2004

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

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

Dear Ms. Dillon

Enclosed is an original and fifteen copies of the Post-Hearing Brief of the Rural Coalition of Small LECs and Cooperatives for filing Please return one copy to me stamped "filed."

Thank you for your assistance.

Sincerely,

Jean Moore

Jean Moore
Legal Assistant to Bill Ramsey

enclosures

cc: PDF e-mailed and mailed today to all counsel of record

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE

Petition of Sprint Spectrum L P d/b/a Sprint PCS for Arbitration under the Telecommunications Act	)	Consolidated Docket No 03-00585
Petition of T-Mobile USA, Inc. for Arbitration under the Telecommunications Act	)	
Petition of BellSouth Mobility LLC; BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, for Arbitration under the Telecommunications Act	)	
Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act	)	
Petition of AT&T Wireless PCS, LLC d/b/a AT&T Wireless for Arbitration under the Telecommunications Act	)	

POST-HEARING BRIEF OF THE RURAL COALITION OF SMALL LECs AND COOPERATIVES on behalf of

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

September 10, 2004

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to as the ACoalition@ or the AIndependents@) respectfully submits this Post-Hearing Brief. In this proceeding, Petitions for Arbitration were filed by five Commercial Mobile Radio Service providers (ACMRS providers@)[1] with the Tennessee Regulatory Authority (ATRA@) on November 6, 2003 and a response by the Coalition was filed on December 1, 2003 (the "Coalition Response") The hearing in this proceeding was held at the TRA on August 9, 10 and 11, 2004 For the reasons demonstrated herein, the Coalition requests that the TRA resolve all issues in a manner consistent with the positions set forth by the Coalition.

During the course of the hearing in this proceeding, Chairman Miller referred to prior arbitrations before the Authority where parties asked for delay Chairman Miller rightfully stated, "We're going to make a decision."[2] The rural Independents applaud Chairman Miller's statement. As the Authority is all too well aware, instability and inequity have existed for nearly one and a half years with respect to the payments due to Coalition members with respect to traffic originated on the networks of the CMRS providers and carried by BellSouth to the rural Independents for termination [3] The Independents seek resolution, consistent with applicable law "that's fair and addresses our rights."[4] The Coalition respectfully submits that, in addition to resolution of the specific arbitration issues, the circumstances of this proceeding warrant additional action by the Authority "in order to further the just, efficient, and economical disposition of cases consistent with the statutory policies governing the Authority."[5]

---

[1] Petitions for Arbitration were filed by (1) Sprint Spectrum L P. d/b/a Sprint PCS (ASprint PCS@), (2) T-Mobile USA, Inc (AT-Mobile@), (3) BellSouth Mobility LLC, BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; d/b/a Cingular Wireless (ACingular@), (4) Cellco Partnership, d/b/a Verizon Wireless (AVerizon Wireless@), and (5) AT&T Wireless PCS, LLC d/b/a AT&T Wireless (AAWS@).

[2] Tr Vol III, p 10, line 21

[3] *See, e g*, Transcript Excerpt of Authority Conference, August 9, 2004, addressing the first item on the Section 3 Docket of the conference, Docket No 00-00523, p 18, lines 15-17 (where Director Kyle recognizes "the fact that the coalition members have been providing services without compensation ")

[4] Witness Steven E Watkins, Tr Vol VII, p 19, lines 16-17

[5] T R A Rules, Chapter 1220-1-2- 22(2)

I. BACKGROUND AND INTRODUCTION

Although the length of both the pleadings and the hearing in this proceeding may suggest otherwise, the subject of the dispute before the Authority is not complex. In fact, there are no dispositive facts in dispute.[6] Nor are there any matters of policy or law to determine within the framework of this arbitration proceeding. Within the framework of an arbitration, interconnection standards and obligations are not established. Arbitrations are resolved by applying existing interconnection standards previously established by statute and regulation to the relevant factual circumstances.[7]

With respect to each and every of their arbitration issues, the CMRS providers have attempted to use this proceeding to establish new interconnection standards to meet their needs. In essence, the CMRS providers have asked the Authority to hold the shoehorn while they try to squeeze the factual circumstances of an existing Section 251(a) indirect interconnection arrangement into Section 251(b)(5) of the Act and the related regulations regarding direct interconnection.[8]

In both its Response to the Petitions for Arbitration, filed on December 1, 2003, and in the testimony filed on its behalf, the Coalition has demonstrated that the CMRS providers have attempted to impose interconnection burdens on the Independents that are not consistent with established regulation. In some instances, the CMRS providers have asked the Authority to apply obligations that are not only inconsistent with established regulation; these obligations are

---

[6] Although questions of fact were raised at the hearing regarding CMRS Issues 8 (pricing methodology) and 13 (accuracy of billing records), as discussed below, the resolution of these issues are not dispositive The factual issues raised by the testimony of the CMRS witnesses with respect to these matters demonstrates the attempt by the CMRS providers to utilize this proceeding wrongfully to establish and apply interconnection standards that have not been established by statute or regulation From its inception and throughout this proceeding, it has been the clear intent of the CMRS providers to utilize the arbitration process wrongfully in order to impose interconnection obligations on the rural Independents in contravention of Section 252(c) of the Communications Act of 1934, as amended (the "Act"), 47 USC Sec 252(c)

[7] 47 USC Sec 252(c)

[8] 47 CFR Sec 51 701 *et seq*

also the very subject of standards that the CMRS Providers have asked the Federal Communications Commission to establish.

The CMRS providers do not want to wait for the established processes before the FCC They apparently believe that they can obtain what they want form the Authority irrespective of existing statute and regulatory standards. There is no doubt that the CMRS providers seek an award from the Authority that goes far beyond the established interconnection standards applicable, by statute, to this arbitration proceeding.[9]

In offering documentation to support this fact, the Independents have not merely offered their "positions" or "feelings" on policy issues. The Coalition has provided specific references and citations to FCC decisions which guide these determinations. As Coalition Witness Watkins stated at the hearing, "Those aren't my words. Those are the FCC's words specifically saying that "[10]

II. THE HISTORY THAT CULMINATED IN THIS PROCEEDING

A. This Proceeding Is Not About Either Direct Interconnection or Any New Interconnection Arrangement.

The history of this proceeding is critical to an understanding of the facts to which the applicable law must be applied in this matter. The dispositive facts established on the record in this proceeding are not disputable or refutable. From its inception, this proceeding, the ensuing negotiations, the pleadings, the testimony and the hearing have been focused on establishing specific terms and conditions applicable to a single interconnection arrangement – the existing indirect interconnection arrangement that the CMRS providers already utilize through BellSouth.

The CMRS providers created an artificial shroud by suggesting that the subject of this proceeding is not only the indirect interconnection arrangement the CMRS providers utilize

---

[9] 47 USC Sec 252(c)

[10] Tr Vol VII, p 24 lines 16-17 The Coalition will reiterate this quote again and again throughout this brief

through BellSouth, but also direct interconnection.[11] The record, however does not demonstrate that there is any specific request for direct interconnection between any specific CMRS provider and any specific Independent. There is no specific direct interconnection request to resolve.

In fact, there is no request for any new interconnection arrangement, either direct or indirect, pending in this proceeding Indirect interconnection, consistent with Section 251(a) of the Act already exists between the CMRS providers and the rural Independents. What this proceeding is really about is an attempt by the CMRS providers to establish new favorable terms applicable to the existing indirect interconnection arrangement. The apparent intent of the CMRS providers is to divert the focus of the authority from the facts by creating an impression of a need to resolve direct interconnection issues when no such need exists.[12] With this diversion in play, the CMRS providers hope that the Authority will use the "shoehorn" and:

1. broadly impose on the rural Independents the standards of direct interconnection that are applicable to non-rural incumbent local exchange carriers.,

2 additionally adopt new interconnection standards, disregarding the fact that to do so is contrary to the applicable statutory standard;[13] and

3. automatically take these new standards together with the direct interconnection standards applicable to non-rural telephone companies, and automatically apply them to the existing indirect interconnection arrangement.

As addressed by the rural Independents in the "Coalition Response," the direct and rebuttal testimony of Steven E Watkins (the "Watkins Testimony"), and again addressed below, this result would be inequitable to the Independents and inconsistent with established regulations

[11] *See, e g* , "Testimony of Marc B Sterling on behalf of Celco Partnership D/B/A Verizon Wireless " ("Sterling Testimony"), p 10

[12] *See, infra*, discussion addressing Issue 8, p

[13] 47 USC Sec 252(c)

and interconnection standards, and impermissible within the statutory framework of this arbitration proceeding [14]

B. This Proceeding Is the Result of the Efforts of BellSouth and the CMRS Providers to Impose New and Unfavorable Terms and Conditions on the Existing Indirect Interconnection Arrangement.

In reality, the petitioning CMRS providers each seek the establishment of new terms and conditions applicable to an interconnection arrangement they already utilize. Each CMRS carrier interconnects to each rural Independent indirectly through BellSouth. This interconnection arrangement has long been utilized, and the establishment of the arrangement did not require negotiations or an agreement between each CMRS carrier and each rural Independent. The three-way arrangement that is in place and working today exists because of the long ago established physical interconnection between BellSouth and each rural Independent.

1. Indirect interconnection between the CMRS providers and the Independents through BellSouth has worked in accordance with two separate agreements: one an agreement between BellSouth and each Independent; and the other, an agreement between Bellsouth and each CMRS provider.

The terms and conditions applicable to this interconnection arrangement between BellSouth and each Independent has been the subject of consideration in Docket No. 00-00523. These existing terms and conditions were originally set forth in contractual agreements between the parties [15] Pursuant to the only set of terms and conditions in effect that govern the physical interconnection between Bellsouth and each rural Independent, terms and conditions have been established whereby BellSouth compensates each rural Independent for the traffic BellSouth carries to the rural Independent network for termination.

---

[14] *Id*

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

The existing three-way indirect interconnection arrangement is the apparent product of the physical interconnection arrangement between BellSouth and each rural Independent and a separate arrangement between BellSouth and each CMRS provider No rural Independent was privy to the arrangement established between BellSouth and each CMRS carrier. Bellsouth and the CMRS providers bilaterally, and in the absence of the Independents, agreed that BellSouth would transport traffic for each CMRS between its network and the network of each rural Independent. This understanding was reached apparently in the context of negotiations that resulted in the establishment of interconnection agreements between BellSouth and each CMRS provider that were approved by the Authority [16]

Pursuant to these bilateral agreements, BellSouth then delivered the traffic to each rural Independent through the existing physical interconnection long ago established between BellSouth and each Independent Initially, BellSouth paid each rural Independent in accordance with the existing terms and conditions that govern this physical interconnection, and each Independent relied on the fact that BellSouth acted in accordance with these terms and conditions in the transmission of all traffic it delivered to the rural Independent networks The Independents were not alone in their understanding. The CMRS providers understood the arrangement they made with BellSouth and the arrangement in place between BellSouth and each Independent. In fact, the CMRS providers understood that BellSouth was obligated to pay the Independents for the terminating service, and CMRS providers agreed to reimburse BellSouth for the charges associated with the termination of their traffic through this indirect arrangement.[17]

---

[16] *See, e g*, Responses of CMRS Providers to Coalition Requests for Production 1 and 3.

[17] *See, e g*, "Direct Testimony of Billy H Pruitt on behalf of Sprint Spectrum L P D/B/A Sprint PCS ("Pruitt Testimony"), p 8, lines14-16

2. The "need" for new terms and conditions applicable to the existing indirect interconnection arrangement was created by a two-way agreement between BellSouth and the CMRS providers. They misused the industry term "meet-point billing arrangement," and applied it to their agreement to provide a cloak of authority to their plan to impose unfavorable terms on the Independents.

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

The Pre-hearing Officer indicated his understanding that the traffic that was subject to the dispute "includes only CMRS-originated traffic transiting BellSouth's network and terminating on a Coalition member's network where BellSouth has entered into a meet point billing agreement with the CMRS carrier that originated the traffic." [18] In an effort to encourage settlement of the issues, the Pre-Hearing Officer required BellSouth to identify the CMRS providers with which BellSouth has agreements to transport traffic to the rural Independent networks, and further required the Coalition and BellSouth to notify these CMRS carriers of the opportunity to participate in collective negotiations.[19]

[18] *Conditional Stay Order*, pp 5-6 (*emphasis added*)
[19] *Id*, at pp 8-9

3. This proceeding reflects the confusion of two distinct potential outcomes: 1) the negotiation of new terms and conditions applicable to the existing three-way indirect interconnection arrangement; and 2) the negotiation of direct interconnection between a CMRS provider and an Independent pursuant to Section 251(b)(5) of the Act.

