BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE:

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

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

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

October 5, 2004

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to as the "Coalition," the Rural LECs or the "Independents" respectfully submits this Post-Hearing Reply in response to the "Joint Post-Arbitration Brief Submitted on behalf of the CMRS Providers" (the "CMRS Brief") filed in this proceeding on September 10, 2004.

I. Introduction – The CMRS Brief Warrants Scrutiny and Challenge

A careful and challenging review of the CMRS Brief reveals the deficiencies of their positions and their attempt to utilize this arbitration proceeding to impose onerous interconnection terms and conditions on the rural Independents. The record clearly reflects the fact that the only specific interconnection arrangement under consideration in this proceeding is the already existing indirect interconnection through the BellSouth common trunk groups that are physically connected to each rural Independent. A review of applicable law, regulation and FCC cases demonstrates with specificity that this arrangement is not consistent with the established standards associated with the implementation of a reciprocal compensation arrangement under Section 251(b)(5) of the Communications Act of 1934, as amended (the "Act")

The tactics employed by the CMRS Providers to achieve their ends are not readily apparent from a casual review. In the CMRS Brief, the CMRS Providers address the issues with a broad brush. They utilize piece-parts of statutes, regulations, and cases to support their positions in a manner that, viewed without scrutiny and challenge, portrays a simple and alluring logic. In each and every instance, however, their arguments in support of their positions cannot stand against scrutiny.

For example, in one instance the CMRS Providers incorrectly rely on an FCC Bureau decision; later in their brief, they discredit the same case as of "no value." In other instances, the CMRS Providers cite fragments of FCC decisions. When the critical reader reviews the citation and reads a few sentences further than the extract quoted by the CMRS Providers, the flaws in

the positions of the CMRS Providers become apparent. In some arguments, the CMRS Providers simply scoff at the positions of the Coalition without providing any legal support for their own positions

Essentially, the CMRS Providers ignore the origins of this proceeding in the generic Universal Service Docket 00-00523. The CMRS Providers clearly have no patience for the concerns of rate design and the delicate regulatory balance required to determine how best to recover the costs of service in the higher cost to serve rural areas of Tennessee. Without regard to the established interconnection standards or universal service considerations, the CMRS Providers basically seek:

1) to obtain free ("bill and keep") interconnection from rural Independents or, alternatively, to require the Independents to use costing methodology that the FCC has not applied to rural companies;

2) to impose transport expenses on rural companies by requiring them to accept responsibility for the transmission of traffic beyond their existing networks, a burden that is not even imposed on non-rural local exchange carriers ("LECs");

3) to mandate how rural LECs network their traffic; and

4) to mandate how rural LECs provide services and how they charge their own end users. Consistently, the CMRS Providers extract piece-parts from statute, regulation, cases and rules.

In many instances, the terms and conditions that the CMRS Providers seek to impose with the endorsement of the Authority are similar to proposals they have submitted to the FCC. Disregarding the statutory delegation of authority to the FCC to establish interconnection standards, the CMRS Providers apparently hope that the TRA will provide them with what they have not obtained from the FCC. The issues before the Authority do not lend themselves to resolution through the unchallenged acceptance of piece-part extracts of law, regulations and cases. A thorough and detailed review of the arguments raised by the CMRS Providers is required – and, it is offered herein.

II. Analysis of Matrix Issues

A. Preliminary Matters

1. Organization of this Reply Brief

The Authority has undoubtedly noted that the CMRS Providers have taken the liberty of "reorganizing" this proceeding. The CMRS Providers, as the Petitioners, initially structured this proceeding through the identification of "arbitration issues" that they now incorrectly label "Joint Issues " The CMRS issues are not "Joint Issues " In fact, from the outset of this proceeding, the Coalition has contended that the CMRS Issues are not subject to arbitration, as further described in "Preliminary Matter 2," below.

The CMRS Providers have apparently determined that their initial organization of their issues did not serve their purposes Rather than follow the logical and now common practice of briefing each issue in the order they initially presented it, the CMRS Providers elected to reorganize their issues under headings of self-styled "Principles." For the sake of administrative ease in the undertaking of review of the CMRS Brief, and the detailed review it requires, the Coalition has reluctantly organized this Reply to follow the structure of the CMRS Brief rather than the order of the Issues initially set forth by the CMRS Providers.

2. The Standard of Arbitration

Overarching this entire proceeding is the fact that it must be conducted in accordance with Section 252(c) of the Act. Only those terms and conditions consistent with established interconnection standards established by statute and the FCC can be imposed as a result of an arbitration unless both parties have voluntarily submitted issues to the arbitrator. The fact that the CMRS Providers raised issues for arbitration and voluntarily submitted those issues does not render those issues subject to arbitration. The U.S. Court of Appeals for the 11th Circuit has noted that if a state regulatory authority "must arbitrate *any* issue raised by a moving party, then

there is effectively no limit on what subjects the incumbent must negotiate. This is contrary to the scheme and text of that statute, which lists only a limited number of issues on which incumbents are mandated to negotiate." [1]

The Coalition has strived both in private negotiation and on the public record to make clear that its members have not voluntarily submitted any issues to arbitration beyond the scope of established interconnection standards.

B. Response to CMRS "Principle No. 1: Carriers have an obligation to interconnect either directly or indirectly." The CMRS Providers have attempted to misapply this principle.

Summary: All agree that carriers have an obligation to connect directly or indirectly. (Issue 1) The CMRS Providers, however, wrongly attempt to utilize the indirect interconnection obligations under Section 251(a) of the Act to establish new standards of interconnection obligations under Section 251(b)(5). No such obligations exist Consideration of the terms and conditions the CMRS Providers seek are pending before the FCC. In the absence of the establishment by the FCC of any such requirements or standards, the CMRS Providers are not entitled to reciprocal compensation with respect to traffic exchanged indirectly through a common toll trunk provided by BellSouth or any other interexchange carrier. (Issues 2 and 2b). In the absence of voluntary agreements among all of the parties involved in this indirect interconnection arrangement, the FCC has established that the proper framework of compensation for terminating service is the assessment of access charges on the intermediary party that delivers the traffic to the termination carrier.

1. The concept of interconnection pursuant to Section 251(a) of the Act does not encompass reciprocal compensation.

From the outset of this proceeding, the CMRS Providers have unsoundly built their "case" on an equation that does not add up to the result they seek. The CMRS Providers suggest that because all carriers are required to interconnect indirectly in accordance with Section 251(a) of the Act, Section 251(b) reciprocal compensation must be applicable to all forms of indirect interconnection. The discussion of "Principle No 1" in the CMRS Brief[2] exemplifies the

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[1] *MCI Telecommunications Corporation v BellSouth Telecommunications, Inc* , 298 F 3rd 1269, 1274 (11th Cir 2002)

[2] CMRS Brief, pp 17-40

approach undertaken by the CMRS Providers throughout this proceeding. They have taken an established principle out of context and misapply it to suit their objectives.

The Coalition respectfully submits that the TRA should be particularly wary of this tactic employed by the CMRS Providers. For example, a review of the discussion in the CMRS Brief regarding Issue No. 1 reflects how the CMRS Providers use an extracted legal proposition in isolation to suggest broad application Specifically, the CMRS Providers cite the broad proposition that carriers must interconnect indirectly under Section 251(a)(1) for the mutual exchange of traffic, and imply that this tenet supports their broad assertion that Section 251(b)(5) reciprocal compensation applied to all indirect interconnection arrangements.[3] The CMRS Providers offer no support or legal citation for their proposition. They apparently trust that the TRA will both be lured by the simplicity of the approach and not be troubled by law or facts.

The fact that the argument set forth by the CMRS Providers is wrong is not simply the position of the Coalition or even a matter of debate or argument. The FCC and the Courts have not elaborately addressed the application of Section 251(a), but they have made clear that, contrary to the suggestion made by the CMRS Providers, there is a significant distinction between the duties imposed by Section 251(a) and the duties imposed by Section 251(b)(5). Specifically, the FCC has recognized that Section 251 of the Act creates a three-tiered hierarch of escalating obligations, and concluded, "Accordingly, it would not be logical to confer a broader meaning to this term (referring to the term "interconnection") as it appears in the less-burdensome section 251(a)."[4]

In contrast to the claim of the CMRS Providers that all Section 251(a) indirect interconnection arrangements are subject to reciprocal compensation, the FCC has stated, "Thus,

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[3] CMRS Brief, p 18

[4] In the Matter of Total Telecommunications Services, Inc and Atlas Telephone Company, Inc. v AT&T, File No E-97-003, Memorandum Opinion and Order, March 13, 2001, para 26

the term interconnection, as used in section 251(a), cannot reasonably be interpreted to encompass a general requirement to transport and terminate traffic. Otherwise, section 251(b)(5) would cease to have independent meaning, violating a well-established principle of statutory construction requiring that effect be given to every potion of a statute so that no portion becomes inoperative or meaningless."[5]

In their own words, "The CMRS Providers seek arbitration of this agreement with the ICOs in order to enter into an agreement establishing reciprocal compensation obligations pursuant to sections 251(a) and 251(b)(5)." (Underscoring added).[6] As the FCC has indicated, however, the concept of reciprocal compensation is not incorporated within the meaning of interconnection pursuant to Section 251(a).

2. The indirect interconnection arrangement through the BellSouth common trunk group does not meet the standards established by the FCC for Section 251(b)(5) reciprocal compensation.

The new, but frenetic, reorganization of the CMRS arbitration issues set forth in their Post-hearing brief incorporates CMRS Issues 1,4,6,14, and 15 and Coalition Issues 2 and 9 within the framework of their discussion of "Principle No. 1." Prior to addressing the most significant inaccuracies and failings in the CMRS arguments, it is imperative that the Coalition address that which is not stated by the CMRS Providers in the context of their "Principle No. 1," regarding the right of all carriers to connect directly or indirectly. Specifically, the CMRS Providers fail to address the undisputed facts regarding the interconnection arrangement under consideration and the application of existing law and regulation to those facts.

At the foundation of each of the CMRS issues regarding their existing indirect interconnection through BellSouth is the notion that all forms of Section 251(a) interconnection

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[5] *Id* The FCC's interpretation was affirmed in ATT Corporation v Federal Communications Commission, 317 F 3d 227 at 235 (U S Court of Appeals , D C Cir)

[6] CMRS Brief, p 18

entitle the CMRS Providers to Section 251(b)(5) reciprocal compensation. As discussed in Section II B 1, above, that notion is incorrect. It is not sufficient to slough off the statutes, regulations, rules and cases cited by the Coalition by simply arguing that the Coalition members "do not want to change anything." The facts before the TRA, and as set forth in Section III below, demonstrate that the Coalition members are not resisting the establishment of new terms and conditions to apply to the existing indirect interconnection through BellSouth. Even more importantly, however, neither the CMRS Providers, the Coalition, nor the Authority can ignore the applicable statutes, regulations, rules and cases

The facts before the TRA are neither disputable nor complex

1. The single interconnection arrangement under consideration is the existing interconnection arrangement that the CMRS Providers utilize through the BellSouth common toll trunk interconnected to each Coalition member

2. Any reference in this proceeding to direct interconnection arrangements or indirect interconnection through other third parties is abstract. There are no specific facts before the authority regarding any specific direct interconnection request, nor any request by any CMRS provider to establish an interconnection point between its network and the network of any Coalition member.[7]

3. The existing interconnection arrangement has been provided in accordance to terms and conditions that have been the subject of Docket No. 00-00523.

While the history of Docket No. 00-00523 is protracted and continuing, the relevance of that proceeding to this proceeding cannot be ignored In brief, the CMRS Providers and BellSouth entered into interconnection agreements that included the provision of interconnection to the Coalition members through BellSouth. These agreements were approved by the TRA. The TRA had also approved and affirmed within Docket No. 00-00523 the terms and conditions pursuant to which BellSouth utilized its interconnection with the Coalition members to terminate traffic including traffic originating on the CMRS provider networks. BellSouth independently decided that it no longer wanted to abide by those terms and conditions which, in turn, gave rise

[7] *See*, 47 CFR Sec 51 701(c)

to action by the Coalition seeking to enforce the application of the standing orders of the TRA by requiring BellSouth to abide by the existing terms and conditions.

