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October 5, 2004

VIA HAND DELIVERY

Honorable Pat Miller, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

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

Dear Chairman Miller:

Enclosed please find one (1) original and thirteen (13) copies of the *Joint Reply Brief Submitted on Behalf of the CMRS Providers* for filing in the above-referenced matter.

Also enclosed is an additional copy of the document to be "Filed Stamped" for our records.

The enclosed document has been served on counsel for the Rural Independent Coalition. If you have any questions or need additional information, please let me know.

Very truly yours,

Melvin J. Malone

MJM cgb

Enclosure

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BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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

JOINT REPLY BRIEF SUBMITTED ON BEHALF OF THE CMRS PROVIDERS

October 5, 2004

TABLE OF CONTENTS

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JOINT REPLY BRIEF OF THE CMRS PROVIDERS

I. INTRODUCTION

It comes as no surprise that the ICOs continue to argue that the Tennessee Regulatory Authority ("TRA" or "Authority") lacks authority to conduct this arbitration under section 252 of the Communications Act of 1934, as amended (the "Act"). The ICOs argue that any resolution of these issues should be based upon their offers "voluntarily" to provide to the CMRS Providers certain services outside of the constructs of sections 251 and 252 of the Act and upon the TRA's general authority to resolve complaints brought before this regulatory body. However, the time for negotiations has passed, and neither the explicit terms of the Act (and the accompanying FCC regulations) nor common sense supports the ICOs' position.

As discussed more thoroughly in the CMRS Provider's post-arbitration brief (the "CMRS Brief"), this case is a straightforward arbitration under section 252(b) of the Act. There is no dispute that the Act applies to wireless – wireline interconnection, that the CMRS Providers initiated negotiations under section 251, that those negotiations failed to produce an agreement between the parties, and that arbitration proceedings under section

252(b) of the Act were timely initiated. In fact, in moments of candor, the ICOs themselves admit that the TRA has the authority to resolve the issues before it.[1]

As discussed throughout this proceeding, the basic principles of interconnection between a local exchange carrier, including rural local exchange carriers like the ICOs, and CMRS Providers are quite simple:

- Carriers have an obligation to interconnect either directly or indirectly for the mutual exchange of traffic.
- Originating carriers are obligated to pay reciprocal compensation to terminating carriers for all intra-MTA traffic.
- Reciprocal compensation must be based on forward-looking costs or on bill-and-keep.
- Originating carriers are obligated to deliver their traffic to the terminating carrier's network.
- Originating carriers are obligated to treat calls to the terminating carrier's telephone numbers (NPA-NXXs) in a nondiscriminatory manner consistent with the principles of dialing parity.

If the TRA concludes that the interconnection arrangements between the ICOs and CMRS Providers are subject to sections 251 and 252 of the Act and the FCC's implementing regulations, then the Authority must find in favor of the CMRS Providers on all major issues. This is the case because the ICOs have failed to provide any alternative proposals that address how the Authority should rule if the Act is found to

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[1] *See* ICO Brief at 13 "Pursuant to the 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 ' " *See also* Transcript of Status Conference, TRA Docket No 00-00523 (April 22, 2002) Counsel for the ICOs stated "The process of establishing that rate [for transport and termination] involves a statutory negotiations period in which the parties can have a good faith discussion about what the terms and conditions should be *To the extent they can't agree*, the process is very clear, they come to the Authority and ask for arbitration " (emphasis added)

govern this arbitration. Instead, the ICOs' recommendations are only voluntary proposals that do not meet the requirements of an arbitrated agreement under sections 251 and 252 of the Act

To agree with the ICOs would require the CMRS Providers to pay switched access rates when the ICOs terminate wireless-originated intraMTA traffic and, at the same time, would allow the ICOs to avoid paying anything when the CMRS Providers terminate wireline-originated intraMTA traffic. Such a result would make the provision of wireless service to subscribers in rural Tennessee much more expensive than providing comparable service in the major cities, thus depriving rural Tennesseans of the benefits of a competitive telecommunications market. As described at the hearing, this result would also force landline subscribers to incur toll calls to mobile phones, even for example in the circumstance where a wife using her home phone calls her husband using his cell phone in the driveway.

II. THE ICOs INAPPROPRIATELY CHALLENGE THE TRA'S AUTHORITY TO CONDUCT THIS ARBITRATION UNDER SECTION 252 OF THE ACT.

The ICOs' post-arbitration brief (the "ICO Brief") attempts to dispose of each of the issues in this arbitration by variations on the common theme that the TRA is without authority to conduct this arbitration. In essence, the ICOs refuse to accept that the Act fundamentally changed the telecommunications industry and the delivery of telecommunications services to consumers throughout the country.

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we *and the states* remove the outdated barriers that protect monopolies from competition

and affirmatively promote efficient competition using tools forged by the Congress.[2]

Each of the ICOs' assaults on the TRA's authority is discussed below (as well as in the CMRS Brief). The key point in all the many words spoken and written is this: if the ICOs are wrong, and if the TRA does have the authority to decide these disputes, then the ICOs' house of cards collapses

A. The FCC's Rules and Regulations Governing Reciprocal Compensation Govern both the Direct and Indirect Exchange of Telecommunications Traffic.

The ICOs claim that the reciprocal compensation obligations of the Act apply only when the CMRS Providers have established direct interconnection trunks [3] Accordingly, the ICOs argue that indirect interconnection arrangements are outside the scope of a section 252 arbitration and that the TRA lacks the jurisdiction to decide any disputes related to indirect interconnection.[4] The ICOs request that this arbitration be "expediently referred back to Docket No 00-00523 [the universal service docket] for resolution and/or alternative dispute resolution should be initiated pursuant to T.R.A. Rules, Chapter 1220-1-2-3 "[5] This position, simply put, is without merit. [6]

The Act places upon "each local exchange carrier" . . . "the duty to establish reciprocal compensation arrangements for the transport and termination of

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[2] In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order") at ¶ 1 (emphasis added)

[3] ICO Brief at 20

[4] *Id* at 50

[5] *Id* at 24.

[6] *See, e g* , CMRS Brief at Section III B 1.

telecommunications."[7] The implementing FCC regulation states: "Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier."[8] Accordingly, the ICOs as "local exchange carriers" are required to establish "reciprocal compensation arrangements" with each requesting CMRS Provider for the transport and termination of "telecommunications traffic "

The FCC defines "telecommunications traffic" to mean "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area . ."[9] Neither the Act nor FCC regulations limit reciprocal compensation obligations to direct interconnection. Indeed, in ruling on the application of reciprocal compensation principles to wireless traffic exchanged indirectly through a LEC tandem, the FCC has specifically stated: "Our rules provide a mechanism for a terminating carrier . . . to recover from originating carriers the cost of the facilities at issue (transport from the point of interconnection at the LEC tandem to the terminating carrier's switch)."[10]

The ICOs' attempt to limit their reciprocal compensation obligations is inconsistent with applicable law

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[7] 47 U S C § 251(b)(5)

[8] *See* 47 C F R § 51 703(a)

[9] 47 CFR § 51 701(b)(2)

[10] Texcom, *Inc , d/b/a Answer Indiana,* No EB-00-MD-14, Order on Reconsideration (rel Mar 27, 2002), ¶ 4 (footnotes omitted)

B. The Issue of Direct Interconnection is Properly Before the TRA.

The ICOs concede that sections 251 and 252 of the Act apply to direct interconnection.[11] However, in the ultimate "gotcha," the ICOs also argue that the CMRS Providers cannot pursue arbitration under 252(b) for direct interconnection because the CMRS Providers have not requested it.[12] The ICOs' argument fails for at least two reasons. First, there is no legal requirement that a written interconnection request identify direct interconnection arrangements at particular points on a LEC's network. The statutory requirements for written interconnection requests are minimal and neither section 252(b)(1) nor the FCC's orders interpreting section 252 require such specificity. The only express requirement for triggering the negotiation and arbitration deadlines of the statute is that a local exchange carrier receives a "request for negotiation under this section "[13] The FCC has specifically avoided establishing strict guidelines applicable to the commencement of negotiations, preferring to leave the process as open-ended as possible—to avoid the very sort of Byzantine argument favored by the ICOs.[14]

There is simply nothing to support the ICO claim that a request for interconnection identifies the specific points of interconnection desired. In fact, as a practical matter, that is often not something that is known until the parties begin to negotiate and share information about their respective networks and traffic patterns.

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[11] ICO Brief at 19-20

[12] *Id* at 43 ("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.")

[13] 47 U S C § 252(b)(1)

[14] *See In re Implementation of Telecommunications Act of 1996*, Docket No M-00960799, adopted May 23, 1996, entered June 3, 1996 ("*Implementation Order*"), *Local Competition Order* at 16118, ¶ 1263 ("We decline at this time to establish guidelines regarding what constitutes a bona fide request ")

Second, contrary to the ICOs' allegations, the CMRS providers did propose and negotiate terms and conditions for direct interconnection arrangements from the outset of this proceeding.[15] Among other things, the CMRS Providers sent a draft of proposed terms and conditions for direct interconnection arrangements to the ICOs as part of the formal negotiations. Additionally, correspondence between the parties during the course of negotiations listed several items of disagreement, which were directly related to reciprocal compensation terms for direct interconnection.[16] Moreover, the direct arrangements requested by the CMRS Providers in these negotiations are similar to the terms and conditions for direct interconnection that are already incorporated into interconnection agreements voluntarily negotiated by ICOs and CMRS Providers and approved by the TRA.[17] Perhaps most importantly, the draft agreement the ICOs proposed in this very proceeding contains terms and condition for direct interconnection,[18] and the ICOs have, on numerous occasions, indicated their preference

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[15] *See, e g*, Direct Testimony of Marc B Sterling at 9. 14 – 10 15, Rebuttal Testimony of Marc B Sterling at 6 10 – 7 7, Hearing Transcript Vol II, 18. 12-18

[16] *See Letter from Suzanne Toller to Hearing Officer Stone*, TRA Docket No 03-00585 (July 26, 2004) (attached hereto as **Exhibit 1**) In that filing, the CMRS providers noted their attempt to clarify that Joint Issue 8 applied to rates for direct and indirect interconnection arrangements Attached to that correspondence was a copy of the Final Joint Issues Matrix, which acknowledged the parties respective positions on direct interconnection at Issue 7 In response to the CMRS request for negotiations under sections 251, 252, the ICOs referenced the "specific" need for carrier- to- carrier negotiations to address "physical connecting arrangements" during the negotiations period *See Letter from Steven G Kraskin to Monica Barone* (June 10, 2003) at page 2 (That letter was attached to the CMRS Providers' Brief at Exhibit 6)

[17] *See, e g*, TDS Interconnection Agreement with Verizon Wireless, at Section II A, CenturyTel Interconnection Agreement with Sprint Spectrum, L P , at Section 4

[18] *See* Response of ICOs at Exhibit 2 (Dec 1, 2003) The entire agreement only addressed rates, terms and conditions for direct interconnection arrangements

for direct interconnection arrangements.[19] Further, ICO Witness Watkins acknowledged that some company-specific negotiations related to direct interconnection arrangements between certain ICOs and CMRS Providers had indeed taken place during negotiations.[20]

In brief, the issue of direct interconnection, like the issue of indirect interconnection, is properly before the TRA, and the ICOs' attempts to avoid their reciprocal compensation obligations for direct interconnection arrangements should be rejected.[21]

C. The TRA has the Authority to Rule on all Open Issues Arising from the Parties' Negotiations of Interconnection and Reciprocal Compensation Obligations.

The ICOs claim that the TRA does not have authority to conduct this arbitration under section 252(b) because the FCC has not established specific rules regarding the application of reciprocal compensation principles to transit traffic.[22] In support of their position, the ICOs refer to the FCC's *Order on Reconsideration* in the Verizon Arbitration dispute.[23] Interestingly, the ICOs do not cite the underlying Order but instead

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[19] *See* Direct Testimony of S E Watkins, at p 32 ("Each ICO is willing to discuss direct arrangements to the extent a CMRS provider requests an interconnection point on the network of the ICO ") *See also* Hearing Transcript Vol VIII, 26 8-12

[20] *See* Direct Testimony of S E Watkins, at 49 ("[I]t is my understanding that separate discussions have taken place ")

[21] Despite the fact that their argument on direct interconnection has no basis in law or fact, the ICOs have clung desperately to it -- perhaps since without this argument, they do not even have the pretense of an excuse for their failure to produce traffic data and forward-looking cost-studies

[22] ICO Brief at 19 ("The FCC, however, has neither expressly nor implicitly determined that Section 251(b)(5) reciprocal compensation is applicable to indirect interconnection or to all intraMTA traffic ") *See also* ICO Brief at 25 ("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 "), ICO Brief at 47 ("As discussed previously the FCC rules do not address 'transiting' ")

[23] *See* ICO Brief at 25, fn 53

cite the Order on Reconsideration.[24] In the underlying order, the FCC's Wireline Competition Bureau, sitting in the place of the Virginia commission, declined to find on delegated authority that the ILEC (Verizon) was required to provide transiting service at forward-looking TELRIC rates.

> We reject AT&T's proposal because it would require Verizon to provide transit service at TELRIC rates without limitation. While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's rules implementing section 251(c)(2), the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty. In the absence of such a precedent or rule, *we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates*. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.[25]

The Bureau did not decide (or even consider) whether reciprocal compensation principles apply to intraMTA traffic exchanged indirectly between wireline and wireless carriers. Nor did the Bureau find that the FCC has otherwise failed to rule on that issue. Instead, the Bureau merely declined to determine that the *transiting carrier* – not the originating or terminating carriers – had an obligation under 251(c)(2) to provide transiting service at TELRIC rates.[26] That issue is not a part of this proceeding.[27]

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[24] In the Matter of Petition of WorldCom, Inc , et al ,Order on Reconsideration, ¶ 3 (rel May 14, 2004) ("Order on Reconsideration")

[25] *In the Matter of Petition of WorldCom, Inc , et al.,* Memorandum Opinion and Order, ¶ 117 (rel July 17, 2002) (emphasis added) ("*Virginia Arbitration Order*")

[26] The Bureau also rejected Verizon's position that it could unilaterally terminate the provision of transit services when traffic exceeded certain thresholds Instead, the Bureau ordered Verizon to offer transit services under certain conditions *See Verizon Arbitration Order,* ¶¶ 116 and 120

[27] At least two subsequent decisions by State authorities have expressly found that "transiting" is an interconnection service required by the Act, and that the Virginia Arbitration Order by no means prevented a ruling on that issue *See Petition of Cox Connecticut Telecom, L L C for Investigation of the Southern New England Telephone Company's Transit Service Cost Study and Rates*, 2003 Conn PUC Lexis 11,

Despite the lack of clear FCC precedent or rule on the specific issue of whether a LEC has a statutory duty to provide transit services at TELRIC rates, the Bureau, sitting as a state commission, did exactly what the ICOs contend the TRA cannot do in this matter - it resolved open issues regarding indirect interconnection regardless of the existence of a specific FCC " transit" rule. Indeed, the *Order on Reconsideration* cited by the ICOs makes this very point:

> While the Bureau did not find that Verizon had a legal obligation to provide transit service at TELRIC rates, as AT&T argued, it nonetheless arbitrated the transit issues in accordance with the Act and the Commission's rules.[28]

When placed in a similar predicament, the North Carolina Commission recently lamented:

> The fact is that the FCC, as is the case in many matters, has not definitively made its mind up on the matter. In the meantime, the telecommunications market and its regulation march on. As much as we would wish for definitive guidance from the FCC, *the states cannot always wait for that body to rule one way or another* - - or somewhere in between.[29]

In brief, even if there were no guidance from the FCC regarding the reciprocal compensation obligations of originating and terminating carriers in the context of an

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Docket No 02-01-23 (Conn Dept PUC 2003), *see also In the Matter of Petition of Verizon South, Inc , for Declaratory Ruling that Verizon is not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method*, 2003 N C PUC Lexis 1062, Docket No P-19, SUB 454 (N C U C 2003) ("*Verizon Declaratory Ruling*") Both of these decisions are attached hereto

[28] Order on Reconsideration, ¶ 3

[29] *Verizon Declaratory Ruling* at 2003, N C PUC LEXIS *14 - 15

indirect interconnection – which there clearly is[30] – the TRA has the authority under the Act to determine the rights and obligations of the parties.[31]

D. There is No Need – or Justification – to Include BellSouth as a Party to this Arbitration.

In addition to contending that the TRA lacks the authority to decide this arbitration, the ICOs reprise the argument first made in their Motion to Dismiss[32] that BellSouth must be included as a necessary party in this proceeding.[33] This argument, like its predecessors, assumes that section 252(b) does not apply to indirect traffic, and that as a result the TRA only has authority to arbitrate issues relating to indirect interconnection under state law. However, as discussed above, section 252 does apply to the pending arbitration, and the inclusion of BellSouth in this proceeding is plainly inconsistent with the Act, as well as common practice even among the ICOs.

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[30] *See generally* CMRS Brief, Sections III B and D , *Texcom, Inc d/b/a Answer Indiana v Bell Atlantic Corp , d/b/a Verizon Communications*, File No EB-00-MD-14, Memorandum and Order released November 24, 2001 (the "*Texcom Order*"), Order on Reconsideration released March 27, 2002 (the "*Texcom Reconsideration Order*") and *Mountain Communications, Inc v Federal Communications Commission*, 355 F 3d 644 (U S App D C 2004) (wherein the FCC's existing reciprocal compensation rules are expressly applied to recognize a terminating CMRS Provider's right to recoup from an originating carrier the costs associated with the delivery and termination of traffic transited through a third party)

[31] See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No 96-98 and Notice of Proposed Rulemaking In CC Docket No 99-68, 14 FCC Rcd 3689, ¶ 26 (Released Feb 26 1999) ("In the absence of a federal rule, state commissions that have had to fulfill their statutory obligation under section 252 to resolve interconnection disputes between incumbent LECs and CLECs have had no choice but to establish an inter-carrier compensation mechanism and to decide whether and under what circumstances to require the payment of reciprocal compensation Although reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic, neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain instances not addressed by section 251(b)(5), so long as there is no conflict with governing federal law ")

[32] Motion to Dismiss, or, in the Alternative, add an Indispensable Party ("Motion") (Mar 12, 2004)

[33] *See* ICO Brief at 11

Further, the ICOs have failed to point to any law supporting BellSouth's inclusion in this proceeding. Instead, the law mandates that section 252 arbitrations are limited to *two parties* – not three. The TRA has previously rejected attempts by third parties to formally participate in a section 252 arbitration.[34] Consistent with this precedent, the Authority has already rejected the ICOs' argument that BellSouth is a necessary party to this proceeding.[35] Indeed, the agency has correctly observed the inconsistency in the ICOs' position, finding that it is "counterintuitive that the Coalition would seek to impose upon these two unwilling parties a three-way agreement that is without support in federal law while objecting to the two-way agreement that is actually required."[36] Perhaps even more telling, the ICOs themselves have entered into several indirect interconnection agreements without the transiting carrier as a party to those agreements. In fact, the ICOs have been unable to identify *any interconnection agreement anywhere* that includes the transiting carrier as a party.

E. The Rural Exemption Does Not Apply To The Reciprocal Compensation Obligations Imposed By Section 251(b)(5).

The ICOs' assertion that the FCC's forward-looking economic cost methodology does not apply to rural LECs' is unfounded.[37] The ICOs' claim rests upon (1) a

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[34] *See* April 12, 2004, Order Denying Motion to Dismiss (*citing* In re Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc , and BellSouth Telecommunications, Inc , Pursuant to 47 U S C Section 252, TRA Docket No 96-01152, Order Denying the Petition of the Consumer Advocate Division to Intervene (Sept 11, 1996))

[35] *See* April 12, 2004, Order. To the extent that there are rules for joinder of additional parties, the Hearing Officer found that the ICOs did not support their request to join BellSouth as a party to the arbitration Specifically, the Hearing Officer held that federal law imposes no compensation obligations on any *third party*, and that therefore, "BellSouth is an unnecessary third party and need not be joined in this particular arbitration " *Id* at 8

[36] *Id* at 8

[37] ICO Brief at 49

misplaced reliance on the FCC's comment that the Act provides exemptions to particular carriers for certain obligations in limited circumstances,[38] and (2) an unsupported contention that the ICOs' proposed rates (which are, in fact, their interstate switched access rates) are "within, or actually lower than, any reasonable expectation of the rates" that would be produced by application of the FCC's cost methodology.[39] Neither the FCC's statement nor the ICOs' claim supports the position that rural LECs are exempt from the FCC's forward-looking cost principles for establishing reciprocal compensation rates.[40] To the contrary, as discussed more fully in the CMRS Brief, the rural exemption has no application to the obligations imposed upon the ICOs by section 251(b)(5), or to the pricing standards established pursuant to section 252(d)(2) by the FCC for those obligations.