The Pre-Hearing Officer identified two possible outcomes in the event a settlement was not reached: 1) "a hearing on the factual and legal issues surrounding the terms of the toll settlement agreements entered into by BellSouth and the Coalition;" and 2) "Alternatively, . . . the Authority may be called upon to arbitrate disputed issues pursuant to Section 252 of the Telecommunications Act of 1996."[20]

As a result, a series of negotiations and exchanges of documents took place initially among the parties (i.e , the Independents, the CMRS providers and BellSouth). The "collective" negotiation required by the Pre-Hearing Officer among all of the parties was far different than the negotiations contemplated by Section 252 of the Telecommunications Act that are anticipated between a requesting carrier and an incumbent local exchange carrier. The Coalition understood the plain meaning of the two potential outcomes that the Pre-Hearing Officer foresaw To the extent that the three parties could not establish new terms and conditions applicable to the indirect interconnection arrangement, new terms and conditions could be established through "a hearing on the factual and legal issues surrounding the terms of the toll settlement agreements entered into by BellSouth and the Coalition." And, to the extent that a CMRS provider requested direct interconnection consistent with the standards established under the Act and "the regulations prescribed by the Commission (FCC) pursuant to Section 251,"[21] the matter would be resolved through arbitration in the absence of agreement.

The CMRS providers and BellSouth did not interpret the Pre-Hearing Officer's words in the same "plain word" manner These parties, in fact interpreted the Pre-Hearing Officer in a

[20] *Id* at p 5
[21] 47 USC Sec 252(c)

manner that is inconsistent not only with the "plain words" of the *Conditional Stay Order*, but also inconsistent with applicable statute, regulations, interconnection standards and industry practice and common sense BellSouth and the CMRS providers used the words of the Pre-Hearing Officer to support their conclusion that the Authority had endorsed the propositions that: 1) BellSouth had no responsibility for the traffic it connects to the networks of the Independents, irrespective of the fact that no such standard has been established by the FCC; 2) that the CMRS providers have a right to reciprocal compensation over the indirect interconnection arrangement through BellSouth, irrespective of the fact that Section 251(b)(5) of the Act and the associated FCC regulations apply only to the direct interconnection of two carriers at an "interconnection point between the two carriers." [22]

The Coalition members participated in discussions with BellSouth and the CMRS providers in a good faith effort to comply with the Hearing Officer's encouragement to resolve the issues: "(S)ettlement of this disputed issue is clearly in the best interest of all parties involved in this docket."[23] Separate and apart from any potential arbitration proceeding, the Coalition offered to engage in good faith discussions and to consider good faith compromise to arrive at new terms and conditions applicable to the existing indirect interconnection arrangement. The Coalition acted in accordance with its understanding of the Pre-Hearing Officer's encouragement to all parties (including BellSouth) to arrive at a settlement of the indirect interconnection terms in order to avoid the alternative need in Docket No. 00-00523 "for a hearing on the factual and legal issues "

In the midst of the negotiations, both BellSouth and the CMRS providers pronounced that the negotiations regarding the establishment of new terms and conditions applicable to the existing indirect interconnection arrangement would not be three-way among the CMRS

[22] 47 CFR Sec 51 701(c)
[23] *Conditional Stay Order* at p 5

providers, BellSouth and the Coalition, but two-way between the CMRS providers and the Coalition. The Coalition noted in protest the fact that this pronouncement appeared to violate the Hearing Officer's expectation of collective negotiations. The Coalition also questioned how the issues involved in a three way arrangement could be resolved in the absence of BellSouth. Contrary to the implicit claims of the CMRS providers and BellSouth, the only standard recognized by regulation and industry practice applicable to three-way "meet-point billing" interconnection arrangements are those established with respect to the multi-party provision of interexchange access services The application of these standards applies only when all of the involved parties agree on the arrangement [24]

The Coalition reluctantly, and in good faith, continued to participate in the negotiations after BellSouth's departure. The Coalition members offered to negotiate new direct interconnection arrangements consistent with the standards established by statute and regulation applicable to rural telephone companies Separate and apart from the offer to negotiate direct interconnection in good faith, the Coalition offered to attempt to negotiate, outside the framework of Section 252 of the Act, new terms and conditions that could be applied to the indirect three-way existing interconnection arrangement The Coalition understood that this effort was consistent with that encouraged by the pre-Hearing Officer in the *Conditional Stay Order*

Ultimately and inevitably the negotiations failed and the Petitions for Arbitration were filed. The inevitability of this outcome was determined by the fact that the CMRS providers insisted on attempting to impose terms and conditions on the rural Independents that have not

[24] ATIS/OBF-MECAB-007 Guidelines, Issue 7, February 2001, p 2-1 ("The determination of implementing a meet-point Billing arrangement between providers, which operate in the same territory, is based upon Provider-Provider negotiations where the regulatory environment permits When all involved providers agree to a meet-point Billing arrangement, these guidelines are used ")

been established as interconnection standards and, accordingly are not statutorily the subject of terms and conditions that can be imposed in a Section 252 arbitration.

III. THE STANDARDS FOR ARBITRATION

Essentially, the arbitration process was initiated because of the belief of the CMRS providers that they can prevail in their insistence on applying Section 251(b)(5) reciprocal compensation to an existing three-way indirect interconnection arrangement through BellSouth. The *Conditional Stay Order* offered the CMRS providers two distinct opportunities. First, the opportunity to negotiate a settlement of new terms and conditions applicable to the existing three-way interconnection arrangement; and second, the alternative opportunity to seek a direct interconnection arrangement with the Independents The CMRS providers did not avail themselves of either opportunity. Instead, whether purposeful or not, they have mixed and confused the two alternative paths and now insist on an arbitration right that does not exist.[25]

The Coalition attempted to address and correct this confusion in its "Preliminary Motion to Dismiss, Or, In The Alternative, To Add An Indispensable Party" (the Coalition Motion") filed on March 4, 2004 The request was denied on April 12, 2004 in the Interlocutory Order entered by the Pre-Hearing Officer then assigned to this proceeding. The Coalition intended by filing this motion to bring before the Pre-Hearing Officer the controlling statutory standards of arbitration pursuant to which it is clear as a matter of law that positions of the CMRS providers cannot be sustained The Coalition, however, did not ask for a simple dismissal of this

[25] Even if, *arguendo*, the Pre-Hearing Officer had intended in the *Conditional Stay Order* to suggest that the CMRS providers could request the application of reciprocal compensation to the existing three-way interconnection arrangement and avail themselves of the Section 252 arbitration process to achieve their objective, the outcome would not change As discussed herein, no statutory provision or established FCC regulation requires a local exchange carrier, on a non-voluntary basis, to establish a reciprocal compensation arrangement with respect to a three-way indirect interconnection As a matter of law, the role of the Authority in a Section 252 arbitration is to apply established standards, it is not statutorily permitted to establish standards and apply them on a non-voluntary basis

proceeding because the Independents seek a stable and equitable resolution to the matters associated with the terms and conditions of the indirect interconnection of the CMRS providers to the Independents through BellSouth.

Accordingly, the Coalition proposed an alternative process to this arbitration proceeding to resolve these matters Unfortunately, the Findings and Conclusions set forth in the April 12, 2004 Interlocutory Order dismissing the Coalition's Motion do not address either the discussion regarding the statutory standards of arbitration or the alternative resolution proposal set forth by the Coalition.[26]

A. The CMRS Providers Seek the Imposition of Terms and Conditions that are not Established Statutory or Regulatory Standards.

The statutory framework governing a Section 252 arbitration proceeding is very specific. The Telecommunications Act delegates to the state regulatory authorities the right, but not the duty, "to arbitrate any open issues" in those instances where a carrier requesting Section 251 interconnection and an incumbent local exchange carrier have not reached agreement. The Congress did not, however, impose any obligation or duty on the state regulatory authorities to invest resources in determining Section 251 interconnection policies or standards. In fact, and to the contrary, the Act specifically sets forth the standards pursuant to which the state authority may resolve open issues and impose conditions on the parties.

Pursuant to this statutory standard in the conduct of an arbitration proceeding, the state regulatory authority is empowered to "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the commission pursuant to section 251 "[27] The state regulatory authority cannot resolve an open issue by imposing a term

[26] The Coalition incorporates by reference both the Coalition Motion and the April 12, 2004, Interlocutory Order and respectfully urges the Authority to review these documents in conjunction with its consideration of this matter
[27] 47U S C Sec 252(c)(1) In the section of the statute quoted above, the term "Commission" refers to the FCC.

or condition that is not an established requirement of Section 251. The arbitration positions set forth by the CMRS providers in this proceeding seek to impose conditions that are contrary to established FCC regulations.

In summary, there are no standards established by either statute or the FCC that address interconnection on an indirect basis that even remotely approach the terms and conditions sought by the CMRS providers No requirement mandates that a rural local exchange carrier ("LEC") must permit BellSouth to utilize a physical interconnection to deliver traffic from CMRS providers over a common trunk group under terms and conditions that alleviate BellSouth from any financial liability for the termination service. No requirement exists that mandates that a rural LEC must transmit traffic to a CMRS provider through an indirect arrangement dictated by the CMRS provider. The Section 251 requirements establish terminating rights. These requirements do not establish a right to dictate how an incumbent local exchange carrier transmits traffic to a CMRS provider or any other carrier. Nor does the FCC require the rural LECs to use the "forward-looking cost methodology" that the CMRS providers would impose.

The CMRS providers have attempted, but failed, to obtain approval for many of their positions at the FCC.[28] The FCC, however, has not acted and the CMRS carriers know it. Apparently the CMRS providers hope that, irrespective of Section 252(c) of the Act, the Authority will give them the results in this arbitration proceeding that they have sought from the FCC. Neither the Authority, however, nor any state regulatory commission has the statutory authority to establish Section 251 interconnection requirements,

---

[28] *See, e g*, "In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers" ("Sprint Petition for Declaratory Ruling") filed by Sprint in FCC CC Docket 01-92 (filed July 18, 2002). The Coalition respectfully refers the Authority to the complete Response of the Coalition A summary addressing this matter is set forth at p 9 See also, pp 21-30 wherein the Coalition earlier attempted to bring these matters to the attention of the Authority's Pre-Hearing Officer Throughout the initial Coalition Response, the Coalition addressed with specificity the applicable interconnection standards, referenced the applicable rules and regulatory decisions, and requested dismissal of each issue

B. The Authority of the TRA and Other State Regulatory Commissions to Resolve Arbitration Issues Beyond the Scope of Established Section 251 Requirements is Narrowly Limited.

As a matter of law, the Authority must resolve the arbitration in a manner consistent with the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251 "[29] The Coalition anticipates that the CMRS providers may incorrectly contend that the Authority may resolve issues that are not subject to standards established by Section 251 of the Act or FCC regulations pursuant to Section 251.

Courts have reviewed the issue of the extent to which such authority may exist and determined that any such authority would be limited to the arbitration of an issue "where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by Sec. 251(b) and (c)."[30] There is no latitude for the Authority or any state commission to resolve an issue through the application of its own standards with regard to any issue subject to Section 251. The resolution of the arbitration issues must be consistent with Section 251 and the regulations that the FCC has established.

In this proceeding, the CMRS providers seek the imposition of standards that are not consistent with the requirements of the Act or the FCC; the Independents have not voluntarily agreed to submit to arbitration the establishment of new interconnection standards for either indirect or direct interconnections. Accordingly, the Coalition respectfully submits, as demonstrated herein, that the arbitration issues should be determined in accordance with the positions set forth by the Independents In further support of this conclusion, the Coalition will review each of the arbitration issues set forth by the CMRS providers and demonstrate the specific basis upon which their positions must be rejected. In contrast to the positions of the

---

[29] 47 USC Sec 252(c)(1).