In the course of the consideration of the action sought by the Coalition, the Pre-Hearing Officer in Docket No. 00-00523 required BellSouth to identify the CMRS Providers with which BellSouth has agreements to transport traffic to the rural Independent networks, and further required the Coalition and BellSouth to notify these CMRS Providers of the opportunity to participate in collective negotiations to establish new terms and conditions applicable to the interconnection arrangement.[8] The Pre-Hearing Officer identified two possible outcomes in the event a settlement was not reached: 1) "a hearing on the factual and legal issues surrounding the terms of the toll settlement agreements entered into by BellSouth and the Coalition;" and 2) "Alternatively, . . . the Authority may be called upon to arbitrate disputed issues pursuant to Section 252 of the Telecommunications Act of 1996."[9]

Unfortunately, both the CMRS Providers and BellSouth seized the non-voluntary collective negotiations required by the Pre-Hearing Officer as an opportunity to force the existing indirect interconnection arrangement into the parameter of a Section 251(b)(5) reciprocal compensation arrangement. As a matter of both fact and law, however, the existing interconnection arrangement through a BellSouth common toll trunk does not constitute a non-voluntary reciprocal compensation arrangement.[10]

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[8] *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions* issued in Docket No 00-00523 on May 5, 2003 (The "*Conditional Stay Order*") at pp 8-9

[9] *Id* at p 5

[10] The Coalition has not disputed the fact that two carriers may voluntarily decide to apply the concept of reciprocal compensation to an indirect interconnection arrangement through a BellSouth common trunk group The Coalition, however, in apparent contrast to proceedings in the few states cited by the CMRS Providers, have not voluntarily agree to negotiate Section 251(b)(5) reciprocal compensation on the basis of the existing indirect interconnection arrangement Almost beyond belief, the CMRS Providers attempt to support their positions by pointing to the fact that rural LECs have voluntarily entered into 251(b)(5) arrangements on the basis of indirect interconnection through a BellSouth common trunk group. *See, e g*, CMRS Brief p 22 at fn 49 Not only do these voluntary agreements lend no support to a contention that such arrangements can be imposed involuntarily, but it is the very bad experiences of some rural LECs under these voluntary agreements that has led the Coalition to insist on maintaining the rights of its members not to enter into any such agreement on an involuntary basis

The fact that the existing indirect interconnection arrangement of the CMRS Providers to the rural LECs through a BellSouth common trunk is not a reciprocal compensation arrangement is clearly understood by the FCC, irrespective of the choice of the CMRS Providers to ignore the facts and the law. The FCC, for example, has had long-pending before it BellSouth's request to exonerate itself from liability for the payment of terminating compensation to rural LECs when this arrangement is used.[11] Were the terms and conditions that the CMRS Providers seek to impose on the rural LECs simple, straight-forward, and clearly in the public interest, the FCC could have long ago ruled on BellSouth's request and the other open proceedings within which these matters will be addressed.[12]

The terms and conditions that the CMRS Providers pose as established standards, however, are not the subject of regulations prescribed by the FCC pursuant to Section 251 of the Act.[13] The rural Independents have not agreed voluntarily to negotiate the terms and conditions of an indirect interconnection through a BellSouth common trunk group within the scope of Section 251(b)(5) interconnection The standards established by the FCC do not require this of the rural Independents.

The CMRS Providers have attempted to confuse the facts and the law while portraying the rural Independents as simply trying not "to change anything." The rural Independents do not

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[11] The Coalition has fully discussed the fact that many of the terms and conditions that the CMRS Providers attempted to force upon the rural Independents are the subject of pending FCC proceedings and clearly not the subject of defined interconnection standards *See*, Coalition Pos-Hearing Brief, p 29, 36.

[12] Almost implausibly, to support their positions, the CMRS Providers actually cite the FCC's Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 96610 *See*, CMRS Brief, p 44, fns 122 and 123 The Coalition respectfully urges the TRA to review this citation and especially note the FCC's footnote 148 Contrary to the CMRS Providers' bold claim that this citation supports their position regarding "the application of reciprocal compensation principles to indirect interconnection," this citation demonstrates only that the FCC has been alerted to the use by CMRS Providers of this alternative interconnection indirect arrangement to interconnect to rural areas Not only is there no reference establishing that this arrangement is subject to reciprocal compensation, but there is also clear articulation of the FCC's understanding of the rural LEC concerns with this arrangement· "Increasingly, the large ILEC is unwilling to bill for the rural carrier, so rural LECs have begun to insist that the CMRS carrier deliver calls directly to the rural LEC's switch " The Coalition urges that the TRA not accept without check and challenge the broad propositions made by the CMRS Providers on the basis of their out of context extracts of law, regulations, rules and cases

[13] 47 USC Sec 252(c)(1)

object to change; they do, however, insist on following the rules. The FCC has established specific rules regarding reciprocal compensation arrangements. These rules are set forth in Subpart H of Part 51 of the FCC Rules and Regulations.[14] The FCC rules specifically require that, for purposes of mandatory reciprocal compensation arrangements under the Act, there must be an "interconnection point between the two carriers." [15] There is no "interconnection point between" a CMRS provider and a rural LEC when the CMRS provider chooses to interconnect indirectly through a BellSouth common trunk group. It is the lack of this interconnection point – the very interconnection point required by the FCC's rules implementing reciprocal compensation arrangements – that gives rise to the numerous issues discussed in this proceeding and the attempts of the CMRS Providers to impose interconnection burdens on the rural LECs that have not been established or imposed by the FCC:

1. The lack of a specific interconnection point between the carriers leads to the issue of whether reciprocal compensation is inapplicable to the arrangement, which party should be responsible for the payment of termination compensation to the terminating rural LEC (the very issue raised by BellSouth before the FCC that remains pending) and what the rate should be. (Issues 2, 3 and 8).

2. The lack of a specific interconnection point between the carriers leads to the issues regarding the measurement and identification of traffic exchanged between the parties. (Issues 6, 9, 10, 11, 13, and 17.

3. The lack of a specific interconnection point between the carriers leads to the issue of which parties should be included in an agreement documenting the terms and conditions of the arrangement. (Issues 4 and 14).

4. The lack of a specific interconnection point between the carriers leads to the issue of responsibility for the payment of transit charges. (Issue 5). Where the point of interconnection is established between the networks of two carriers, as is the case in a traditional Extended Area Service (EAS) arrangement, each carrier can take responsibility for transport to the point of interconnection established between the two networks. When a CMRS provider does not elect to establish a specific point of interconnection with a terminating rural LEC, there is no rule or standard that requires the rural LEC to incur charges to transport the traffic beyond a point of interconnection on its network. The FCC's reciprocal compensation rules appropriately

[14] 47 C F R Sec 701 *et seq* A comprehensive discussion of these rules and their application in this proceeding is set forth in the Coalition's Post-Hearing Brief at pp 20-27

[15] 47C F R Sec 701(c)

contemplated that they would be applied where a point of interconnection on the incumbent LEC network is established.

The establishment of a specific "interconnection point between the two carriers" in association with reciprocal compensation is not only required by the FCC rules, but it is required for good reason. The establishment of a specific point of interconnection established an interconnection arrangement that addresses each of the matters identified above.

The decision of the CMRS Providers not to establish a specific point of interconnection with each of the rural LECs is clearly an allowable choice. As the CMRS Providers have repeatedly pointed out themselves, the volume of traffic that they terminate to a rural LEC network may not warrant the establishment of a point of interconnection with the rural LEC.[16] The choice is one of economics and efficiencies that the CMRS Providers may make. With each choice, there is a different set of rights and responsibilities.

The CMRS Providers apparently seek to pick and choose from among the choices available to them in order to obtain the rights they seek while avoiding the responsibilities. It is on this basis that they have built their faulty and discredited argument that Section 251(b)(5) reciprocal compensation is applicable to all Section 251(a) indirect interconnection arrangements. In building their argument, the CMRS Providers have apparently confused the general Section 251(a) duty "indirect interconnection" with the concept of establishing an "interconnection point between the two carriers" that are parties to a reciprocal compensation arrangement. The CMRS Providers have apparently forgotten that the FCC specifically indicated that there are identified conditions when they may interconnect "indirectly" with a terminating LEC and establish a reciprocal compensation arrangement.[17] For purposes of a

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16 *See, e g*, CMRS Brief, p 2

17 The Coalition did not forget, however This is not the first instance in which the Coalition has raised this point in this proceeding *See, e g*. Coalition Response to the CMRS Petitions, November 28, 2003, p 29

251(b)(5) arrangement, the CMRS provider does not have to construct its own facilities to establish a point of interconnection on the terminating LEC's network. The FCC stated:

> Many alternative arrangements exist for the provision of transport between the two networks. These arrangements include: dedicated circuits provided by the incumbent LEC, the other local service provider, separately by each, or jointly by both; facilities provided by alternative carriers; unbundled network elements provided by incumbent LECs; or similar network functions currently offered by incumbent LECs on a tariffed basis.[18]

In a true reciprocal compensation arrangement, the CMRS provider may choose to obtain a facility from another provider, as described above, to interconnect indirectly But, in doing so, it must use that facility to establish a specific interconnection point with the terminating LEC.

The choices outlined by the FCC do not include transport through a common trunk facility because such a facility does not establish a specific point of interconnection. While the matter is not complex, it is detailed and it requires more than a casual gloss-over claim that reciprocal compensation applies to all indirect interconnections. In the absence of voluntarily negotiated terms and conditions, mandatory reciprocal compensation is not applicable to this existing interconnection arrangement. Accordingly, absent a new voluntary agreement, the existing indirect arrangement remains subject to the same framework applicable to all other traffic transported over a common toll trunk.

It is not surprising that BellSouth's request to be alleviated from responsibility for terminating payments when its common feature group C trunk is used to terminate CMRS traffic remains pending at the FCC. From the outset of the FCC's consideration of new interconnection rules emanating from the passage of the '96 Act, the FCC recognized that CMRS traffic is

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[18] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection between Local Exchange Carriers and Commercial Radio Service Providers*, CC Docket Nos 96-98 and 95-185, 11 FCC Rcd 15499, 16015 (para 1039) (1996) ("*FCC Interconnection Order*")

carried over toll trunks and the carrier is subject to the payment of access charges.[19] The choice of how to terminate the traffic is that of the CMRS provider; each CMRS provider must make its choice which leads to distinct rights and responsibilities. The CMRS provider may maintain the existing indirect arrangement through the common BellSouth trunk. It may elect this choice because it is most economic, but this choice does not bring reciprocal compensation. The CMRS provider may alternatively deploy transport facilities of its own (direct connection) or obtain facilities from another carrier to establish a point of interconnection with each rural LEC and then implement a reciprocal compensation arrangement

The terms and conditions that the CMRS Providers seek to impose, however, are not consistent with the FCC's rules and established standards regarding reciprocal compensation arrangements. The CMRS Providers cannot require the imposition of a non-voluntary reciprocal compensations arrangement to the existing indirect interconnection arrangement through BellSouth. The positions of the CMRS Providers with respect to each of the arbitration issues should be rejected

3. The resolution of the issues raised by the CMRS Providers are controlled by the fact that the CMRS Providers seek to maintain an indirect interconnection arrangement without establishing an interconnection point between each of their respective networks and the networks of each rural LEC.