1. The FCC did not Exempt Rural Carriers from its Pricing Rules.

The ICOs claim that the FCC's statement in Paragraph 1059 of the *Local Competition Order* means that "the FCC has repeatedly declined to impose" its pricing rules for reciprocal compensation on rural carriers.[41] Nothing could be farther from the truth. As discussed in the CMRS Brief, Paragraph 1059 merely restates that the Act

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[38] *Id* at 48-49

[39] ICO Response at 64

[40] *See* 47 U S C § 252(d)(2)

[41] ICO Brief at 49 The ICOs' use of the phrase "the FCC has repeatedly declined" is at best curious, given that the only citation provided by the ICOs to support that statement is the reference to Paragraph 1059 of the *Local Competition Order* Although the citation does not support their position, as discussed above, the ICOs repeat their position in almost every pleading they have filed in this matter *See e g* , ICO Response at 63-64, Rebuttal Testimony of Watkins at 19

provides small carriers with two avenues for relief from particular obligations under the Act.[42] In relevant part, the paragraph reads:

> We also note that certain small 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 incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act

The language of section 251(f)(1) does not exempt the ICOs from the reciprocal compensation obligations of section 251(b)(5), the applicable pricing methodology set forth in section 252(d)(2), or the FCC's rules implementing these requirements (*e.g.*, 47 C F.R. § 51.705). The only way to arrive at such a conclusion is to determine that section 251(f)(1) also exempts rural carriers from *all of the obligations of sections 251(b) and 252*. However, this interpretation is directly in conflict with section 251(f)(1), which specifically only applies to the obligations of section 251(c) This is why the FCC stated in the same *Local Competition Order* relied upon by the ICOs:

> As discussed above, pursuant to section 251(b)(5) of the Act, all local exchange carriers, *including small incumbent LECs* and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange service.[43]

2. The ICOs' Proposed Rates are Irrelevant to the Issue of Pricing Methodology.

In tacit recognition that their rural exemption argument lacks substance, the ICOs argue that even if the FCC's pricing methodology were applicable, the TRA should adopt their proposed rates because they are "within, or actually lower than, any reasonable

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[42] CMRS Brief at 14-15

[43] *Local Competition Order*, ¶ 1045 (emphasis added).

expectation of the rates" using a forward-looking cost methodology.[44] The TRA should soundly reject this argument.

As an initial matter, if the FCC's pricing methodology is applicable to the ICOs' reciprocal compensation obligations under section 251(b)(5) – which it is – then that is the methodology which must be used. Neither the parties nor the TRA has the authority to modify the FCC's explicit dictates on that issue.

Moreover, ICO witness Watkins conceded that the ICOs have conducted no forward-looking cost studies, so no basis exists for the comparison.[45] The only relevant evidence on this issue, which are the CMRS Providers' benchmark rates, confirms that the proposed ICO rates are not "within or less than" the rates that would be developed using the FCC's forward-looking cost methodology. In fact, the ICOs have proposed their interstate switched access rates, which include the embedded costs that the FCC has specifically ruled are inappropriate for developing transport and termination rates under section 252(d)(2) [46]

In sum, the ICOs' claim that the rural exemption somehow relieves them of their obligation to establish reciprocal compensation arrangements (based on either forward-looking economic costs or on bill-and-keep) is without merit.

III. ANALYSIS OF JOINT MATRIX ISSUES

1. **Joint Issue No. 1:** Does an ICO have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?

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[44] ICO Response at 64

[45] Hearing Tr , Vol IX, 22 6-9

[46] Direct Testimony of Watkins at 35 ("The ICOs have proposed to utilize the per-minute rates for identical transport and termination as they use and apply for interstate access purposes ") *See also* 47 CFR § 51 505(c)(1) (embedded costs may not be considered in establishing transport and termination rates)

The ICOs admit that "the Independents are interconnected indirectly to each CMRS Provider"[47] but attempt to undercut that admission by ignoring the FCC's definition of "interconnection": "the linking of two networks *for the mutual exchange of traffic.*"[48] Specifically, the ICOs propose a resolution of Issue 1 that leaves out the concept of "mutual exchange of traffic."[49] "Mutual exchange" means traffic flows *in both directions*. Obviously, the ICOs are attempting to obscure the fact that traffic is originated on their network and sent to the CMRS Providers via a section 251(a) indirect interconnection, because if the ICOs are originating traffic to terminate on a CMRS Provider's network, the ICOs must compensate the CMRS Provider pursuant to section 251(b)(5). In the ICOs' view of the world, they owe no terminating compensation to the CMRS Providers, despite the evidence that they originate traffic that terminates on the CMRS Providers' networks.

Proposed Ruling: The ICOs and CMRS Providers each have a statutory duty pursuant to section 251(a)(1) to interconnect directly or indirectly with each other for the mutual exchange of traffic

Relevant CMRS Agreement Sections: CMRS Section IV.[50]

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[47] ICO Brief at 16

[48] 47 CFR § 51 5 (emphasis added)

[49] ICO Brief at 19 ("The Authority should resolve Issue 1 by finding that 'All parties agree that all telecommunications carriers, including both the Coalition members and the CMRS Providers, have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers '")

[50] References are to the Sections of the CMRS Providers' proposed "Interconnection and Reciprocal Compensation Agreement" ("Agreement") attached as Exhibit 2 to each CMRS Provider's Petition for Arbitration

2. **Joint Issue No. 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' discussion of this issue is contained in section II.A above.

Proposed Ruling: The Act's reciprocal compensation obligations and the related negotiation and arbitration process apply to all intraMTA traffic exchanged indirectly by a CMRS Provider and an ICO.

Relevant CMRS Agreement Sections: CMRS Section IV.

3. **Joint Issue No. 2(b):** 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)?[51]

The ICOs' improper reliance on *TSR Wireless* and 47 U.S.C. § 251(g) to support the premise that toll traffic carried by an IXC is not subject to reciprocal compensation indicates a fundamental confusion between the end-user concept of local/toll calling and the carrier concept of reciprocal compensation. In *TSR Wireless,* the FCC allowed US West to charge toll to its end user on a wireline to wireless call when such call would be a toll call on a wireline to wireline basis, and the wireless carrier could "buy down" the toll charges if it wanted the wireline end-user to be able to make the call without incurring a toll charge.[52] The case does not stand for the proposition that that a toll call is not subject to the FCC's reciprocal compensation rules. To the contrary, the FCC specifically found that such a call was subject to its reciprocal compensation rules in holding that the

[51] Cingular and Verizon Wireless do not join in the discussion of Joint Issue 2b

[52] *See* CMRS Brief, Section III,D p 73, fn 204

originating party was responsible for the cost of delivering the call to the terminating wireless network.[53]

Regarding section 251(g), the ICOs once again fail to consider all of the language of the cited source. The pertinent portion of Section 251(g) provides:

> On and after February 8, 1996, each local exchange carrier, to the extent it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order or policy of the Commission, *until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996.* [Emphasis added.]

The FCC's Part 51 interconnection rules were initially promulgated in August of 1996.[54] While preserving interexchange access as the compensation mechanism for interstate and intrastate exchange access traffic exchanged between wireline carriers, the FCC's definition explicitly establishes the MTA as the scope of wireline/wireless exchanged traffic that is subject to reciprocal compensation. [55]

The ICOs simply refuse to acknowledge that neither a carrier nor the TRA can change the jurisdictional nature of the traffic, *i.e.*, whether it is an intraMTA call and thus subject to reciprocal compensation, based on how that call is delivered to the terminating carrier.

Proposed Ruling: The FCC's reciprocal compensation requirements apply to land-originated intraMTA traffic delivered to a CMRS Provider via an IXC.

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[53] *See generally* CMRS Brief, Section III D

[54] Final Rules, 61 Fed Reg 45476 (FCC August 29, 1996) codifying new rules and amending existing rules within 47 CFR Parts 1, 20, 51 and 90

[55] *See* 47 C F R § 51 701(b)(1), and (b)(2)

Relevant CMRS Agreement Sections: CMRS Sections II (Definitions), IV, and Appendix A.

4. **Joint Issue 3:** Who bears the legal obligations to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS Provider and an ICO?

The ICOs do not address the substantive aspects of this issue. Once again they assert that because this issue relates to indirect interconnection and otherwise implicates a transiting function, it is not subject to section 252 arbitration.[56] As explained above and throughout this proceeding, such a position is contrary to the law and facts, and the TRA should reject it summarily. Assuming that the TRA adopts the CMRS Providers' position on the fundamental issue that indirect interconnection is subject to an arbitration under section 252, the TRA must also adopt the CMRS Providers' proposed ruling on this issue.

Such a ruling is appropriate not only because the ICOs have offered no alternative position,[57] but also because the established precedent and law on this issue support the CMRS Provider position.[58] The FCC currently has in place a calling party network pays ("CPNP") regime, under which the originating carrier pays reciprocal compensation for

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[56] Among other things, the ICOs assert that the TRA does not have the authority to impose a transiting obligation upon BellSouth and therefore, any agreement encompassing transit traffic cannot be subject to section 252 However, this assertion is non-responsive to the issue Whether BellSouth has a transiting obligation is not an issue in this proceeding, and in fact, is irrelevant In fact, the ICOs acknowledge that section 251(a) establishes "terminating rights" for all telecommunications carriers, such that the ICO has the obligation under section 251 to accept and terminate traffic transited from BellSouth Thus, because BellSouth has agreed to transit traffic, the ICO must *terminate* traffic transited by BellSouth The only issue that remains then is which entity bears the compensation obligation for such termination of traffic

[57] In re Petition for Arbitration of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc , TCG Midsouth, Inc , and BellSouth Telecommunications, Inc , Pursuant to 47 U S C Section 252 TRA Docket No 00-00079 (2001) (arbitrators rejecting a party's positions on the issues "due to lack of evidentiary support")

[58] CMRS Brief at 49-53

the transport and termination of telecommunication traffic.[59] Moreover, the FCC has specifically held that, when there are three carriers involved in carrying traffic, the transiting carrier *does not bear costs* of transporting and terminating traffic that originates on another carrier's network.[60] Accordingly, the ICOs are mistaken in asserting that there are no FCC standards relieving transiting providers of compensation obligations for terminating traffic.[61]

Proposed Ruling: When traffic is exchanged indirectly, the originating carrier bears the responsibility to compensate the terminating carrier under the FCC's reciprocal compensation rules.

Relevant CMRS Agreement Sections: CMRS Sections II, IV, and Appendix A.

5. **Joint Issue No. 4**: When a third party provider transits traffic, must the Interconnection Agreement between the originating and terminating carriers include the transiting provider?

As explained above in section II.D., there is no need – or justification – for including BellSouth as a party to this proceeding or to the arbitration agreement between the CMRS Providers and the ICOs. Neither the law nor industry practice would sanction such a result.

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[59] Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime, 16 FCC Rcd 9610, ¶ 8 (2001)("Intercarrier Compensation NPRM")

[60] CMRS Brief at 49-50, (citing *Texcom Order* at ¶ 6) *See also Virginia Arbitration Order*, at ¶ 119 (finding that the intermediary carrier has no billing carrier obligation in transiting traffic)

[61] ICO Brief at 27 The ICOs cite to the BellSouth *ex parte* to the FCC, in which BellSouth requested that the FCC find that transiting carriers are not liable for compensation to any other carrier, as illustrative of the lack of FCC precedent on this issue However, the BellSouth *ex parte* demonstrates no such thing Regarding who pays the terminating carrier for transited traffic, the BellSouth *ex parte* merely reflects BellSouth's position, which is consistent with existing FCC requirements and the law On this issue, the BellSouth *ex parte* is not driven by a lack of clarity or rules, but rather by the refusal of carriers like the ICOs to accept that originating carriers bear the reciprocal compensation obligation

The ICOs' arguments in this regard are significantly undermined by the fact that (a) the ICOs currently have *two-party* interconnection agreements with various CLECs and CMRS providers which cover indirect traffic and *do not include* a third party transiting carrier as a party to the agreements, and (b) there are many reliable billing options available to the ICOs, including but not limited to BellSouth's 110101 records.[62]

Although the ICOs refer to a recent Kentucky settlement agreement reached among rural LECs, CMRS Providers, and BellSouth as an example of a three-party interconnection agreement,[63] that agreement (as well as similar agreements reached in other states in the Southeast) is distinguishable from the agreement being arbitrated here for a number of reasons. Specifically, as the CMRS Providers previously explained, the Kentucky agreement was *not an interconnection agreement.* Indeed, the Kentucky agreement, like the agreements in the other states, was a *settlement* agreement entered into on a *voluntary* basis for an *interim period* in order to provide the parties further opportunity to negotiate final *two-party interconnection agreements.* Indeed the parties are now negotiating final two-party interconnection agreements in Georgia, Mississippi, and Louisiana.

Proposed Ruling: An interconnection agreement involving the indirect exchange of traffic need not include the transiting provider as a party

Relevant CMRS Agreement Sections CMRS Section IV and Appendix A (Section I.B).

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[62] CMRS Brief at 24-26

[63] ICO Brief at 31

6. **Joint Issue No. 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?

The CMRS Providers have already addressed the *TSR Wireless* order, *Texcom*, and the impact of the most recent *Mountain Communications* case on the ICOs' position. Indeed, the ICOs are now clearly aware of the *Mountain Communications* decision of the United States Court of Appeals that reversed the *Mountain Memorandum Opinion & Order.*[64] Undercut by the Court of Appeals' reversal, the ICOs try to downplay the significance of that case by erroneously claiming that it did not "involve the transiting of traffic by a third party." However, it is the very fact that Qwest was a transiting carrier that prompted the D.C. Circuit to find that (a) Qwest was not responsible for any costs associated with delivering traffic originated by a third party, and (b) to the extent Qwest charged the terminating wireless provider for such costs, the terminating wireless provider could recover such costs from the originating carrier.[65]

Proposed Ruling: The originating carrier has the obligation to pay transiting costs associated with intraMTA traffic transited to the terminating carrier.

Relevant CMRS Agreement Sections: CMRS Section IV.B.2.

7. **Joint Issue No. 6:** Can CMRS traffic be combined with other traffic types over the same trunk group?

The ICOs have not raised any new arguments regarding this issue and instead repeat their mantra that reciprocal compensation obligations are not applicable to intraMTA traffic exchanged through an indirect interconnection. For all the reasons

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[64] ICO Brief at p 36, fn 77 (citing *Mountain Communications*)

[65] *See* CMRS Brief, Section III D 1 (citing *Mountain Communications*, 355 F 3d 649)

previously discussed, the ICOs' position has no merit, and the CMRS proposal for this issue, as well as the other open issues, should be adopted by the TRA

Proposed Ruling: CMRS traffic can be commingled with other types of traffic (including "access").

Relevant CMRS Agreement Sections: CMRS Section IV.B.1, and Appendix A (Sections I. B. and II).

8. **Joint Issues No. 7(a) and (b):** Where should the point of interconnection be if a direct connection is established between a CMRS Provider's switch and an ICO's switch? What percentage of the cost of the direct connection facilities should be born by the ICO?

a. The Point of Interconnection ("POI") for Direct Interconnection may be Located at any Mutually Agreeable Point.

The ICOs would "permit a CMRS provider to establish their [sic] POI at any established point of interconnection within the rural LEC's network or any other mutually agreeable point."[66] The CMRS Providers have no objection to this concession. There being no dispute between the parties over the location of the POI, the TRA should rule that the POI may be located on the network of the LEC or at any other mutually agreeable point

b. The FCC's Rule 51.709(b) Requires That The Cost Of The Transmission Facilities Be Apportioned In Accordance With The Relative Use Of Each Carrier.

The ICOs agree that section 51.709(b) of the FCC's reciprocal compensation rules requires that the costs of dedicated facilities should be allocated between the parties in accordance with their proportionate use of the facility. [67] However, the ICOs then try to

[66] ICO Brief at 45

[67] ICO Brief at 45

limit that obligation to the costs of any shared facility within the boundaries of an ICO's service area.[68] As discussed in detail in the CMRS Providers' opening brief and above, this claim has no basis in fact or law.[69]

Originating carriers are obligated to pay the costs of transporting their traffic to the terminating carrier whether or not the terminating carrier's switch is within the originating carrier's local exchange.[70] A contrary rule would disproportionately shift the cost of the transmission facility to the CMRS Provider in opposition to both the spirit and letter of the Act.

Proposed Ruling: The Parties may determine a mutually agreeable POI. Originating carriers must pay the cost of transporting traffic to the terminating carrier whether or not the terminating carrier's switch is within the originating carriers' local exchange.

Relevant CMRS Agreement Sections: CMRS Sections IV.A.1 and IV.A 2.

9. Joint Issue No. 8: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic?

In claiming that the FCC's forward-looking cost methodology should not be applied to them, the ICOs' post-hearing brief relies on two arguments. First, the ICOs claim (again) that reciprocal compensation principles do not apply to indirect

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[68] ICO Brief at 46

[69] *See* Section II B , *supra*

[70] CMRS Brief at 76 (quoting *TSR Wireless,* 15 FCC Rcd 11166, ¶ 31) ("Section 51 703(b), when read in conjunction with Section 51 701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated [A] LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules ")

interconnection arrangements.[71] Second, the ICOs imply, without specifically saying as much, that the rural exemption under section 251(f)(1) somehow means that the reciprocal compensation obligations under 251(b)(5), and the FCC's attendant forward-looking cost methodology, are inapplicable to indirect interconnection arrangements.[72] As detailed above, these claims are not supportable, and they cannot excuse the ICOs' failure to provide appropriate traffic and cost studies in this proceeding.

As discussed above, the principles of interconnection clearly apply to indirect interconnection. There is no basis for the claim that the obligations of section 251(b)(5) do not apply in this instance.[73] In addition, the rural exemption is not applicable to this proceeding. As discussed repeatedly, the provisions of section 251(f)(1) potentially apply to various obligations under section 251(c) but not to the reciprocal compensation obligations under section 251(b)(5), which is the focus of the petitions before the TRA.

The ICOs also attempt to raise the specter that this arbitration will somehow adversely affect the provision of universal service to rural Tennesseans.[74] The ICOs' "economic" analysis is faulty, however, because it ignores the reciprocity of compensation under the Act. If there is indeed more mobile-originated intraMTA traffic

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[71] ICOs' Brief at 48

[72] *Id* at 49

[73] *See* Section II A , *supra*

[74] *See* ICO Brief at 49 The CMRS Providers note that this arbitration proceeding is not the proper forum to raise concerns over universal service Such concerns are arguably relevant to a commission's deliberations on whether to terminate the rural exemption under 251(f)(1), but this is clearly not such a proceeding, especially because the rural exemption is not applicable to the relief sought by the CMRS Providers in this matter See Section II E , *supra* Moreover, the TRA has already opened a separate Rural Universal Service docket The issue is simply not germane to the issues before the TRA in this arbitration proceeding

as the ICOs suggest,[75] then the ICOs will always be net payees (i.e. always receiving more than they pay). Moreover, the FCC has ruled that its reciprocal compensation principles apply to *all* local exchange carriers, including rural independents:

> As discussed above, pursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange service. CMRS Providers, including small entities, and LECs, including small incumbent LECs and small entity competitive LECs, will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and will pay such compensation for certain traffic that they transmit and terminate to other carriers. We believe that these arrangements should benefit all carriers, including small incumbent LECs and small entities, because it [sic] will facilitate competitive entry into new markets while ensuring reasonable compensation for the additional costs incurred in terminating traffic that originates on other carriers' networks.[76]

As discussed in the CMRS Brief , the ICOs' failure to provide appropriate traffic and cost studies leaves the TRA with only one viable option in this matter--to adopt a bill and keep arrangement, pending the submission of an appropriate traffic study by each ICO. If such a study is produced, demonstrating that traffic is not "roughly balanced," then the parties should begin exchanging traffic at the benchmark rate introduced by CMRS witness Conwell.

Proposed Ruling: The appropriate pricing methodology for establishing a reciprocal compensation rate is the FCC's forward-looking cost methodology. Absent appropriate cost studies and traffic studies, traffic should be exchanged on a bill and keep basis. If subsequent traffic studies demonstrate that traffic is not "roughly balanced," the

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[75] Hearing Tr Vol IX, 63 11-21

[76] Local Competition Order, ¶ 1045

Parties should exchange traffic at the benchmark rates introduced by the CMRS Providers.

Relevant CMRS Agreement Sections: CMRS Section IV.C and Appendix A, as modified.

10. Joint Issue No. 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?

The ICOs claim that "because no such specific *direct* interconnection arrangement is pending before the Authority, there is no practical issue for the Authority to address."[77] This is the same ICO argument that the TRA lacks the jurisdiction to decide disputes involving indirect interconnection. The CMRS Providers have discussed above in detail why that argument is invalid and would simply point out here that because bill and keep is the appropriate method of compensation between the ICOs and CMRS Providers, the TRA need not adopt a traffic factor. Instead, the interconnection agreements between the ICOs and CMRS Providers should contain, in addition to bill – and keep provisions, the same language as is contained in Section 4.3 of the Appendix Pricing attachment to the three filed contracts executed by four of the ICOs to this proceeding:

> "Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that the traffic is no longer in balance, either Party may notify the other of their [sic] intent to bill for Local Traffic termination pursuant to the rates set forth in Appendix Pricing of this Agreement and continue for the duration of the Term of this Agreement unless otherwise agreed by the Parties. A minimum of thirty (30) days written notice is required prior to the first billing of mutual compensation."[78]

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[77] ICO Brief at 51 (emphasis added)

[78] Exhibit B to Rebuttal Testimony of William H Brown and Record Exhibit 7, § 4 3, Exhibit C to Rebuttal Testimony of William H Brown and Record Exhibit 8, § 4 3, Exhibit D to Rebuttal Testimony of William H Brown and Record Exhibit 9, § 4 3

Assuming that the parties agree regarding the results of the traffic study, then the traffic factor would be set at the percentages shown in the study. If, however, either party challenges the traffic study, any dispute should be resolved pursuant to the Agreement's dispute resolution provision.[79]

Proposed Ruling: Assuming the Parties agree regarding the results of a traffic study, the traffic factor would be set at the percentages shown in the study.