[30] Coserv Limited Liability Corporation v Southwestern Bell Telephone Company, 350 F 3d 482 at 487 (5th Cir , November 21, 2003)

CMRS providers, the positions of the Coalition are based upon specific FCC regulations and orders As Coalition Witness Watkins pointed out· "Those aren't my words. Those are the FCC's words specifically saying that."[31]

IV. EACH OF THE ARBITRATION ISSUE POSITIONS OF THE COALITON SHOULD BE ADOPTED; EACH POSITION OF THE CMRS PROVIDERS SHOULD BE REJECTED.

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

As Coalition Witness Watkins has observed, "There really is no issue to arbitrate."[32] Section 251 of the Act requires all telecommunications carriers to interconnect "directly or indirectly" with other telecommunications carriers. No question of fact exists; the Independents are interconnected indirectly to each CMRS provider. No Independent has refused interconnection to any CMRS provider nor to any other carrier.[33]

As a matter of law, the interconnection obligations are set forth in Section 251 of the Act. The duty to connect "directly or indirectly" established by Section 251(a) is set forth under the heading "General Duty of Telecommunications Carriers." This general duty does not encompass any specific network arrangement or intercarrier compensation arrangement.[34] The Section 251(a) general duty is, in fact separate and distinct from the hierarchy of additional interconnection obligations set forth in Section 251 of the Act. This hierarchy of increasingly burdensome obligations includes Section 251(b), the "obligations of all local exchange carriers" and Section 251(c), the "additional obligations of incumbent local exchange carriers. Rural local

---

[31] Tr Vol. VII, p 24 lines 16-17 The Coalition will reiterate this quote again and again throughout this brief
[32] Tr Vo 7, p 21, line20
[33] Watkins Direct Testimony, p 6
[34] *Id* at p 7

exchange carriers, including the Coalition members, are exempt from the Section 251(c) obligations pursuant to Section 251(f)(1) of the Act.

While it is plainly evident that all parties are in agreement regarding the general duty of interconnection, the real intent of the arbitration issue raised by the CMRS providers did not become apparent until the filing of rebuttal testimony on June 24, 2004 when CMRS Witness Pruitt stated:

> The issue is whether or not the ICOs have a duty to interconnect on an indirect basis for the mutual exchange of intraMTA telecommunications traffic as defined in 47 C F.R 51.701(b)(2) "[35]

This issue is, however, repetitive of 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?"

Apparently, the intent of the CMRS providers when they set forth Issue 1 was to create an appearance of logic in this manner: "If the Independents are required to connect indirectly under Section 251(a) and the Independents are required to provide reciprocal compensation under Section 251(b)(5), they must provide reciprocal compensation for indirect interconnection." But, one plus one does not equal 5. The Coalition will provide the specific legal basis that demonstrates that Section 251(b)(5) reciprocal compensation requirements are not applicable to a Section 251(a) indirect interconnection arrangement in the discussion below regarding Issue 2 (Section IV, B.).

With respect to Issue 1, it is critical to note that statutory language is given its plain meaning. Congress was very specific in the establishment of the interconnection obligation hierarchy established by Sections 251(a), (b) and (c) Each of these subsections is separate and distinct. Irrespective of the attempt of the CMRS providers to add Sections 251(a) and (b)

[35] Pruitt Rebuttal Testimony, p 6, line 22

together to obtain the result they desire, the FCC is well aware that the general duty to interconnect directly or indirectly does not encompass a duty to provide reciprocal compensation on an indirect basis. In its rules implementing Section 251, the FCC provides the following definition of Interconnection:

> Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.[36]

The terms "transport" and "termination" are specific terms of art referenced in Section 251(b)(5) reciprocal compensation provision of the Act and the FCC rules that implement that section (as further discussed in Section IV. B, below). Unlike the CMRS providers, the FCC understands that the general duty of interconnection and exchange of traffic does not incorporate the concept of reciprocal compensation or the associated requirements for "transport and termination of traffic." [37]

Coalition Proposed Resolution of Issue 1: To the extent that there is any disagreement between the parties regarding the obligations associated with section 251(a) indirect interconnection, the disagreement is with respect to CMRS Issue 2 and not with respect to the matter set forth by the CMRS providers as Issue 1. The attempt by the CMRS Providers in Mr. Pruitt's rebuttal testimony to rephrase Issue 1 as a restatement of Issue 2 should be ignored in the context of Issue 1 and addressed appropriately within Issue 2.

All parties agree that there is a duty for all carriers to connect to one another directly or indirectly, and, the parties agree that all CMRS providers and the Independents are

---

[36] 47 C F R 51 5 (underscoring added)

[37] Section 251(b)(5) of the Act defines reciprocal compensation as "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications

interconnected on an indirect basis.[38] Accordingly, the Authority should resolve Issue 1 by finding that "All parties agree that all telecommunications carriers, including both the Coaltion members and the CMRS providers, have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

B. 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?

The CMRS providers have asserted the position that the "FCC Rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered."[39] The FCC, however, has neither expressly nor implicitly determined that Section 251(b)(5) reciprocal compensation is applicable to any form of indirect interconnection or to all intraMTA traffic. The mere allegation to the contrary by the CMRS providers does not raise an issue of either fact or law. The imposition of any such requirements by a single commission in another state pursuant to a decision made in the context of specific facts and circumstances before that state Commission provides no support for the inaccurate contention that the CMRS providers have made [40] Nor can they maintain their position on the basis that some rural local exchange carriers have voluntarily entered agreements to provide reciprocal compensation beyond the scope of the requirements of the Act and the FCC.[41]

The CMRS providers have to establish termination of their traffic to local exchange carriers through direct interconnection and reciprocal compensation arrangements upon request

[38] Pruitt Rebuttal testimony, p 6 line 20
[39] Position of the CMRS providers set forth in the July 26, 2004 "Final Joint Issues Matrix." *See also*, Pruitt Direct Testimony, pp 16 -18 and Testimony of William H Brown on behalf of BellSouth Mobility ("Brown Direct Testimony"), pp 13-14, Tr Vol I, p 31, lines 14-21
[40] *See*, Brown Direct Testimony, p 14
[41] *See*, Pruitt Rebuttal Testimony, p 12-13

with respect to traffic that originates and terminates within an MTA.[42] The CMRS providers however extract phrases out of context from the FCC's rules in order to impute and support a right to establish reciprocal compensation with respect to indirect interconnection. Not only does this right not exist, but the specific applicable FCC interconnection requirements explicitly apply the reciprocal compensation rules only to a direct interconnection arrangement.

The CMRS providers incorrectly assert that Sec. 251(b)(5) reciprocal compensation applies to all "Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area "[43] Although the CMRS providers extract the quote from the FCC rules accurately, they fail to recognize or understand that the rule is set forth in the context of the entirety of the regulations applicable to reciprocal compensation Instead, the CMRS providers jump to the conclusion that they are entitled to a reciprocal compensation arrangement irrespective of the physical interconnection arrangement they elect to use. And, on the basis of this incorrect assumption, they wrongly insist that they should have Sec. 251(b)(5) reciprocal compensation applied to the indirect interconnection through BellSouth that they have elected to use.

Whether purposeful or not, the CMRS providers have overlooked the critical aspect of the FCC's regulations that govern the implementation of reciprocal compensation. Although the CMRS providers have extracted and quoted from the appropriate Subpart H of Part 51 of the FCC Rules and Regulations,[44] they ignore the inconvenience of the specific rule provision that reflect the requirement of direct interconnection to establish a reciprocal compensation arrangement on a non-voluntary basis.

---

[42] 47 C F R Sec. 51 701(b) and 51 703(a)
[43] 47 C F R Sec 51 701(b) *See*, Brown Direct Testimony, p 14
[44] 47 C F R Sec 701 *et seq*

This specific rule makes clear that the transport of traffic for a reciprocal compensation arrangement (not otherwise agreed to voluntarily) cannot be indirect transport through a third party (i.e., Bellsouth or any other so-called "transit carrier" or interexchange carrier). This specific rule states:

> (c) *Transport* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC. [45]

As the underscored words in the quoted rule above demonstrate, the FCC specifically understands and requires that, for purposes of mandatory reciprocal compensation arrangements under the Act and its rules, there must be an "interconnection point between the two carriers." Not among three carriers. And not an interconnection point between each carrier and an intermediary carrier, but an "interconnection point between the two carriers." As Mr. Watkins observed. "Those aren't my words. Those are the FCC's words specifically saying that."[46]

The most complete and comprehensive discussion regarding the inapplicability of reciprocal compensation and the FCC's Subpart H Rules to three-way indirect interconnection arrangements was provided in the Direct Testimony of Coalition Witness Watkins where he responded to the question, "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?"

> 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.

---

[45] 47 C F R Sec 701(c) (underscoring added)

[46] Tr Vol VII, p 24 lines 16-17 The Coalition will reiterate this quote again and again throughout this brief

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 Abetween the two carriers.@ An arrangement for two separate interconnection points involving three carriers is neither discussed nor consistent with the explicit terms.

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 Abetween the two carriers@ for the framework of Subpart H to apply.

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. 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 Atransit @

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.[47]

In the narrative analysis cited above and provided by Witness Watkins in his Direct Testimony, there is a citation to *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11. The specific quote cited states.

> the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under [section 251(c)(2)] of the statute, nor do we find clear Commission precedent or rules declaring such a duty.

[47] Watkins Direct Testimony, p 10

The weight of the citation is compelling. Not only do the FCC's rules (specifically, 47 C.F.R. Sec 51 701(c)) require a direct point of interconnection for purposes of establishing reciprocal compensation, but the FCC is clear that it has not even required the indirect transiting of traffic.

Coalition Proposed Resolution of Issue 2: CMRS providers may have ignored the rules and words of the FCC in order to reach their incorrect proposition that they are entitled to reciprocal compensation on an indirect interconnection arrangement. The Coalition respectfully submits that the Authority, however, cannot ignore the established rules and standards which must be applied in order to resolve arbitration issue 2. The FCC does not require indirect transiting arrangements, and it has found no "clear Commission precedent or rules declaring such a duty." In its specific Subpart H Rules governing the establishment of reciprocal compensation arrangements there is, accordingly, no reference to or standard established for indirect interconnection or transiting arrangements. To the contrary, the rules specifically require a direct interconnection as demonstrated by the requirement of an "interconnection point between the two carriers."[48]

Accordingly, the Coalition respectfully submits that the Authority should reject the position of the CMRS providers and conclude that the reciprocal compensation requirements of 47 U.S.C. ' 251(b)(5) and the related negotiation and arbitration process in ' 252(b) do not apply to traffic exchanged indirectly by a CMRS provider and an Independent. Moreover, to the extent that the remaining issues in this arbitration proceeding have been raised by the CMRS providers in the context of their existing indirect interconnection arrangement, the positions of the CMRS providers with respect to those issues should also be rejected. As previously discussed, an arbitration proceeding is one in which established interconnection standards are

[48] 47 C F R Sec 51 701(c)

applied, it is not a proceeding in which standards are established. Although the matters related to the establishment of new terms and conditions applicable to the existing indirect interconnection arrangement cannot be lawfully established within the framework of this arbitration proceeding, the Coalition remains desirous of expediently resolving these issues. The Coalition respectfully notes again that it has proposed, on a voluntary basis and outside of the framework of Section 252 negotiation and arbitration, a compromise proposal intended to address the needs of all parties to the existing three-way indirect interconnection arrangement.[49] The Coalition respectfully submits that, in accordance with T.R.A. Rules, Chapter 1220-1-2-.22(2), this matter should be expediently referred back to Docket No. 00-00523 for resolution and/or alternative dispute resolution should be initiated pursuant to T.R A. Rules, Chapter 1220-1-2- 3.

C. 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)?

The CMRS providers assert that the Independents owe reciprocal compensation on a call that originates and terminates in an MTA when the call is carried by the customer's toll carrier. In other words, if a rural LEC customer picks up his or her phone and dials a long distance number to reach a wireless customer, the CMRS providers want the rural LEC to pay them a terminating reciprocal compensation charge. The CMRS providers disregard the fact that the call is carried to their networks by the originating customers' toll carrier, and not the rural LEC. Moreover, the CMRS providers ignore applicable statutory provisions and FCC requirements. The position of the CMRS providers should be rejected.