As previously discussed, the organization of the CMRS Brief makes it difficult to respond on an orderly basis because of the decision of the CMRS Providers to rearrange the order of the issues that they initially identified, organized and set forth. As the Coalition noted in its brief, the CMRS Providers never confront the fact that the arbitration proceeding factually

[19] *FCC Interconnection Order*, para 1043 "Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS Providers so that CMRS Providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges "

only addresses the existing interconnection arrangement through BellSouth and that there are no specific interconnection requests or specific facts before the Authority that sustain the establishment of terms and conditions that would address any other specific interconnection arrangement. While the discussions set forth by the Coalition in both its Post-Hearing Brief and Section II. B. 1 and 2 above demonstrate that the positions of the CMRS Providers in this proceeding should be rejected, the Coalition takes the opportunity below to address additional aspects of the arguments set forth in the CMRS Brief. Because this brief is in response to the Brief of the CMRS Providers who elected not to address their issues in the order in which they first presented them and maintained them in the Issues Matrix, the Coalition will, for the benefit of the Authority's review, respond in the order presented in the CMRS Brief.

A. <u>CMRS Brief Section A 2, Issue 4:</u> Issues with BellSouth must be addressed when new terms and conditions are established for the existing indirect interconnection through the BellSouth common trunk group.[20]

The CMRS Providers argue that "there is nothing in the Act or the FCC's rules that require an intermediary transiting carrier to be included as a party to a reciprocal compensation arrangement."[21] The CMRS Providers can provide no cite for this specific concept because the reciprocal compensation rules do not contemplate an arrangement where an interconnection point is not established between the networks of the two carriers The Coalition would not need to insist that issues with the third party intermediary carrier be addressed if the CMRS provider undertook responsibility for obtaining a facility from a third party and establishing a point of

[20] The discussion that follows also addresses the arguments set forth by the CMRS Providers in Section A 7 of their brief, pp 37-39 where similar issues are addressed by the CMRS Providers without any reference to additional facts or legal support

[21] CMRS Brief, p 19

interconnection with each rural LEC in the manner contemplated by the FCC's rules and orders.[22]

The CMRS Providers state that the existence of voluntary indirect interconnection agreements with rural LECs "is perhaps the most telling evidence that transiting carriers are not necessary parties to indirect interconnection agreements."[23] The Coalition respectfully submits that experience under these agreements, entered in good faith, are perhaps the most telling evidence that participation by the common trunk provider is necessary.

In searching for a precedent to support their positions, the CMRS Providers oddly rely on "In re: Petition of WorldCom, Inc. 17 FCC rcd 27 (July 17, 2002) (the "*Virginia Arbitration Order*"). Unlike the current circumstances -- where the rural LECS were required in Docket No 00-00523 to initiate collective discussions with the CMRS Providers, and the rural LECs have not voluntarily negotiated the application of Section 251(b)(5) reciprocal compensation to the existing indirect interconnection arrangement -- the parties in the *Virginia Arbitration Order* did apparently voluntarily negotiate. Moreover, and in contrast with the present facts, the parties in the *Virginia Arbitration Order* apparently voluntarily submitted issues to the FCC to arbitrate.

> Accordingly, in addressing the issues that the parties have presented for arbitration – the only issues that we decide in this order – we apply current Commission rules and precedents, with the goal of providing the parties, to the fullest extent possible, with answers to the questions that they have raised.[24]

The reliance of the CMRS Providers here on the *Virginia Arbitration Order* is enlightening with respect to the "pick and choose" citation tactic of the CMRS Providers. As with other citations to law and cases, the CMRS extract is taken out of context of the entirety and not supportive to their position. Moreover, later in their brief when the CMRS Providers attempt to rebut a

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22 *See, e g , supra* p 12 and fn 17

23 CMRS Brief, p 19

24 *Virginia Arbitration Order*, para 3 (underscoring added) Consistent with the decision in MCI v BellSouth, it appears that both parties voluntarily submitted issues to the FCC to resolve by arbitration

citation by the Coalition to the *Virginia Arbitration Order*, the CMRS Providers simply scoff at the Coalition and conclude that the *Virginia Arbitration Order* "is of no value in this proceeding."[25]

The bottom-line with respect to the issues regarding BellSouth's absence from this proceeding is that BellSouth remains a necessary participant in the common trunk group arrangement that the CMRS Providers have chosen to continue to utilize. The matter would be very different if the CMRS Providers sought to establish a reciprocal compensation arrangement in a manner that follows the rules and established standards. If the CMRS Providers chose, as required by the reciprocal compensation rules, to establish a point of interconnection on the network of a rural LEC by utilizing facilities in any of the multitude of arrangements outlined by the FCC,[26] the concerns raised throughout this proceeding by the Coalition with respect to the need for BellSouth's participation would be addressed.

The CMRS Providers fail as a matter of both fact and law in their attempt to gloss over the issue by summarily dismissing the Coalition concerns on the supposed basis that the "legal obligation and responsibility for ensuring accurate billing records lies solely with the terminating provider "[27] Once again, the CMRS Providers extract a citation from an order and utilize it in a manner that ignores the full context. Clearly, the FCC has said:

> ***to implement transport and termination pursuant to section 251(b)(5)***, carriers including small incumbent LECs and small entities, may be required to measure the exchange of traffic, but we believe that the cost of such measurement to these carriers is likely to be substantially outweighed by the benefits of these arrangements [28]

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25 CMRS Brief, p 45

26 *See,* fn 17.

27 CMRS Brief, p 24

28 *FCC Interconnection Order,* para 1045 (emphasis added)

The CMRS Providers cited this same quote.[29] They, however, ignore the context, the rules and the facts It is only 6 paragraphs earlier in the very order from which this citation is extracted that the FCC lays out for the CMRS Providers and all carriers the array of choices they have in deploying direct or indirect facilities ***to implement transport and termination pursuant to section 251(b)(5).***[30] Instead of making one of these choices, the CMRS Providers attempt to use the existing interconnection through the BellSouth common trunk group. It is their apparent hope that the TRA will not scrutinize the facts or the law, but will instead accept their broad out-of-context assertions and join the CMRS Providers in their attempt to fit the common trunk group arrangement into the parameters of Section 251(b)(5).

The concerns raised by the Coalition regarding accurate billing records would not exist if the CMRS Providers chose to implement a Section 251(b)(5) arrangement in a manner consistent with the FCC's rules. The Coalition members understand the preference to be able to measure terminating traffic through a properly established Section 251(b)(5) arrangement The Coalition members would, in fact, prefer to measure the traffic which they could do if the CMRS Providers choose to implement facilities for a Section 251(b)(5) arrangement in the manner set forth by the FCC, instead of continuing the use of a BellSouth common toll trunk transport facility.

The wrongful attempts by the CMRS Providers to attribute this issue somehow to a "failing" or "inability" on the part of the Independents is now well documented on the record. AT&T Witness Nieman incorrectly initially suggested that the only issue relates to a need for the Independents to deploy a new billing system that would use the SS7 network in a manner that the Independents would not have to rely on BellSouth to obtain billing information.[31] Ms. Nieman's claim led to the need for an additional round of additional and responsive supplemental

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29 CMRS Brief, p 24

30 *FCC Interconnection Order,* para 1039

31 Tr Vol V, p 34, line 7 through p 35 line 14

testimony and a TRA staff inquiry to BellSouth. After all the effort of the additional testimony and data response, the facts are affirmed. The matter is not one that is simply addressed by requiring the rural Independents to install new billing systems. As Coalition Witness Roark points out in her September 29, 2004 rebuttal testimony:

> Ms. Nieman now corrects herself by admitting that her proposed approach goes well beyond simply a billing system but would, in fact, involve the purchase of SS7 equipment (only recently available), installation of switch upgrades, and the acquisition of some new billing software. This additional network deployment goes far beyond the deployment of SS7 Signaling which most rural telephone companies already provide.[32]

In its response to the Staff data request, BellSouth, in fact, states "[s]uch signaling and traffic information, which is provided in real time for call set-up purposes, is not typically used by companies for the purpose of generating billing." Finally, in her own Supplemental Rebuttal testimony, even Witness Nieman begrudgingly, though not directly, must acknowledge that when the traffic is terminated through a common feature group C toll trunk group (as opposed to one of the facilities choices for a Section 251(b)(5) arrangement laid out by the FCC), the terminating carrier is forced to rely on the intermediary carrier for billing records. In her last and final effort to divert attention from the fact that this is not a simple billing system matter, Witness Nieman attempts to divert attention to the tangential regarding the use of SS7 records for billing records. Witness Nieman cites and quotes from a rural LEC tariff in Oklahoma that contemplates the potential use of SS7 records for billing purposes. Ms. Nieman fails to acknowledge that the tariff provision she cites specifically addresses a situation where the SS7 usage reports and/or records would be "generated by a third party ILEC whose network is used to transit the traffic to Telephone Company (i.e., the rural Independent) for termination." The

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[32] "Rebuttal Testimony of Lera Roark," p 1, September 29, 2004 *See also,* "Supplemental Testimony of Lera Roark," September 7, 2004, "Supplemental Testimony of Suzanne K Nieman," September 7, 2004, "Supplemental Rebuttal Testimony of Suzanne K Nieman," September 29, 2004, and "Data Response of BellSouth," September 20, 2004

hearing transcript reveals that Witness Nieman led the Authority to believe that it was possible for the Rural Coalition members to bill without any reliance on BellSouth by merely installing a new billing system. The otherwise unnecessary exercise of additional testimony and data requests affirms, as the Coalition set forth from the outset, that this is not accurate.

All parties – and "non-party" BellSouth – agree that BellSouth's participation is necessary with respect to measurement and record provision when CMRS Providers utilize the BellSouth common trunk group to interconnect to the rural Independents. But, there are other matters that require BellSouth's participation.

The Coalition has set forth a non-exhaustive list of issues that require BellSouth participation with respect to the establishment of new terms and conditions to be applied to the existing interconnection arrangement through the common trunk. These issues include: (a) establishment of trunking facilities and a physical interconnection point with the Independents; (b) responsibility to establish proper authority for either BellSouth or the Independents to deliver traffic of third parties to the other; (c) responsibility not to abuse the scope of traffic authorized by the arrangement (*i.e* , with unidentified phantom traffic); (d) provision of complete and accurate usage records; (e) coordination of billing and collection and compensation (as discussed above in the previous issue); (f) responsibilities to resolve disputes that will necessarily involve issues between and among at least three parties; (g) responsibilities to act to implement network changes which alter or terminate the voluntary arrangement between the Independents and BellSouth; (h) responsibilities to coordinate actions to address default and non-payment by third parties, and so on.[33]

The only issue other that billing records that the CMRS Providers address, however, is the Coalition's concern regarding remedy in the event of default. The CMRS Providers

[33] Coalition Response, pp 42-43

mischaracterize the concerns of the Coalition, suggesting that the rural LECs "seek to block customers' service because of an intercarrier dispute."[34] Neither the concerns expressed by the Coalition nor the remedies they seek to enforce are frivolous. Rural Independents, and carriers across the nation, have learned to take careful and legal caution in dealing with non-paying interconnecting carriers. The lessons of the WorldCom and Global Crossing bankruptcies should not be lost. Rural carriers and their customers do not want to again be placed in the position of subsidizing bankrupt operations of other carriers.

This matter should be put to rest. The diverting arguments of the CMRS Providers should be rejected The rural Coalition members do not seek approval to act "contrary to the public interest" or to block traffic without appropriate regulatory approvals The Coalition members seek to maintain their existing rights to cease the provision of interconnection services to a defaulting carrier in a manner consistent with established law, regulation and tariff. The specific terms and conditions established to address a factual situation where a third party carrier is provided interconnection to a rural LEC through the common trunk facilities of BellSouth or another carrier are well established and set out in tariff provisions, and exemplified by the following extract from the NECA tariff:

> ACCESS SERVICE
> 2. General Regulations (Cont'd)
> 2.1 Undertaking of the Telephone Company (Cont'd)
> 2 1.8 Refusal and Discontinuance of Service (Cont'd)
> (G) When access service is provided by more than one Telephone Company, the companies involved in providing the joint service may individually or collectively deny service to a customer for nonpayment. Where the Telephone Company(s) affected by the nonpayment is incapable of effecting discontinuance of service without cooperation from the other joint providers of Switched Access Service, such other Telephone Company(s) will, if

[34] CMRS Brief, p 26

> technically feasible, assist in denying the joint service to the customer. Service denial for such joint service will only include calls originating or terminating within, or transiting, the operating territory of the Telephone Companies initiating the service denial for nonpayment. When more than one of the joint providers must deny service to effectuate termination for nonpayment, in cases where a conflict exists in the applicable tariff provisions, the tariff regulations of the end office Telephone Company shall apply for joint service discontinuance.[35]

The Coalition members insist on nothing more, but nothing less, than enforcement of their existing rights in defined circumstances where an interconnecting carrier is in default. There is no basis in fact or law to treat CMRS Providers on a preferred basis. Moreover, and as indicated by the tariff language quoted above, in a situation where an interconnecting carrier utilizes a common trunk group of a third-party (in this case BellSouth) to obtain interconnection to a rural LEC, the third party (i.e., BellSouth) "will, if technically feasible, assist in denying the joint service to the customer."