Relevant CMRS Agreement Sections: CMRS Appendix A, (Section I B 2, as modified).

11. Joint Issue No. 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*?

If the TRA adopts bill –and keep as the method of compensation until the ICOs produce appropriate traffic and cost studies, then the issue of "*de minimis* traffic" will not arise. However, in the event an ICO subsequently produces an appropriate study demonstrating that traffic is no longer "roughly balanced," and if an appropriate forward-looking compensation rate has been established, the CMRS Providers are willing to accept the suggestion of ICO witness Watkins that the ICO and CMRS Provider "voluntarily and mutually agree to defer billing to periods when the amounts would be material."[80]

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[79] *See, e g* , AT&T Wireless Petition, Exhibit 2, Section VIII, "Dispute Resolution Process"

[80] Direct Testimony of S E Watkins at 39.

Proposed Ruling: If an appropriate traffic study has been produced and the parties have begun billing each other for reciprocal compensation, the Parties agree to defer billing to a mutually agreeable period when the amounts would be material.

Relevant CMRS Agreement Sections: CMRS Sections Appendix A.I.D., as modified.

12. Joint Issue No. 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?

With regard to Issue 11, the ICOs once again argue that the TRA lacks the authority to resolve disputes concerning indirect interconnection.[81] In other words, instead of proposing alternative language, or submitting evidence of a particular level of interMTA traffic, the ICOs choose to rely on their unsubstantiated claim that this arbitration should simply not be taking place.

Without offering any comment on the ICOs' strategic decision, the CMRS Providers suggest that the TRA adopt the same contract provision contained in the filed contract between CenturyTel of Claiborne (one of the ICOs) and Eloqui Wireless:

> "PLU: 100%: The Percent Local Usage (PLU) Factor describes the portion of [Telecommunications] Traffic exchanged between the Parties that both originated and terminated within the same local call area (MTA). This factor applies to both originating and terminating MOUs."[82]

The effect of assuming that 100% of all exchanged traffic originates and terminates in the same MTA is to eliminate interMTA traffic as a source of compensation to either party. Moreover, such a provision is consistent with the only relevant evidence

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[81] ICO Brief at 54

[82] TRA Docket 02-00328 The proposed language is contained in "Attachment I--Rates " *See also* Rebuttal Testimony of William H Brown, Exhibit E

on this issue, which confirms the widely held belief in the telecommunications industry that compensable interMTA traffic constitutes a very small portion of traffic exchanged between a wireless and wireline carrier.[83] The above provision is also consistent with the application of bill-and-keep principles to intraMTA traffic.

Proposed Ruling: The percentage local usage factor of traffic between the Parties that originates and terminates within the same MTA should be 100% and thus, the Parties should apply bill and keep principles to interMTA traffic.

Relevant CMRS Agreement Sections: CMRS Appendix A, (CMRS I.B.2 and II).

13. **Joint Issue 12:** Must an ICO provide (a) dialing parity and (B) charge its end user the same rates for calls to a CMRS NPA/NXX as calls to a landline NPA/NXX in the same rate center?[84]

As discussed in the CMRS Brief and in the testimony of the CMRS Provider witnesses, dialing parity and non-discrimination are the cornerstones of the Act as it relates to consumers. Without strict adherence to those principles, the ICOs would force consumers to dial more digits, and often to pay toll charges, for calls to wireless numbers that should otherwise be treated as local by the ICOs.[85] The reason the ICOs characterize – albeit disparagingly – this issue as the equivalent of "motherhood and apple pie" is because it is so basic to the consumers throughout Tennessee.

The ICOs make three arguments in opposition to the Act's clear dialing party and non-discrimination requirements: (1) that section 332's prohibition on the regulation of CMRS rates somehow applies to land-originated traffic sent to wireless consumers and

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[83] *See also* Rebuttal Testimony of William H Brown, 23 15-19

[84] Cingular does not join in the CMRS discussion of Issue 12

[85] Hearing Tr Vol V, 74 1-8, *See* Rebuttal Testimony of Tedesco at 10-12 (as adopted by Conn)

allows ICOs to impose discriminatory charges on their consumers; (2) that there are no applicable standards governing dialing parity and non-discrimination; and (3) even if there were such standards, enforcement of those standards is a matter for the FCC, not the TRA. The ICOs' positions are without merit.

As an initial matter, the argument that the section 332(c)(3)(A) prohibition on CMRS rate regulation somehow applies to rates charged by ICOs to their end-users for land-originated calls to wireless numbers is not only novel, it is absurd. The Act states: ". . . no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service." That statute in no way restricts a state's ability to regulate ICO end-user rates.

Perhaps even more importantly, the CMRS Providers are not asking the TRA to determine what an ICO may charge its subscribers for services rendered. Instead, the CMRS Providers are merely asking the TRA to ensure that whatever those charges are, they are the same for ICO-originated calls to both wireline and wireless numbers associated with the same rate center.[86]

Second, the FCC has established standards to address these issues. Section 51.207 provides that a "LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call *notwithstanding the identity of the customer's or the called party's telecommunications service provider.*"[87] This rule expressly precludes dialing distinctions based on the identity of the telecommunications service provider. Further, the FCC has specifically

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[86] Hearing Tr Vol V, 74 1-8

[87] 47 C F R § 51 207 (emphasis added) *See also* 47 U S C §§ 202 (antidiscrimination provision) and 251(b)(3) (dialing parity)

rejected the argument that LECs do not have to provide dialing parity to CMRS providers.[88] As noted in the CMRS Brief, there is no support for the ICOs' claim that federal law does not require dialing parity for landline to wireless traffic.[89]

Finally, the ICOs argue that even if the Act does mandate dialing parity and non-discrimination, "enforcement of any such statutory requirement" would be a matter for the FCC and is not an issue that can be "negotiated or resolved through arbitration." The question of enforcement, however, is not an issue in this proceeding (although it appears that state commissions have significant authority to also enforce the obligations imposed by interconnection agreements).[90] The issue here is the obligation to treat calls on a non-discriminatory basis consistent with the principles of dialing parity – an obligation the ICOs simply do not wish to acknowledge.

Proposed Ruling: An ICO must provide dialing parity and charge its end users the same rates for calls to a CMRS NPA/NXX as calls to a landline NPA/NXX in the same rate center.

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[88] *See* In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, CC Docket Nos 96-98, 95-185, 92-237, Second Report and Order and Memorandum Opinion and Order, ¶ 68 (Rel August 8, 1996). ("We reject USTA's argument that the section 251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers ")

[89] The ICOs' citations are completely inapposite First, the ICOs quote the FCC's Number Portability Order that wireless service is "spectrum-based" and often has larger service areas than those associated with wireline rate centers. *See* ICO Brief at 57 In addition, the ICOs take the FCC's statement in the TSR matter, which relates to wide area calling and reverse toll billing arrangements, and attempt to imply that this has something to do with the non-discriminatory treatment of similarly rated codes *Id* Neither of these statements, however, has any bearing on the principle that a call to a locally rated code must be treated the same whether the carrier holding the code is a wireless or a wireline provider

[90] *See, e g , In re Petition of Brooks Fiber to Enforce Interconnection Agreement and for Emergency Relief,* Initial Order of Hearing Officer, TRA Docket No 98-00118, p 12 (April 21, 1998) (citations omitted) ("Having been authorized to review and either approve or reject such agreements under the Act, it necessarily follows that the TRA has the authority to enforce the interconnection agreements that it approved.")

Relevant CMRS Agreement Sections: CMRS Section XV.B.

14. Joint Issue No. 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?

As with the other issues, the ICOs refuse to respond substantively to the issue raised and instead challenge the applicability of section 251 reciprocal compensation rules and standards to billing records in the context of indirect interconnection and assert that this issue is outside the scope of a section 252 arbitration.[91] However, assuming that the TRA finds (as it must) that section 251 and 252 rules do govern indirect interconnection, the TRA must also adopt the CMRS Providers' position that the interconnection agreement should not exclude traffic when billing errors are made.

The ICOs acknowledge that resolution of issues regarding the accuracy of, or the obligation to provide, billing records "is *not dispositive* to the arbitration proceeding itself."[92] The ICOs also claim, however, that such issues should be resolved pursuant to a voluntary agreement.

Although the CMRS Providers disagree that this issue must be resolved under a *voluntary* agreement,[93] they agree with the ICOs that resolving the accuracy of billing records is irrelevant for purposes of this interconnection agreement. Indeed, the ICOs

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[91] The ICOs also argue that 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 " ICO Brief at 59 Such a statement ignores the plain fact that under section 251(a)(1), each LEC (including the ICOs) has the obligation to establish indirect or direct interconnection with requesting telecommunications carriers

[92] ICO Brief at 60 (emphasis added) The ICO Coalition also "reserves its rights to address this matter further in subsequent pleadings in this proceeding " *Id* at 61 The TRA should reject any attempts by the ICOs to introduce new evidence or testimony on the record beyond the dates established for reply briefs in this arbitration

[93] Under the proposed CMRS interconnection agreement, if billing records are incomplete or inaccurate, the parties can resolve such issues through dispute resolution procedures

have entered into a number of interconnection agreements with other carriers in which there is no provision that would limit the applicability of the agreement to traffic for which billing records are available [94]

To the extent that the TRA wishes to make a finding on the issue of billing records, it is clear that the ICOs have the obligation to measure terminating traffic at their own cost, and that there are several options available for doing so. In addition, the record is clear that if the ICOs decide not to upgrade their own billing systems, the continued use of BellSouth billing records presents a viable and reliable alternative.[95] In fact, it is clear from the supplemental testimony filed by the ICO witness on this issue that the only "problem" the ICOs have with using BellSouth records for CMRS traffic is that BellSouth does not provide billing information on a real time basis [96] There is no need, therefore, to limit the scope of this agreement because of billing issues.

Proposed Ruling: All traffic exchanged between the Parties should be included within the scope of the Agreement.

Relevant CMRS Agreement Sections: CMRS Appendix A, (Section I.B.1).

15. Joint Issue No. 14: Should the scope of the Interconnection Agreement be limited to traffic transited by BellSouth?

Again, the ICOs argue that this issue is not appropriate for section 252 arbitration, because it relates to indirect interconnection. The ICOs have offered no support,

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[94] CMRS Brief at 22

[95] *See* BellSouth's Response to TRA Data Request dated August 30, 2004 (Sept 30, 2004) (stating that BellSouth provides EMI 11-01-01 records that are consistent with industry standards and also provides SS7 signaling to ICOs that could be used to verify the accuracy of 11-01-01 records), Supplemental Testimony of Suzanne K Nieman on behalf of AT&T Wireless PCS, LLC (Sept 7, 2004) (noting that ICOS may use SS7 signaling to capture calling number information and that certain ICOs are also using billing software that identifies each caller's carrier)

[96] Supplemental Testimony of Lera Roark at 4

evidence, or even a "position" on this issue, other than to claim that the question is moot because there is no transiting carrier other than BellSouth.[97]

If BellSouth were the only available transiting carrier, there would be no need to limit the scope of the interconnection agreement. If, however, there are other current or potential transiting carriers - which there are[98] - the ICOs have offered no legal or factual rationale to limit the scope of the agreement to traffic transited by BellSouth Indeed, the CMRS Providers have offered compelling testimony about the need for flexibility in choosing transiting carriers as well as the common practice --employed even by the ICOs -- not to specify the transiting carrier in an interconnection agreement.

The ICOs further argue that the CMRS Providers are attempting to "force the rural Independents to send traffic to them through the BellSouth transport arrangement they choose."[99] That claim ignores the CMRS Providers' testimony that the ICOs may choose another transiting provider at any time.[100] Moreover, the CMRS Providers have already proposed a modification to the interconnection agreement, which should address any lingering confusion on this issue.[101] The TRA should reject this ICO allegation as unsupported by the record and inapposite to the real issue, that there should *not* be any restrictions on the scope of traffic exchanged under the agreement.

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[97] ICO Brief at 63

[98] The evidence provided by the ICOs in discovery indicates that there is another non-ILEC carrier to whose tandem the ICOs are interconnected Specifically, as the CMRS Providers noted in their brief, one ICO has acknowledged that it is currently connected to two different tandem providers, the IRIS tandem and the BellSouth tandem in Nashville *See* CMRS Brief at 31, n 84 (citing Response of Coalition to Supplemental Interrogatories (Jul 2004), Attachment 1, Question 1, Ardmore Telephone Company and DeKalb Telephone Cooperative Responses)

[99] ICO Brief at 63

[100] CMRS Brief at 30 (citing Hearing Tr Vol V, 18 23-19 25) *See also* Hearing Tr Vol V, 72 16 - 73 9

[101] CMRS Brief at 30, n 76

Proposed Ruling: The agreement should apply to all traffic exchanged between the carriers and should not be limited to specific transiting carriers.

Relevant CMRS Agreement Sections: CMRS Section IV.

16. Joint Issue 15: Should the Scope of the Interconnection Agreement be limited to indirect traffic?

The ICOs argue that since the CMRS Providers have requested only indirect interconnection, the scope of the interconnection agreement should be so limited. Since the ICOs claim that indirect interconnection is not a proper subject for an agreement, the ICOs also argue that the TRA lacks the authority to take any action on this issue. [102] Again, the ICOs fail to provide any legal support for their claim that indirect interconnection is not the proper subject to an interconnection agreement. The TRA should reject the ICOs' attempt to limit the scope of this proceeding and affirm that reciprocal compensation applies to intraMTA traffic exchanged both indirectly and directly.

Proposed Ruling: The scope of the interconnection agreement should not be limited to indirect traffic

Relevant CMRS Agreement Sections: CMRS Section IV.

17. Joint Issue No. 16: What standard commercial terms and conditions should be included in the Interconnection Agreement?

The ICOs erroneously claim that there is "minimal discussion" in the record on this issue when in fact the CMRS Providers filed extensive written testimony, including a detailed matrix, discussing why the CMRS proposals are preferable to the terms and

[102] ICO Brief at 65

conditions suggested by the ICOs.[103] The ICOs are correct, however, to the extent that the *ICOs failed to provide any significant evidence or testimony* on this issue. As the CMRS Providers previously noted, the ICOs' failure to provide any evidentiary support for their position leaves the TRA with no option but to adopt the CMRS proposed standard terms and conditions.[104]

The ICOs assert that "the most practical way to resolve this Issue 16 is for the Authority to refrain at this time from adopting any general terms and conditions," again claiming that indirect interconnection arrangements are not proper for section 252 arbitration.[105] As discussed above, the ICOs' assertion is baseless. Moreover, as a practical matter, it is critical that the TRA resolve all issues within one proceeding, and that the TRA adopt specific contract language on each issue. The parties should not be required to return to the TRA to arbitrate piece-meal or to resolve disputes over contract language.

Proposed Ruling: The TRA should adopt the standard terms and conditions contained in (CMRS) Exhibit 2, which are typical of other commercial contracts.

Relevant CMRS Agreement Sections: CMRS Sections II (Definitions), III (Interpretation and Construction; Change of Law), IV.C (Billing), VI (Liability), VIII (Dispute Resolution), XIII (Notice), XIV (Assignability), XVI (Non-Disclosure).

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[103] CMRS Brief at 83

[104] Tenn Code Ann § 4-5-314(d) ("Findings of fact [in an agency order] shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding The agency member's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence ")

[105] ICO Brief at 66

18. Joint Issue No. 17: Under which circumstances should either Party be permitted to block traffic or terminate the Interconnection Agreement?

The ICOs attempt to minimize the critical impact of "blocking" traffic by asserting that the issue appears "to be more controversial than it is."[106] That statement does not convey the enormous discretion for termination and "blocking" that the ICOs' proposed contract language provides. Moreover, it appears that the ICOs' true position regarding blocking may be closer to the CMRS position than is reflected in the ICOs' proposed contract language Thus, the TRA should adopt the proposed CMRS provisions.

While the CMRS provisions ensure that the agreement's terms and conditions will remain in place and that traffic will continue to flow while disputes are resolved and/or new arrangements are reached, the ICO provisions would allow discontinuance of service (blocking) for "any major default of the terms and conditions of the agreement and/or nonpayment" (which could be construed subjectively and unilaterally by either party).[107] Perhaps even more critically, the ICOs' provisions would *not* provide for coordination with a regulatory authority. In this regard, the ICOs offer in their brief that they would not discontinue service to a CMRS Provider without "appropriate coordination with regulatory authority"[108] and thus appear to concede that the CMRS Providers' proposed language is preferable. Finally, as the CMRS Providers noted, the ICOs' proposed cure period (30 days) does not provide enough time for application of the dispute resolution

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[106] *Id*

[107] Hearing Tr Vol X, 18 9-17, *see also* ICO Exhibit 2, Sections 7 5 and 7 6

[108] ICO Brief at 67

provisions.[109] Accordingly, the TRA should adopt the termination provisions specified in the CMRS Proposed Agreement,[110] and reject the ICO proposed provisions.[111]

Proposed Ruling: The CMRS Providers' proposed language should be adopted so that a Party may terminate when the other Party defaults in the payment of any undisputed amount due under the terms of the Agreement, or upon providing requisite notice ninety (90) days prior to the end of the term. All other disputes should be resolved pursuant to the dispute resolution procedures proposed by the CMRS Providers.

Relevant CMRS Agreement Sections: CMRS Section VII.

19. Joint Issue No. 18: If the ICO changes its network, what notification should it provide and which carrier bears the cost?

The ICOs raise nothing new in their brief regarding this issue and do not state anything of substance other than an objection to being forced to subtend a BellSouth tandem. The CMRS Providers do not intend to preclude the ICOs from changing their network at any time and only request the ability to continue to exchange traffic indirectly.

Proposed Ruling The ICOs should provide notice of network changes and not be allowed to prevent the CMRS Providers from exchanging traffic indirectly.

Relevant CMRS Agreement Sections: CMRS Sections XV.C.

20. ICO Additional Issues:

The CMRS Providers noted in their brief and the ICOs have acknowledged that the ICO Additional Issues are repetitive of the CMRS issues and have been incorporated

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[109] The ICOs' provision would provide 30 days' notice to a CMRS provider when an ICO perceives a compensation default to have occurred and would then permit discontinuation of service However, the dispute resolution provisions of the ICOs' agreement would provide a 60 days' informal resolution period prior to a party's pursuit of any remedy available under law *See* ICO Exhibit 2, Section 8

[110] CMRS Agreement, Section VII

[111] ICO Exhibit 2, Section 7

into discussions addressing the CMRS issues.[112] Accordingly, the TRA should dismiss these ICO Additional Issues and, given the lack of ICO substantive support, adopt the CMRS Providers' positions on the Joint Issues.

IV. CONCLUSION

Many of the issues in this arbitration involve the construction of highly technical statutes and regulations. In the thicket of words, it is easy to lose site of the purpose of this proceeding—to open rural Tennessee to telecommunications competition. If the ICOs have their way, wireless traffic in rural Tennessee will be substantially more expensive than similar traffic in the major cities. Such a result was never envisioned by the Telecommunications Act of 1996 and has never been the policy of this Authority [113]

The CMRS Providers respectfully request that the Authority put an end to the posturing and, as Chairman Miller put it, "make a decision."[114] The consumers of rural Tennessee will be the beneficiaries

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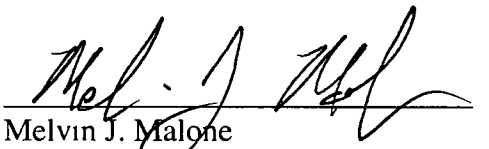
[112] *See* ICO Brief at 68 Moreover, the ICOs offer no substantive evidence or support for their positions on these issues, other than to reiterate that these "issues are subject to voluntary agreement" and that they should not be subject to this arbitration

[113] *See*, c f , Tenn Code Ann § 65-4-123 ("The general assembly declares that the *policy of this state* is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in *all telecommunications services markets,* and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to *any telecommunications services provider,* universal service shall be maintained, and rates charged to residential customers for essential telecommunications services shall remain affordable ") (emphasis added)

[114] Hearing Tr Vol III, 10 21

Respectfully submitted this 5th day of October 2004.



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July 26, 2004

Hon Jean Stone, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Pkwy
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Re Docket No. 03-00585- Petition for Arbitration of Cellco Partnership D/B/A Verizon Wireless

Dear Hearing Officer Stone

Pursuant to the Procedural Schedule in this docket, enclosed please find the original and fourteen (14) copies of the Final Joint Issues Matrix. The parties in the case have agreed to the deletion of two issues, ICO Issue 1 and ICO Issue 3 In addition the CMRS Providers seek to add three sub-issues to Issue 8 and an additional issue, Issue 19, but have not been able to reach agreement on this point with the ICO Coalition CMRS Providers believe that these additional issues are essentially implicit in other issues already contained in the matrix and will need to be addressed for those issues to be completely and efficiently resolved by the TRA Moreover as is explained in more detail below, these additional issues were the subject of negotiation between the parties, discussed in the arbitrations petitions and response and addressed in pre-filed testimony. We would ask for your guidance on this issue at the next status conference in this case.