The analysis required to address and resolve this issue is the same as that required to address Issue 2. Once again, the CMRS providers extract pieces of rules out of context to attempt to support their position. For example, Witness Tedesco states "All intraMTA traffic

[49] *See, e g* Coalition Response, p 15, Watkins Direct Testimony, p 11, Coalition Motion, p. 14

exchanged between a LEC and a CMRS provider is subject to reciprocal compensation under the Act "[50] To the contrary, the scope of LEC/CMRS traffic that is subject to the Act is not set forth in the Act at all; it is established by the FCC's Part 51 Subpart H Rules. As discussed in Section IV. B , *supra*, these rules require "interconnection point between the two carriers."[51] No such point of interconnection exists with respect to traffic that is carried between a LEC network and a CMRS network by an interexchange carrier. As a matter of law, reciprocal compensation does not apply to calls carried by interexchange carriers

At least one CMRS witness unjustly suggests that a rural LEC is acting somehow improperly if calls from its customers to a CMRS network are handled by a toll carrier. Witness Tedesco incorrectly states, "The fact that a LEC may choose to have that traffic delivered by an IXC (a practice which is at best questionable except perhaps to the extent the IXC merely performs a transiting function) is irrelevant to whether intraMTA traffic is subject to reciprocal compensation " [52] This statement by Mr Tedesco, together with the position of the CMRS providers with respect to this issue, is misguided and misinformed at best.

Mr. Tedesco's suggestion that the IXC should only be performing a "transiting function" is obviously misplaced. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement [53] The CMRS position on Issue 2b is based on the same flawed logic that they applied to Issue 2 where they ignored the fact that the FCC's rules specifically contemplate that reciprocal compensation is applicable to direct interconnection where a point of interconnection is established "between the two carriers."

---

[50] Direct Testimony of Greg Tedesco on behalf of T-Mobile USA, Inc ("Tedesco Testimony"), p 9
[51] 47 C F R Sec 51 701(c)
[52] Tedesco Rebuttal Testimony, p 6, lines 6-10
[53] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11

To further support the incorrect position, Witness Tedesco grasps onto the FCC rule that prohibits the application of access charges to a reciprocal compensation arrangement.[54] Once again the CMRS providers quote the rules accurately and apply them incorrectly. The limitation on the application of access charges is only applicable in the context of a reciprocal compensation arrangement which, in turn, is only applicable to interconnection "between the two carriers."

The CMRS providers know fully well that the FCC has said that access charges may apply to traffic carried to their networks by interexchange carriers; CMRS providers were involved in the proceeding that addresses this issue.[55] Contrary to the assertions of the CMRS providers, the inter-carrier and interconnection framework adopted by the FCC fully anticipated that calls destined to mobile users may be completed via interexchange carriers, and the FCC recognizes that landline-to-mobile calls may be treated as toll calls [56] As the FCC observed in both its original *FCC Interconnection Order* and in its *Order on Remand,*[57] Congress intended that the existing access arrangements of incumbent LECs on the date immediately preceding the date of enactment of the 1996 Act be maintained until explicitly superseded by new rules.[58] The FCC has also concluded that "the reciprocal compensation provisions of section 251(b)(5) for

---

[54] Tedesco Direct Testimony, p 9, lines 22-23

[55] In the Matter of Petitions of Sprint PCS and AT&T Corp for Declaratory Ruling Regarding CMRS Access Charges, WT Docket No 01-316 (July 3, 2002) (the "*Sprint Access Order*") The Coalition anticipates that the CMRS providers may contend that this order applies only to interMTA traffic, but this contention would be incorrect See, e g , *Sprint Access Order* para 4 and footnote 16

[56] See, e g , Memorandum Opinion and Order, In the Matters of TSR Wireless, LLC, et al., Complainants, v US West Communications, Inc et al , Defendants, released June 21, 2000, in File Nos E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 ("*TSR Order*") at para 31, *aff'd sub Nom , Qwest Corp V FCC*, 252 F 3d 462 (D C Cir 2001)

[57] First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, CC Docket Nos 96-98 and 95-185, 11 FCC Rcd 15499, 16013 (para 1033) (1996) ("FCC Interconnection Order") and Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9167, para 34 (2001) ("*Order on Remand*")

[58] *See*, Section 251(g) Decision released by the FCC on April 27, 2001, at paras 31-41 concluding that the scope of traffic discussed in the Act in § 251(g) (i e , information access and exchange access) is not subject to the § 251(b)(5) reciprocal compensation framework Also, in its original interconnection decision, the FCC concluded that the Act "preserves the legal distinction between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic " *FCC Interconnection Order* (para 1033) (1996) ("*FCC Interconnection Order*")

transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic."[59] Finally, the Commission also rejected the suggestion that the § 251(b)(5) reciprocal compensation framework would apply "when a long-distance call is passed from the LEC serving the caller to the IXC."[60] Once more the Coalition respectfully observes, "These are the words of the FCC "

Coalition Proposed Resolution of Issue 2B: CMRS providers may have ignored the rules and words of the FCC in order to reach their incorrect proposition that they are entitled to reciprocal compensation from the Coalition members on calls carried to their networks by IXCs. The Coalition respectfully submits that the Authority, however, cannot ignore the established rules, standards, and FCC Orders which must be applied in order to resolve arbitration issue 2B. The Coalition requests that the Authority reject the position of the CMRS providers and find that the reciprocal compensation requirements of 47 U.S.C. ' 251(b)(5) do not apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC)

[59] *FCC Interconnection Order* at para 1034

[60] *Id* Toll calls that originate on the network of LECs are subject to 1+ dialing and routing to competing interexchange carriers under presubscription. Accordingly, all interexchange, toll calls are "passed from the LEC serving the caller to the IXC "

D. 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?

This issue is raised in the context of indirect interconnection. As a matter of law (and fully addressed within the context of Issue 2), a Section 251(b)(5) reciprocal compensation arrangement is not applicable to indirect interconnection and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement.[61]

With respect to this issue, Witness Watkins stated:

> 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 Alegal obligation@ cannot stand when there are no interconnection standards, at all, for such transit interconnection arrangements.[62]

On a voluntary basis, and outside of the framework of a Section 252 arbitration, the Coalition has indicated its willingness to establish new terms and conditions regarding the aspects of the existing three-way interconnection arrangement The Independents respectfully submit that the ultimate resolution of these issues must address the concerns they have set forth including, but not limited to record keeping and payment responsibilities, and rights of the Independents to configure their networks and deploy tandems.[63]

---

[61] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11

[62] Watkins Testimony, p 17

[63] *Id* At p 17-19

It is critical that the Authority recognize that the indirect interconnection arrangement worked pursuant to the existing terms and conditions until BellSouth decided unilaterally that it no longer wanted to maintain those terms.[64] Throughout this proceeding and the Docket No. 00-00523 proceeding, both BellSouth and the CMRS providers have asserted a right to enter into bilateral self-styled "meet-point billing agreements" claiming that by doing so they can affect the rights of the Independents who were not parties to those agreements. The Coalition has brought to the attention of the Authority in both this proceeding and in Docket No. 00-00523 the fact that FCC regulations and industry standards do not recognize the establishment of "meet-point billing arrangements" in the absence of agreement of all parties to the arrangement.[65]

Not only is there no Section 251 requirement that the rural LECs or any party enter a "transiting arrangement;" and, not only is there no FCC rule or industry standard that would require a rural LEC to terminate CMRS traffic carried by BellSouth through a common trunk group on the basis of terms and conditions that totally alleviate BellSouth of financial responsibility for the terminating compensation; but both BellSouth and the FCC are well aware of this issue and the fact that no such standards or requirement exists. As recently as June 6, 2004, BellSouth made an *ex parte* presentation to the FCC in Docket No. 01-92 In the written public document that BellSouth presented to the FCC, BellSouth requests that the FCC determine that· 1) "ILECs are not obligated to provide a transit function," 2) Originating and terminating carriers are responsible for intercarrier compensation associated with transit or indirect traffic:" 3) transiting carriers are not liable for compensation to any other carrier," and 4) transiting carriers are entitled to a fee for use of their networks."

The Coalition notes that items 2 and 3 are directly related to CMRS Issue 3. The FCC has not acted on the BellSouth requested relief. The Coalition respectfully submits that the matter is

---

[64] *See generally*, "Coalition Emergency Petition," Docket No 00-00523

[65] *See*, fn 24, *supra*

one that should be determined by the FCC, and that this issue is one that cannot be determined within the framework of a Section 252 arbitration.

Coalition Proposed Resolution of Issue 3: The issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration because it is associated with indirect interconnection. Moreover, the FCC has not established any standards or requirements with respect to this issue, and the specific matter is pending before the FCC. Accordingly, the Coalition submits that the position of the CMRS providers must be rejected and that the Authority should find that this issue cannot be addressed lawfully in this proceeding in a manner consistent with the standards of arbitration set forth in Section 252(c) of the Act.

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

This issue is raised in the context of indirect interconnection. As a matter of law (and fully addressed within the context of Issue 2), a Section 251(b)(5) reciprocal compensation arrangement is not applicable to indirect interconnection and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement.[66]

[66] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11

Outside of the context of a Section 252 proceeding, and on a voluntary basis, the Coalition has indicated its preference that new terms and conditions applicable to the existing indirect interconnection arrangement should be set forth in a single document. The coalition has recognized that the three-way arrangement could alternatively be established in three distinct agreements.[67] With respect to this issue, the Coalition pointed out in its Response to the arbitration petitions a non-exhaustive list of issues that must be resolved with BellSouth in order for a voluntary three-way arrangement to work in a satisfactory and equitable manner irrespective of whether the arrangement is documented by a single agreement or three agreements These issues include: (a) establishment of trunking facilities and a physical interconnection point with the Independents, (b) responsibility to establish proper authority for either BellSouth or the Independents to deliver traffic of third parties to the other, (c) responsibility not to abuse the scope of traffic authorized by the arrangement (*i e*, with unidentified phantom traffic); (d) provision of complete and accurate usage records; (e) coordination of billing and collection and compensation (as discussed above in the previous issue); (f) responsibilities to resolve disputes that will necessarily involve issues between and among at least three parties, (g) responsibilities to act to implement network changes which alter or terminate the voluntary arrangement between the Independents and BellSouth; (h) responsibilities to coordinate actions to address default and non-payment by third parties, and so on.[68]

In his testimony, Witness Watkins referenced a recent agreement reached among all parties (i.e., rural LECs, CMRS providers and BellSouth) on a voluntary basis in Kentucky.[69] Witness Watkins also set forth a comprehensive list of issues that must be coordinated among all three parties to a three-way arrangement regardless of whether the arrangement was set forth in a

[67] Tr Vol VII, p 37, lines 15-19
[68] Coalition Response, pp 42-43
[69] Watkins Direct Testimony, Attachment D

single agreement or multiple agreements. He described these issues in the context of a draft voluntary three party contract that was prepared by the Coalition The issues include:

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 Acomplete 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, Aexcept 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.

On cross examination at the hearing, the CMRS providers attempted to establish that the rural Independents could enter into an indirect interconnection agreement without addressing all of these issues, and that in a few instances, some rural Independents had done so.[70] On redirect examination, Witness Watkins was asked to explain his understanding of how a rural Independent that had executed any such indirect contract agreement could reconcile that fact with the position of the Coalition. Mr. Watkins responded:

> I think they believe they made a mistake. It certainly would not be my recommendation to have an agreement in place that depends upon a third party when there's no terms and conditions in place with that third party. I think we all did things one way early on and we've all learned our lessons.[71]

Coalition Proposed Resolution of Issue 4: The issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration because it is associated with indirect interconnection. Moreover, the FCC has not established any standards or requirements with respect to this issue, and the specific matter is pending before the FCC. Accordingly, the Coalition submits that the position of the CMRS providers must be rejected and that the Authority should find that this issue

[70] Tr Vol VII, p 40, lines 11-22
[71] Tr Vol VII, p 41, lines 13-18

cannot be addressed lawfully in this proceeding in a manner consistent with the standards of arbitration set forth in Section 252(c) of the Act.[72]

F. 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?

This issue is raised in the context of indirect interconnection. As a matter of law (and fully addressed within the context of Issue 2), a Section 251(b)(5) reciprocal compensation arrangement is not applicable to indirect interconnection and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement.[73]

This issue reflects another attempt by the CMRS providers to ask the Authority to establish interconnection standards in the context of an arbitration hearing, thereby violating the standards of arbitration set forth in Section 252(c) of the Act. The CMRS providers are well aware that "there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated." These are not the Coalition's words, these are the words of the

---

[72] With regard to the appropriate finding regarding this issue, Witness Watkins properly observed: "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 " Watkins Testimony, p 23

[73] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11

FCC. In the matter of Telephone Number Portability, CC Docket No. 95-116, released November 10, 2003 at fn. 75. The point of this quotation demonstrates that the CMRS providers know that this issue is pending before the FCC The issue was raised in the Sprint Petition for Declaratory Ruling filed by Sprint on July 18, 2002.[74] It is apparent that the CMRS providers want the Authority to utilize this arbitration to establish an interconnection standard that they requested the FCC to establish over two years ago. The Coalition respectfully submits that establishing Section 251 interconnection standards is not within the scope of authority of the TRA.