Coordination and participation by BellSouth is clearly necessary if the CMRS Providers seek to establish new terms and conditions applicable to the existing interconnection they utilize through a Bellsouth common trunk group. As discussed throughout this proceeding, that existing common trunk group arrangement is not within the framework of the established standards for a Section 251(b)(5) reciprocal compensation arrangement, and the positions of the CMRS Providers in this proceeding should be rejected

B. <u>CMRS Brief Section A 3, Issue 6:</u> The Coalition has not stopped the CMRS Providers from sending traffic commingled over the BellSouth common trunk. As discussed, however, this arrangement is not a Section 251(b)(5) arrangement.

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[35] NATIONAL EXCHANGE CARRIER ASSOCIATION, INC TARIFF F C C NO 5, 5th Revised Page 2-10 Transmittal No 995, Issued August 5, 2003 Effective August 20, 2003

Issue No. 6 is another CMRS red herring.[36] No issue exists with respect to whether the CMRS Providers may transmit their traffic to the rural LECs through a BellSouth common trunk group. The problem is that the CMRS Providers attempt to take this issue, like so many others, and then leap to the conclusion that because they can send traffic over a common trunk group, they are somehow entitled to a reciprocal compensation arrangement In putting forth their position, the CMRS Providers assert arguments as if the Coalition took issue with factual statements. For example, the CMRS Providers insist that rural Independents have no right to force a CMRS provider to install direct trunks to a rural LEC tandem, or to prevent a CMRS provider from using an indirect interconnection arrangement through BellSouth.[37] The Coalition has never taken issue with those isolated statements. That, however, does not lead to the conclusion that a CMRS provider is entitled on a non-voluntary basis to a reciprocal compensation arrangement through the common trunk group of BellSouth. The CMRS provider may indeed interconnect indirectly in accordance with established terms and conditions or new agreed upon mutual and voluntary terms. But, it may not force the imposition of a reciprocal compensation arrangement. To do so, the CMRS provider must choose to establish a point of interconnection on the rural LEC network and deploy transport facilities consistent with the manner prescribed by the FCC.[38] The reliance of the CMRS Providers on *MCIMetro*[39] is factually incorrect and legally flawed. In *MCIMetro*, the Authority addressed a situation where a CLEC established a point of interconnection with the terminating LEC, BellSouth. Once having established a point of interconnection, the CLEC was not required to place its telephone exchange traffic on a separate trunk from its exchange access traffic.

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[36] The discussion that follows also addresses the arguments set forth by the CMRS Providers in Section A 6 of their brief, pp 35-36 where similar issues are addressed by the CMRS Providers without any reference to additional facts or legal support

[37] CMRS Brief, p 28

[38] *See*, 47 C F R 51 701(c) and *FCC Interconnection Order*, para 1039

[39] CMRS Brief, p 28, citing *In Re petition of MCIMetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc for Arbitration*, Docket No *00-00309* (April 3, 2002) ("*MCIMetro*")

In this proceeding, there are no similar facts The CMRS Providers have not established, nor do they propose to establish, a point of interconnection between their networks and the rural LEC networks The rural LECs have not required the CMRS provider to separate "telephone exchange traffic on a separate trunk from its exchange access traffic." The rural LECs have not even mandated that the CMRS Providers place their traffic on a trunk separate from the BellSouth common trunk group The Coalition has simply insisted on following the rules, and has rebutted the claim of the CMRS Providers that they are entitled to a reciprocal compensation arrangement when they utilize the common trunk group. The CMRS Providers apparently cited the *MetroAccess* proceeding simply because it was before the TRA. *MetroAccess* has no relevance to the facts or applicable law in this proceeding. If the CMRS Providers want to continue to use the BellSouth common trunk group to interconnect to the rural LECs they may do so under appropriate terms and conditions, but these terms and conditions do not include a non-voluntary reciprocal compensation arrangement. If, alternatively, the CMRS Providers decide to lawfully establish a physical interconnection arrangement that is subject to Section 251(b)(5) reciprocal compensation, they may do so, and may request and negotiate the implementation of reciprocal compensation.[40]

C. CMRS Brief Section A 4, Issue 14: The existing indirect interconnection through the BellSouth common toll trunk is the only specific interconnection arrangement that has been addressed by this proceeding; and CMRS Brief Section A 5, Issue 15: There is before the Authority no specific request for direct interconnection from any CMRS provider to any Rural LEC.

In these sections of their Brief, the CMRS Providers once more set forth their conviction that interconnection agreements should be negotiated and arbitrated in the abstract. The entirety of the Section 252 negotiation and arbitration process, however reflects the fact that each

[40] *See*, 47 C F R 51 701 and *FCC Interconnection Order*, para 1039

interconnection arrangement is subject to good-faith negotiation and, if necessary, arbitration. The CMRS Providers, as is their habit, support their position with bold and broad statements. For example, they state that the positions set forth by the Coalition are "contrary to law and public policy "[41] But, they offer no specific citation to support their assertions, nor can they.

Contrary to the claim by the CMRS Providers that the Independents somehow have attempted to limit the scope of the proceeding,[42] the Coalition took no action to limit the discussion of specific interconnection arrangements. The record reflects the facts: no discussion or request for a point of interconnection between any CMRS provider and any Independent appears on the record;[43] no request for indirect interconnection through a carrier other than BellSouth exists. To the contrary, the CMRS Providers proposed terms and conditions that would essentially dictate how each Independent designs its network and require the use of BellSouth.[44]

The CMRS Providers offer nothing new in their brief and no legal or factual support for their positions.[45] The CMRS Providers merely resort to calling the position of the Coalition "feeble."[46] With respect to their desire for the TRA to mandate blanket direct interconnection terms and conditions in the absence of any specific request for direct interconnection before the

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41 CMRS Brief, p 29

42 *Id,* p 30

43 This is not merely an "academic" point How could a party rationally negotiate the terms of interconnection without knowing where the interconnection will take place? How could a transport and termination rate be established? How could the parties establish network trunking needs?

44 When the CMRS Providers found themselves tripping over themselves at the hearing, they acknowledged that their proposals had drafting errors, and they attempted to claim that they would not try to mandate how a rural LEC interconnects its traffic Tr , Vol V, p 54-55 The CMRS Providers' brief, however, demonstrates that they still want to dictate how a LEC transmits traffic (CMRS Brief, p 30) Their proposal to modify their position to replace the use of the term "intermediate third party LEC" with "intermediate third party transiting carrier" has no effect on the fundamental issue discussed at the hearing the CMRS Providers seek to dictate how rural LECs transmit their traffic

45 The best that the CMRS Providers can do is to once again reference the fact that some rural Independents have previously and voluntarily entered agreements with the terms and conditions that the CMRS Providers seek Once again, the Coalition points out that the experiences gained by Independents in these prior voluntary agreements provide the Independents with all the more reason to seek enforcement of their rights An agreement entered into in the past that the Independent may now view as a mistake, and may now lawfully terminate, does not support perpetuation of the mistake as the CMRS Providers would want

46 CMRS Brief, p 31

Authority, the CMRS Providers merely describe as "somewhat halfheartedly" the Coalition's discussion of the fact that the existing interconnection arrangement through the common BellSouth trunk is the only interconnection arrangement under consideration. The facts on the record, and the absence of facts related to any other interconnection arrangement, speak for themselves. Ultimately, it is clear that the CMRS Providers expect that the TRA should award them with blanket and favorable interconnection terms, ignoring the fact that there are no specific facts or specific interconnection requests before the Authority other than the existing interconnection arrangement through BellSouth Essentially, the CMRS Providers are asking the TRA to arbitrate abstract and general interconnection agreements, thereby depriving each independent of its right to negotiate the terms of a specific interconnection request.[47] As more fully discussed in the Coalition's Post-Hearing Brief, the positions of the CMRS Providers should be rejected.[48]

D. Response to CMRS "Principle No. 2." Originating Carriers are not obligated to pay reciprocal compensation to terminating carriers for all intraMTA traffic.

CMRS Brief Section B 1, Issue 2: Reciprocal compensation arrangements do not apply on a mandatory basis to indirect interconnection through a BellSouth common trunk group; and
CMRS Brief Section B 2, Issue 2(b): Reciprocal compensation arrangements do not apply to traffic carried by interexchange carriers.
CMRS Brief Section B 3, Issue 3: In the absence of a mutual agreement among the parties, the carrier that physically connects its common trunk group to a rural Independent is responsible for payment of terminating compensation.

Summary: The indirect interconnection arrangement through the Bellsouth common trunk group is not subject to Section 251(b)(5) reciprocal compensation on a non-voluntary basis. While the Coalition expressed a willingness to discuss new voluntary arrangements, it specifically did so outside the scope of this arbitration proceeding. To the extent that a reciprocal compensation arrangement may be established through the facilities of a third party,

[47] *See, e g*, CMRS Brief, p 35 "Additionally, inclusion of direct connection facilities at this juncture will avoid renegotiation, amendment, possible arbitration and subsequent filings with the TRA on the related issues raised in this proceeding " The CMRS Providers refer, however, only to abstract general "direct connection facilities " Neither the statutory framework of specific interconnection request and negotiation, nor the statutory rights of each Independent should be sacrificed to foster the convenience of the CMRS Providers

[48] Coalition Brief, pp 61-65

the FCC has clearly articulated in its rules and cases that the available arrangements and the requirement that a point of interconnection be established between the networks of the two carriers exchanging traffic [49]

The FCC has specifically recognized that all intraMTA traffic may not be exchanged through a reciprocal compensation arrangement. When traffic is carried by an interexchange carrier to and from a rural LEC network, access charges apply and are assessed on the third party carrier.

While the discussions set forth by the Coalition in both its Post-Hearing Brief and Section II. A. 1 and 2 above demonstrate that the positions of the CMRS Providers in this proceeding should be rejected, the Coalition takes the opportunity below to address additional aspects of the arguments set forth in the CMRS Brief Because this brief is in response to the Brief of the CMRS Providers who elected not to address their issues in the order in which they first presented them and maintained them in the Issues Matrix, the Coalition will, for the benefit of the Authority's review, respond in the order presented in the CMRS Brief.

1. The Coalition has not voluntarily submitted to arbitration the issue of whether reciprocal compensation should be applied to the existing indirect interconnection arrangement through a BellSouth common trunk.