The CMRS Providers seek to add four compensation related issues – two sub issues related to the impact of the rural exemption on the appropriate pricing methodology, one related to the pricing methodology for direct interconnection and one relating to interim compensation.

- *Rural Exemption Sub-Issues 8(b) and (c)*· Issue 8 as currently drafted asks "What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic". In the November 28, 2003 response of the ICO Coalition to the arbitration petitions ("*ICO Response*") the ICOs asserted that the forward looking cost pricing rules do not apply to the ICOs and other rural telephone companies, noting that "All of the ICOs that are parties to this proceeding are not subject to the FCC's specific pricing rules by virtue of the protections afforded Rural Telephone Companies under Section 251(f)(1) of the Act." *ICO Response* at p. 64 The applicability of the rural exemption is also discussed in the testimony of the ICO Witness Mr. Watkins. (Watkins Direct Testimony at 35-37; Watkins Rebuttal Testimony at 3,19-25.) The CMRS Providers disagree with the ICOs' position and have introduced

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Exhibit 1

testimony in support of their position that the pricing methodology in this case in unaffected by the rural exemption. (See Brown Direct Testimony at 27-28, Brown Rebuttal Testimony at 11-12.) Also, the *ICO Response* notes at page 64 "the CMRS Providers could attempt to demonstrate that the protections afforded by Section 252 (f)(1) of the Act should no longer apply with respect to the pricing methodology applicable to the ICOs.) As a result the CMRS Providers believe that it is entirely appropriate to include the following two sub-issues to issue 8:

> 8(b) Does the rural exemption under 47 U.S.C. § 251(f)(1) affect the appropriate pricing methodology for establishing a reciprocal compensation rate for either the direct and/or indirect exchange of traffic?
>
> 8(c) If so, what is the appropriate pricing methodology for establishing a reciprocal compensation rate for the direct and/or indirect exchange of traffic where the rural exemption under 47 U.S.C. § 251(f)(1) is applicable?

In fact, given the ICOs' position on this issue, the CMRS Providers do not know how Issue 8 could be resolved without a decision on the impact of the rural exemption, if any, on the appropriate pricing methodology.

- *Pricing Standards for Direct Interconnection Issue 8(a):* As noted above Issue 8 as currently framed relates only to the reciprocal compensation pricing methodology for *in*direct interconnection. This was an inadvertent oversight on the CMRS Providers' part. Our intention was to have this issue address the appropriate pricing methodology for all types of traffic exchanged by the parties – whether on a direct or indirect basis. In this regard the discussion of the issue in the arbitration petitions deals generally with reciprocal compensation pricing methodology without regard to the manner in which traffic is exchanged and is under the General Heading "Compensation for IntraMTA Traffic". (See e.g. Verizon Wireless Arbitration Petition at pp 17- 19; see also Brown Direct Testimony at 3-4, 13-14, 17-20.) Moreover, there are a number of other issues in the Matrix that address the exchange of traffic on a direct basis (See e.g. Issues 7, 15) and both the ICOs' and CMRS Providers' proposed interconnection agreements include provisions relating to direct interconnection. It would be a waste of the parties and the TRA's resources in this matter for the arbitration to decide all of the issue related to direct interconnection except the rate. In order to prevent this from occurring, CMRS Providers propose the inclusion of the following sub- issue:

  > 8(a) What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the direct exchange of traffic?

- *Interim Compensation Issue 19*· The issue of interim compensation in this case was the subject of extensive negotiations between the parties. The CMRS Providers have steadfastly maintained that the provisions of 47 CFR section 51.715 govern any interim compensation arrangements in this case. The ICOs disagree that the FCC rules apply but have vociferously asserted in both this proceeding and the Rural USF docket that they are entitled to compensation for CMRS traffic they terminated for the period of time since BellSouth stopped paying them In fact, in response to the ICOs' discussion of the issue at the February 23, 2003 status conference in this case, Hearing Officer Beals directed the parties to file their positions on interim compensation with Tennessee Regulatory Authority which CMRS providers did on March 4, 2003. The issue of interim compensation has also been addressed in parties' testimony. (See e.g. Brown Direct Testimony at 5-6) Accordingly, the CMRS Providers believe it is entirely appropriate to add the following issue to the Final Joint Issue Matrix:

  Issue 19· Are the interim arrangement obligations of 47 C.F.R. Section 51.715 applicable in this case?

Given the interrelatedness of these additional issues to ones already in the Matrix, the CMRS Providers believe it is likely that the TRA would address them in the course of reaching a decision on the merits of the arbitration petitions. CMRS providers assert, however, that the parties and the TRA would benefit from an explicit identification of these issues in the matrix. We would ask that this subject be addressed at the next status conference and that these four additional issues be added to the Final Issues Matrix.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

HW/pp

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BEFORE THE
TENNESSEE REGULATORY AUTHORITY

FINAL JOINT ISSUES MATRIX (7/26/04)

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
Issue 1: Does an ICO have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?	Yes. The FCC rules expressly require the ICOs to interconnect directly or indirectly with the CMRS provider	The ICOs are already in full compliance with the requirements of Section 251(a) of the Act establishing the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications providers including the CMRS providers The ICOs are connected with other carriers and are willing to interconnect with any other carrier that may request interconnection Section 251(a) of the Act sets forth the "general duty" of interconnection and is separate and distinct from the specific Section 251(b)(5) requirements regarding the exchange of traffic Accordingly, a carrier's choice to interconnect indirectly pursuant to Section 251(a) is distinct from a carrier's choice to seek Section 251(b)(5) which under the FCC's established rules, requires a physical interconnection with the carrier from which a reciprocal compensation arrangement is requested To the extent that the CMRS providers' Issue 1 position suggests requirements that go beyond the simple requirements of Section 251(a) of the Act, or infer a resolution of other issues to be discussed below, the ICOs' positions on these issues are set forth below.
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?	Yes The FCC rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered.	The CMRS providers do not understand the position of the ICOs. The three-party transit service arrangement is an arrangement not within the scope of the standards of the FCC's Subpart H rules. Those rules define transport and termination arrangements for which the specific framework of reciprocal compensation applies The requirements for such framework do not include the situation where an interexchange carrier (BellSouth or any other carrier) commingles third party traffic of CMRS providers with the interexchange carrier's own traffic. The tandem arrangement under which BellSouth switches the CMRS provider traffic onto trunks commingled with BellSouth's interexchange carrier access traffic is not an interconnection arrangement that is within the definitions of the Subpart H rules. Nor is any LEC obligated to accept traffic from a physically connecting interexchange or toll carrier subject to terms and conditions that alleviate that interexchange carrier from payment for the termination of the traffic, irrespective of whether the traffic

BEFORE THE
~~TENNESSEE REGULATORY AUTHORITY~~

FINAL JOINT ISSUES MATRIX (7/26/04)

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
Issue 1: Does an ICO have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?	Yes. The FCC rules expressly require the ICOs to interconnect directly or indirectly with the CMRS provider	The ICOs are already in full compliance with the requirements of Section 251(a) of the Act establishing the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications providers including the CMRS providers The ICOs are connected with other carriers and are willing to interconnect with any other carrier that may request interconnection. Section 251(a) of the Act sets forth the "general duty" of interconnection and is separate and distinct from the specific Section 251(b)(5) requirements regarding the exchange of traffic Accordingly, a carrier's choice to interconnect indirectly pursuant to Section 251(a) is distinct from a carrier's choice to seek Section 251(b)(5) which under the FCC's established rules, requires a physical interconnection with the carrier from which a reciprocal compensation arrangement is requested To the extent that the CMRS providers' Issue 1 position suggests requirements that go beyond the simple requirements of Section 251(a) of the Act, or infer a resolution of other issues to be discussed below, the ICOs' positions on these issues are set forth below.
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ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		originates on another carrier's network. The ICOs understand that the CMRS providers have a separate and clear right to pursue physical connections with the ICOs which may be subject to specific interconnection requirements Accordingly, and as an alternative to the establishment of physical connections, the ICOs are willing to resolve fair, competitively neutral, non-discriminatory three-party arrangements under which all of the parties may otherwise avoid burdensome proceedings In some instances, the ICOs have no local exchange traffic that they send to the CMRS providers for termination. In such cases, even if the reciprocal compensation rules were to apply, there is no responsibility for terminating compensation since there is no traffic delivered for termination to the CMRS provider's network The willingness of the ICOs expressed in the course of negotiations to send local exchange service traffic via a three-party BellSouth tandem arrangement is conditioned on the agreement of the CMRS providers to accept responsibility for the transport on the BellSouth network of the traffic beyond the ICO's network to a point of interconnection with the CMRS provider The ICOs object to any attempt by the CMRS providers to require an ICO to take financial responsibility for the transport of traffic beyond the ICO's network
Issue 2b (excluding Verizon Wireless and Cingular 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)?	Yes. The FCC rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered	The CMRS providers (notably excluding Verizon Wireless) are simply incorrect in their portrayal of the established rules; they have provided an incomplete and misleading explanation of their position that ignores the clear statements of the FCC Moreover, the CMRS providers have misunderstood or misstated the ICOs' position The ICOs' position is that a LEC's obligation to pay reciprocal compensation is applicable only with respect to the LEC's local exchange service traffic. The obligation to pay reciprocal compensation cannot extend to a call that is carried by the originating customer's chosen interexchange carrier Interexchange carrier traffic is mutually exclusive from the traffic subject to the reciprocal compensation framework. The ICOs positions are: 1. Traffic that is interexchange carrier traffic is not subject to the framework of reciprocal compensation, it is subject to the framework of access. As discussed below, the FCC has explicitly verified this treatment of traffic

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		[*See* ICO Exhibit 1, Section 3 4; and ICO Exhibit 2, Section 3 1 3] 2. The scope of reciprocal compensation is defined as local exchange service traffic between a LEC and CMRS provider.[1] Interexchange service traffic between the IXC and the CMRS provider does not constitute traffic handled by the LEC Interexchange service traffic is not the traffic of the LEC which provides only access service. It is nonsensical to apply reciprocal compensation obligations to a LEC when the call is not treated as "local exchange service," but is carried by the customer's toll provider 3. The CMRS providers asked the FCC to declare that the framework of access applies to traffic that IXCs terminate to CMRS providers, and the FCC found that the framework of access applies [2] 4. For interexchange services, the IXC is the service provider; the IXC is the provider that bills and receives the service revenues for the provision of the interexchange call, and it is the IXC provider which has the revenue to compensate the terminating carrier. While the FCC clarified that the framework of access applies for traffic that IXCs terminate to CMRS providers, the FCC questioned whether the CMRS providers had established the proper contractual obligations between the IXC and the CMRS provider in a manner that obligates the IXC to provide compensation. Accordingly, the CMRS providers have been left by the FCC in the position of knowing that the framework of access applies between an IXC and the CMRS provider but collecting from the IXC may be difficult. Finding themselves in this dilemma, some CMRS providers (excluding

[1] The FCC has stated that the duty to establish reciprocal compensation is only with respect to a LEC's "local exchange service " *First Report and Order* at para 1045 ("[P]ursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange services " Underlining added) The framework does not apply to a service that a LEC does not offer or provide The FCC also understood that the framework only applies to "certain" traffic, not all traffic (will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers) *Id* Certain traffic does not mean all traffic, and local exchange service traffic does not mean interexchange service traffic.

[2] *Declaratory Ruling*, In the Matter of Petitions of Sprint PCS and AT&T Corp For Declaratory Ruling Regarding CMRS Access Charges, WT Docket No 01-316, released July 3, 2002 The CMRS providers will attempt after the fact to suggest that the FCC's findings regarding IXCs and the access charge framework were confined to interMTA IXC traffic only That is once again misleading and wrong for the following reasons (a) there is no evidence that the FCC's decision is confined to interMTA IXC traffic, the discussion is with respect to interstate access which is both interMTA and intraMTA, (b) an IXC is oblivious as to whether a interexchange service call in interMTA or intraMTA; and (c) the CMRS provider's petition and the FCC's discussion does not even mention this issue

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		Verizon Wireless) have proposed irrationally that somehow the LEC providing access services to the IXC should be responsible for the payment of reciprocal compensation to compensate for the fact that the wireless carrier failed to establish proper terms and conditions when it terminates the traffic of an IXC The ICOs respectfully urge the TRA to reject this attempt by those CMRS providers that would burden the ICOs for payment to cover their failing to establish proper access arrangements with IXCs
		5 The petitions of the CMRS providers demonstrate their misunderstanding of IXC services and the distinction from LEC services In the last paragraph of their discussion of Issue 2b, they suggest that their position "does not impact the originating ICO's ability to assess toll charges on its end-users for these calls (assuming they are toll calls) "[3] This suggestion is inconsistent with the manner in which interexchange toll services are provided Toll service is not a local exchange service, it is an inter-exchange carrier service In their capacity as incumbent LECs, the ICOs provide access to interexchange carriers under an equal access arrange-ment; they do not provide intraLATA toll services like BellSouth The ICOs' involvement in an interexchange call is simply to provide originating access services to the presubscribed IXC or toll carrier The ICOs do not bill toll on behalf of their LEC operations, toll charges are billed on behalf of interexchange carriers.[4]
		6 An examination of the interconnection arrangements that BellSouth has with CMRS providers will reveal that BellSouth provides no compen-sation to CMRS providers for interexchange service traffic that BellSouth switches to competing interexchange carriers on an equal access basis, including those interexchange carriers that compete with BellSouth for the provision of intrastate, intraLATA interexchange toll business. BellSouth provides no compensation to CMRS providers for traffic that is

[3] *E g* , Sprint PCS at p 14.

[4] There is a distinct difference between BellSouth and the ICOs here BellSouth is an intrastate, intraLATA interexchange carrier that competes with other intrastate interexchange carriers, but the ICOs are not BellSouth does terminate interexchange service calls to CMRS providers while the ICOs do not

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		terminated to the CMRS providers by other interexchange carriers 7. The CMRS providers' demand for reciprocal compensation on calls handled by IXCs is inconsistent with facts and a common sense understanding of the industry and the FCC's specific conclusions [5] For all of these reasons, the position of the CMRS providers set forth under Issue 2b should be rejected and the issue should be dismissed.
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?	The carrier on whose network a call originates is responsible for paying the carrier on whose network the call terminates	When a CMRS carrier elects to utilize BellSouth to transit traffic to the ICO networks instead of establishing a physical point of interconnection with the ICO network, the most reasonable administrative and efficient approach is that: 1) BellSouth contracts to provide the transit service to the CMRS provider; 2) the CMRS provider compensates BellSouth for the transport and termination service it receives and 3) BellSouth compensates the ICO for the termination of all the traffic BellSouth carries to the ICO network through the interconnection of the common trunk group This approach is consistent with the agreements that BellSouth and the CMRS providers have reached with the independent telephone companies in other states in which BellSouth operates While alternative approaches to the compensation arrangement may be possible (*i.e* , the CMRS provider pays BellSouth and BellSouth is responsible for compensation to the ICOs, or multiple CMRS providers each pay the ICOs even though they are not directly interconnected), the mechanism utilized ultimately depends on what arrangements and contracts are established between and among multiple parties. The payment mechanism is not dependent upon any established interconnection standard that is subject to arbitration. Throughout the industry, it has been common practice for CMRS carriers to utilize interexchange carriers to deliver traffic for termination in the absence of direct physical interconnections. The CMRS providers are well aware that under these circumstances, IXC terminates the traffic to the LEC,

[5] The ICOs note that Verizon Wireless correctly has not joined in with the other CMRS providers on this issue because Verizon Wireless has already recognized in *ex parte* presentations with the FCC that traffic carried by an IXC should not be part of the reciprocal compensation framework *See* Notice of Ex Parte Presentation, CC Docket No 01-92 -Intercarrier Compensation, filed by Verizon Wireless with the FCC on January 27, 2003 ("IXC-carried traffic should not be subject to reciprocal compensation even if it originates and terminates in the same MTA ") Consistent with the fact that Cingular's part owner, BellSouth, does not provide compensation to CMRS providers for other IXCs' traffic, an examination of Verizon's wireline local exchange carrier interconnection agreements with CMRS providers, including those with its affiliate Verizon Wireless, would demonstrate similar results

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		the CMRS provider compensates the IXC for the transport and termination service, and the IXC compensates the LEC for terminating access Under the existing arrangements and practices that govern BellSouth's interconnection to the ICO networks, and pursuant to which BellSouth offered to terminate the traffic of the CMRS providers on the ICO networks, BellSouth is responsible for compensating the ICOs Before BellSouth and the CMRS providers bilaterally decided to implement so-called "meet point billing"[6] arrangements with respect to termination to the ICO networks, the interconnection agreements between BellSouth and the CMRS providers incorporated provisions whereby the CMRS provider was responsible for reimbursing BellSouth for any termination payments that BellSouth was responsible for making to the ICOs. These provisions in prior effective interconnection agreements demonstrate that this arrangement is both possible and workable. The ICOs respectively submit that this approach is more reasonable and efficient than the alternative under consideration which will require interconnection and billing arrangements between every carrier that transits traffic through BellSouth and every ICO. In these arbitration proceedings the result could be over 100 new interconnection agreements (5 CMRS carriers multiplied by 22 ICOs) to document that indirect interconnection arrangement which is already deployed in accordance with existing terms and conditions set forth in established agreements The so-called "meet-point billing" concept discussed by the parties in their negotiations and under consideration in these arbitrations is not an arrangement addressed by the existing interconnection rules and established standards Meet point billing is a voluntary, mutually agreeable arrangement used when two or more carriers have decided to jointly provide a service to some other customer. With respect to the proposed arbitration issue of which the carrier has the "legal obligation" to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO, the answer is simply that this is not a matter of arbitration because is not a matter

[6] The Coalition is keenly aware that both BellSouth and the CMRS providers often refer to the implementation of so-called "meet point billing" arrangements as if the event were a natural phenomenon There is no instance under either industry guidelines or common principles of law whereby two parties may bilaterally establish agreements that imposes obligations on a third party in the absence of the third party's participation or authorization When the CMRS providers and BellSouth established meet point billing arrangements affecting the ICOs, they never negotiated with any ICO

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		that has been subjected to interconnection rules and established standards. Regardless, even under industry standards, meet point billing is not a mandatory arrangement In the absence of standards and rules, the matter is left to voluntary negotiation and not arbitration. This fact is rationally reflected by the voluntary compromise arrangements that BellSouth, the CMRS providers, and the ICOs have recently put in place in other states where similar issues were addressed
Issue 4: When a third party provider transits traffic, must the Interconnection Agreement between the originating and terminating carriers include the transiting provider?	No Interconnection agreements between the CMRS providers and the ICOs should not include third party transiting carriers	The CMRS providers already enjoy the utilization of an indirect inter-connection arrangement with the ICOs through the utilization of transport service provided by BellSouth These arbitrations do not involve the establishment of new interconnections arrangements. Instead, they involve the establishment of new terms and conditions for the existing arrangement Under the existing terms and conditions, the ICOs look solely to BellSouth for responsibility for the traffic carried through the physical interconnection between BellSouth and each ICO The existing interconnection arrangement cannot be maintained in the absence of appropriate terms and conditions that continue to address the use of the existing physical interconnection As indicated throughout this response and throughout the discussions among the Parties, the ICOs do not object to BellSouth's desire to alleviate itself of financial responsibility for the CMRS traffic it carries to the ICO networks through the common trunk connection established for intraLATA inter-exchange traffic. The ICOs request, however, that BellSouth's desires not be given preferential treatment at the expense of establishing mutually agreeable processes. The ICOs do not understand why any party or regulator would condone BellSouth's unilateral attempt to impose terms and conditions on the ICOs in the absence of even the semblance of good faith negotiation This, however, is exactly what BellSouth did when it unilaterally informed the ICOs that it was implementing a "meet point billing" arrangement with the CMRS providers and ceasing payment of associated terminating compen-sation to the ICOs The new terms and conditions sought by the CMRS providers cannot be sustainable nor acceptable unless BellSouth fulfills specific obligations and maintains ultimate responsibility regarding the identification of the traffic it carries as the intermediary between the CMRS providers and the ICOs.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
~~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?	Yes. The originating party is responsible for paying applicable transit costs associated with the delivery of its traffic to a terminating carrier.	The interconnection obligations established in the Act and set forth in the FCC's rules address interconnection with a LEC's network and interconnection within the LEC's service area [7] LECs have no obligations to establish interconnection with other carriers or provide interconnection services at a geographic point outside of its network or in areas where the LEC does not provide LEC service Accordingly, the interconnection obligations and responsibilities of the ICOs do not extend beyond each of their respective LEC networks and service areas. The ICOs are not responsible for deployment or provisioning of network facilities or services for transport of telecommunications beyond their own networks [*See* ICO Exhibit 1, Section 4 2 5, and ICO Exhibit 2, Section 4 5 4] No LEC, including BellSouth and the ICOs, is obligated to provide interconnection at points that are not within its network service area A LEC's interconnection responsibilities are related exclusively to its existing network and service area.
Issue 6: Can CMRS traffic be combined with other traffic types over the same trunk group?	Yes There is no technological reason for requiring CMRS provider traffic to be delivered over segregated trunk groups. It is also economically inefficient to require separate and distinct trunk groups for CMRS traffic	This is not an issue for arbitration between the CMRS providers and the ICOs The CMRS Providers already enjoy the utilization of the physical indirect interconnection that is the subject of these arbitrations. The CMRS providers seek only new terms and conditions applicable to the existing interconnection Under this existing network arrangement, the CMRS providers are not required to deploy any trunk groups to the ICO networks Instead, the trunk groups referred to in the issue statement above are trunk groups between BellSouth and the ICOs. The manner in which BellSouth and the ICOs decide to maintain physical interconnection, including the potential establishment of distinct trunk groups for different traffic types that each sends to the other, is a matter to be resolved between BellSouth and the ICOs [8]