Since the CMRS providers are well aware that Sprint has asked the FCC over two years ago to establish this standard, it is curious that Sprint Witness Pruitt maintains that the standard is already established.[75] Notwithstanding the fact that his company's request to the FCC is unresolved after more than two years, Witness Pruitt wrongly concludes that "there is authority" establishing that the rural LEC is responsible for the delivery of intraMTA traffic to a CMRS provider "at any point within the MTA."[76] If it were only that simple and that straight-forward, the FCC could have long ago acted on the Sprint Petition for Declaratory Ruling.

In making the claim that a rural LEC is responsible for the delivery of intraMTA traffic to a CMRS provider "at any point within the MTA," Witness Pruitt and the CMRS Providers have cited and incorrectly relied upon two cases.[77] Neither the *TSR Order* or *Mountain* involve the transiting of traffic by a third party. Both cases involve the responsibility of a non-rural LEC (Qwest) to deliver traffic to a paging carrier as a single point of connection on the network of the

---

[74] *See*, Fn 28 In addition to the pending Sprint petition for Declaratory Ruling, there is also pending the relief sought by BellSouth regarding the establishment of standards addressing responsibility for transit traffic *See*, p 29, *supra*

[75] Pruitt Direct Testimony, pp 20-21, Pruitt Rebuttal Testimony, pp 13-14.

[76] Pruitt Rebuttal Testimony, pp 13-14

[77] *TSR Order* (*see*, Fn 56) and *Mountain Communications, Inc V FCC*, , 355 F 3d 644 (D C Cir, January 16, 2004) ("Mountain.")

originating non-rural LEC.[78] In this proceeding, and in contrast, the CMRS providers want the rural LECs to take financial responsibility for the transport of traffic to the CMRS providers at a point beyond the network of the rural LEC No standard of interconnection, law or regulatory requirement exists that requires any rural LEC to assume financial responsibility for the transport of traffic beyond its network.

Witness Watkins explained in his Direct Testimony.

> 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 Ainterconnection 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) In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 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 Ainterconnection point@ on the network of the incumbent LEC.[79]

In its consideration of this issue and other related issues in this proceeding, the Coalition respectfully brings to the attention of the Authority the fact that this proceeding was initiated

---

[78] Pursuant to Sec 251(c)(2)(B) of the Act, non-rural LECs are required to provide interconnection at any technically feasible point within the carrier's network Rural LECs are exempt from this requirement pursuant to Sec 251(f)(1)

[79] Watkins Direct Testimony, p 26

within Docket No. 00-00523 which addresses "Universal Service in Rural Areas." The policy concerns that underlie these issues are far-reaching with significant implications for rural universal service. Accordingly, it is not surprising that the FCC has not rushed to act on the Sprint Petition for Declaratory Ruling and require rural LECs to pay to route traffic to points beyond the rural LEC networks.

At the hearing held in this proceeding, Director Tate explored this issue with Witness Watkins [80] On Redirect Examination, Witness Watkins was asked to comment on a quantitative example of the resulting impact if a rural LEC was required to pay Bellsouth's proposed transit charge of $ .0025 per minute, and a customer made 3000 minutes of calls per month to wireless customers that were transited by BellSouth. Mr. Watkins agreed that the resulting additional cost burden on the rural LEC would be $7 50 per month. He was asked, "Would 3,000 minutes times a quarter of a penny a minute, $7.50 a month, be significant to your clients?" Witness Watkins responded:

> It would seem to be considering that that would seem to be a large percentage of what they're currently charging as local exchange service in total.[81]

The FCC has clearly had good cause to refrain from acting to grant the Sprint Petition for Declaratory Ruling. There is no statutory or regulatory standard that would impose financial responsibility on rural LECs to transport traffic to a point of connection with the CMRS providers or any carrier beyond their networks. The example commented upon by Witness Watkins at the hearing reflects the underlying universal service concerns that any such requirement would raise.

---

[80] Tr Vol VIII, p 15 line 7 through p 16
[81] Tr. Vol. VIII, p 19, lines 19-21.

Coalition Proposed Resolution of Issue 5: The issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration because it is associated with indirect interconnection. Moreover, the FCC has not established any standards or requirements with respect to this issue, and the specific matter is pending before the FCC. Accordingly, the Coalition submits that the position of the CMRS providers must be rejected and that the Authority should find that this issue cannot be addressed lawfully in this proceeding in a manner consistent with the standards of arbitration set forth in Section 252(c) of the Act.

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

This issue is raised in the context of indirect interconnection. As a matter of law (and fully addressed within the context of Issue 2), a Section 251(b)(5) reciprocal compensation arrangement is not applicable to indirect interconnection and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement.[82]

This issue is associated with Issue 2, "Whether reciprocal compensation requirements apply to traffic exchanged indirectly. The Coalition respectfully submits that what the CMRS providers really seek by raising this issue is approval from the Authority to apply reciprocal

[82] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11

compensation to the termination of traffic sent indirectly over a BellSouth common trunk group. The facts and applicable regulation remain, as previously discussed: the reciprocal compensation rules established in Part 51 Subpart H of the FCC's regulations apply only to circumstances where there is an "interconnection point between the two carriers."[83]

No factual debate exists with respect to this issue; there is no doubt that CMRS traffic is combined with other traffic and carried by BellSouth over a common trunk group to the rural Independent networks The CMRS providers have a right to interconnect indirectly in this manner; they do not, however, have a right to apply reciprocal compensation to this arrangement. The choice of how to terminate traffic to the rural Independents is that of the CMRS providers. If they want to take advantage of reciprocal compensation, they may elect direct interconnection and establish Sec. 251(b)(5) interconnection in accordance with applicable law and regulations. In the alternative, if they find it more economical to utilize an indirect interconnection arrangement through BellSouth's common trunk group they may elect that course. CMRS Witness Pruitt indicates that a significant amount of CMRS traffic is transmitted through this indirect arrangement in order to obtain economic efficiency.[84]

The bilateral election by the CMRS provider and BellSouth does not, however, impose any obligation on the part of the rural Independents to relieve BellSouth of financial or network responsibilities with respect to the traffic that it physically interconnects to each Independent. Witness Watkins described the concerns that arise for the Coalition members in this regard as follows:

> 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

[83] 47 C F R Sec 51 701(c)
[84] Pruitt Direct Testimony, p 23, lines 1-5

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.[85]

Witness Watkins recognized that these concerns together with all matters related to this issue are beyond the scope of this arbitration proceeding:

> This is really an issue regarding the arrangement that the Independents have with BellSouth and the trunk groups that connect between the Independents and BellSouth. And the resolution of what the appropriate trunk group should be is largely dependent upon what those terms and condition are with BellSouth in this overall three-party agreement. . And because BellSouth isn't here and BellSouth discontinued its discussions, we don't yet know what those terms are going to be. . . It really demonstrates why these issues can't be resolved without BellSouth being here.[86]

Coalition Proposed Resolution of Issue 6: The issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration because it is associated with indirect interconnection. To the extent that the CMRS providers' intent is to utilize BellSouth common trunk groups to transport traffic on a reciprocal compensation basis, the FCC rules do not permit the mandatory imposition of reciprocal compensation in the absence of the establishment of an interconnection point between the networks of the two carriers exchanging traffic. Accordingly, the Coalition submits that the position of the CMRS providers must be rejected and that the Authority should find that this issue cannot be addressed lawfully in this proceeding in a manner consistent with the standards of arbitration set forth in Section 252(c) of the Act. Separate and apart from the

---

[85] Watkins Direct Testimony, p 29

[86] Tr Vol VIII, p 27 line 22 through p 28 line 13

requirements of Sec. 251 and the context of a Sec. 252 arbitration, the Coalition members remain willing on a voluntary basis to work with all parties to develop new and appropriate terms and conditions applicable to the transport of traffic by BellSouth through its common trunk groups and legacy Feature Group C interconnection arrangements.

H. CMRS ISSUE 7: (A) Where should the point of interconnection (APOI@) 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?

In contrast to the prior CMRS arbitration issues, this issue addresses direct interconnection. In a typical Sec. 252 arbitration, the establishment of a POI and the apportionment of the cost of direct connection facilities could be resolved in a manner consistent with the standards of arbitration established by Sec. 252(c). This proceeding, however, is not a typical arbitration – it is a collective arbitration. Direct interconnection is the product of a myriad of carrier specific considerations. Because the establishment of direct interconnection is specific and fact laden, Sec 252 of the Act establishes a process to facilitate the voluntary negotiation of agreements, and provides for arbitration of specific unresolved issues. The resolution of direct interconnection issues, however requires specific direct interconnection requests.

This arbitration proceeding, however, does not address any direct interconnection issues applicable to a specific proposed direct interconnection arrangement between any CMRS provider and any Independent. Instead, the CMRS providers merely issued a broad general request for direct interconnection, but focused the pre-arbitration discussions on the existing indirect interconnection arrangement. In this proceeding, the CMRS providers have raised an array of policy issues in an attempt to apply reciprocal compensation on a non-voluntary basis to an indirect interconnection arrangement, contrary to the established requirements of the Act and the FCC

When the CMRS providers initiated their interconnection request, they indicated that the request was for both indirect and direct interconnection. As the record in this proceeding reflects, however, there is no specific direct interconnection request pending before the Authority

to be resolved in this proceeding. With respect to Issue 7 and any of the subsequent issues that address direct interconnection, the Authority can, at best, resolve the general issues raised by the issue by restating the applicable statutory or FCC requirement.

Even the CMRS witnesses agree In the course of a discussion regarding the matter of direct interconnection, CMRS Witness Pruitt was asked if Direct interconnection agreements might incorporate "general terms that would apply to all agreements?" Mr. Pruitt responded, making the point that individual direct connection agreements may even vary with respect to those terms that are considered general:

> I'm not an attorney, but there are various common terms and definitions that you find in interconnection agreements. Obviously, it's not consistent across all agreements because it's subject to the individual negotiation of the parties.[87]

Coalition Witness Watkins has explained that there is little to be achieved in this proceeding with respect to any issue related to direct interconnection because of the lack of specific direct interconnection requests from the CMRS providers:

> 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.[88]

---

[87] Tr Vol I, p 42, lines 4-8

[88] Watkins Direct Testimony, p 32 (underscoring added)

Mr. Watkins stated and the Coalition reemphasizes the fact that each Coalition member would be pleased to enter into good-faith negotiations regarding direct interconnection of any CMRS provider to a point of interconnection on its network. Contrary to the implication indicated by the CMRS providers raising issue 7(a), no debate could exist with respect to where the POI should be. The statute and the FCC rules require the POI to be on the network of the incumbent LEC that receives the direct interconnection request. CMRS Witness Sterling suggests that the POI "may be located at any technically feasible point on an ICO's network or at any other mutually agreeable point."[89] As indicated by the quote provided above from the Direct Testimony of Witness Watkins, the Coalition is in general agreement. Mr. Sterling, however, may have overlooked the fact that the requirement to provide interconnection "at any technically feasible point' is established by the Act in Sec. 251(c)(2)(B), and that thie rural LECs are exempt from that requirement pursuant to Sec. 251(f)((1). Accordingly, the rural Independents would agree to permit a CMRS provider to establish their POI at any established point of interconnection within the rural LEC's network or any other mutually agreeable point.