The CMRS Providers incorrectly state that the Coalition claims "that the reciprocal compensation obligations of section 251(b)(5) are limited to direct interconnection and outside the scope of section 252 arbitration rules."[50] What the Coalition claims is simply that the applicable law and rules should be followed What the Coalition insists upon is that the reciprocal compensation obligations of Section 251(b)(5) do not include the indirect interconnection through a BellSouth common trunk group where there is no point of interconnection established between the networks of the originating and terminating carriers. What the Coalition has legally demonstrated is that the FCC's reciprocal compensation rules require the establishment of a point of interconnection; and that the FCC has been very clear

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[49] 47 C F R 51 701(c) and *FCC Interconnection Order*, para 1039 *See, also,* discussion at Section II A 1 and 2 *supra*

[50] CMRS Brief, p 40

with respect to what "indirect" facility arrangements may be utilized to establish mandatory reciprocal compensation.[51]

The CMRS Providers know that they have a problem in this proceeding. Unlike the few other state proceedings[52] that they reference to support their position, the CMRS Providers know that the present facts are very different. The CMRS Providers are well aware that issues outside of the established Section 251 interconnection statutory requirements and FCC established standards cannot be involuntarily submitted to arbitration.[53] Moreover, the CMRS Providers know that from the outset of negotiations, the Coalition has stated repeatedly that while it would attempt to negotiate mutually acceptable arrangements outside the scope of the established section 251 standards, it would do so only outside the scope of the potential arbitration. While the negotiations are conducted with confidentiality, the record reflects the fact that the Coalition has candidly indicated from the outset that it would not agree to submit voluntarily to arbitration any issues beyond the scope of the established interconnection standards.[54]

Aware of this fact and this deficiency in their argument, the CMRS Providers grasp at straws to suggest that the Coalition has, irrespective of all of its specific statements, somehow nonetheless voluntarily submitted to arbitration the issue of whether reciprocal compensation is applicable to the existing interconnection arrangement through the BellSouth common trunk To support their claim, the CMRS Providers once more resort to extracting incomplete quotes

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51 47 C F R 51 701(c) and *FCC Interconnection Order*, para 1039

52 CMRS Brief, p 43 where proceedings in Iowa, Montana, and Oklahoma are referenced In addition to the controlling factual distinction discussed above, the CMRS Providers are well aware that each of these proceedings is ongoing The Iowa proceeding has been remanded, the Montana and Oklahoma proceedings are in appellate processes The Illinois proceeding addresses a procedural matter regarding the effectiveness of a tariff filing that would assess charges for the termination of CMRS traffic Unlike the facts in this proceeding, there is no indication that the state commission had found that the existing interconnection arrangement utilized by the CMRS Providers was subject to other explicit applicable terms and conditions

53 47 USC Section 252(c)

54 *See, e g* , Coalition Response to Petitions for Arbitration, November 28, 2003, pp 9-15, 96

out of context.[55] The resolution of this matter, however, should not be the subject of word games. In grasping at straws, the CMRS Providers attempt to hide the short straw.

Where the CMRS Providers quote from the transcript of an April 22, 2003 status conference to support their position, they fail to provide the full quote. Prior to the statement the CMRS Providers quoted, counsel for the Coalition stated:

> The rural Independents acknowledge and recognize that any wireless carrier has every right to, ***under the rules that exist, establish an interconnection point with the Independents and seek transport and termination under Section251(b)(5) of the Telecommunications Act***. That is, in plain English, they are entitled to a rate established ***according to the FCC's rules*** for the transport and termination of traffic upon request [56]

The CMRS Providers quoted from the April 22, 2003 status conference to support their contention that the Coalition had "voluntarily" submitted to arbitration the issue of whether interconnection through a common BellSouth trunk is subject to reciprocal compensation. As reflected by the full quote, that is not at all what the Coalition stated. The Coalition understood that the FCC has not established standards to apply reciprocal compensation to an indirect interconnection arrangement through a BellSouth common trunk group and where no point of interconnection is established "between the networks" of the originating and terminating carrier.[57] As indicated in the full quote, the Coalition attempted from the outset to candidly state that the willingness of the Coalition members to participate in a negotiation and potential arbitration was limited to one that is:

1) determined in accordance with "***the rules that exist***" pursuant to established standards;

2) determined on the basis of an interconnection arrangement where the CMRS Providers "***establish an interconnection point with the Independents***;" and

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55 CMRS Brief, p 40, fn. 109

56 Transcript of April 22, 2003 Status Conference, TRA Docket No 00-00523, p. 10.

57 *See,* 47C F R Section 51 701(c), *FCC Interconnection Order*, para 1039; and pending transit traffic and compensation responsibilities raised by BellSouth *ex parte* in FCC Docket 01-92, June 6, 2004

3) determined on the basis of a "***rate established according to the FCC's rules***."[58]

The Coalition has not voluntarily submitted any issues to arbitration regarding whether reciprocal compensation should be made applicable to indirect interconnection through a BellSouth common trunk group.

2. The CMRS Providers misapply statute and cases to the existing facts.

The Authority may appropriately question why the issues raised in this proceeding have not been addressed in mores states. After all, the CMRS Providers refer to proceedings in only a very few states to support their positions – and those state proceedings are not final and they are factually distinguishable [59] The Coalition can only speculate with respect to how or why the CMRS Providers would generally reach compromise agreements with rural LECs in some States,[60] while they pick and choose certain state forums as venues to attempt to broaden their interconnection rights that are established by federal regulation.

To the extent that any regulatory or judicial body has made a determination to support the proposition that indirect interconnection of intraMTA traffic through a third-party carrier's common trunk group is subject to reciprocal compensation on a mandatory basis, the Coalition respectfully suggests that the determination is incorrect. Although the Coalition is not involved

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[58] The Coalition understood that the FCC's forward-looking pricing rules are not applicable to the rural LECs *FCC Interconnection Order*, para 1059

[59] For example, in the few other state proceedings referenced by the CMRS Providers, it appears that the rural local exchange carriers involved in those proceedings before state regulators may have voluntarily submitted to the state authority to arbitrate the issue of whether reciprocal compensation is applicable to indirect interconnection through a common toll trunk That is not the case here The Coalition members recognize that such arrangements may be voluntarily negotiated and voluntarily submitted to arbitration But, the Coalition has not elected to agree to the arbitration of this issue The Coalition has insisted even prior to the outset of this proceeding that negotiation within the framework of potential arbitration should be limited to the negotiation of existing established interconnection standards, consistent with Section 252(c) of the Act The Coalition has pointed out that the issue of compensation responsibility regarding traffic interconnected indirectly through a common toll trunk group is pending before the FCC in Docket No 01-92 That issue is distinct 1) from the issue of whether reciprocal compensation may apply on a mandatory basis to certain indirect interconnection arrangements (see, fn 17, *supra)*, and 2) from the issue of whether parties may voluntarily establish a reciprocal compensation arrangement by indirectly interconnecting through another carrier's common toll trunk

[60] *See, e g*, the agreement in Kentucky referenced by Coalition Witness Watkins and appended to his testimony Watkins Direct Testimony, Attachment D

in any of the few proceedings referenced by the CMRS Providers, the Coalition is confident that the error inherent in these decisions, which are in the review process, will ultimately be corrected.

In the face of the fact that BellSouth has attempted at the FCC to obtain resolution of the matter of the designation of compensation responsibility for the CMRS traffic it carries over common trunk groups for well over a year (and most recently in its June 6, 2004 *ex parte* in Docket No 01-92), it is difficult to understand how any party or decision-maker can suggest that this is a settled issue under federal regulatory standards.[61]

It is all too alluring apparently for decision-makers to gloss over the details to reach a result that they may find appealing on an unstudied and unchallenged basis. The result that the CMRS Providers seek is to require all intraMTA traffic to be exchanged over a network arrangement that they mandate; to require the rural LECs to transmit traffic to the CMRS Providers through the BellSouth common trunk group, and to force the exchange of the traffic to be on a "bill and keep" basis, requiring the rural LEC to take financial responsibility for the charges associated with carrying the traffic beyond the rural LEC's network. Moreover, the CMRS Providers apparently believe that the TRA will reach this result without addressing either 1) the universal service ramification of such an outcome or 2) the details of statute, regulation and cases that demonstrate the fallacy of the positions of the CMRS Providers. The Coalition trusts that the TRA will not sacrifice truth for ease, and accordingly addresses each of the statutes, regulations and cases cited by the CMRS Providers in support of its positions.

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[61] The single occasion on which the FCC has considered "transit traffic" was in the *Virginia Arbitration Order* This is the order that the CMRS Brief likes to cite when they incorrectly believe it supports their positions, on the one hand, and then later claim that the "case is of no value" when understand how it weighs against them CMRS Brief, p 45 *See also,* p 16 *Infra* The *Virginia Arbitration Order* establishes beyond question the fact that the FCC has not determined that reciprocal compensation applies to self-styled "transit" interconnection arrangements provided by intraLATA toll carriers through common trunk groups In its arbitration order the FCC Wireline Competition Bureau recognized the fact that the Commission "had not had occasion" to consider obligations regarding so-called "transit" service arrangements *Virginia Arbitration Order*, para 117

The CMRS Providers' argument in section B.1 a of their brief begins with the citation to the statutory Section 251(b)(5) duty of reciprocal compensation. The Coalition has previously addressed the distinction of this duty from the general Section 251(a) duty of interconnection.[62] The Coalition has also addressed the fact that: 1) the FCC has specifically set out the physical network arrangements pursuant to which a mandatory reciprocal compensation arrangement may be imposed, and 2) a point of interconnection between the networks of the CMRS provider and the rural LEC is required.[63]

The CMRS Providers ignore these requirements and attempt to chisel support to prop up their contention that they can ignore the rules. A review of their citations offers no support for their arguments.[64] In fact, in the single instance where the CMRS Providers acknowledge the existence of paragraph 1039 of the *FCC Interconnection Order*, they apparently misconstrue it, somehow apparently concluding either that it is only applicable to a direct connection arrangement or that that the Coalition believes that reciprocal compensation "is limited to case (sic) where carriers interconnect directly."[65] The Coalition has not said this.

Purposeful or not, the CMRS Providers ignore the fact that the Coalition has recognized the specific FCC sanctioned circumstances where indirect facilities may be used.[66] These arrangements do not include the use of a third-party's common trunk group where there is no point of interconnection established between the originating and terminating carrier Purposeful or not, the CMRS carriers miss the intent and plain language of paragraph 1039 of the *FCC*

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[62] *Supra*, pp 5-6
[63] *Supra*, pp 12-13, *FCC Interconnection Order*, para 1039
[64] CMRS Brief, p 44 At fn 122, the CMRS Providers cite the FCC's Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 96610 The Coalition addressed at the outset of this Reply Brief the fact that this cited FCC rulemaking proceeding does not support the argument made by the CMRS Providers *See* , fn 11, *supra*
[65] CMRS Brief, p 44 and fn 121
[66] *See*, fn 16, *supra*

Interconnection Order which sets forth the fact that carriers may use indirect facilities to connect, but that they must establish a point of interconnection.

The distinction is significant. The use of indirect interconnection facilities in the manner prescribed by the FCC is consistent with FCC rule 51.701(c) which requires "an interconnection point between the two carriers." For example, a CMRS Provider may use dedicated facilities obtained from BellSouth or any third party and establish a specific point of interconnection with the terminating rural LEC. The use of a common trunk group of a third party does not result in "an interconnection point between the two carriers." The interconnection point is with the third-party carrier who may use that connection to transmit the co-mingled traffic of other carriers to be terminated on the rural network.[67] Indirect interconnection through a third-party's common trunk group is not, accordingly, an interconnection arrangement that is consistent with the FCC's rules regarding reciprocal compensation

The CMRS Providers' next point to the language set forth in Section 51.701 of the FCC's rules. There is no doubt that these rules state that "(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers;" and that the rules may be applied to "Telecommunications 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, as defined in §24.202(a) of this chapter."[68]

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[67] This is, in fact, the interconnection arrangement that exists and has been subject to terms and conditions established by the December 29, 2000 Initial Order of the Hearing Officer in TRA Docket No 00-00523 This, in fact, is also the arrangement that prevails in many states and the subject of BellSouth's attempts to exonerate itself from responsibility, as reflected by its June 6, 2004 *ex parte* in FCC Docket No 01-92 And finally, this in fact is an indirect interconnection arrangement that is not the subject of mandatory reciprocal compensation.