[7] An incumbent LEC's interconnection obligations only arise with respect to the geographic area within which it operates as an incumbent LEC and with respect to its incumbent network and facilities. *See* 47 U S C. § 251(h)(1)(A)-(B) ("For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that—on the date of enactment provided telephone exchange service in such area " Underlining added) Also, the FCC's rules regarding "Interconnection" state that "[a]n incumbent LEC shall provide interconnection with the incumbent LEC's network: (1) , (2) at any technically feasible point within the incumbent LEC's network " 47 C F R § 51 305, underlining added The Act's requirement to establish interconnection points with other carriers pertains to the LEC's actual network, not to some other LEC's network or to some other service area

[8] The ICOs respectfully note the irony The ICOs preferred to address this matter as part of a comprehensive three party approach described above The CMRS providers insisted otherwise Yet, they raise a matter regarding the provision of physical interconnection between BellSouth and each ICO as an issue for this arbitration! While this issue is

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		Each of the arguments advanced by the CMRS providers in their petition in support of their position on this issue raise matters that pertain to BellSouth's provision of services. BellSouth has yet to respond to the proposals set forth by the ICOs with respect to these issues, and, as discussed previously, the CMRS providers did not want BellSouth to participate in three way discussions. To the extent that the TRA considers this issue, the Authority should be fully aware of the competitively favorable position BellSouth holds with respect to the provision of tandem switching and transport services for other competing carriers No carrier other than BellSouth has the opportunity to transport traffic on a commingled basis to the ICO networks utilizing an interexchange trunk group that technically prevents the terminating ICO from identifying what traffic originates on another carrier's network No carrier has an established right to obtain this arrangement; and the ICOs are not required to provide any such arrangement to any carrier. At the interstate level, the FCC has previously decided not to require so-called "shared transport" access arrangements specifically because such arrangements would burden smaller LECs, including the ICOs, with respect to their ability to obtain proper compensation for the interconnection services they provide [9] If BellSouth chooses to provide "transit services" to enable CMRS providers and other third party carriers to interconnect indirectly to the ICO networks, the

not one subject to Section 252 arbitration, the matter of whether BellSouth should be required to establish separate trunks for traffic carried to the ICO networks does require resolution The ICOs attempted to address this issue with the parties [*See* ICO Exhibit 1, Sections 4 2 1, 4 3 2 1, 4 3 3, and ICO Exhibit 2, Sections 3 3 2, 3 3 4, 4 4 1, 4 4 2, 4 5 1, 4 5 2, 4 5.4, 4 7, 7.2, 7 6, 7 7, 8 0, and 16 0]

[9] *Report and Order*, In the Matter of Transport Rate Structure and Pricing, Resale, Shared Use and Split Billing, CC Docket No 91-213, released March 5, 1998 "[W]e decline, based on the record before us, to require incumbent LECs to offer tariffed split billing arrangements" *Id* at para 1 "[T]he record indicates that a mandated split billing tariff would be costly and burdensome to many small LECs and, based on that record, we conclude that the benefits would not outweigh these costs OPASTCO states that, although in general LECs may not be affected economically by mandated split billing, small LECs would be more likely to be harmed by non-payment, as well as by having to support the additional administrative costs that would be incurred to supervise the provision of split billing " *Id* at para 17, footnote omitted The ICOs, in this proceeding, are asked to receive the commingled traffic of multiple carriers commingled over a BellSouth trunk Instead of holding BellSouth responsible for this traffic, consistent with the existing arrangement, BellSouth and the CMRS carriers seek to impose on the ICOs the very same type of "split billing" that the FCC refused to mandate On the basis of information provided by BellSouth, the ICOs would be required to "split bill" among several CMRS providers with which they do not directly interconnect Because of the technical arrangement resulting from the commingled traffic, the ICOs have no means independently to verify the traffic sent by each carrier, nor to determine whether the residual traffic sent through the commingled trunk is the responsibility of any carrier other than BellSouth As determined by the FCC's consideration of a similar "split bill" process, this arrangement is inequitably disadvantageous to the ICOs.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		establishment of separate trunk groups is necessary under any circumstances where BellSouth is alleviated from the responsibilities it holds under existing arrangements and practices
Issue 7: (A) Where should the point of interconnection ("POI") be if a direct connection is established between a CMRS provider's switch and an ICO's switch? (B) What percentage of the cost of the direct connection facilities should be borne by the ICO?	The POI for a dedicated two-way facility may be established at any technically feasible point on the ICO's network or at any other mutually agreeable point. Pursuant to applicable federal rules, the cost of the dedicated facility between the two networks should be fairly apportioned between the Parties.	This issue only arises in the context of a direct interconnection between a specific CMRS provider and a specific ICO The ICOs respectfully suggest that it is not productive or useful to attempt to address company-specific interconnection issues on a generic basis Each ICO operates its own network with its own established physical points of interconnection, switching and distribution Within the context of the collective party negotiations, there has been no discussion of the speculative arrangements that would be applicable to any specific direct interconnection situation. As a collective party, the Coalition is aware that individual CMRS carriers and ICOs are negotiating company specific direct interconnection arrangements. To the extent that the resolution of those discussions are not ultimately resolved through negotiation, the resolution of company-specific network issues will require the discussion of company-specific facts, and not global policy considerations. These arbitrations are the result of the Pre-Hearing Officer's May 5, 2003 Order directing the parties to meet collectively to address the transit traffic dispute with BellSouth created when BellSouth unilaterally informed the ICOs that it would not abide by the existing terms and practices pursuant to which it carries the CMRS provider traffic to the ICO networks for interconnection All parties can agree as a matter of good faith that the focus of the negotiations has been the establishment of new terms and conditions for the "transit" arrangement of the existing indirect interconnection The ICOs respectfully suggest that the parties agree as a matter of good faith to eliminate this issue 7 from the list of arbitrated issues.
Issue 8: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic?	The TRA should adopt a bill-and-keep as the appropriate reciprocal compensation method until the ICOs (1) produce appropriate cost studies, and (2) rebut the presumption of roughly balanced traffic.	The rate proposals of the ICOs are more than reasonable and are in compliance with the controlling regulatory requirements.

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
Issue 8(a): What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the direct exchange of traffic?	The TRA should adopt bill and keep at the appropriate reciprocal compensation method until the ICOs (1) produce appropriate cost studies and (2) rebut the presumption of roughly balanced traffic	The ICOs cannot accept the addition of issues at this point in the process. Statutorily, Section 252 (b)(4) limits the TRA's consideration in the arbitration to the issues set forth in the petition and in the response.
Issue 8(b): Under the facts of this case, does the rural exemption under 47 U S.C § 251(f)(1) affect the appropriate pricing methodology for establishing a reciprocal compensation rate for either the direct and/or the indirect exchange of traffic?	No In the event the rural exemption is even applicable under the facts of this case, the pricing methodology should not be affected.	The ICOs cannot accept the addition of issues at this point in the process Statutorily, Section 252 (b)(4) limits the TRA's consideration in the arbitration to the issues set forth in the petition and in the response
Issue 8(c) If so, what is the appropriate pricing methodology for establishing a reciprocal compensation rate for the direct and the indirect exchange of traffic where the rural exemption under 47 U.S.C § 251(f)(1) is applicable	Not applicable	The ICOs cannot accept the addition of issues at this point in the process. Statutorily, Section 252 (b)(4) limits the TRA's consideration in the arbitration to the issues set forth in the petition and in the response.
Issue 9: Assuming the TRA does not adopt bill and keep as the compensation mechanism, should	Yes. There are circumstances under which the Parties may need, or choose, to use factors.	The established interconnection rules and standards do not contemplate a requirement by any party to utilize a traffic factor In the absence of voluntary agreement, the traffic subject to a reciprocal compensation arrangement, where such an arrangement is lawfully established, should be measured and the appropriate reciprocal compensation rate should be applied

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
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?		the appropriate reciprocal compensation rate should be applied
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?	Bill and keep is often considered to be a practical and an appropriate basis for compensation when the amount of traffic exchanged does not justify the costs of recording and billing. Whether a particular amount of traffic is considered *de minimis*, and thus does not justify those costs, may vary by carrier (both CMRS and ICO).	Although the ICOs proposed alternative mechanisms to address the concerns raised by the CMRS providers, the ICOs do insist on exercising their rights to require the accurate identification and measurement of all traffic terminated on their networks. While a proposed level of 50,000 minutes a month may be "*de minimis*" to an individual CMRS provider, this amount is not "*de minimis*" to the ICOs The impact of the "*de minimis*" characterization is easily seen by multiplying the 50,000 minutes by the 5 CMRS Providers involved in these proceedings The impact grows with the identification of additional carriers and the concerns become even greater if the would-be "*de minimis*" traffic is commingled with BellSouth's intrastate access traffic Under this circumstance, what party is responsible for providing auditable and verifiable data attesting to the "*de minimis*" traffic from which the ICO would receive no compensation If an ICO, or any business, simply overlooks all charges for services that are below a certain amount, it would forego large amounts of revenue, and the large volume users of service would be effectively subsidizing small volume users. If the CMRS provider concerns are simply matters of administrative efficiency, their concerns can be addressed by other voluntarily agreed to means Imposing a "*de minimis*" benchmark on charges for interconnection services is not an element of any established interconnection standard or rule and the CMRS proposal should not be an issue for arbitration
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?	Yes. The CMRS providers have negotiated interMTA factors with other similarly situated LECs in other states	The ICO position regarding the establishment of an "interMTA factor" is based on the same analysis and consideration set forth in the discussion above regarding Issue 9 and consideration of other default factors. In the course of the negotiations, the ICOs did indicate a willingness to negotiate a mutually agreeable factor The interests of all parties require that the factor reflects an accurate representation of the actual amount of traffic that is interMTA In addition, the ICOs observe that the amount of traffic that is interMTA will vary with respect to each ICO on the basis of many factors including the

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
		geographic scope of the CMRS provider's service area and the proximity of the LEC's service area to an MTA boundary.
Issue 12: (excluding Cingular as to Issue 12(B)) Must an ICO provide (A) dialing parity and (B) charge its end users the same rates for calls to a CMRS NPA/NXX as calls to a landline NPA/NXX in the same rate center?	Yes The FCC rules expressly require dialing parity regardless of the called party's provider and other state commissions and basic principles of fairness and nondiscrimination requires ICOs to charge the same end user rates	The ICOs fully understand and abide by the Section 251(b) dialing parity obligation to the extent that the obligation is applicable Neither the Section 251(b) dialing parity obligation, associated FCC rules and regulations, nor any applicable statute or regulation establish requirements with respect to the rates any LEC, including the ICOs, charge their end user customers for the provision of wireline to wireless calls. Any issue related to ICO end user service charges is not properly the subject of arbitration.[10]
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?	No All traffic exchanged between the Parties should be included in the scope of the Agreement	The willingness of the ICOs to enter into a new voluntary agreement is conditioned upon assurance that BellSouth will provide the ICOs with complete and accurate usage records pursuant to enforceable terms and conditions
Issue 14: Should the scope of the Interconnection Agreement be limited to traffic transited by BellSouth?	No The agreement should apply to all traffic exchanged between the carriers, and it should not be limited to cover only specific transiting carriers.	The scope of these arbitration proceedings should be limited to the consideration of the issues identified in the Pre-Hearing Officer's May 5, 2003 Order which initiated the collective negotiations that have led to these arbitrations. the indirect "transit" arrangement involving BellSouth as an intermediary.
Issue 15: Should the scope of the Interconnection Agreement be limited to indirect traffic?	No. The scope of the Agreement should include both direct and indirect traffic.	The scope of these arbitration proceedings should be limited to the consideration of the issues identified in the Pre-Hearing Officer's May 5, 2003 Order which initiated the collective negotiations that have led to these arbitrations If the TRA were to ask each party about the scope of the

[10] The ICOs respectfully suggest that the CMRS providers and their representatives withdraw this issue The CMRS providers cannot point to any statute or regulation that provides support for their position Within the "Additional Information and Discussion" below, the ICOs will provide a summary demonstrating the absence of any basis to support the assertion of the position advocated by the CMRS providers. In addition to this discussion, the ICOs respectfully observe that those ICOs that are Cooperatives are not subject to the ratemaking jurisdiction of the TRA

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
limited to indirect traffic?		negotiations that have taken place, each party must acknowledge with candor that the discussions have focused on the establishment of new terms and conditions to apply to the existing interconnection arrangement whereby the CMRS providers have chosen to connect indirectly to the ICO networks through BellSouth in lieu of establishing a point of interconnection with any ICO.
Issue 16: What standard commercial terms and conditions should be included in the Interconnection Agreement?	The TRA should adopt the standard terms and conditions contained in (CMRS) Exhibit 2 which are typical of other commercial contracts.	The TRA should adopt the standard terms and conditions contained in either ICO Exhibit 1 or ICO Exhibit 2 attached to this Response
Issue 17: Under which circumstances should either Party be permitted to block traffic or terminate the Interconnection Agreement?	A Party may terminate when the other Party defaults in the payment of any undisputed amount due under the terms of the Agreement, or upon providing requisite notice ninety (90) days prior to the end of the term All other disputes should be resolved pursuant to the dispute resolution procedures proposed by the CMRS providers Blocking of traffic should never be permitted.	An ICO should cease the provision of interconnection services to a CMRS provider when, after appropriate notice and opportunity to cure a default, the CMRS provider remains in default of its lawfully established obligations to the ICO The provision of notice and opportunity to cure default should be consistent with that provided to other interconnecting carriers pursuant to long existing standards, terms and conditions

ISSUE	CMRS POSITION	CORRECTED ICO POSITION
Issue 18: If the ICO changes its network, what notification should it provide and which carrier bears the cost?	The ICO must comply with the FCC's rules regarding notification of network changes and should bear the cost of those changes If the CMRS provider objects to a proposed change, the dispute shall be handled pursuant to the Dispute Resolution process section in the Interconnection Agreement The ICO may proceed with the network change, but shall also maintain the existing network configuration until the dispute is resolved	Although the rules regarding notification of network changes are not applicable to the ICOs, the ICOs have offered to provide the CMRS providers with greater notice of network changes than the FCC rules require.[11] The ICOs have not required or requested that the CMRS providers bear the costs of an ICO network change
Issue 19: Are the interim arrangement obligations of 47 C F.R. Section 51 715 applicable in this case? :	Yes. If the TRA establishes an interim compensation arrangement it should be governed by the detailed provisions of section 51.715 which require that the interim rate be symmetrical, reciprocal and cost-based	The ICOs cannot accept the addition of issues at this point in the process Statutorily, Section 252 (b)(4) limits the TRA's consideration in the arbitration to the issues set forth in the petition and in the response

[11] *See* ICO Exhibit 1, Sections 7 3 and 7 7, and ICO Exhibit 2, Sections 7 3 and 7 7

ADDITIONAL ICO ISSUES	CMRS POSITION	ICO
ICO Issue 1: ***[DELETED]***		
ICO Issue 2: BellSouth should not deliver third-party traffic to an ICO that does not subtend a BellSouth tandem	The Telecom Act requires all carriers to connect directly or indirectly with each other 47 U S.C § 251(a)(1). If it is technically feasible for BellSouth to deliver traffic to an ICO that does not subtend a BellSouth tandem, then such indirect interconnection is appropriate and required under the Act.	Indirect transit traffic arrangements may be appropriate where small ICOs have not deployed their own tandem switching offices and have elected, for now, to subtend a Bell tandem However, ICOs that deploy their own tandems have no continuing obligation to use the Bell tandem, transit traffic arrangement, involuntarily No law or regulation requires any carrier to subtend a BellSouth tandem There will be a chilling effect on competition if BellSouth is allowed to establish itself always at the center, between and among all other carriers as the switch and transport provider
ICO Issue 3: ***[DELETED]***		
ICO Issue 4: The CMRS providers should clarify which of their affiliate entities seeks new terms and conditions for the utilization of indirect "transit" arrangements.	The CMRS providers will provide the name of the contracting entity(ies)	The CMRS providers are comprised of many corporate entities An ICO's interconnection will be with the CMRS licensee that holds the license in the specific MTA in which the ICO operates It will be this specific CMRS provider which terminates intraMTA traffic with the ICO. The CMRS providers have not in all cases indicated which corporate entity will be the contracting entity but must do so. It is not clear which CMRS provider licensee actually operates in the MTAs of each individual ICO. The ICOs asked the CMRS providers for this information and have not yet received it.

ADDITIONAL ICO ISSUES	CMRS POSITION	ICO
ICO Issue 5: The CMRS providers should indicate the specific scope of the traffic originating on their respective networks that is the subject of these proceedings	The Agreement should not place a limit on the area from which mobile calls can be originated. Instead, the agreement should include appropriate compensation mechanisms for interMTA and intraMTA traffic	Each CMRS provider must provide the specific geographic area from which it will originate mobile user traffic for each type of interconnection arrangement it may have with an ICO The geographic scope of the originating mobile user area will be one key factor in determining the extent of interMTA traffic to be terminated to the ICO. [ICO Exhibit 1 and Exhibit 2, Section 3 1.4.]
ICO Issue 6: Access charges apply to both the origination and termination of interMTA traffic on the networks of the ICOs	CMRS Providers agree that access charges apply to some types of interMTA traffic depending on a variety of factors.	The TRA should note that, consistent with applicable FCC decisions, intrastate and interstate access charges apply to interMTA traffic that a CMRS provider both originates and terminates on the LEC network of an ICO The ICO's intrastate and interstate access charges apply to both originating and terminating traffic When a CMRS provider carries a call to a mobile user that is located in another MTA, the CMRS provider is acting as an interexchange carrier, is obtaining originating access from the ICO, and must pay the ICO for this originating service Thus is consistent with the FCC's conclusions that the LEC's access charge tariffs apply to interMTA traffic.[12] [*See* ICO Exhibit 1, Section 4 1 3, and ICO Exhibit 2, Sections 4 3 4 and 4 5.2.]
ICO Issue 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.	The Telecom Act allows a party to seek arbitration of "any open issues " 47 U S C. § 252(b)(1). That an issue may or may not be the subject of an FCC regulation does not affect whether it may be arbitrated. The CMRS providers agree that the inclusion of a change of law provision is appropriate and have included such a provision in their draft interconnection agreement. *See* CMRS Exhibit 2, Section III	To the extent that an agreement between the parties is the result of an arbitration pursuant to Section 252 of the Act, then the provisions of the agreement must be consistent with the requirements of Section 251 of the Act and the FCC's implementing rules Therefore, the "Changes in Law" provision which would recognize subsequent legislative, regulatory or judicial or other governmental decision (including potential clarifications of any matter addressed by the interconnection agreement) that either materially affects the terms of the agreement or determines that the ICO is not required by law to provide some service, arrangement, payment, or benefit to any other party must be included in the arbitrated agreement. [*See* ICO Exhibit 2, Section 24.]

[12] *First Report and Order* at note 2485

ADDITIONAL ICO ISSUES	CMRS POSITION	ICO
ICO Issue 8: Any agreement must accurately define the scope of traffic authorized to be delivered over an interconnection to ensure that the interconnection arrangement is not misused	The agreement should apply to all traffic exchanged between the parties. To the extent that different types of traffic require different treatment, that should be addressed in the interconnection agreement *See also* CMRS positions on Issues 13-15 and ICO Issue 5 above	Any agreement which involves the delivery of traffic by one party to the network of another carrier must set forth the specific scope of traffic that is authorized by the interconnection arrangement. [*See* ICO Exhibit 1, Sections 3 1 through 3.5, and ICO Exhibit 2, Sections 3.2 1 through 3.2 4 (direct traffic) and Sections 3 3 1 through 3 3 5 (intermediary traffic).]
ICO Issue 9: Issues governing the physical interconnection arrangement between BellSouth and the ICOs must be resolved before effective new terms and conditions can be established between the CMRS providers and BellSouth.	The resolution of any unresolved issues between BellSouth and the ICOs should not be a prerequisite to the establishment of an interconnection agreement between the CMRS providers and the ICOs.	In resolving an interconnection agreement between the ICOs and the CMRS providers, many issues associated with arrangements with BellSouth must be resolved as a prerequisite to any three party arrangement For example, the scope of traffic ultimately within the scope of any agreement will depend on the physical interconnection terms and conditions between the ICOs and BellSouth [*See* ICO Exhibit 2, Sections 3 3 and 4 4] The billing and compensation terms are dependent on the role that BellSouth play in the process. [*See* ICO Exhibit 2, Sections 4 5 1 and 4 5 2] The billing and revenue distribution methods will depend on BellSouth's duties [*See* ICO Exhibit 2, Section 4 7.] The term and termination of the agreements will depend on the status of the tandem interconnection between BellSouth and the ICO [*See* ICO Exhibit 2, Sections 7.2, 7.6, and 7.7.] Disputes involving measurement by BellSouth and billing to the ICOs and the CMRS providers can only be settled between and among the interrelated parties. [*See* ICO Exhibit 2, Section 8] The treatment of proprietary information created by BellSouth can only be resolved between and among the three parties to a transit traffic arrangement. [*See* ICO Exhibit 2, Section 16.]
ICO Issue 10: The CMRS providers must provide any specific objections or concerns that they have with the terms and conditions proposed by the ICOs	The CMRS providers have provided such objections to the ICOs. Those objections are also contained in the filed Petitions for Arbitration and in this Issues Matrix	All issues that arise as a result of the differences in agreement language between the ICOs' Exhibit 1 or Exhibit 2 draft agreements and the CMRS providers' Exhibit 2 draft agreement must be resolved.