With respect to Issue 7(b), there should be no disagreement between the parties that requires resolution. The standard regarding the apportionment of transmission facilities dedicated to the transmission of traffic between two carriers' networks is set forth in Sec. 51.709(b) of the FCC's Rules [90] Within the context of this proceeding there is no specific direct interconnection arrangement to which the Authority is asked to apply this standard to address an unresolved negotiation issue.

---

[89] Sterling Direct Testimony, p 10, lines 21-23
[90] 47 C F R Sec 51 709(b)

The CMRS providers have, however, attempted again to ask the Authority to establish an additional burdensome standard that goes far beyond any statutory or regulatory requirement. Witness Sterling states

> ILECs are responsible for the cost of delivering ILEC-originated traffic to CMRS carriers anywhere within the MTA in which the call originated. While we would not expect the ICOs to build facilities outside of their territory ti carry such traffic, we do believe the ICOs should compensate the CMRS carrier or third party carrier whose facilities are used to deliver such traffic.[91]

At the hearing, Mr. Watkins pointed out that this CMRS provider proposition with respect to direct connected traffic is the same as the CMRS provider proposal set forth in Issue 5 regarding the financial responsibility for the costs of transport of traffic to connect to a CMRS provider at a point beyond the network of a rural Independent.[92] Rather than repeat the discussion and citations the Coalition provided in response to Issue 5, the Coalition incorporates that response by reference here in response to Witness Sterling's proposal with respect to Issue 7(b). In summary, there is no statutory or FCC requirement that imposes financial responsibility on a rural LEC with respect to the transport of traffic wee beyond the network of the rural LEC.

Coalition Proposed Resolution of Issue 7: In its initial Response to the Petitions for Arbitration, the Coalition noted that the focus of the pre-arbitration discussions was on the establishment of new terms and conditions for the existing indirect interconnection arrangement. The Coalition proposed that the parties agree as a matter of good faith to eliminate Issue 7 from the list of arbitrated issues in recognition of the fact that the parties had not discussed specific direct interconnection arrangements. Once more in good faith, the Coalition proposes that the parties agree to eliminate this issue and all others that address direct interconnection In the alternative that the CMRS providers do not agree to this proposal, the Coalition respectfully submits that, for the reasons discussed above, the Authority should determine

[91] Sterling Direct Testimony, p. 11, lines 13-17
[92] Tr P 44, line 22 through p 45, line14

Issues 7(a) by finding that a CMRS provider may establish a POI at any established point of interconnection within a rural Independent's network or any other mutually agreeable point; and with respect to Issue 7(b), the Authority should find that the parties must apportion the costs of transmission facilities dedicated to the transmission of traffic between two carriers' networks in the manner set forth in Sec 51 709(b) of the FCC's Rules. In addition, the Authority should find that, consistent with statutory and regulatory requirements, no rural Independent is responsible for the transmission of local exchange service traffic to distant points or beyond the network of the rural LEC or beyond the area established for its local calling scope

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

This issue is raised in the context of indirect interconnection. As a matter of law (and as fully addressed within the context of Issue 2), a Section 251(b)(5) reciprocal compensation arrangement is not applicable to indirect interconnection, and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement [93]

[93] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11.

The CMRS providers expended an apparent considerable amount of resources in the development of expert costing testimony [94] Their testimony is entirely based on the assumption that the appropriate costing methodology on which the rural Independents should base their termination charges to CMRS providers is forward-looking economic cost based methodology pursuant to Section 51.505 and 51511 of the FCC's Rules.[95]

Coalition Witness Watkins pointed out in his Rebuttal Testimony that the assumption upon which the CMRS witnesses based their testimony was incorrect:

> (T)he FCC=s form of costing and pricing, as reflected in those rules, do not apply Not only do these pricing rules not apply to the indirect Atransit@ arrangement that already exists, but these pricing rules do not even apply in the scope of establishing a lawful exchange of traffic at an interconnection point between two carriers where one carrier is a to Rural Telephone Company [96]

Mr. Watkins testimony in this regard is not a matter of opinion or analysis; his testimony reflects his knowledge of the plain meaning of the FCC's own words set forth in the initial *FCC Interconnection Order*

> We also address the impact on small incumbent LECs. For example, the Western Alliance argues that it is especially important for small LECs to recovery lost contributions and common costs through termination charges. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, we conclude that termination rates for all LECs should include an allocation of forward-looking common costs, but find that the inclusion of an element for the recovery of lost contribution may lead to significant distortions in local exchange markets. We also note that certain incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small

---

[94] *See, generally*, Direct, Rebuttal, supplemental and Second Supplemental Testimony of W Craig Conwell ("Conwell Testimony") and the Supplemental Consolidated Direct and Rebuttal Testimony of Talmage O Cox, III ("Cox Testimony")

[95] 47 C F R. Sec. 51 505 and 51 511.

[96] Watkins Rebuttal Testimony, p 19

incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.[97]

It is appropriate to note once more that the inception of this proceeding was in the Authority's generic Rural Universal Service Docket No. 00-00523. The very specific underlying policy that has resulted in the FCC's decision not to apply forward-looking economic cost methodology to the rural LECs is based on the potential adverse impact on rural universal service. In this regard, Mr. Watkins noted that the FCC has repeatedly declined to impose these pricing rules on Rural Telephone Companies (based upon the FCC=s own conclusions) largely because of the concerns for universal service in rural areas as reflected by the protections afforded these smaller LECs and their rural customers pursuant to Section 251(f)(1) of the Act. All of the ICOs are Rural Telephone Companies.[98]

Outside of the context of Section 251 interconnection and Section 252 negotaition and arbitration, and on a voluntary basis, the rural Independents have endeavored to develop and offer a voluntary rate proposal that could be used in conjunction with the establishment of new terms and conditions applicable to the existing indirect interconnection arrangement through BellSouth While the voluntary compromise rates have been provided subject to confidentiality, aspects of the voluntary proposal and the conceptual framework upon which it is based have been discussed by Coalition Witness Watkins [99] As reflected by Mr Watkins, the Coalition members have been subjected to accusations by parties suggesting that the Independents have resisted the reality of change in the telecommunications environment:

> 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

---

[97] *FCC Interconnection Order*, para 1059 (underscoring added)
[98] Watkins Rebuttal Testimony, p 19
[99] *See*, Watkins Direct Testimony, pp 35-37, Tr Vol VIII, p 47

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 from the rate they receive (or should lawfully receive) for the termination of the traffic through BellSouth under existing terms and conditions.

Coalition Proposed Resolution of Issue 8: The issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration because it is associated with indirect interconnection. Moreover, the FCC has not established any standards or requirements with respect to costing standards for the rural LECs other than those standards established in Part 69 of the Commission's rules which would be applicable to functionally equivalent network elements. Accordingly, the Coalition submits that the position of the CMRS providers to utilize forward-looking economic cost methodology with respect to the rural Independents must be rejected. The Coalition members express their continued willingness to negotiate new terms and conditions on a voluntary basis and outside of the scope the arbitration proceeding

J. 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?

To the extent that this matter is raised in the context of a direct Sec. 251(b)(5) interconnection arrangement, the Coalition has indicated that it is reasonable for parties to agree voluntarily to the utilization of traffic factors, but that the Rural LECs would prefer to measure their own traffic.[100] No statutory requirements or FCC standards have been established that address the use of traffic factors If a specific direct interconnection agreement was pending before the Authority, the parties could voluntarily submit to the Authority to resolve the

[100] Coalition Response, p 71

establishment of a traffic factor Because no such specific direct interconnection arrangement is pending before the Authority, there is no practical issue for the Authority to address.

To the extent that the CMRS providers have raised this issue in the context of the existing indirect interconnection arrangement, a Section 251(b)(5) reciprocal compensation arrangement is not applicable to indirect interconnection and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement.[101]

CMRS Witness Brown suggests the use of a 60/40 factor to be applied to the existing indirect interconnection arrangement. Moreover, he proposes that the Authority adopt the use of this factor because the Coalition has not proposed an alternative [102] Witness Brown's suggestion should be rejected as both a matter of law and common sense. As a matter of law, the parties have not voluntarily submitted the issue of establishing a traffic factor for a direct interconnection arrangement to the Authority. In the absence of established Section 251 requirements established by statute or regulation, there is no basis upon which the Authority could resolve this matter unless the parties voluntarily submitted the issue for arbitration. As a matter of common sense, it makes no sense to apply any specific factor broadly and in the absence of the consideration of a specific direct interconnection arrangement. If and when any

---

[101] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para. 3 and note 11

[102] Brown Direct Testimony, p 30, lines7-10

of the parties negotiate direct interconnection, they may voluntarily agree to utilize factors and to submit the establishment of the factor to the Authority in the event they are unable to establish a factor on a mutual basis.

Outside of the context of a Section 252 proceeding, and on a voluntary basis, the Coalition has indicated

Coalition Proposed Resolution of Issue 9: For the reasons discussed above, the Authority should reject the proposed establishment of any specific traffic factors. To the extent that this issue addresses direct interconnection pursuant to Sec. 251(b)(5), the Authority should find that parties may voluntarily agree to use factors as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic.

K. 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*?

The analysis of this issue is very similar to Issue 9 to the extent that the CMRS Providers seek to establish an interconnection standard and requirement that does not exist. Nor have the parties voluntarily submitted this issue to the Authority to resolve through arbitration:

> The Independents will require identification of all traffic, particularly if such traffic is commingled with traffic of many carriers and is commingled with BellSouth=s traffic. Accordingly, the amount of traffic from any specific CMRS provider will be known. Once billing systems are established for whatever the ultimate relationship will be between the parties, the cost to produce the bill will be little more than the cost of pushing a few buttons and printing the results on paper. If a business simply overlooks all bills that are below a certain amount, they would forego large amounts of revenue, and the large volume users of service would be effectively subsidizing small volume users [103]

The Coalition has observed that an amount of traffic and related compensation that is *de minimis* to a large CMRS provider may not be *de minimis* to a rural LEC. On a voluntary basis and outside of the scope of an arbitration proceeding, the Coalition has indicated its willingness "to consider accommodating any legitimate concerns regarding administrative efficiency by working toward an agreement to hold billing until the amount due reached a threshold amount."[104]

Coalition Proposed Resolution of Issue 10: For the reasons discussed above, the Authority should reject the proposed establishment of any specific *de minimis* billing criteria, recognizing that no statutory or regulatory standard exists with regard to this matter. To the extent that this issue addresses direct interconnection pursuant to Sec. 251(b)(5), the Authority should find that parties may voluntarily agree to establish *de minimis* billing criteria, but that there is no requirement to do so.

---

[103] Coalition Response, p 72
[104] *Id*

L. 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?

The analysis of this issue is very similar to Issue 9 and 10 to the extent that the CMRS Providers seek to establish an interconnection standard and requirement that does not exist. Nor have the parties voluntarily submitted this issue to the Authority to resolve through arbitration. No statutory requirements or FCC standards have been established that address the use of inter-MTA traffic factors. If a specific direct interconnection agreement was pending before the Authority, the parties could voluntarily submit to the Authority to resolve the establishment of an interMTA traffic factor. Because no such specific direct interconnection arrangement is pending before the Authority, there is no practical issue for the Authority to address.

Coalition Witness Watkins conclusively explained why the voluntary establishment of an interMTA factor cannot be achieved with a broad-brush general application to all of the rural Independents. The issue and the related concerns are fact specific and based on the characteristics of the carriers involved in the interconnection arrangement:

> 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.[105]

Coalition Proposed Resolution of Issue 11: For the reasons discussed above, the Authority should reject the proposed establishment of any specific interMTA factor, recognizing that no statutory or regulatory standard exists with regard to this matter. To the extent that this issue addresses direct interconnection pursuant to Sec. 251(b)(5), the Authority should find that parties

[105] Watkins Direct Testimony, p 40

may voluntarily agree to establish an interMTA factor criteria, but that there is no requirement to do so.