[68] CMRS Brief, pp 41-42 citing 47C F R Sec 51 701(a) and (b)2 For apparent good measure, the CMRS Providers throw into the mix of rules they cite 47C F R 20 3 and 20 11(a) and (b) to support the proposition that they may interconnect on an indirect basis and establish mutual compensation They fail, however, to note the specificity with which the FCC has required "an interconnection point between the two carriers," and defined the a physical transport arrangements that are subject to reciprocal compensation ,*FCC Interconnection Order,* para

The success of the CMRS Providers is linked to their hope that the TRA will review the rules and cases they cite in isolation and without scrutiny. The CMRS Providers essentially ask the TRA to accept the notion that all CMRS/LEC traffic that originates and terminates with an MTA is "automatically" subject to reciprocal compensation.[69] The FCC rules and cases, however, demonstrate that all intraMTA traffic qualifies for reciprocal compensation pursuant to the establishment of an interconnection arrangement consistent with the FCC's rules and cases.[70] While all intraMTA CMRS/LEC traffic may become subject to reciprocal compensation upon the establishment of an appropriate interconnection arrangement, intraMTA is not automatically subject to reciprocal compensation, as the CMRS Providers may profess.[71]

The certainty of this understanding by the FCC has been absolutely clear from the outset of its initiation of the interconnection rules including those applicable to CMRS/LEC reciprocal compensation arrangements. When the FCC initially established these rules, it could have required the exchange of all intraMTA traffic to be conducted pursuant to Section 251(b)(5). It did not The FCC did offer CMRS Providers the option of renegotiating their existing arrangements and to establish a Section 251(b)(5) arrangement consistent with its newly adopted

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[69] The Coalition has reviewed the few state proceedings that have been cited by the CMRS Providers CMRS Brief, pp 42-43 The Coalition can only conclude that the decision-makers in these proceedings (which remain under review) reached a conclusion without confronting the conflicting hard facts and specific FCC citations that the Coalition addresses *infra,* pp 33-35

[70] *See, e g ,* 47C F R 51 701(c) (an interconnection point between the carriers must be established) and *FCC Interconnection Order*, para 1039

[71] At this point in their brief, the CMRS Providers also toss in the "*Texcom Reconsideration Order*" *Texcom, Inc d/b/a Answer Indiana v BellAtlantaic Corp , d/b/a Verizon Communications*, File No EB-00-MD-14, Memorandum Opinion and Order released November 28, 2001, Order on Reconsideration released March 27, 2002 The CMRS Providers cite paragraph 4 of the Reconsideration Order as holding that supports their position that reciprocal compensation is applicable to all intraMTA traffic irrespective of the physical interconnection arrangement The Coalition respectfully suggests that the Authority review this citation Paragraph 4 of the Texcom Reconsideration Order addresses the fact that an intermediary carrier (such as BellSouth) may charge a carrier such as Texcom or a CMRS provider, for facilities to carry traffic that originates on another LEC's network from the originating LEC to the carrier in the place of Texcom or a CMRS provider Moreover, nothing in the Texcom Reconsideration Order suggests that the indirect interconnection facilities used by Texcom are common trunk group facilities of the intermediary carrier To the contrary, the FCC clearly believes that the interconnection transport facilities are consistent with those it has described in the *FCC Interconnection Order,* para 1039 which is cited by the FCC in the Texcom Reconsideration Order at para 4, fn 11 The apparent confusion of the CMRS Providers regarding the "Texcom matter" is also relevant to Section D, *infra,* regarding the responsibility for transport facility charges

rules, but it did not require that the intraMTA traffic "automatically" be treated pursuant to reciprocal compensation.[72]

The FCC could have recognized that CMRS carriers interconnect to rural LECs through common trunk groups and, in doing so, made clear that all such indirect interconnection arrangements fall within the scope of reciprocal compensation. Not only has the FCC not so directed, but BellSouth's request to the FCC on this very matter remains pending.[73]

The CMRS position that all intraMTA traffic somehow "automatically" falls under the reciprocal compensation framework simply does not square with the FCC's Rules. The reciprocal compensation mechanism does not come into being absent a request (47 C.F.R. 51.703(a)); the arrangement requires the establishment of "an interconnection point between the networks" (47C.F.R. 51.703(c); and the transport arrangements must be consistent with those specified by the FCC at paragraph 1039 of the *FCC Interconnection Order.*

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[72] *FCC Interconnection Order*, para 1094-1095

[73] *See, e g ,* BellSouth *Ex Parte*, June 6, 2004, FCC Docket 01-92 Moreover, the citation by the CMRS Providers to that same FCC proceeding (CMRS Brief, p 44 at fn. 122) actually demonstrates that the FCC is aware of the rural LEC concerns regarding this form of interconnection There is no indication that the FCC has stated that this arrangement is subject to reciprocal compensation To the contrary, the FCC states that under these circumstances "the rural LEC can seek recovery if its termination costs (if it can segregate the traffic) by asking the ILEC (referring to the intermediary company such as BellSouth) to charge the CMRS carrier " *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 96610, FCC Docket No 01-92, fn 148 *See also,* fn 11 *supra*

3. IntraMTA traffic carried by interexchange carriers is subject to access charges assessed to the interexchange carrier.

The CMRS Providers have told the Authority that reciprocal compensation applies "on all intraMTA traffic without regard to how it may be delivered."[74] They boldly state: "Moreover, had the FCC intended to except from its reciprocal compensation rules intraMTA traffic exchanged through a third-party, the FCC clearly could have done so."[75]

The FCC did, in fact, clearly do so. The CMRS Providers even provided the authority with the proper citation; they apparently failed, however, to read the entire paragraph that they cited. The CMRS Providers quote from paragraph 1043 of the *FCC Interconnection Order*: "[w]e reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA...is subject to transport and termination rates under section 251(b)(5), rather than interstate or interstate (sic) access charges."[76]

The CMRS Providers stopped their quote at that point. Perhaps the CMRS Providers thought that the TRA would not read the remainder of paragraph 1043.[77] The remainder of the quote is as follows:

> Under our existing practice, most traffic between LECs and CMRS Providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges (Footnote omitted.) Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS Providers so that CMRS Providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are

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[74] CMRS Brief, pp 46-48 The discussion that follows also addresses the arguments set forth by the CMRS Providers in Section C 5 of their brief, pp 69-70 where similar issues are addressed by the CMRS Providers without any reference to additional facts or legal support

[75] CMRS Brief, p 47

[76] CMRS Brief at p 47 quoting *FCC Interconnection Order*, para 1043 The quote is duplicated above as presented in the CMRS Brief

[77] The Coalition will not speculate as to whether decision-makers in the few other state proceedings cited by the CMRS Providers read the quote proffered by the CMRS Providers out of context or in its entitety

assessed such charges for traffic that is currently subject to interstate access charges.[78]

Contrary to the statements presented by the CMRS Providers, the FCC clearly understands that the implementation of reciprocal compensation is not automatic. Once implemented, in fact, the rules do not provide that a LEC must utilize the reciprocal compensation arrangement to transmit its traffic. As the underscored portions of the full quoted paragraph 1043 demonstrate, the FCC understands that intraMTA traffic may be alternatively carried by an interexchange carrier in which case the traffic is *subject to access charges.*

In those instances where a toll carrier, such as BellSouth,[79] carries intraMTA traffic, the traffic is subject to access charges assessed to that carrier. In contrast to the unsupported assertion by the CMRS Providers that "the originating carrier's reciprocal compensation obligation is not altered when a transiting carrier is interposed between the originating and terminating carriers,"[80] the fact is that the compensation obligation is altered. The CMRS Providers cannot justify their claim when they read the full text of paragraph 1043 of the *FCC Interconnection Order* The reliance of the CMRS Providers on the April 12, 2004 interlocutory order by the Pre-Hearing Officer in this proceeding is misplaced.[81] As the *FCC Interconnection Order* indicates, federal law does impose compensation obligations on third party carriers of intraMTA traffic. Such traffic is subject to access charges when "it is carried by an IXC."[82] Moreover, the CMRS Providers are well aware of the fact that the FCC has determined that access charges are applicable when traffic is carried by a third-party

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[78] *FCC Interconnection Order*, para 1043 (Underscoring added)

[79] Contrary to any protests BellSouth may make, the TRA is fully aware that BellSouth provides services as an intraLATA toll carrier BellSouth utilizes its intraLATA toll trunks to connect the CMRS traffic to the networks of the rural LECs BellSouth charges the CMRS carriers to carry their traffic to the rural LEC networks The existing terms and conditions that govern that interconnection establish the assessment of access charges billed to BellSouth

[80] CMRS Brief, p 49

[81] *Id*

[82] *FCC Interconnection Order*, para 1043

interexchange carrier; it was a CMRS provider that sought a declaratory ruling from the FCC regarding this matter.[83]

D. Response to CMRS "Principle No. 3" – Neither forward looking cost rules or bill and keep is applicable to the existing interconnection arrangement through the Bellsouth common trunk group. Nor are forward looking cost rules or bill and keep applicable to any reciprocal compensation arrangement established with the rural LECs.

CMRS Brief Section C 1, Issue 8: The FCC's forward looking cost methodology is not applicable to the Rural LECs.

Summary: The existing interconnection arrangement through BellSouth is not subject to a reciprocal compensation arrangement imposed on a non-voluntary basis. The existing arrangement has been the subject of terms and conditions approved by the TRA, pursuant to which BellSouth has carried the CMRS traffic to the rural LECs and paid the rural LECs terminating access charges. The arrangements regarding traffic originated by rural LEC customers and carried to CMRS provider networks by BellSouth is similarly a matter that was arranged and determined by BellSouth and the CMRS Providers in privity and in the absence of the rural LECs. On a voluntary basis, and outside the scope of an arbitration proceeding, the rural Independents have proposed new terms and conditions to apply to the existing interconnection arrangement. These terms and conditions include significant reductions in the rate that has been applicable to the subject traffic.

The rates developed by the rural Coalition are based on cost information in the public domain that has been subject to FCC review. The rates are based on the actual additional costs that the rural LECs incur in transporting and terminating the subject traffic. The rates are not based on "forward-looking" cost methodology; the FCC's forward-looking pricing rules are not applicable to the rural LECs. Even if a reciprocal compensation arrangement could be established in this proceeding in accordance with all applicable established regulatory standards – and, it cannot – neither the forward-looking "benchmark" developed by the CMRS Providers nor a bill and keep methodology would be lawfully applicable. The rural Independents provided rate proposals that are consistent with all applicable obligations imposed on rural LECs.

The CMRS Brief expends considerable resources on the provision of narrative description of the FCC's forward looking pricing rules developed pursuant to Section 251(c) of

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

the Act.[84] Other than the citations to the FCC pricing rules and quotations from the rules, the CMRS Providers offer no support for their position that forward-looking pricing rules apply to the rural LECs. The forward-looking pricing rules are not statutory. These rules were established by the FCC to implement the statutory interconnection requirements imposed on non-rural LECs. In the development of these rules, the FCC determined that it would impose the same forward-looking cost methodology on the non-rural LECs with respect to the establishment of reciprocal compensation rates pursuant to Section 251(b)(5) of the Act.

In so doing, however, the FCC was careful to clarify that it was not imposing these forward-looking pricing rules on rural LECs:

> We also address the impact on small incumbent LECs. For example, the Western Alliance argues that it is especially important for small LECs to recovery lost contributions and common costs through termination charges. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, we conclude that termination rates for all LECs should include an allocation of forward-looking common costs, but find that the inclusion of an element for the recovery of lost contribution may lead to significant distortions in local exchange markets. We also note that certain incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.[85]

The FCC did not limit expression of its intent in the *FCC Interconnection Order* to make clear that the forward-looking pricing rules are not applicable to rural LECs to the single passage cited above. The FCC repeated this intent on several occasions in the *Order* to ensure that no confusion arose. For example, in discussing the applicability of symmetrical compensation, the FCC repeated:

> We also note that certain incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state

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[84] CMRS Brief, pp 55-58

[85] *FCC Interconnection Order*, para 1059 (Underscoring added)

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.[86]

In the context of discussing symmetry, and after making the statement quoted above, the FCC stated, "In addition, symmetry will avoid the need for small businesses to conduct forward-looking economic cost studies in order for the states to arbitrate reciprocal compensation disputes "[87] The FCC clearly understood that whether imposed on a rural LEC or on any "small business" competitor, conducting a forward-looking cost study is a burden that can be avoided.