LEXSEE 2003 N C PUC LEXIS 1062

In the Matter of Petition of Verizon South, Inc , for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method

DOCKET NO P-19, SUB 454

North Carolina Utilities Commission

2003 N C PUC LEXIS 1062

September 22, 2003

PANEL: **[*1]** Commissioner Robert V Owens, Jr did not participate

OPINION: ORDER DENYING PETITION

BY THE COMMISSION On January 30, 2002, the Commission issued an Order establishing extended area service (EAS) between the Durham exchange of Verizon South, Inc (Verizon), the Pittsboro exchange of Carolina Telephone and Telegraph Company (Carolina or, collectively with Central Telephone Company, Sprint), and the Hillsborough exchange of Central Telephone Company (Central or, collectively with Carolina Telephone and Telegraph Company, Sprint) (the EAS Order) n1 This EAS was implemented on June 7, 2002 EAS from the Durham exchange to the Pittsboro exchange and zero-rated expanded local calling from the Durham exchange to the Hillsborough exchange were implemented earlier in the tax flow-through docket, Docket No P-100, Sub 149

n1 *In the Matter of Carolina Telephone and Telegraph Company — Hillsborough and Pittsboro to Durham Extended Area Service, Order Approving Extended Area Service,* Docket No P-7, Sub 894 (January 30, 2002)

Shortly **[*2]** after the EAS was implemented, the Public Staff began receiving complaints from customers in the Pittsboro exchange who were unable to complete calls to numbers in the Verizon Durham exchange as either local or toll calls On investigating these complaints, the Public Staff learned that Verizon was blocking calls from the Pittsboro exchange to competing local provider (CLP) and commercial mobile radio service (CMRS) end-users in the Durham exchange Verizon stated that it blocked the calls because "the proper interconnections between the CLPs, CMRSs and Sprint have not yet been established " n2 Subsequently, the Public Staff learned that Verizon had also begun blocking calls from Central's Roxboro exchange to CLP customers in Durham, calls that it previously had been completing The Roxboro/Durham route is a two-way interLATA EAS route that has been in service since February 14, 1998 IntraLATA EAS calls from the Hillsborough exchange to CLP end-users in Durham have not been blocked In its letters to the Public Staff, Verizon agreed to discontinue its blocking until the matter had been resolved by the Commission n3

n2 See Verizon's letters from Joe Foster to Nat Carpenter dated July 11, 2002, and October 31, 2002, attached as Exhibits A and B to Verizon's Petition

[*3]

n3 *47 U S C A §§ 151 et seq* , "the Act "

On December 9, 2002, Verizon filed a Petition for Declaratory Ruling (Petition) requesting "that the Commission issue a ruling clarifying that Verizon is not required to transit Sprint's InterLATA EAS traffic destined to third party CLPs/CMRS providers" and "that the Commission direct Sprint to cease delivering traffic destined for third-parties to Verizon and make alternative arrangements for proper delivery of such traffic "

On December 10, 2002, the Commission issued an Order seeking comments and reply comments Petitions to intervene have been filed by The Alliance of North Carolina Independent Telephone Companies (the Alliance), BellSouth

Telecommunications, Inc , (BellSouth), AT&T Communications of the Southern States, LLC, (AT&T), ALLTEL Carolina, Inc , and ALLTEL Communications, Inc , (collectively, ALLTEL), KMC Telecom, Inc (KMC), ITC¬DeltaCom, Inc , (ITC), Level 3 Communications, Inc , (Level 3), US LEC of North Carolina, Inc , (US LEC), and Barnardsville Telephone Company, Saluda Mountain Telephone Company, **[*4]** and Service Telephone Company (collectively, TDS Companies) All petitions to intervene were allowed

ITC, Level 3 and KMC, US LEC, Sprint, the Public Staff, BellSouth, and AT&T filed initial comments Verizon, the Alliance, Sprint, and the Public Staff filed reply comments

On May 16, 2003, the Commission issued an Order scheduling an oral argument on June 19, 2003, to consider

(1) Whether Verizon is legally obligated to perform a transiting function or to act as a billing intermediary in regards to third-party traffic, and

(2) If so, the principles that should inform the rates, terms and conditions for such services and the appropriate procedure for arriving at a decision about them

On May 23, 2003, Verizon filed a Motion for Clarification requesting that the Commission make clear that the oral argument would address only legal and not factual issues On June 3, 2003, Sprint filed a response to Verizon's Motion for Clarification in which it argued that the only issues to be resolved in this matter are legal

On June 5, 2003, the Presiding Commissioner issued an Order clarifying that the purpose of the oral argument was to decide whether Verizon is obligated as a matter of law **[*5]** pursuant to the Telecommunications Act of 19963 and other applicable provisions of law to perform a transiting function or to act as a billing intermediary with regards to third-party traffic with particular reference to the third-party interLATA EAS calls at issue in this docket The Order reserved to Commissioners the right to ask questions of the participants at the oral argument bearing upon the regulatory process should the matter be decided in one way or another

The oral argument was heard by the Commission, Commissioner Joyner presiding, on July 15, 2002

On August 29, 2003, the Commission received briefs and/or proposed orders from the following Verizon, BellSouth Telecommunications, Inc (BellSouth), Sprint, the Public Staff, AT&T Communications of the Southern States, Inc (AT&T), and US LEC of North Carolina, Inc (US LEC) Of these, Sprint, the Public Staff, AT&T, and US LEC may be classified as proponents of the duty to provide the transiting function as a matter of law, while Verizon and BellSouth may be classified as opponents Since the arguments of the proponents are largely the same, their arguments will be summarized collectively as those of the "Proponents " Likewise, **[*6]** those of Verizon and BellSouth will be summarized collectively as those of the "Opponents " Since many of the citations to the law are the same, but with the Opponents and Proponents putting a different construction on them, the text of the most common citations is set out below

Most Common Citations

Telecommunications Act of 1996 (TA96)

Sec 251 (a) General Duty of Telecommunications Carriers —Each telecommunications carrier has the duty—
(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers

Sec 251 (b) Obligations of All Local Exchange Carriers—Each local exchange carrier has the following duties

(5) Reciprocal Compensation —The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications

Sec 251 (c) Additional Obligations of Incumbent Local Exchange Carriers —In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties
(2) Interconnection —The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange **[*7]** 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

any other party to which the carrier provides interconnection, and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252

State Law

G S 62-110(f1) The Commission is authorized to adopt rules it finds necessary to provide for the reasonable interconnection of facilities between all providers of telecommunications services

G S 62-42(a) Except as otherwise limited in this Chapter, whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds (1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory or (5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity, **[*8]** the Commission shall enter and serve an order directing that such additional services or changes shall be made or affected within a reasonable time prescribed in the order

Rule R17-4 Interconnection, (a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request (b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs

Summary of Proponents' Arguments

The thrust of the Proponents' arguments was that Verizon is obligated under TA96 as well as under State law to perform a transiting function They argued that this requirement is clearly in the public interest and is in fact necessary to effectuate the purposes of TA96, which include the preserving and extending of the ubiquitous telecommunications network and the encouragement of competition

With respect to provisions in TA96, the Proponents argue that the transiting obligation follows directly from the obligation **[*9]** to interconnect and the right of non-incumbent carriers to elect indirect interconnection *See,* Section 251(a)(1) (all carriers to connect directly or indirectly with other carriers) and Section 252(c)(2) (additional ILEC duties regarding interconnection) Transit traffic is an important option to have available because it offers a simple and economical method of interconnection for carriers exchanging a minimal amount of traffic It was routinely used without objection prior to the enactment of TA96 Otherwise, such carriers would be forced to created redundant and uneconomic arrangements to deliver their traffic As such, the obligation to provide transit service is necessary to give meaning to the right to interconnect directly under TA96 and in fulfillment of its purposes The right to transit service exists independently of any given interconnection agreement, although such agreements may certainly establish procedures for it

Concerning the *Virginia Arbitration Order* of the FCC's Wireline Competition Bureau (July 17, 2002), the Proponents noted that, contrary to Verizon's representations concerning the import of that decision, the Bureau expressly refused to declare **[*10]** that an ILEC is not obligated to provide transit service but rather, in view of the fact that the FCC had not previously decided the issue, it declined to rule on the issue in the context of its delegated arbitration authority

The Proponents also maintained that authority to require the transit function could be found under State law For example, G S 62-110(f1) allows the Commission to enact rules regarding interconnection Rule R17-4 expresses similar sentiments G S 62-42 bears on the matter of compelling efficient service, which would certainly be impaired if there was no duty to provide transit service Other states, notably Ohio and Michigan, have held for a transit service obligation None of the Proponents, however, argued that there was a necessary duty for Verizon to perform a billing intermediary function

Summary of Opponents' Arguments

The key argument of the Opponents was that the provisions of TA96 cited by the Proponents do not create obligations or duties that are separate from interconnection agreements No such transit obligation, either explicitly or through fair inference, can be found in TA96 Any provision of transit is purely voluntary on the ILECs' part **[*11]** The Opponents

further argue that, since TA96 in both Sections 251 and 252 creates a comprehensive framework with the negotiation and arbitration of interconnection agreements as its centerpiece, this preempts the states from enacting other obligations, such as a transit obligation, based on state law

With respect to the *Virginia Arbitration Order,* the Opponents contended that the gravamen of that decision was not only that transit services need not be provided at TELRIC rates, they need not be provided at all, since the Bureau stated that it did not find "clear Commission precedent or rules declaring such a duty "

The Opponents declared that at least one state, New York, had decided against a transit obligation, while several others, such as Maryland, Wisconsin, and Michigan, have expressed skepticism about any billing intermediary obligation

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to find that Verizon is obligated to provide the transit service as a matter of law for the reasons as generally set forth by the Proponents Accordingly, Verizon's Petition for Declaratory ruling in its **[*12]** favor is denied

The Commission is persuaded that a transit obligation can be well supported under both state and federal law The Commission does not agree with the Opponents' view that duties and obligations under TA96 do not or cannot exist separately from their incarnation in particular interconnection agreements pursuant to the negotiation and arbitration process—or, as Verizon put it, "[TA96] contemplates only duties that are to be codified in interconnection agreements, not duties that apply independent of interconnection agreements "

Aside from not being compelled by the history, structure, or real-world context of TA96, the "interconnection agreements-only" approach suggested by the Opponents would lead to a number of undesirable, even absurd, results For example, it would call into question the status of generic dockets, which are an efficient means by which the Commission can resolve interconnection issues arising under TA96 *en masse* Apparently, the state commissions would be limited to arbitrating interconnection agreements one-by-one There is simply no evidence that Congress intended to abolish generic dockets by the states, indeed, quite the opposite is suggested **[*13]** *See,* for example, Section 251(d)(3) (Preservation of State Access Regulations) *As* a practical consequence, adoption of the Opponents' view would immoderately multiply the number of interconnection agreements—and the economic costs relating to entering into them—because the corollary of the Opponents' view is that, in order to fully effectuate rights and obligations, everyone must have an interconnection agreement with everybody else, even if the amount of traffic exchanged is minimal The overall impact would be a tendency to stifle competition by the imposition of uneconomic costs as, for example, by the construction of redundant facilities

If there were no obligation to provide transit service, the ubiquity of the telecommunications network would be impaired Indeed, in a small way this has already happened in this case when Verizon refused to transit certain traffic It should also be noted that the privilege of initiating arbitration proceedings is not symmetrical Even if an ILEC, such as a smaller one with less than 200,000 access lines, urgently desires an interconnection agreement from a CLP or CMRS, it may not be able to get one These effects illustrate the ultimate **[*14]** unsupportability of the Opponents' view of their obligations as ILECs to interconnect indirectly—essentially, as matters of grace, rather than duty

The fact of the matter is that transit traffic is not a new thing It has been around since "ancient" times in telecommunications terms The reason that it has assumed new prominence since the enactment of TA96 is that there are now many more carriers involved—notably, the new CMRS providers and the CLPs—and the amount of traffic has increased significantly Few, if any, thought about complaining about transit traffic until recently It strains credulity to believe that Congress in TA96 intended, in effect, to impair this ancient practice and make it merely a matter of grace on the part of ILECs, when doing so would inevitably have a tendency to thwart the very purposes that TA96 was designed to allow and encourage

The Opponents rely heavily on the *Virginia Arbitration Order* for the proposition that there is no obligation to provide the transit function The *Order* was not meant to bear such a heavy burden A close examination of the *Order* yields a more equivocal conclusion The fact is that the FCC, as is the case in many **[*15]** matters, has not definitively made its mind up on the matter In the meantime, the telecommunications market and its regulation march on As much as we would wish for definitive guidance from the FCC, the states cannot always wait for that body to rule one way or another—or somewhere in between

The Opponents have urged that, in any event, the states are preempted from relying on state law to create a transit obligation This would seem to follow logically from their view that TA96 has established a comprehensive "interconnection agreements-only" approach The Commission, as noted above, views this approach as insupportable In fact, it should be clear that Congress contemplated that states *do* have a role in establishing interconnection obligations as long as they do not thwart the provisions and purposes of Section 251 As alluded to earlier, Sec 251(d)(3) of TA96 specifically provides that "in prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers, (B) **[*16]** is consistent with the requirements of this section, and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part " It is significant that the wording of this provision mentions both state "policies" and the "purposes" of Sec 251 It is also useful to observe that the Opponents' "interconnection agreements-only" view would "read out" this savings provision and render it nugatory, because anything done outside of interconnection agreements would, according to the Opponents, be contradictory to Sec 251 This is yet another example of the consequences of the Opponents' idiosyncratic interpretation of TA96 Establishing a transit obligation and defining reasonable terms and conditions is well within a state's purview, even *arguendo* that no such positive obligation can be derived from TA96

The real challenge facing the industry and the Commission is not whether there is a legal obligation for ILECs to provide a transit service The Commission is convinced that there is The Commission is confident that, should the FCC ever address the issue, it will find the same The *real* question is what should be the rates, terms **[*17]** and conditions for the provision of that service Those are matters included or includible under Docket No P-100, Sub 151 Certainly, interconnection agreements are by and large desirable things, and as many companies as practicable should enter into them No one really denies that But it is not always practicable because, among other things, the privilege of petitioning for arbitration under Sec 252 of TA96 is not symmetrical This simply reinforces the case that, ultimately, there may need to be a default provision made for those that do not have such agreements or cannot interconnect directly In such cases, this *may* require ILECs as intermediaries The equities of the situation are reasonably straightforward—those that seek to terminate traffic should pay for its termination and the one that transits should be compensated for its services This *may* also require that an ILEC perform a billing intermediary function—again for reasonable compensation The system of ubiquitous interconnection and the seamless telecommunications network may well be compromised without this "fail-safe" device The Commission will move expeditiously on Docket No P-100, Sub 151 should negotiations **[*18]** come to naught

IT IS, THEREFORE, SO ORDERED

ISSUED BY ORDER OF THE COMMISSION

This the 22nd day of September, 2003

Commissioner Robert V Owens, Jr did not participate

LEXSEE 2003 CONN PUC LEXIS 11

PETITION OF COX CONNECTICUT TELCOM, L L C FOR INVESTIGATION OF THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY'S TRANSIT SERVICE COST STUDY AND RATES

DOCKET NO 02-01-23

Connecticut Department of Public Utility Control

2003 Conn PUC LEXIS 11

January 15, 2003

PANEL: [*1] By the following Commissioners Jack R Goldberg, John W Betkoski, III, Donald W Downes

OPINION: DECISION

I. INTRODUCTION

A. SUMMARY

In this Decision, the Department of Public Utility Control (Department) determines that the Southern New England Telephone Company's (Company or Telco) transit traffic service offering is an interconnection service and subject to the Department's regulatory authority As such, the Telco must continue to offer transit traffic service to certified local exchange companies (CLEC) and reduce the markup for that service The Telco is also required to develop a transit traffic service offering that mirrors those service offerings currently offered by its affiliates around the country

B. BACKGROUND OF THE PROCEEDING

On January 18, 2002, the Telco filed its cost study in Docket No 00-04-35, Application of MCI WorldCom Communications, Inc , MCIMetro Access Transmission Services, Inc , and Brooks Fiber Communications of Connecticut, Inc for Arbitration Cox Connecticut Telcom, L L C (Cox) petitioned the Department for party status in that docket, n1 however, the Department denied Cox's petition due to the fact that the docket was closed [*2] after the issuance of the November 21, 2001 Decision n2 In the November 21, 2001 Decision in Docket No 00-04-35, the Department required the Telco to submit a cost of service study to determine an appropriate transit service rate The Department did not address Cox's alternative request for a separate proceeding to investigate the Telco's transit rates By petition (Petition) dated January 30, 2002, Cox requested that the Department investigate the Company's transit rates n3 Cox utilizes the Telco's transit service n4 to transport traffic to end-users and therefore, Cox is affected by the Company's CTTS rates

n1 See Cox's December 27, 2001 Motion for party status
n2 By letter dated January 22, 2002, Cox's Motion for party status in Docket No 00-04-35 was denied
n3 Transit Service allows certified local exchange carriers to utilize the Telco's network to exchange both local and intraLATA toll traffic with third-party carriers with which the CLECs have no direct interconnection Pellerin Testimony, p 3
n4 The Telco offers transit service under the name of Connecticut Transit Traffic Service (CTTS)

[*3]

In the Petition, Cox renewed its request that the Department initiate a generic proceeding so that all interested parties, including Cox, could participate in the review of the Telco's transit service rates According to the Petition, transit service rates are an issue of universal interest for all carriers using the Telco's transit service Cox also states that a proceeding specifically related to the Telco's transit service cost study and rates would provide an efficient process and avoid duplicative efforts by the Department in resolving multiple carriers' related complaints or independently determined rates in interconnection agreement arbitrations Cox believes that a generic docket, wherein all carriers that are subject to the

Telco's transit rates are given the opportunity to comment on the validity of the Company's cost study and transit rates, would best serve the interests of the Department, all carriers and, ultimately, Connecticut consumers Petition, pp 1-3

C. CONDUCT OF THE PROCEEDING

On March 22, 2002, the Telco filed a motion to dismiss the Petition (Telco Motion) According to the Telco Motion, the Company's CTTS was not within the jurisdiction of the Department **[*4]** either under the General Statutes of Connecticut (Conn Gen Stat) § 16-247b(b) or the Telecommunications Act of 1996 (Telcom Act), and that the Telco was entitled to set a market-based rate for CTTS which did not require Department approval As such, the Telco recommended that the Petition be dismissed Telco Motion, p 1

On April 1, 2002, Cox filed its response opposing the Telco Motion (Cox Response) Cox argued that the Department should deny the Telco Motion because it was untimely and without merit Cox also argued that the Telco has been offering CTTS for approximately seven years and it remains necessary for facilities-based providers to interconnect with and to deliver traffic to other carriers in an efficient manner Cox Response, p 2

As a result of the Telco Motion and Cox Response, the Department suspended this proceeding's procedural schedule and issued a Notice of Request for Written Comments (Notice), n5 seeking written comments or legal memoranda addressing the Petition and Motion n6 Specifically, the Department sought comments addressing, but not limited to, the Telco's claims that CTTS (1) is nonessential and unnecessary to the provision of telecommunications **[*5]** services, is not subject to the Department's authority under Conn Gen Stat § 16-247b(b) and is not required under the Telcom Act, (2) does not fall under the provisions of Conn Gen Stat § 16-247b(a) and Conn Gen Stat § 16-247b(a) does not authorize the Department to set the rates for transit traffic, and (3) does not fall under the purview of the Telcom Act's interconnection obligations n7

n5 See the Department's April 3, 2002 Notice and the April 9, 2002 Amended Notice of Request for Written Comments

n6 On April 19, 2002, Cox requested an extension until May 16, 2002, to respond to the Notice By letter dated May 10, 2002, the Department granted Cox's request By that letter, the Department also granted the Telco's request that all parties be permitted to file reply comments on May 23, 2002

n7 In response to the Notice, the Department received written comments on May 16, 2002, from Cox, AT&T Communications of New England, Inc (AT&T) and WorldCom, Inc (WorldCom) The Department also received reply comments from the Telco dated May 23, 2002