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

This issue represents another attempt by the CMRS providers to try to obtain an award from the Authority that they have failed to obtain from the FCC. The CMRS providers want the rural Independents "to charge their end users the same amount for calls to CMRS NPA/NXXs associated with a given rate center as they charge their end users for calls to landline subscribers" NPA/NXXs associated with the same rate center."[106] At first blush, and in the absence of critical analysis, the CMRS provider position appears to rank with "motherhood and apple pie." If only the issue was as simple as it may artificially appear at first, the FCC would long ago have ruled on the Sprint Petition for Declaratory Ruling.[107]

As the Authority is undoubtedly aware, within the framework of landline calling, customer demand for expanded local calling areas raises an array of issues including the migration of traffic from toll to local and the resulting ramifications on network investment, cost recovery and rate design. Within the framework of landline/mobile calling, there are no established standards or requirements Pursuant to Sec. 332 of the Act, CMRS traffic is not subject to rate regulation Arguably, and as a matter of equal protection, the restriction on rate regulation of CMRS traffic between wireless and landline networks may be applicable

---

[106] Sterling Rebuttal Testimony, p 3, line 23 to p 4, line 2

[107] "In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers" ("Sprint Petition for Declaratory Ruling") filed by Sprint in FCC CC Docket 01-92 (filed July 18, 2002).

irrespective of whether a call traveling on a CMRS network originates on the wireless or landline networks.

Thankfully, the Authority need not and should not address this issue within the context of this arbitration proceeding. To the extent that this Sec. 252 arbitration proceeding addresses a request for direct Sec 251(b)(5) interconnection, the statutory standards and regulatory requirements associated with reciprocal compensation arrangements address only a carrier's right to terminate traffic There is no standard or requirement that addresses any mandate with respect to how a carrier charges its end users for the traffic it sends to another carrier.[108]

The CMRS providers attempt, but fail, to sustain their argument on the basis of Sec. 251(b)(3) of the Act:

> DIALING PARITY – The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory lsiting, with no unreasonable dialing delays [109]

This statutory provision does not address or mandate the charges that a carrier assesses to its end users. Moreover, assuming *arguendo* that this statutory provision did mandate the result that the CMRS providers seek, enforcement of any such statutory requirement would be subject to the authority of the FCC.[110] The matter would not be one to be negotiated by parties and resolved through arbitration by the TRA or any state regulatory body.

The fact is, however, that there is no statutory or FCC requirement that mandates the charges a landline carrier assesses to its end users with respect to calls to wireless networks The CMRS request to establish this requirement is pending in the Sprint Petition for Declaratory Ruling. Contrary to the assertions of the CMRS providers, the FCC has affirmed that "nothing

---

[108] Watkins Testimony, p 43-44
[109] 47USC Sec 251(b)(3)
[110] 47 USC Sec 201

prevents" a local exchange carrier from provisioning service from its end users to a CMRS carrier as a toll service.[111] Unlike the CMRS providers, the FCC has recognized·

> Because 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.[112]

Notwithstanding the fact that no statutory or FCC standard mandates the manner in which any Coalition member provisions its end users with service to wireless networks, the rural Independents are concerned with meeting their customers' needs with respect to their calling to wireless networks. Accordingly, on a voluntary basis outside of the scope of the Sec. 252 arbitration proceeding, the Coalition developed and proposed a surrogate approach that addresses the objectives of the CMRS providers, serves the needs of rural landline customers, and ensures that the rural LECs are not burdened with the imposition of significant additional expenses in the absence of offsetting revenues. The Coalition members remain ready, willng and able to discuss this proposal on a voluntary basis

Coalition Proposed Resolution of Issue 12: The "dialing parity" issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration. Even if the CMRS providers were correct in their attempt to mandate how rural Independents provision their services – and, they are not – their claim would be one subject to the enforcement power of the FCC. The rates a rural LEC charges its end users is not a matter addressed by the statutory and regulatory

---

[111] *TSR Order* at para. 31

[112] *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order, CC Docket No 95-116, released October 7, 2003

requirements regarding Sec 251(b)(5) termination of traffic through a reciprocal compensation direct interconnection arrangement Consequently, the Coalition submits that the Authority should address this issue by rejecting the position of the CMRS providers and determining that it will not establish end user rates applicable to any party in the context of a Sec. 252 arbitration proceeding.

N. 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?

This issue is raised in the context of indirect interconnection. As a matter of law (and fully addressed within the context of Issue 2), a Section 251(b)(5) reciprocal compensation arrangement is not applicable to indirect interconnection and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement.[113]

The matter of 11-01-01 records arises only under circumstances where the interconnection is indirect through BellSouth. The Coalition understands that "11-01-01" is the term that BellSouth has given to the records that it would provide to a carrier to which it transits another carrier's traffic The Coalition understands that as a result of the bilateral so-called "meet-point billing arrangements" established between BellSouth and the CMRS providers, these parties expect the rural Independents voluntarily to alleviate BellSouth of responsibility for

[113] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11

the traffic it brings to each rural LEC through its established interconnection. Because of the configuration of this common trunk interconnection that BellSouth insists on maintaining, the Coalition member cannot independently determine the originating carrier that sends traffic through BellSouth It is for this reason that BellSouth would provide the Independents with "11-01-01" records for billing purposes

There is no statutory requirement or FCC regulation that requires the rural Independents to establish a reciprocal compensation through an indirect BellSouth common trunk group Coalition Witness Watkins concisely explained how this issue 13 further demonstrates why three-way interconnection arrangements are not subject to mandatory reciprocal compenstation:

> 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 . . . If no carrier is ultimately responsible (to the rural Indepenndnets), 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 [114]

In the course of the hearing and the examination regarding this matter, an odd event occurred. Throughout the discussions related to this matter among all parties (including BellSouth), and as reflected by the arbitration petitions, the Response and the pre-filed testimony, there was an apparent understanding that when traffic is transmitted to the rural Independents through the existing common trunk interconnection of BellSouth, the

[114] Watkins Direct Testimony, p 47

Independents must depend on cooperation from BellSouth to receive billing records if they agreed to alleviate BellSouth of financial responsibility for the traffic it terminates to them. During cross examination, CMRS Witness Nieman indicated, however, that with the use of the SS7 network, the Independents would not have to rely on BellSouth to obtain billing information.[115]

When Witness Nieman was questioned further regarding her claim, Witness Nieman acknowledged that her technical knowledge of SS7 was a "layman's understanding."[116] The Coalition respectfully noted before the Authority and the other parties that Witness Nieman had testified during cross examination to new information that was neither in her direct testimony, nor anywhere on the record prior to cross-examination.[117] Subsequent to discussion among the parties and with the Chairman, the parties agrees to attempt to reach a factual stipulation subsequent to the hearing or, alternatively, file supplemental testimony regarding this factual issue. The parties failed to reach a stipulation; supplemental testimony was filed on September 7, 2004, and supplemental rebuttal testimony is due on September 22, 2004.

The Coalition reserves its rights to address this matter further in subsequent pleadings in this proceeding While the Coalition submits that it is vital to establish a complete understanding of the truth regarding this issue, the Coalition also notes that the matter is not dispositive to the arbitration proceeding itself. Resolution of the matter of billing records where BellSouth remains in an intermediary role does not change the fact that the interconnection arrangement is an indirect arrangement where there is no "point of interconnection between the carriers" exchanging traffic. Consequently, the billing record matter is not crucial to resolving

---

[115] Tr Vol V, p 34, line 7 through p 35 line 14
[116] Vol V, p 35, line2
[117] Vol VI, p 89, line 21 to p 9, line 3

the arbitration issues. The matter is critical, however, to the subsequent negotiations and potential formal processes that the Coalition anticipates will be required to resolve issues regarding the establishment of new terms and conditions applicable to the three-way existing interconnection arrangement.

Coalition Proposed Resolution of Issue 13: The issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration because it is associated with indirect interconnection. The use of 11-01-01 billing records, or the billing records of any intermediary party, are associated with an indirect interconnection arrangement The Coalition members have not voluntarily submitted indirect interconnection issue to arbitration, and no statutory standards or regulatory requirements are established with respect to the use of third-party billing records or any other aspect of indirect interconnection. Accordingly, the Coalition submits that the Authority should resolve Issue 13 by finding that the scope of a reciprocal compensation agreement subject to Sec 252 arbitration is one that involves direct interconnection and would not, therefore, address the use of the billing records transmitted by BellSouth or any other third party intermediary carrier.

O. CMRS ISSUE 14: Should the scope of the Interconnection Agreement be limited to traffic transited by BellSouth? and
CMRS Claimed ICO Position Issue 15: Yes. The ICO position appears to be that a separate agreement is required for a direct interconnection scenario.

The CMRS Providers apparently desire that the outcome of this Sec. 252 arbitration proceeding will be a boiler plate catch-all agreement that they can utilize with any rural LEC and any third party carrier, for direct or indirect traffic, and for all traffic exchanged between the

carriers.[118] As convenient and efficient as that may appear, it is contrary to the established interconnection statutory standards and requirements. While there is no doubt that it may be worthwhile for parties to endeavor voluntarily to establish a master all-in-one contractual agreement, no party should be required to do so

With respect to Issue 14, the scope of any interconnection agreement subject to a Section 252 arbitration would not include traffic transited by BellSouth or any other third party carrier unless the parties voluntarily agreed to subject an indirect interconnection to arbitration which is not the case in this instance As a matter of law (and fully addressed within the context of Issue 2), a Section 251(b)(5) reciprocal compensation arrangement is not applicable to Issue 14 or any aspect of indirect interconnection, and the FCC has not established standards or requirements that are applicable within the context of a Section 252 arbitration. To the extent that the Issue raised by the CMRS providers assumes circumstances where BellSouth is providing a "transiting arrangement," the terms and conditions associated with that arrangement cannot be lawfully resolved through a Section 252 arbitration on a non-voluntary basis. As discussed previously, the FCC rules do not address "transiting," and the FCC has seen no clear "precedent or rules declaring such a duty" to enter into a transiting arrangement.[119]

Moreover, it became apparent at the hearing that the issue was "academic." On cross examination, Witness Nieman indicated that there is only one party that fit the description of the indirect interconnection arrangement that the CMRS providers seek to impose on the Coalition member, and that party is BellSouth [120]

---

[118] Nieman Direct Testiony, p 8, lines 18-21

[119] *Order on Reconsideration*, CC Docket Nos 00-218, 00-249, and 00-251 released May 14, 2004 at para 3 and note 11

[120] *See*, Tr Vol V p 52, lines 2-17

In the course of that cross examination, another critical fact was confirmed with respect to the mandates the CMRS providers attempt to require from the rural Independents. Witness Nieman confirmed that the arrangement proposed by the CMRS providers would mandate how the rural Independents transmit their traffic. In other words, the CMRS providers profess that they have the right to elect to use BellSouth to interconnect to the rural Independent networks, and the additional right to force the rural Independents to send traffic to them through the BellSouth transport arrangement they choose [121] The Coalition respectfully submits that there is no statute, regulation, order or requirement of any type that would permit any CMRS provider to dictate how the rural Independent elects to network its traffic. The revelation by the CMRS providers that their proposed arrangement requires the rural Independents to network traffic at the command of the CMRS providers demonstrates further how unreasonable, inequitable and unsustainable are the indirect interconnection terms and conditions proposed by the CMRS providers

Coalition Proposed Resolution of Issue 14: The issue raised by the CMRS providers is outside of the scope of a Section 252 arbitration because it is associated with indirect interconnection. The Coalition members have not voluntarily submitted indirect interconnection issue to arbitration, and no statutory standards or regulatory requirements are established with respect to the use of any third-party transit provider or any other aspect of indirect interconnection. Moreover, the testimony by the CMRS witness indicating that BellSouth is the only carrier that fits their proposed arrangement essentially would moot this issue even if it was one subject to the standards required by Sec. 252(c). The Coalition submits that the Authority should resolve Issue 14 by finding that the scope of a reciprocal compensation agreement subject to Sec. 252

[121] Tr , Vol V, p 54, lines 7-10

arbitration is one that involves direct interconnection and would not, therefore, address the use of the BellSouth or any other third party intermediary provider.

With respect to Issue 15 and the proposal by the CMRS providers to include direct interconnection in an arbitrated Sec. 252 agreement, the Coalition notes that as a matter of law, it is only a direct interconnection reciprocal compensation arrangement that could be arbitrated on a non-voluntary basis. The Coalition understood from the outset of the negotiations initiated by the Pre-Hearing Office in Docket No. 00-00523 that the focus of all parties was on the establishment of new terms and conditions applicable to the existing indirect interconnection arrangement. Each Independent stands ready to negotiate direct connection in good faith with any CMRS provider.