In response to the fact that the FCC has determined that forward-looking cost methodology is not automatically applicable to rural LECs, the CMRS Providers merely state that "the ICOs are wrong in their argument that the pricing standards of section 252(d)(2) do not apply as a result of their 251(f)(1) status."[88] What the Coalition has actually said is that the FCC's forward-looking pricing rules are not applied by the FCC to the rural LECs The CMRS Providers offer no support for their contention that the Coalition is "wrong," nor could they. The Coalition is not aware of any FCC determination at any level of the Commission (whether a full Commission decision, a bureau decision, or an enforcement decision) that has imposed forward-looking cost methodology on rural LECs. The position urged by the CMRS Providers would leave the underscored portions of paragraphs 1059 and 1088 quoted above with no meaning.

The Coalition has provided extensive testimony and data in response to interrogatories regarding this matter. Outside of the scope of arbitration and on a voluntary basis, the Coalition has proposed rates that reflect significant reductions to the terminating charges that have been previously deemed lawful by the TRA and applied to

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[86] *Id*, para 1088 (Underscoring added)
[87] *Id*
[88] CMRS Brief, p 57

the termination of the subject traffic through a BellSouth common trunk group. Coalition Witness Watkins has thoroughly addressed the basis of these voluntary rate proposals made outside the scope of arbitration, explaining how the rates follow costs and network function. Witness Watkins also explained how the rates may, in fact, be below so-called "forward-looking" costs because the rates do not recover all associated costs in recognition of current assignment of a portion of the costs to recovery through universal service mechanisms [89] Proposed future universal service mechanisms may not provide the same level of cost recovery which, in turn, would result in a higher "forward-looking" rate than those voluntarily offered outside the scope of arbitration.

As discussed and demonstrated by the Coalition in this Reply Brief and throughout this proceeding, the existing indirect interconnection arrangement through BellSouth is not subject to the imposition of a reciprocal compensation arrangement on a non-voluntary basis, and, no specific requests for any alternative direct or indirect interconnection arrangements have been set forth on the record of this proceeding. If, nonetheless, the TRA ignored all the law, regulations, and cases referenced by the Coalition and attempted to impose a reciprocal compensation arrangement on the rural Independents, the TRA has before it a significant body of cost data, provided in response to the CMRS Provider interrogatories, that demonstrates the reasonableness of the rates voluntarily proposed by the Coalition outside the scope of arbitration No rational basis exists for the TRA to adopt and impose either the so-called "forward-looking" benchmark rate developed by the CMRS Providers or a bill and keep methodology.

The attempt of the CMRS Providers to impose bill and keep is clearly contrary to FCC rules and equity. The FCC rules permit a state commission to impose bill and keep

[89] *See*, Watkins Direct Testimony, pp 35-37, Tr Vol VIII, p 47

only in instances where the "telecommunications traffic from one network to the other is roughly balanced."[90] Setting aside for the sake of discussion the fact that a lawful reciprocal compensation interconnection arrangement does not exist, the TRA has no factual basis to conclude that any potential exchange of traffic is balanced. To the contrary, the TRA is well aware of the fact that the rural LECs have strived in Docket No 00-00523 to obtain their due compensation for significant amounts of traffic that originated on the CMRS Provider networks and was carried to the rural LECs through the BellSouth common trunk groups. The CMRS Providers offered no evidence to even suggest that this traffic would be "roughly balanced" now or in the future. Ironically, the TRA is also fully aware of the repository of the "best evidence" with regard to the amount of traffic that is carried through the BellSouth common toll trunk groups; the information resides with "non-party" BellSouth.

The positions of the CMRS Providers regarding Issue 8 should be rejected. The establishment of a reciprocal compensation rate in this proceeding is inappropriate because, as previously discussed, there is no proposal before the TRA to establish a specific interconnection arrangement that is consistent with the established FCC standards regarding the transport and termination of traffic pursuant to Section 251(b)(5). Moreover, even if in the alternative, the TRA determined to impose a reciprocal compensation arrangement on the rural LECS in the absence of due process,[91] no factual basis exists on the record to adopt either the "benchmark forward-looking" rate proposed by the CMRS Providers or an inequitable bill and keep methodology. The rural Independents have provided ample data to support both the rates and the

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[90] 47 C F R 51 713(b)

[91] *See, e g*, Indiana Bell Telephone Company Incorporated v Smithville Telephone Company, Inc , et al , 31 F Supp 2d 628 at 639-640 (S D Ind 1998)

methodology used to derive those rates that have been voluntarily offered outside of the scope of the arbitration. Should the TRA elect to impose a reciprocal compensation arrangement on the rural LECs (contrary to the arguments set forth by the Coalition herein and throughout this proceeding), the TRA would have no rational basis to ignore the cost data and methodology provided by the Coalition.[92]

E. Response to CMRS "Principle No. 4" – Originating Carriers are not obligated to deliver their traffic to the terminating carrier's network in the manner proposed by the CMRS Providers.

Summary: The CMRS Providers have misinterpreted FCC rules and cases in an attempt to saddle the rural LECs with the financial responsibility of transporting traffic to a point of interconnection ("POI") with the CMRS provider beyond the rural LEC's network. Irrespective of whether interconnection is "direct" or indirect, no LEC (neither a rural LEC nor a non-rural LEC) is obligated to carry traffic beyond its network. Requiring rural LECs to incur charges to transport traffic beyond their networks has significant impact and universal service ramifications. The CMRS Providers are fully aware that they have raised these "rating and routing" issues before the FCC, and that these matters are pending.

1. CMRS Brief Section D 1, Issue 5: The rural LECs are not obligated to pay transit costs to deliver "local" traffic to geographic points beyond their own networks.

The CMRS Providers not only seek to force the rural LECs to send traffic through the BellSouth common trunk group, they want the rural LECs to pay BellSouth for the transport service. As anticipated in the Coalition's Post-Hearing Brief, the CMRS Providers attempt to support their position by employing extracts of FCC rules and cases out of context.[93]

For example, the CMRS Providers cite the *TSR Wireless* and *Mountain Communications* cases to support their contention that a LEC is required "to deliver, without charge, traffic to CMRS Providers anywhere within the MTA in which the call originated."[94] The CMRS

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[92] Within the scope of their discussion of their Brief Section C addressing "Principle No 3," the CMRS Providers also address Issues 9 (traffic factors), 10 (treatment of *de minimis* traffic, and 11 (interMTA traffic factors) Essential agreement appears to have been reached with respect to Issue 10 CMRS Brief, p 68 With respect to Issues 9 and 11, the CMRS Providers offer no new facts or legal support Accordingly, the Coalition relies on the record and the arguments set forth in its Post-Hearing Brief with respect to these issues

[93] *See*, Coalition Brief, pp 35-38

[94] CMRS Brief, p 71, citing *In the Matters of TSR Wireless, LLC, et al , Complainants, v US West*

Providers fail to provider the Authority with the full context of their citation. In both *TSR Wireless* and *Mountain Communications*, a paging carrier established a physical interconnection on the network of the incumbent LEC with which it was interconnecting to receive one-way traffic The requirement that the CMRS Providers site to support their flawed position is actually a requirement for an originating LEC to deliver traffic without charge to a POI on the originating LEC's network.

There is no requirement for an originating LEC to deliver traffic to a POI beyond its network and on the network of another LEC or any other carrier. Whether purposeful or not, the CMRS Providers have cited the *TSR Wireless* and *Mountain Communications* cases out of context to try to bolster their unsupportable position. If the CMRS Providers established interconnection at an established or mutually agreed upon POI on the network of the rural LEC, the rural LEC would deliver traffic to that POI, consistent with the *TSR Wireless* and *Mountain Communications* cases. These cases, unlike this proceeding, do not involve interconnection through the common toll trunk groups of a third party carrier.[95]

It is incredible that the CMRS Providers could hold out to the Authority that the FCC has established that rural LECs must pay the cost of transporting call beyond their borders. In their brief, the CMRS Providers fail to acknowledge that Sprint raised this issue over two years ago at

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Communications, Inc et al , Defendants, released June 21, 2000, in File Nos E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 ("*TSR Order*") at para 31, *aff'd sub Nom , Qwest Corp V FCC*, 252 F. 3d 462 (D C Cir 2001) ("*TSR Wireless*"), and *Mountain Communications, Inc V FCC*, 355 F 3d 644 (D C Cir, January 16, 2004) ("*Mountain Communications*.")

[95] It should be noted that the FCC is apparently not completely clear regarding how this issue should be treated even with respect to non-rural carriers interconnecting directly with a CMRS provider at a POI on the incumbent LEC network As alluded to by the CMRS Providers at fn 204 of their Brief, the Court of Appeals remanded the *Mountain Communications* proceeding The matter is still pending before the FCC which must attempt to ensure that the results in *Mountain Communications* and *TSR Wireless* are not inconsistent For purposes of this proceeding, it suffices to emphasize the fact that the CMRS Providers do not seek a point of interconnection on the networks of any rural Independent Contrary to all established rules, standards, and cases, the CMRS Providers wrongly seek to force the rural LECs to bear the financial burden of transporting calls to a POI that the CMRS Providers establish on the BellSouth network

the FCC and that it is still not resolved [96] While the CMRS Providers ignore the pending *Sprint Petition for Declaratory Ruling*, the FCC has not. Contrary to the arguments submitted by the CMRS Providers, the FCC has indicated that it is well aware that "there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated." [97]

To support their position, the CMRS Providers simply ignore the real holdings of the cases they cite, their own pending declaratory ruling and the very specific words of the FCC [98] Instead, they grasp at straws and come up with two very short ones. First, they cite a brief filed by the FCC at the U.S. Court of Appeals for the District of Columbia Apparently, the CMRS Providers hope that the brief will provide them with the support that they cannot extract from the FCC's Orders. Without any comment or analysis, the CMRS Providers offer a lengthy extract that includes the following statement· "[w]hen a rural LEC customer calls a wireless customer, the rural LEC is responsible for transporting the call and paying the cost of this transport."[99]

Because the CMRS Providers offer no comment or analysis on the extract from the FCC brief that they provide, the Coalition surmises that the CMRS Providers hope that the statement quoted above would "catch" the eye of the Authority since it appears to be the most "damaging" statement in the quoted. The statement, however, is hardly "damaging" when it is considered in context of the entire extract which recognizes that the transport required by an originating LEC is

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

[97] *In the matter of Telephone Number Portability*, CC Docket No 95-116, released November 10, 2003 at fn 75

[98] Rather than repeating the discussions set forth regarding this matter in the Coalition Brief, the Coalition respectfully refers the Authority to the discussion set forth at pp 36-38 of therein In addition to the legal fallacies of the argument of the CMRS Providers, the TRA is respectfully requested to consider and address the universal service implications addressed at p 38, the universal service concerns were well illustrated by example at the hearing Tr Vol VIII, p 15 line 7 through p 16, and p 19, lines 19-21

[99] CMRS Brief, pp 73-74, fn 205 citing "FCC Brief at pp 34-35 "

to a POI which, consistent with the specific words of the Act, must be at a technically feasible point within the network of the LEC.[100]

The other short straw that the CMRS Providers pull is their attempt to distinguish the *Texcom Reconsideration Order.*[101] The CMRS Providers would like this case to hold, consistent with their position, that the rural LECs must pay the charges of a third party carrier when a CMRS connects to a POI on the rural LEC network indirectly.[102] That, however, is not what the *Texcom Reconsideration Order* holds The case holds that the carrier requesting interconnection pays the charges to the third party carrier that provides the indirect facility (in a manner consistent with the *FCC Interconnection Order,* para 1039)[103] to connect the requesting carrier to a POI on the network of the LEC.[104] In other words applicable to the facts in this proceeding, the CMRS Providers are required to pay BellSouth for "indirect" facilities to connect the CMRS Provider to a POI on the networks of the rural Independents.