[*6]

By Interim Decision dated July 3, 2002, the Department determined that it had jurisdiction over CTTS and that the Telco was obligated to provide CTTS to the CLECs Accordingly, the Department denied the Telco Motion and resumed the procedural schedule in this proceeding

On December 2, 2002, the Department issued its draft Decision in this proceeding All parties and intervenors were afforded the opportunity to file written exceptions and present oral argument

D. PARTIES

The Department recognized Cox Connecticut Telcom L L C, the Southern New England Telephone, 310 Orange Street, New Haven, Connecticut 06510, MCI WorldCom, Inc , 1133 19th St , NW, Washington, DC 20036, and the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051 as parties to this proceeding PaeTec Communications, Inc , One PaeTec Plaza, 600 Willowbrook Office Park, Fairpoint, New York 14450, and AT&T Communications of New England, 111 Washington Avenue, Albany, New York requested and were granted party status n8

n8 By letter dated September 11, 2002, PaeTec Communications, Inc (PaeTec) requested that its status be changed to non-party status On September 19, 2002, the Department granted PaeTec's request

[*7]

II. POSITIONS OF PARTIES

A. AT&T COMMUNICATIONS OF NEW ENGLAND

AT&T argues that because traffic transit service is an interconnection service that the Telco is required to provide, Section 252(d) of the Telcom Act dictates that it be priced at total element long run incremental cost (TELRIC) AT&T notes that the FCC recently addressed the issue of transit traffic service in an AT&T/WorldCom/Cox arbitration proceeding with Verizon Virginia n9 Specifically, in the order in that proceeding, the FCC's Wireless Competition Bureau (WCB) required Verizon to charge TELRIC rates for transit service where the combined traffic between two carriers did not exceed 200,000 minutes of use for any three consecutive months For traffic above that threshold, Verizon was required to continue to provide transit facilities at TELRIC rates, but could impose additional rates for billing and trunk ports In addition, the FCC recognized that the functionality provided by Tandem Transit Service could be achieved via access to unbundled network elements (UNE) and that there should not be any restrictions imposed on a carrier's ability to obtain transit service functionality via UNE purchases

n9 See, Petition of Worldcom, Inc , et al , Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc , and for Expedited Arbitration, CC Docket No 00-218, Memorandum Opinion and Order (July 17, 2002)

[*8]

While noting that the Telco's CTTS rate includes compensation for the Company to perform a "billing clearinghouse" function for the carriers that use transit traffic service, AT&T asserts that the Telco's current $0 035 rate includes a significant markup AT&T also asserts that the Company's CTTS rate is not cost-based, and it is incumbent upon the Department to revise that rate so it complies with TELRIC and reflects only a reasonable markup

Additionally, AT&T compared the Company's transit traffic service rates to that of its SBC Communications Company, Inc (SBC) affiliates as an indication that the Telco's rates must be reduced According to AT&T, the Telco's existing rate for CTTS is nearly four times higher than the next highest rate charged by an SBC-affiliated incumbent local exchange carrier (ILEC), and over four times higher than the average for the other 12 SBC states In the opinion of AT&T, to allow the Telco's rate for transit traffic service to remain at its current inflated level will stifle competition in Connecticut because CLECs do not have any economically viable alternatives to purchasing the service from the Telco AT&T Brief, pp 3-5

Lastly, AT&T argues that **[*9]** Connecticut CLECs lack the practical alternatives to the Company's CTTS AT&T states that the time, resources, and expense that would be required to negotiate transit traffic arrangements with every other carrier in Connecticut militate against the approach suggested by the Telco, and highlight the fact that in many instances, the Telco's transit traffic service is the only economically viable alternative available to a CLEC in Connecticut AT&T concludes that it is important to Connecticut CLECs that they have access to cost-based transit traffic service from the Telco Therefore, AT&T requests that the Department require the Telco to provide transit traffic service at TELRIC-based rates Id , p 6

B. COX CONNECTICUT TELCOM, L.L.C.

Cox maintains that the central issue of this proceeding is the removal of the exorbitant markup that the Telco has placed on its Connecticut CTTS Cox also maintains that the Company's cost does not equal the price of its CTTS and that the Telco's profit margin for this service substantially deviates from the price of transit service across the nation Cox claims that the Telco's CTTS price is almost four times higher than the highest transit **[*10]** rate charged by other SBC companies Cox also states that while its witness has identified numerous errors in the Company's cost study, the correction of these errors serves only to increased the huge profit margin inherent in the Telco's CTTS rate Cox Brief, pp 1 and 2

Cox calculated and provided under protective order the amount that the Company's CTTS rate was priced above its cost Cox also proposed an adjustment to the Telco's CTTS cost study that resulted in a lower CTTS cost and a larger profit margin to the Company which it also provided under protective order Cox notes that the Telco's CTTS rate is more than 10 times greater than the transit rate charged to interexchange carriers (IXC) under the Company's intrastate access

tariff for the similar functionality provided via Meet Point Billing arrangements In the opinion of Cox, the Telco's CTTS rate is neither just nor reasonable and recommends that the Department reduce that rate to one which more closely reflects the service's cost Cox Brief, pp 4 and 5, Cox Reply Brief, p 1

Cox also disagrees with the Telco's claim that the CTTS rate is market-based because no functioning market exists in Connecticut for a comparable [*11] service, therefore, no market exists to establish a rate Cox notes that the Telco is the only carrier currently interconnected with every other carrier operating in its service territory Consequently, there is no other carrier from whom Cox could obtain transit service to interconnect with other CLECs, ILECs and wireless carriers operating in the Company's service territory

Cox further disagrees with the Telco suggestion that CLECs' past payment of the CTTS rate illustrates that a market exists According to Cox, since it and other CLECs are CTTS consumers, the fact that Cox and other CLECs are still using CTTS does not support the existence of a market Rather, it provides strong evidence that the CLECs have no available lower cost options Cox states that if a real market did exist for CTTS, competition in that market would dictate that the Telco's rate be reduced to one that is much closer to its costs Cox Brief, pp 5-9, Cox Reply Brief, pp 2 and 3, 7 and 8

Additionally, Cox maintains that the Telco's bill clearinghouse function does not justify its high transit costs In other SBC jurisdictions, the ILEC does not perform the middleman or clearinghouse function In the opinion [*12] of Cox, this clearinghouse function provides little value to Cox and other carriers Cox states that it and other carriers are being asked to pay for something that has little value to them, which is not the sign of a product whose features and price are driven by the market Moreover, Cox argues that the Telco's CTTS rates are excessive and pose a significant barrier to entry (or survival) of local telephone competition in Connecticut Accordingly, Cox recommends that the Telco, at a minimum, be required to offer a transit service without the bill clearinghouse function Cox also recommends that the Department lower the Company's CTTS rate to be more in line with the Telco's costs and with the price charged for transit service in other SBC states Cox Brief, pp 9-14, Cox Reply Brief, 6 and 7

Lastly, Cox suggests that adjustments to the Telco's cost study are warranted Cox recommends that at a minimum, the Company should be required to lower its rate closer to the level shown in the Telco's cost study Nevertheless, Cox maintains that additional adjustments should be made to the CTTS cost study For example, Cox recommends that at a minimum, the Telco's transport termination and [*13] transport facilities costs should be adjusted Id , pp 11 and 12

C. THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

The Telco submits that CTTS is not a service that it is required to offer either under Conn Gen Stat § 16-247a et seq or the Telcom Act, and as such, it is entitled to set a market-based rate for the service The Telco also contends that the Department's authority under state law is limited to ensuring that the Company does not unreasonably discriminate in the provision of the service and that the service fosters competition and protects the public interest

For offerings such as CTTS, where there is no specific requirement to provide a service/facility either under state or federal law, the Telco suggests that the parties be left to negotiate the appropriate arrangements for the provision of the service taking into account their mutual business interests The Telco claims that the vast majority of the CLEC community has no issue with the rate for this service, and that they have been and continue to utilize the service until their own business decisions justify either direct interconnection or alternative arrangements In the opinion of the Telco, CTTS is [*14] appropriately priced based on what the service offers and the options available to CLECs Therefore, the Telco requests that the Department endorse the rate for this service Telco Brief, pp 1 and 2

The Telco also maintains that CTTS allows CLECs to utilize the Company's network to exchange both local and intraLATA toll traffic with third-party carriers with which the CLECs have no direct interconnection According to the Company, CTTS is a value added service providing CLECs the option to complete its end users' originating traffic to end users of other local exchange carriers (LEC), CLECs and wireless carriers (i e , non-Telco end users) via the Telco's network, without the necessity of separate interconnection arrangements with each of these third parties The Company's end users are not part of these transited calls because these calls do not originate from nor terminate to the Telco's network or end users The Telco argues that absent CTTS, CLECs can interconnect directly with third-party carriers or use the facilities or networks of other) carriers to indirectly interconnect with third-party carriers

Additionally, the Telco asserts that CTTS was developed in response to CLEC [*15] requests for provisioning options that would offer them service alternatives for the delivery of traffic to non-Telco end users The Telco states that it agreed to negotiate and provide CTTS arrangements to CLECs pursuant to contracts at a market-based rate that it negotiated

through interconnection agreements with numerous CLECs since it began offering the service

The Telco asserts that CTTS is an optional service and that other carriers are able to provide the same service The Telco also asserts that the manner in which it provides the service allows carriers to avail themselves of the Company's interconnections, without the administrative worry of having to deal with the third-party carrier The Telco states that it purchases and establishes the facilities to terminate a CLEC-originated transit traffic call to a third-party carrier The Telco is also responsible for payments to the third-party carrier to complete the call, either through local reciprocal compensation or terminating switched access According to the Telco, CTTS allows carriers to send up to one DS-1 worth of traffic per month (24 trunks carrying approximately 240,000 minutes) over these trunks to these third-party **[*16]** carriers The Telco claims that the current CTTS rate considers these factors The rate was arbitrated and approved by the Department in the arbitration proceeding with MCI in 1996 The Telco also states that nothing has changed in the law that would render that decision invalid today Telco Brief, pp 2-4

The Telco also disagrees with the Cox and AT&T assertion that the Company's CTTS rate is excessive because pursuant to the Telcom Act, the Company is obligated to provide transit service at a cost-based rate In the opinion of the Telco, the Cox and AT&T legal arguments are misplaced because they are trying to impose an obligation on the Company that does not exist According to the Telco, there is no requirement under the Telcom Act that the Company or any carrier provide indirect interconnection The Telco claims that § 251(a)(1) of the Telcom Act obligates all telecommunications carriers to interconnect their networks Carriers may satisfy this obligation through direct or indirect interconnection with the facilities and equipment of other telecommunications providers

The Telco concludes that § 251(a)(1) of the Telcom Act constitutes a general obligation on all carriers to **[*17]** interconnect with the facilities of another telecommunications carrier Section 251(a) of the Telcom Act also provides that that duty pertains to direct or indirect interconnection The Company notes that in stark contrast to § 251(c) of the Telcom Act, there are no specified parameters on what the interconnection would be used for, nor are there restrictions on how that specific carrier may charge for that interconnection The Telco claims that this is significant because whereas the Company may provide carriers the ability to indirectly interconnect through use of the CTTS, the Telco is free to establish the terms and conditions and the price, associated with that indirect interconnection, just as any other telecommunications carrier

Additionally, the Telco notes that equally significant is the fact that § 251(c) of the Telcom Act does not address indirect interconnection Rather, the duty under § 251(c) of the Telcom Act is limited to a requesting telecommunications carrier's direct interconnection with the ILEC's network Finally, Section 251(c) of the Telcom Act requires an ILEC to provide "for the facilities and equipment of any requesting telecommunications carrier, interconnection **[*18]** for the transmission and routing of telephone exchange service and exchange access " *47 USC § 251*(c)(2)(A) The Telco argues that its CTTS is not a "telephone exchange service" as defined by § 3(47) or "exchange access" as defined under § (3)(16) n10

> n10 Telephone exchange service is defined as a (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service *47 U S C § 3*(47) The term Exchange Access is defined as the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services 47 U S C § (16)

[*19]

The Telco further claims that the FCC has similarly interpreted these statutory provisions In its First Report and Order, n11 the FCC expounded on the ILECs' obligations under § 251(c) of the Telcom Act In the opinion of the Telco, the FCC envisioned that § 251(c)(2) of the Telcom Act involved the interconnection of two networks, the incumbent's and the requesting carrier's, for the mutual exchange of traffic between their end users The Company states that as interpreted by the FCC, § 251(c) of the Telcom Act applies to traffic terminating on the ILEC's network and not traffic transiting the ILEC's network to terminate to another carrier The Telco also states that there is no support for the Cox and AT&T assertions that the Telcom Act requires CTTS to be provisioned and clearly no support that the service be priced at cost

n11 First Report and Order, Implementation of the Local Competition Provisions in the *Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996),* modified on recon , *11 FCC Rcd 13042 (1996),* vacated in part, *Iowa Utils Bd v FCC, 120 F3d 753 (8th Cir 1997),* aff'd in part, rev'd in part sub nom , *AT&T Corp v Iowa Utils Bd , 525 U S 366 (1999),* decision on remand, *Iowa Utils Bd v FCC, 219 F3d 744 (8th Cir 2000),* aff'd in part, rev'd in part sub nom , *Verizon Communications Inc v FCC, 122 S Ct 1646 (2002)* (First Report and Order)

[*20]

Regarding the FCC's WCB ruling, the Telco asserts that the Cox and AT&T efforts to create a legal requirement that the Telco provide CTTS when the Telcom Act, the First Report and Order and the other cited cases recognize no such legal obligation Therefore, the Telco concludes that CTTS is a discretionary service and it should be free to offer the service on terms and at a rate that the market will bear Telco Brief, pp 5-10

Moreover, the Telco argues that the Department cannot regulate the Company's CTTS rate any differently than it would CLECs' rates for their telecommunications services Citing the Connecticut Supreme Court July 23, 2002 decision in *Southern New England Telephone Company v Department of Public Utility Control (Supreme Court's EPS Decision), 261 Conn 1,* * (2002), the Company claims that the Connecticut Supreme Court (Court) construed Conn Gen, Stat § 16-247b(b) as granting the Department authority to regulate the rates for necessary services The Telco also states that the Supreme Court however, found that the Department had authority to review the rates for Enhanced Provisioning Services (EPS) under Conn Gen Stat § 16-247b(a) **[*21]** and § 16-247f

While the Supreme Court found that § 16-247b(a) empowers the Department to ensure that the Company does not unreasonably discriminate in the provision of its services, the Telco notes that the Supreme Court held that the authority granted under Conn Gen Stat § 16-247b(a) did not empower the Department to prescribe the markup on these services In addition, the Telco claims that the Supreme Court found that Conn Gen Stat § 16-247f(a) grants the Department the authority to regulate the provision of telecommunications in a manner to foster competition and protect competition and protect the public interest The Company contends that while the Supreme Court's opinion discusses the Telco's rates for EPS, the analysis is significant in determining the extent of the Department's authority over services that the Telco offers that do not fall under the restrictions of Conn Gen Stat § 16-147b(b) Namely, if the service is necessary as defined by Conn Gen Stat § 16-247b(b), the Department may still ensure the Telco does not discriminate in the provision of the service, and in doing so, order the Telco to provide cost information so that the costs of the service could **[*22]** be judged by neutral criteria According to the Court, pursuant to Conn Gen Stat § 16-247f, the Department may prescribe the markup for the service However, any inherent public interest authority the Department has under Conn Gen Stat § 16-247f to set the markup for telecommunications services that do not fall under Conn Gen Stat § 16-247b(b) as essential, would apply equally to all carriers The Telco concludes that in essence, the service would be treated as "competitive" and the rates for such services would be allowed unless they did not foster competition or were found to be contrary to the public interest

In support of its position that the Department cannot regulate the Company's CTTS rate, the Telco submits that it does not fall under the parameters of Conn Gen Stat § 16-247b(b) Citing to the Supreme Court's EPS Decision, the Telco claims that the Supreme Court has construed Conn Gen Stat § 16-247b(b) as applying to "necessary" services The Company notes that pursuant to § 251(a)(1) of the Telcom Act, Cox or another other carrier has the obligation to interconnect directly or indirectly with any other carrier when requested Cox can complete these calls **[*23]** by directly interconnecting with the originating or terminating carriers or by using a carrier other than the Telco to transit the traffic Accordingly, the Telco concludes that while CTTS is a substitute for a CLEC's provision of direct connections to other carriers, it is not necessary for a CLEC's provision of telecommunications services

After concluding that Conn Gen Stat § 16-247b(b) is inapplicable, the Telco states that the next step under the Supreme Court's analysis is to ensure that, if the Company offers an optional service like CTTS, that the rate for the service does not unreasonably discriminate amongst carriers purchasing the service The Company states that since Conn Gen Stat § 16-247b(b) does not apply, the discriminatory test would be conducted under Conn Gen Stat § 16-247b(a) According to the Company, the Supreme Court held that under Conn Gen Stat § 16-247b(a), the Department may prescribe a cost methodology to determine if there is an unreasonable variation in rates charged competing carriers However, consistent with the Supreme Court's ruling, the Department cannot use this statutory authority to prescribe what markup would apply to CTTS

The Telco [*24] also notes that, unlike in the EPS proceeding, no carrier has alleged any claim of rate discrimination The Telco maintains that it has and continues to offer its CTTS under the same terms and conditions to any requesting CLEC Regarding the CTTS cost study, the Telco maintains that cost study was conducted in accordance with the Department's total service long run incremental cost (TSLRIC) study requirements and details the Company's cost per minute in providing carriers CTTS The cost study reflects a projection of the forward-looking costs the Telco expects to incur in providing the service based on CLECs' traffic mix (local, toll and wireless) and the compensation (reciprocal compensation and access) and interconnection rates in effect at the time the study was conducted In the opinion of the Telco, it provided the requisite cost information for the Department to conduct a neutral analysis Since the Telco offers its CTTS to all CLECs under essentially the same terms, conditions and rates, there can be no unreasonable discrimination

Lastly, the Telco disagrees with the claim that CTTS is excessively priced because of the fact that carriers are using CTTS even though they have [*25] the volumes of traffic that would justify their direct interconnection with other carriers The Telco states that it offers CTTS via its interconnection agreements to 56 carriers The Telco also argues that CTTS, at its current rate, is the most economic and efficient method to provide service In the opinion of the Telco, Cox's claim of excess are equally flawed because in its previous interconnection agreement, Cox had terms for CTTS that provided a lower rate for CTTS based upon the volume of traffic and the percentage of that traffic being local In particular, the Telco cites to the month of January 2002, wherein Cox paid the Telco on average $0 016 per minute In April 2002, Cox opted-in to TCG Connecticut's 1997 interconnection agreement that provided for renegotiation of the rate on request The Telco states that no carrier with such contract provisions elected to exercise those conditions

The Telco also states that probably most fatal to the Cox and AT&T argument that the rate for CTTS is excessive is the fact that, despite the significant volumes of traffic carriers are sending via the service, they have continued to use CTTS rather than seeking to directly interconnect [*26] with terminating carriers. The Company questions that if the Telco's CTTS were priced at an excessive rate, why the carriers would not have invested in direct interconnection with other carriers years ago, especially considering the volumes of traffic transiting the Telco's network Telco Brief, pp 17-22

III. DEPARTMENT ANALYSIS

A. INTRODUCTION

Connecticut Transit Traffic Service (CTTS) is an interconnection product that enables traffic originating and/or terminating from a CLEC's end user and passed through the Telco's tandem switch where that traffic neither originates nor terminates from/to a Telco end user Rather, CTTS is used for transmitting telephone exchange service to other carriers Pellerin Testimony, p 3, Lafferty Testimony, p 4 Pursuant to §§ 251 and 252 of the Act, the Department has an obligation to ensure that all ILEC interconnection and network element services are just and reasonable

CTTS first became an issue during the MCI WorldCom Communications, Inc (WorldCom)/Southern New England Telephone Company interconnection negotiations which led to WorldCom's request for arbitration before the Department and subsequently, Docket No 00-04-35 In that [*27] docket, the Department agreed to examine more closely the Telco's offering of its transit service by requiring a cost study of the product and agreed to take up the complaints of WorldCom in a new proceeding The Department's assertion of jurisdiction in Docket No 00-04-35 was the impetus for this proceeding Moreover, the Department deemed the Telco's compliance with the Department's order with the November 21, 2001 Decision in Docket No 00-04-35 as an indication of its assertion of jurisdiction in the matter

B. STATUTORY AUTHORITY

The Department is asserting authority over the Telco's CTTS based on Conn Gen Stat §§ 16-247b(b) in conjunction with 16-247f(a) and 16-247a Such exercise of authority is consistent with the federal provisions of §§ 251 and 252 of the Act Furthermore, the jurisdictional authority of this Department over a regulated and certificated public service company such as the Telco is clear The Telco is a public service company as defined by Conn Gen Stat § 16-1(4) and a telephone company as defined by Conn Gen Stat § 16-1(23) The Connecticut legislature also granted the Department broad statutory authority pursuant to Conn Gen Stat § 16-247f(a) [*28] to "regulate the provisions of telecommunications services in the state in a manner designed to foster competition and protect the public interest " In addition, Conn Gen Stat § 16-247a expressly enumerates the goals of the State with respect to telecommunications services and the Department's authority to help meet and serve the public interest considerations that accompany a robust, affordable and efficient deployment of telecommunications services in Connecticut Based on the above-mentioned state and federal

statutes and the Supreme Court's EPS Decision, the Department concludes it has authority to adjudicate Cox's claims