As noted earlier in the context of the discussion regarding Issue 7, there is no specific direct interconnection request pending before the Authority in this proceeding. The requests for direct interconnection by the CMRS providers were part of a broad catch-all, and the pre-arbitration discussions did not address any specific direct interconnection between any of the carriers. The fact that direct interconnection requires the negotiation of a number of specifics is well known by all parties.[122] The Coalition simply does not understand the fact that the CMRS providers maintain that they would like to resolve a direct interconnection agreement in this proceeding without first engaging in good faith company specific negotiations. Witness Sterling offers only a somewhat circular comment in support of moving forward with a direct interconnection agreement:

[122] "I'm not an attorney, but there are various common terms and definitions that you find in interconnection agreements. Obviously, it's not consistent across all agreements because it's subject to the individual negotiation of the parties." Tr. Vol. I, p. 42, lines 4-8.

> Without provisions governing the rates, terms and conditions for direct interconnection facilities, it is not clear the parties would be able to negotiate terms and conditions governing direct interconnection facilities.[123]

The fact is, however, that any purported interconnection agreement resulting from this arbitration will, by necessity, be scant and require negotiation. No discussions have been held in this process regarding specific facilities, points of interconnection, anticipated network load demands and numerous other specifics. The statutory and regulatory framework for resolving direct interconnection is a matter of law and should be maintained. When and if any CMRS provider desires to deploy direct interconnection with a rural LEC, it should, pursuant to statute and regulation, issue a bona fide request and then engage in a good faith negotiation with the carrier

Coalition Proposed Resolution of Issue 15: The Coalition respectfully submits that the Authority should resolve Issue 15 by finding that the proper scope of an interconnection agreement to establish reciprocal compensation is a direct interconnection arrangement. In addition, the Authority should find that based on the record, it is clear that the efforts of the parties in this proceeding have been focused on the existing indirect interconnection arrangement. There is no sufficient record upon which to establish any specific direct interconnection arrangement, and there is no specifics related to any direct interconnection arrangement pending before the Authority in this proceeding.

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

The record demonstrates minimal discussion regarding this issue.[124] In the course of good faith negotiations and within the scope of attempts to resolve the matters related to indirect

---

[123] Sterling Direct Testimony, p 7, lines 5-7

[124] *See*, Watkins Direct Testimony, p 50, Nieman Direct Testimony, pp 12-14

interconnection on a voluntary basis outside of the scope of Sec. 251(b)(5)interconnection requirements and Sec. 252 arbitration, the parties exchanged document that set forth commercial terms and conditions.

Coalition Proposed Resolution of Issue 16: The Coalition respectfully submits that the most practical way to resolve this Issue 16 is for the Authority to refrain at this time form adopting any general terms and conditions. The adoption of any such terms and conditions for application to the existing indirect interconnection arrangement in the context of the arbitration proceeding would be contrary to the standards of arbitration. The adoption of any such terms and conditions for application to a direct connection arrangement appears to be wasted effort when no parties have brought any specific direct interconnection before the Authority. The Coalition is confident that the relative minimal disagreement regarding standard commercial terms and conditions is indicative that the parties will be likely able to reach agreement with respect to these terms and conditions as they go forward with bona fide requests for direct interconnection as the need arises.

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

This issue appears to be more controversial than it is. The rural Independents do not seek to cut off any customers or block any traffic. The Coalition members only want to be able to enforce their basic commercial rights. Nationwide, all carriers that provide interconnection are more vigilant in their collection efforts in order to avoid adverse financial impact that may in turn harm the well-being of a rural LEC, its customers and its community.[125] The Coalition does not seek the ability to cut-off a CMRS carriers in the absence of circumstances that would

[125] Watkins Direct Testimony, p 51

warrant any reasonable service provider to discontinue service in the absence of payment. Nor does any rural Independent seek to discontinue service to a CMRS provider in the absence of appropriate coordination with regulatory authority.

Coalition Proposed Resolution of Issue 17: The Coalition respectfully submits that this issue should be resolved by a determination by the Authority that rural Independents may incorporate into interconnection agreements subject to Sec. 251(b)(5) reciprocal compensation and Sec. 252 arbitration such terms and conditions that are equivalent to the notice and cut-off provisions which are incorporated into the effective interstate access tariff of the rural Independents.

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

This issue is another that did not produce significant amounts of testimony or discussion in the course of this proceeding CMRS Witness Pruitt, however, focuses attention on this matter in the context of the interconnection between BellSouth and the rural LECs and the ramification of any potential network changes.[126] Witness Pruitt's comments together with those of CMRS Witness Nieman regarding the attempt to require rural Independents to transit traffic through BellSouth[127] set off alarms of continued concern by the Coalition members that the CMRS providers are, indeed, attempting to bind them to subtend a BellSouth tandem.[128] In the course of subsequent voluntary negotiations and or other appropriate formal proceedings that may address the establishment of new term and conditions for the existing indirect interconnection arrangement, the Coalition members will continue to protect their interests in this regard.

---

[126] Pruitt Rebuttal Testimony , p 17-18
[127] *See, supra*, p 60
[128] Watkins Testimony, p 53

Coalition Proposed Resolution of Issue 18: To the extent that the CMRS providers have raised and addressed this issue in the context of the existing indirect interconnection arrangement, there is no basis for the Authority to act on this issue in the context of this Sec. 252 arbitration proceeding. The Coalition respectfully submits that this issue should be resolved by the Authority's determination that the rural Independents may incorporate into interconnection agreements subject to Sec. 251(b)(5) reciprocal compensation and Sec. 252 arbitration such terms and conditions regarding network changes, associated costs, and notifications that are consistent with the statutory and FCC regulations applicable to the rural Independents and any other such provisions mutually and voluntarily negotiated by the parties.

S. The "ICOs' Additional Issues" Have Been Incorporated Into Discussions Addressing the CMRS Issues.

The Act provides parties responding to an arbitration petition with the opportunity "to provide such additional information as it wishes."[129] The Coalition utilized this opportunity to attempt to bring to the attention of the Authority several of the most significant aspects of the issues regarding the establishment of new terms and conditions for the existing indirect interconnection arrangement. Most significantly, and at the earliest possible opportunity, the Coalition sought to provide the Authority with its analysis of the limited potential scope of the arbitration process that was initiated.

Accordingly, one of the discussion points set forth by the Coalition was item 7, "Many of the issues raised in these proceedings are not the subject of established FCC rules and regulations. The parties must recognize that these issues are subject to voluntary agreement, and not to involuntary arbitration." This together with the other discussion points added by the

[129] 47 USC Sec 252(b)(3)

Independents was intended to both stimulate and focus the discussion of the issues. The Coalition is satisfied that these points of discussion have been incorporated into the discussions addressing the CMRS arbitration issues in both the pre-filed testimony of all parties and the presentations of the witnesses at the hearing

In addition, the Coalition respectfully submits that a review of both the narrative introduction to the Coalition Response to Petitions (pages 2-15) and the Coalition's Preliminary Motion to Dismiss will provide the Authority with a fuller appreciation of the efforts the Coalition has undertaken to resolve all disputed matters in a manner consistent with the application of the law to these factual circumstances. Although the Coalition was not successful in its efforts to move the parties away from adversarial arbitration to the alternative dispute resolution that the Coalition first proposed in its Response to the Petition, the rural Independents remain steadfast in their desire to resolve the issues associated with the existing indirect interconnection arrangement in a manner that is mutually satisfactory to all parties.

V. Conclusion

Wherefore, the Coalition respectfully submits that the Authority should resolve each of the arbitration issues in accordance with the recommendations set forth above

Respectfully submitted,

The Tennessee Rural Independent Coalition

By William T. Ramsey

William T. Ramsey
John Clarke
Neal & Harwell, PLC
2000 First Union Tower
150 Fourth Avenue North
Nashville, Tennessee 37219-2498

Stephen G. Kraskin
Kraskin, Moorman & Cosson LLC
2120 L St. N.W. Suite 520
Washington, D.C. 20037

CERTIFICATE OF SERVICE

I , the undersigned, hereby certify that on 10th day of September 2004, a true and correct copy of the foregoing was served on the parties of record via first-class mail and electronic mail:

Russ Mitten, Esq.
Citizens Communications
3 High Ridge Park
Stamford, Connecticut 06905
Rmitten@czn com

Henry Walker, Esq
Boult, Cummings, et al
PO Box 198062
Nashville, TN 37219-8062
hwalker@boultcummings com

Jon E. Hastings, Esq.
Boult, Cummings, et al
PO Box 198062
Nashville, TN 37219-8062
jhastings@boultcummings.com

James Wright, Esq.
Sprint
14111 Capitol Blvd.
NCWKFR0313
Wake Forest, North Carolina 27587
James wright@mail sprint com

J. Gray Sasser, Esq
Miller & Martin
1200 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219
gsasser@millermartin.com

James Lamoureux, Esq.
AT&T
1200 Peachtree St N.E.
Atlanta, Ga. 30309
Lamoureux@att com

Donald L. Scholes
Branstetter, Kilgore, et al.
227 Second Ave. N.
Nashville, TN 37219
dscholes@branstetterlaw.com

Timothy Phillips, Esq.
Office of the Tennessee Attorney General
PO Box 20207
Nashville, TN 37202
Timothy.Phillips@state.tn.us

Guy M. Hicks, Esq.
Joelle Phillips, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300
Joelle.Phillips@bellsouth.com

Elaine Critides, Esq.
John T. Scott, Esq.
Charon Phillips, Esq.
Verizon Wireless
1300 I Street N.W.
Suite 400 West
Washington, D.C. 20005
elaine.critides@verizonwireless com

Paul Walters, Jr., Esq.
15 East 1st Street
Edmond, OK 73034
pwalters@sbcglobal.net

Suzanne Toller, Esq.
Davis Wright Temaine
One Embarcadero Center #600
San Francisco, Calif. 94111-3611
suzannetoller@dwt com

Beth K Fujimoto, Esq.
AT&T Wireless Services, Inc
7277 164th Ave., N E.
Redmond, WA 90852
Beth.fujimoto@attws.com

Monica M. Barone, Esq.
Sprint
6450 Sprint Parkway
Overland Park, KS 66251
mbaron02@sprintspectrum.com

Mr Tom Sams
Cleartalk
1600 Ute Ave.
Grand Junction, CO 81501
toms@cleartalk.net

Dan Menser, Esq
Marin Fettman, Esq
c/o T Mobile USA, Inc.
12920 SE 38th St.
Bellevue, WA 98006
dan.menser@t-mobile.com

Mark J. Ashby
Cingular Wireless
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342
Mark.ashby@cingular.com

Stephen G. Kraskin, Esq.
Kraskin, Lesse & Cosson, LLP
2120 L Street NW, Suite 520
Washington, DC 20037
skraskin@klctele.com

Joe Chiarelli
Sprint
6450 Sprint Parkway, 2nd Fl
Mail Stop KSOPHN0212 2A568
Overland Park, KS 66251
jchiar01@sprintspectrum.com

Bill Brown
Senior Interconnection Manager
Cingular Wireless
5565 Glenridge Connector, Suite 1534D
Atlanta, GA 30342
bill.brown@cingular.com

Dan Menser
Sr. Corporate Counsel
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
dan.menser@t-mobile.com

Greg Tedesco
T-Mobile USA, Inc.
2380 Bisso Lane, Suite 256
Concord, CA 94520-4821
greg.tedesco@t-mobile.com

Gary Sanchez, Associate Director-
State Regulatory Relations
Cingular Wireless
5565 Glenridge Connector Ste. 1710
Atlanta, GA 30342
gary.sanchez@cingular.com

Marc Sterling
Verizon Wireless
One Verizon Place
Alpharetta, GA 30004
Marc.Sterling@VerizonWireless.com

Melvin J. Malone
Miller & Martin PLLC
1200 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219
mmalone@millermartin.com

Mark Felton
SPRINT
6450 Sprint Parkway
Mail Stop KSOPHN0212 – 2A472
Overland Park, KS 66251
mark g felton@mail com

Laura Gallagher, Esq.
Drinker Biddle & Reath LLP
1500 K Street, NW
Washington, DC 20005
laura Gallagher@dbr com

William J Ramsey