In the instant docket, Cox argues that the Department is authorized by state and federal law to set transit traffic arrangement rates and that the rate set by the Telco is excessive and cannot be justified by the Company's cost of providing these arrangements Similarly, AT&T argues that it is within the Department's jurisdiction to investigate the Telco's rate, that the rate is not cost-based and includes a significant markup and that the Company is legally obligated to provide transit traffic service to CLECs at just and reasonable rates However, in its **[*29]** Written Exceptions to the Draft Decision, the Telco continues to argue that CTTS is not necessary for CLECs to provide service in the state n12 Telco Written Exceptions, p 6 The question before the Department now is whether it has the authority to set the mark-up for CTTS, it is not a subject matter jurisdiction issue, rather, it is a question of authority to act pursuant to the relevant statutes n13 The July 3, 2002 Interim Decision determined both issues conclusively No appeal ensued n14 The Department will not revisit that Decision

n12 The Telco further argues that Conn Gen Stat § 16-247b(b) only deals with "necessary" elements, functions or services and where the statute does address rates for "interconnection and unbundled network elements and any combination thereof," it requires that they be consistent with the provisions of *47 USC 252*(d) Telco Written Exceptions, p 9

n13 See, *Supreme Court's EPS Decision, 261 Conn 1,* * (2002) at p 3 Fn 2, wherein Justice Katz addressed the distinction of subject matter jurisdictional issues raised on grounds of a court to hear a particular matter versus the authority to act pursuant to a particular statute

[*30]

n14 The July 3, 2002 Interim Decision to which the Department refers was never challenged in any court of competent jurisdiction On July 8, 2002, the Department received a petition from the Company requesting that the Department reconsider its July 3, 2002 Interim Decision (Petition) The Department did not act on the Petition, resulting in the finality of the issue as set forth in the Interim Decision for purposes of appeal

The Department concluded in the Interim Decision that Conn Gen Stat § 16-247b(b) provides the authority to regulate the rates and charges for telephone company services A plain reading of that statute does not place any restriction on the rates for interconnection services, including the Telco's CTTS Conn Gen Stat § 16-247b(b) states in pertinent part

> Each telephone company shall provide reasonable nondiscriminatory access and pricing to all telecommunications services, functions and unbundled network elements and any combination thereof necessary to provide telecommunications services to customers The department shall determine the rates that a telephone company **[*31]** charges for telecommunications services, functions and unbundled network elements and any combination thereof, that are necessary for the provision of telecommunications services The rates for interconnection and unbundled network elements and any combination thereof shall be based on their respective forward looking long-run incremental costs, and shall be consistent with the provisions of *47 USC 252*(d)

Accordingly, the Department has authority over rates and charges for interconnection services including the Telco's CTTS without first having to demonstrate the necessity of such service n15 The Department believes that the Legislature recognized the "necessary" nature of interconnection services and their value to an integrated telecommunications network (i e , the public switched telecommunications network) when drafting Conn Gen Stat § 16-247b(b) To interpret the exception otherwise would be of little value to individual telecommunications service providers since end users would only be able to communicate with other subscribers to their respective service providers or require the maintaining of multiple service accounts with other service **[*32]** providers to reach those subscribers of those providers Clearly, interconnection was a necessary function in the Legislature's eyes in order to provide for an efficient mutual exchange of telecommunication traffic

n15 Without conceding that such a finding is required and only in response to the Telco's claim as raised in its Written Exceptions that the evidence on the record does not support a finding of necessity, the Department notes

that there is sufficient evidence on the record to render such a finding In this proceeding, the participating CLECs have demonstrated a need for CTTS so that they may compete effectively in the market The Telco would have the Department believe that the sparse participation of certificated CLECs in this docket indicates how insignificant the Telco's CTTS service is in its ability to provide service or to compete effectively However, the Department considers that reasoning flawed and will not indulge in such speculation The lack of a market for CTTS and the Department's legislative mandate to foster competition justifies Department oversight of CTTS See also, Conn Gen Stat 16-247(f)a Lastly, regarding the Telco's contention as explained in its Written Exceptions that the Department has in some manner wrongly passed the Burden of Proof onto the Company in this proceeding, the Department offers the following, Conn Gen Stat § 16-22 expressly states in relevant part "At any hearing involving a rate of a public service company, the burden of proving that said rate under consideration is just and reasonable or is in the public interest shall be on the public service company " As such, the Department disagrees with the Company that it acted contrary to the principles of administrative law or to any prior Department Decisions Telco Written Exceptions p 15, Fn 17 The Department notes that the majority of Department Decisions the Company cites regarding Department precedent on the issue of Burden of Proof are primarily billing disputes in which the customer carries that burden and are distinct from issues on rates such as the case at hand

[*33]

The Department also believes the Telco has misinterpreted Conn Gen Stat § 16-247b(b) and the reference that the rates for interconnection services be consistent with the provisions of *47 USC § 252*(d) Specifically, the Telco's contention that *47 USC § 252*(d) limits the application of interconnection services that fall under the purview of *47 USC § 251*(c)(2) does not discuss interconnection services (i e , transit traffic services) for the purpose of transporting calls across the local exchange carrier's network for the purpose of indirect interconnection

However, § 251(a) of the Act provides that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers Moreover, the Department believes that § 251(c)(2) of the Act provides for the physical linking of telecommunications networks for the mutual exchange of traffic Specifically, this statute is explicit in that it provides for the interconnection of telecommunications carriers' network facilities (e g , ILECs, CLECs etc) for **[*34]** purposes of exchanging traffic The Department also notes that the FCC has provided for tandem transiting arrangements based on its discussion in its First Report and Order in CC Docket 96-98 n16 In particular, the FCC's determination that indirect connection satisfies a telecommunications carrier's duty to interconnect pursuant to § 251(a) of the Act n17

n16 CC Docket No 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and CC Docket No 95-185, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order (FRO), Released August 8, 1996

n17 Cox Comments p 9, citing the FRO, P 997

Lastly, the Department believes its conclusion is correct based on the Supreme Court EPS Decision's treatment of the above mentioned federal provisions and J Katz's analysis that

> There is no express limitation in § 251, however, on an incumbent carrier's duty to provide reasonable and nondiscriminatory rates Even **[*35]** if we assume that § 251 cannot be construed to *authorize* the department to ensure reasonable and nondiscriminatory rates for network elements that are not necessary, there clearly is no language that *prohibits* any action with respect to those elements Indeed, under the plaintiff's view, § 251 (c) simply does not apply to services that are not necessary Accordingly, we find nothing in the express language of the 1996 federal act that would preclude the department from regulating under state law in the present case to protect the public's interest in affordable, high quality telecommunications service n18

n18 261 Conn 1 at p 36

C. CTTS RATES

The issue now before the Department is the alleged excessiveness of the CTTS rates Pursuant to the November 21, 2001 Decision in Docket No 00-04-35, the Telco filed its CTTS cost study with the Department Docket No 00-04-35 Compliance Filing, January 18, 2002, Pellerin PFT, p 4 That cost study was prepared in accordance with Department directives regarding **[*36]** TSLRIC principles Id Because the Telco viewed CTTS as neither necessary nor essential, it priced the service based on what the market would bear *Id , p 6* Cox argues that the Telco's CTTS rates are unreasonable and not market-based Cox Brief, pp 4 and 5 Cox also reviewed the Telco's CTTS cost study and determined that the Company's transit traffic rates are significantly higher than those charged by its SBC affiliates Lafferty PFT, pp 15 and 16 Cox also proposed various adjustments to the Telco's CTTS cost study Lafferty PFT, pp 18-24, Late Filed Exhibit No 5, Exhibit FWL-3R (Rev)

The Department has reviewed the CTTS cost study and finds that it is a long run cost analysis, auditable, and contains the data and documentation necessary so that interested parties may replicate the study The Department also finds that the CTTS cost study comports with the Department's June 29, 2001 Decision in Docket No 00-01-02, Application of the Southern New England Telephone Company for Approval of Cost Studies for Unbundled Network Elements Telco Response to Interrogatory TE-1 While Cox has proffered adjustments to the Telco's cost study, the **[*37]** Department notes that Cox's proposed adjustments suggest that more than transit traffic service expenses have been included in the study Based on its review of the cost study and the record, the Department finds that only those facilities and expenses associated with CTTS have been included in the study Tr 10/02/02, pp 318-321 Additionally, the Department is not persuaded by Cox's claim that transport and termination facilities' costs are overstated and an adjustment is required to remove that portion which would be associated with non-transit traffic Brief, p 12, Tr 9/17/02, p 126 In the opinion of the Department, the Telco's cost study has identified all costs with respect to CTTS and all costs directly incremental to the service or caused by the service Tr 9/17/02, p 31 Therefore, the Department rejects Cox's proposed adjustments and hereby accepts the Telco's CTTS cost study as filed

In addition to proposing certain adjustments to the Telco's CTTS cost study, Cox expressed concerns over the CTTS market-based rate and the bill clearinghouse function provided by the Company Cox asserts that the CTTS bill clearinghouse function does not justify its high transit costs **[*38]** and that the CTTS rate exceeds other SBC affiliates' rates for transit service Cox Brief, pp 4-14 The Department agrees with Cox on this issue While the Department has accepted the Company's CTTS cost of service study, it is the magnitude of the service's markup that is truly at issue

The Department also believes that although 56 carriers n19 that have agreed to the Telco's terms and conditions to purchase CTTS in their respective interconnection agreements, they may have done so in order to have access to the transit traffic portion of CTTS The Department is not persuaded by the Company's suggestion that because only four carriers have objected to CTTS, the remaining carriers' silence indicates that the CTTS service offering and associated rates are acceptable In this proceeding two carriers have actively participated seeking alternative rates or a service offering to the Telco's current CTTS Although the Telco has argued that there are alternatives to CTTS that are available to the carriers, the Department does not believe that the record supports a finding that there are a large number of alternatives or that the existing carriers possess sufficient market share to warrant **[*39]** the existing CTTS markup Pellerin Testimony, pp 5 and 6 Rather, the record supports a finding that while there may be a large number of providers offering transit-like services, only the Telco through its extensive network deployed throughout the state as well as the large number of interconnection agreements can offer to the carriers, such as Cox and AT&T the economies and efficiencies that they require to offer competitive services Lafferty Testimony, pp 5 and 6

n19 Telco Interrogatory Response to TE-2, Attachment A

Cox also argues and demonstrates that the Telco's CTTS rate, including markup is excessive See for example Lafferty Proprietary Testimony, p 16, Late Filed Exhibit 1-R Revised, Attachment A, p 1 The Department notes that § 252(d)(1)(B) of the Act requires interconnection service rates to include a "reasonable profit " In fact, in a recent ruling, the US Supreme Court reaffirmed the FCC's definition of profit to mean "the total revenue required to cover all of the costs of a firm including **[*40]** its opportunity costs " n20 The Supreme Court also noted that

> a "reasonable profit" may refer to a "normal" return based on "the cost of obtaining debt and equity financing" prevailing in the industry First Report and Order P 700 This latter sense of "cost" (and accordingly "reasonable profit") is fully incorporated in the FCC's provisions as to "risk-adjusted cost of capital," namely,

that "States may adjust the cost of capital if a party demonstrates that either a higher or a lower level of cost of capital is warranted, without conducting a 'rate-of-return or other rate based proceeding" *Id*, P 702 n21

n20 Verizon Communications Inc v FCC, LL S Ct 1646 (2002) (Verizon), p 19
n21 Id

In the opinion of the Department, for all intents and purposes, the Telco is the only market force by which its CTTS rates have been based The Department also believes the Telco's claim that its CTTS rates are market-based are disingenuous at best Pellerin Testimony, pp 2 and 9 Accordingly, **[*41]** the Department concludes that the CTTS markup and rates are excessive and are contrary to the Act, existing FCC provisions, Verizon, state statutes, and the public interest and should be reduced

As noted above, the US Supreme Court reaffirmed that the Act provides the states the authority, in those cases when incumbent and requesting carriers fail to agree, to set just and reasonable rates for interconnection or the lease of network elements based on the cost of providing those functions plus a reasonable profit or markup n22 Conn Gen Stat § 16-247b(b) also requires that interconnection rates be consistent with the provisions of § 252(d) of the Act which requires that those rates be reasonable Moreover, Conn Gen Stat §§ 16-247f(a) and 16-247a afford the Department the authority (261 Conn 1, at pp 15 and 16), to set the limits on the maximum markup an incumbent carrier may charge for services the Department has previously determined to possess excessive rates that have been found to be contrary to the public interest Based on the record, the Department hereby exercises that authority and will require the Telco to reduce the CTTS markup to 35% pending the filing and approval **[*42]** by the Department of a transit traffic service offering that more closely resembles those which are offered by SBC in other states The Department will require a 35% markup in view of the number of alternative providers and competitive services currently available to the carriers

n22 Id , pp 20 and 21

Regarding the alternative service offering, the Department will require the Telco to develop a transit traffic service offering that mirrors those service offerings currently offered by its SBC affiliates, (i e , one that does not include the bill clearing house function) Telco Response to Interrogatory TE-8 The Department does not believe that the new transit traffic service should replace CTTS, but rather once it is approved, would complement that service offering In developing a new transit traffic service offering, the Department expects the Company to price that service according to acceptable TSLRIC principles and federal and state pricing guidelines including a reasonable markup The Department recognizes **[*43]** the Company's concerns regarding billing validation (Tr 9/17/02, p 93) and would expect the Telco to identify and assign a reasonable expense within its cost study for that function Finally, because the new transit traffic service will be a competitive service offering to the Telco's CTTS, the Department believes that this new product could impose the pricing pressures on CTTS that the Company claims currently exists

Finally, the Department disagrees with the Telco's suggestion that in light of the Supreme Court's EPS Decision, Conn Gen Stat § 16-247f allows the Company to price CTTS to the same extent as a CLEC's rates for a competitive service Although it is true that Conn Gen Stat § 16-247f applies to all telecommunications services, that statute also prescribes the level of regulatory treatment for telecommunications services See for example Conn Gen Stat § 16-247f(b) that classified various telecommunications services as competitive, or Conn Gen Stat § 16-247f(e) which prescribes how competitive and emerging competitive tariffs would be implemented Most important however for purposes of this Decision is that Conn Gen Stat § 16-247f(d) prescribes the "market" **[*44]** factors that the Department must consider when reclassifying a telecommunications service from noncompetitive to emerging competitive or competitive Although the Telco argues that there are alternative providers to transit traffic service and that the market regulates the markup on the service (Telco Brief, p 16), the record does not support a finding that there are a sufficient number of carriers to make transit service economical to the CLECs or that the existing providers possess a sufficient market share which would permit a reclassification of a noncompetitive service to emerging competitive or competitive pursuant to Conn Gen Stat § 16-247f(d) Clearly, were the Department to allow the Telco to price CTTS as a competitive service, such a move would not foster competition nor protect the public interest as required by Conn Gen Stat § 16-247f(a) The Department notes

that the Supreme Court's EPS Decision is silent on the service reclassification provisions of Conn Gen Stat § 16-247f(d)

The Department questions the Telco's argument that CTTS should be treated as "competitive" when the Supreme Court has repeatedly reaffirmed the Department's regulatory role throughout **[*45]** its opinion yet, making no reference to requiring a relaxation of the level of regulatory treatment by the Department of incumbent (Telco) telecommunications services such as CTTS Had the Telco been correct in its suggestion, the Supreme Court would have been just as explicit as it was in reaffirming the Department's regulatory responsibilities and that Conn Gen Stat § 16-247f(d) would no longer apply except in those cases when there is a claim of discriminatory rate treatment on behalf of the Company In the opinion of the Department, the Telco's argument is unfounded and contrary to statutory construction because if accepted, it would supersede the provisions required by the Legislature to reclassify telecommunications services from noncompetitive to emerging competitive or competitive Therefore, before CTTS and any other noncompetitive or emerging competitive service may be treated as a competitive service, the reclassification provisions prescribed in Conn Gen Stat § 16-247f(d) must be satisfied by the provider (in this case, the Telco) Accordingly, the Telco's suggestion that CTTS be afforded the same treatment as CLEC services and priced as a competitive service is **[*46]** hereby rejected

IV. FINDINGS OF FACT

1 The Telco is a public service company as defined by Conn Gen Stat § 16-1(4) and a telephone company as defined by Conn Gen Stat § 16-1(23)

2 The FCC has provided for tandem transiting arrangements in that indirect connections satisfy a telecommunications carrier's duty to interconnect pursuant to § 251(a) of the Telcom Act

3 The Telco did not provide the evidence required by Conn Gen Stat § 16-247f(d) which demonstrates that CTTS is a competitive service

4 The CTTS cost study is a long run cost analysis, auditable, and contains the data and documentation necessary so that interested parties may replicate the study

5 The CTTS cost study comports with the Department's June 29, 2001 Decision in Docket No 00-01-02

6 Only those facilities and expenses associated with CTTS have been included in its cost of service study

7 The Telco's cost study identifies all costs with respect to CTTS and all costs directly incremental to the service or caused by the service

8 Only the Telco through its extensive network deployed throughout the state as well as the large number of interconnection agreements can proffer **[*47]** carriers, such as Cox and AT&T the economies and efficiencies they require to offer competitive services

9 The CTTS markup and rates are excessive and are contrary to the public interest and should be reduced

10 SBC's transit traffic service offering in other states does not include a bill clearing house function

11 Conn Gen Stat § 16-247b(b) provides the Department with authority to regulate the rates and charges for telephone company services, functions and UNEs that are necessary for the provision of telecommunications services

12 Conn Gen Stat § 16-247f(a) together with Conn Gen Stat § 16-247a provides the Department with the authority to investigate telephone company and other telecommunications company service rates and charges to guard against excessive rates that are contrary to the public interest

13 *47 USC § 252*(d)(A) and (B) require interconnection and network element charges to be based on the cost of providing interconnection and may include a reasonable profit

14 Section 251a of the Telcom Act imposes on each telecommunications carrier the duty to interconnect directly or indirectly with the facilities **[*48]** and equipment of other telecommunications carriers

15 Section 251(c)(2) of the Telcom Act provides for the physical linking of telecommunications networks for the mutual exchange of traffic

16 Pursuant to Conn Gen Stat § 16-247b(a), the Department may prescribe a cost methodology to determine if there is an unreasonable variation in rates charged competing carriers, but cannot use this statute to prescribe a markup

17 Cost of service responsibilities and service tariffing procedures are the best tools that the Department has before it to analyze the Company's filings to ensure that those requirements are met

18 Conn Gen Stat § 16-247f prescribes the level of regulatory treatment for telecommunications services

19 Conn Gen Stat § 16-247f(d) prescribes the "market" factors that the Department must consider when reclassifying a telecommunications service from noncompetitive to emerging competitive or competitive

20 The Supreme Court's EPS Decision is silent on the service reclassification provisions of Conn Gen Stat § 16-247f(d)

21 Before CTTS and any other noncompetitive or emerging competitive service may be treated as a competitive service, **[*49]** the reclassification provisions prescribed in Conn Gen Stat § 16-247f(d) must be satisfied by the provider (in this case, the Telco)

22 Conn Gen Stat §§ 16-247f(a) and 16-247a afford the Department the authority to set the limits on the maximum markup an incumbent carrier may charge for services

V. CONCLUSION AND ORDERS

A. CONCLUSION

The Department reaffirms its July 3, 2002 Interim Decision that it has subject matter jurisdiction over the petitioner's claims and statutory authority to regulate CTTS and its rates Due to the Telco's vast network and the number of interconnection agreements with other carriers as well as the limited number of alternatives available to the CLECs, no real competitive market for CTTS exists and that the service's markup is excessive and the corresponding rate, overpriced The Supreme Court's EPS Decision has not made obsolete the service reclassification provisions outlined in Conn Gen Stat § 16-247f(d) Therefore, before CTTS treated as a CLEC service, the Telco must satisfy the reclassification provisions outlined in Conn Gen Stat § 16-247f(d) Accordingly, the Department will require the Telco to reduce the markup for CTTS **[*50]** The Department will also require the Company to develop a transit traffic service offering that is similar to that currently provided by its SBC affiliates The Department views this new service as an alternative offering to CTTS that is intended to place pricing pressure on the Company so that its CTTS can be priced based on real market forces

B. ORDERS

For the following Orders, please submit an original and 10 copies of the requested material, identified by Docket Number, Title and Order Number to the Executive Secretary

1 Effective the date of this Decision, the Telco shall reduce its CTTS rates to reflect a 35% markup and submit proof to the Department that it has complied with this Order

2 No later than March 3, 2003, the Telco shall file a new transit traffic service offering that is consistent with that offered by its SBC affiliates The new service offering shall be priced according to acceptable principles and federal and state pricing guidelines and include a reasonable markup

This Decision is adopted by the following Commissioners

Jack R Goldberg

John W Betkoski, III

Donald W Downes