Contrary to the position set forth by the CMRS Providers, the *Texcom Reconsideration Order* stands for the proposition that if a carrier does not want to interconnect its facilities directly to the POI of a LEC, it must take responsibility for the charges associated with the indirect facility provided by a third-party carrier. The FCC recognized in the Texcom *Reconsideration Order* that the carrier choosing to use the indirect facilities provided by a third party (in a manner consistent with the *FCC Interconnection Order,* para. 1039) "may seek reimbursement of these costs from originating carriers through reciprocal compensation."[105]

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[100] 47 USC Section 251(c)(2)(B)

[101] *See,* fn 70, *supra*

[102] It is important to note that, in contrast to the facts presented here where a common BellSouth trunk group is chosen by the CMRS Providers to transport traffic indirectly to the rural Independents, in para 4 of the *Texcom Reconsideration Order*, the FCC clearly understands that the indirect facility used is deployed consistent with the requirements of the *FCC Interconnection Order*, para 1039 *See, also fn 70, supra*

[103] *Texcom Reconsideration Order*, fn 11

[104] *Id,* at para 4

[105] *Id*

The FCC did not in any way suggest that the originating LEC should pay the third party carrier, as the CMRS Providers demand in Issue 5 In fact, the FCC stated, "While the cost of using the facilities at issue typically is recovered through reciprocal compensation charges to originating carriers, we note that carriers are free to negotiate different arrangements for the costs associated with indirect interconnection." [106] The Coalition respectfully asks, in the face of all of the law and cases presented herein, how could the CMRS Providers set forth their positions so boldly claiming sanction from the FCC, and how could they expect the TRA to find a rational basis to support their positions?

2. CMRS Brief Section D 2, Issue 7: A carrier requesting interconnection must establish a point of interconnection (POI) on the incumbent LEC's network. The CMRS Providers confuse the FCC's rules regarding cost-sharing of transport facilities.

The issue presented by the CMRS Providers is not an issue in controversy. Even the CMRS Providers appear to understand that in a direct interconnection arrangement, they must establish a POI within the incumbent LEC's network, consistent with Section 251(c)(2)(B) of the Act [107] While this matter is straight-forward, the CMRS Providers appear to have confused the concept with respect to when it is appropriate to share the costs of transmission facilities.

While the CMRS Providers recognize that in a direct interconnection arrangement, they must deploy facilities to a POI, they apparently want the rural Independents to pay for a portion of the facility charges on their side of the POI. The rural LECs, however, have no obligation to pay involuntarily to deploy facilities beyond their networks The CMRS Providers confuse cases involving non-rural LECs with multiple local service areas within their networks.[108]

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[106] *Id* at fn 12.
[107] CMRS Brief, p 75
[108] The confusion of the CMRS Providers, whether purposeful or not, is similar here to their improper attempt to their improper reliance on the *TSR Wireless* and *Mountain Communications* cases *See* pp 42-43, *supra*

In both *MCI Metro Access* and *Southwestern Bell*, no third party carrier is involved; CLECs sought a single POI on the incumbent network and did not want to bear the entire costs of the transmission facility from the POI to the incumbent LEC's tandem.[109] In contrast to these cases, the CMRS Providers appear to expect the rural LEC's to share transmission costs beyond the POI.[110]

The CMRS Brief is somewhat confusing in this regard, however. While appearing to impose shared costs for facilities beyond a POI on the rural LEC network at one point in their brief, at another point the CMRS Providers state, "Where the parties agree to construct or lease two-way interconnection facilities on a dedicated basis for the purpose of exchanging traffic, both parties must pay their proportionate share of costs for such facilities, regardless of whether such facilities extend beyond an ICO's local exchange area boundary." [111] (Underscoring added.) The rural LECs do not quarrel with this quoted statement which is conditioned on the underscored "Where the parties agree ..." The problem is that in this proceeding, there is no direct interconnection request before the TRA, and the confusing discussion in the CMRS brief highlights the dilemma. There is no specific issue before the Authority to be arbitrated.

F. Response to CMRS "Principle No. 5"

Issue 12 – Originating Rural LECs are not Obligated to Treat calls to a terminating CMRS NPA-NXX in the manner the CMRS Providers seek to require.

Summary: The scope of this proceeding is the request by the CMRS Providers to transport and terminate traffic on the networks of the rural LECs pursuant to section 251(b)(5). The matter raised by this issue addresses how the rural LECs provision services to their end users, and not how the rural LECs provide transport and termination services Accordingly, the issue is beyond the scope of the arbitration proceeding and the positions of the CMRS Providers should be

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[109] CMRS Brief, p 76 citing *MCI Metro Access v BellSouth Telecommunications*, 352 F 3d 872 (4th Cir 2003) (*MCI Metro Access*), and *Southwestern Bell Tel Co v Publ Utls Comm'n of Tex*, 348 F 3d 482 (5th Cir 2003) (*Southwestern Bell*)

[110] CMRS Brief, p 76

[111] *Id*, p 77

dismissed. Moreover, the requirements that the CMRS Providers ask the Authority to impose have not been established as interconnection standards by the FCC.

1. If the CMRS Providers were correct, and they are not, the matter would be one for FCC enforcement and not an issue to negotiate or arbitrate.

It must certainly be appealing to a regulatory body to hear the CMRS Providers say, "Please tell the rural LECs to treat calls to us as "local" whenever we say they are local." The concept of "free service" is, of course, appealing. The realities of operational costs are often inconvenient. As evidenced by the proposal set forth by the Coalition in Section III, *infra*, the rural Independents seek to address customer needs in a responsive, but realistic manner. The objectives of the CMRS Providers will simply not work. If rural LECs are required to treat all calls to CMRS Providers as "local" while also required to incur additional facilities and transport costs, the impact on universal service and basic rates will be severe. The example discussed at the hearing by Coalition Witness Watkins was telling. The ramifications for a rural LEC if it is responsible for paying transit charges of $ 0025 per minute for 3000 minutes per month for each customer is significant, the cost would be the bulk of the rural LEC's basic rate.[112]

As popular as it is to produce an appearance that customers are getting "something for nothing" the reality of costs cannot be ignored. Regulators are well aware that when members of a community seek expanded local calling, the ramifications of both additional local facilities costs and lost cost recovery contribution from toll revenue must be accounted for in determining the increase in local rates necessary to provide the expanded local calling scope.

These considerations are not diminished by the fact that the carrier on the other end of the call is a CMRS carrier instead of another landline carrier. The decision to impose requirements on rural LECs with respect to how they provision services to their customers calling CMRS NPA-NXX is not one that should be made in a vacuum, without a full record in an arbitration

[112] Tr Vol VIII, p 19, lines 19-21

proceeding ostensible undertaken to address the termination, not the origination, of traffic pursuant to Section 251(b)(5) The rural Independents have most certainly not voluntarily submitted this issue to arbitration.

If, in fact, the CMRS Providers were correct in their claims that Section 251(b)(3) of the Act mandated how the rural LECs treat calls to NPA-NXXs, the arbitration proceeding would not be the proper forum for the CMRS Providers to enforce their claims. Instead, there would be no issue to arbitrate, and the CMRS Providers would seek FCC enforcement of any inadequate compliance by rural LECs. The CMRS Providers are fully aware, however, that there are no established FCC standards in this regard. It was for this reason that they filed and advocate the *Sprint Petition for Declaratory Ruling* before the FCC. The CMRS Providers are impatient and apparently think that they have found a forum where they can find the reward that they have not obtained from the FCC. The positions of the CMRS Providers have not been established as standards by the FCC; accordingly, they cannot be supported in a manner consistent with Section 252(c) of the Act.

III. Response to CMRS "Administrative/Practical Considerations" with a Practical Proposal to Resolve these Matters.[113]

The Coalition respectfully concludes this Reply Brief by adding to the words that opened its initial Post-Hearing Brief. As the Authority is all too well aware, instability and inequity have existed for nearly one and a half years with respect to the payments due to Coalition members associated with traffic originated on the networks of the CMRS Providers and carried by BellSouth to the rural Independents for termination.[114] The Independents seek resolution, consistent with applicable law "that's fair and addresses our rights "[115] The Coalition respectfully submits that the circumstances of this proceeding warrant additional action by the Authority "in order to further the just, efficient, and economical disposition of cases consistent with the statutory policies governing the Authority."[116]

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[113] Within Section F of its Brief, the CMRS Providers address CMRS Issues 13, 16, 17, and 18, and "ICO Issues" 4, 7, 8 and 10 The discussions in this Section of the CMRS Brief offer no additional compelling arguments of fact or law that have not already been addressed by the Coalition

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

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

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

The relevant law, regulations and cases applied to the facts before the Authority have demonstrated that the arbitration positions set forth by the CMRS Providers must be rejected. The only specific interconnection arrangement under consideration before the TRA is the existing indirect interconnection arrangement through BellSouth's common trunk group. This arrangement is not consistent with the *FCC's Interconnection Order* para. 1039 regarding reciprocal compensation facilities arrangements, nor is it consistent with the FCC's subpart H rules governing reciprocal compensation and the specific requirement of 47 C.F.R. 51.701(c) regarding the establishment of an "interconnection point between the two carriers" exchanging traffic pursuant to reciprocal compensation.

The dismissal of the arbitration issues alone is not a sufficient outcome for any party. The TRA has a full record before it and the authority to act beyond the scope of the arbitration proceeding pursuant to TRA Rules, Chapter 1220-1-2-22(2).[117] Accordingly, the Coalition respectfully offers an alternative resolution. The Coalition requests that on the basis of the record before it, the TRA adopt and approve the proposal set forth below which the Coalition offers on a voluntary basis outside of the scope of the Section 252 arbitration proceeding to establish new terms and conditions whereby the CMRS Providers interconnect indirectly to the networks of the rural Independents:

1. Parties: The agreement will be a bi-lateral agreement between the CMRS Providers and the RURAL Independents.

2. Scope: The agreement shall set forth the terms and conditions between the parties for the exchange of indirect telecommunications traffic.

3.Indirect Traffic:

A. Intermediary Provider: If a CMRS provider chooses an Intermediary Provider other than BellSouth, the CMRS provider will notify the RURAL INDEPENDENT in advance.

[117] The members of the Coalition that are organized as Cooperatives respectfully note that they have not waived their rights with respect to the extent of the statutory authority of the TRA

B. Co-mingling of Traffic: Indirect traffic can be co-mingled with other traffic delivered by the Intermediary Provider over a common trunk group.

C. Payments, acceptance of third party billing records, and disputes.

1) The CMRS Providers will agree to render payments in accordance with the records provided by the third party transit provider In the event that either party disputes the records, that party will provide notice to the other and undertake to resolve the matter with the third party transit provider. During the course of a dispute, payments will continue on the basis of the records rendered; all such payments shall be subject to true-up in accordance with the resolution reached regarding the disputed records.

2) CMRS Providers agree to accept the RURAL Independent's use of BellSouth's 110101 records as a basis for billing CMRS Providers. To the extent any CMRS provider challenges the accuracy of such records, the CMRS provider will bear burden and cost of working with BellSouth to correct the records.

D. Representation of limitation of traffic transmitted.

The CMRS Providers agree that the traffic they transmit through the arrangement will be limited to CMRS traffic originated on their respective networks. The transmission of any other traffic (e.g., IXC, VOIP) will be treated as a default of the agreement, subjecting the agreement to termination – all improperly routed traffic will be subject to the higher of the interstate or intrastate access charges in effect at the time of the occurrence.

E. Interexchange Carrier Traffic

Traffic transmitted by an interexchange carrier (IXC) through a terminating access arrangement will not fall under the scope of this Agreement.

F. Choice of Third Party Provider

The choice by a CMRS Provider of a third party transit provider to transport traffic to an INDEPENDENT will not dictate the Independent's choice of network to transport traffic to the CMRS Provider (e.g., the CMRS Provider may use BellSouth and the INDEPENDENT may use another third party carrier).

4. Factors

a) Traffic Factor - The Parties will voluntarily resolve their dispute regarding the obligation of RURAL Independents to compensate CMRS carriers for intraMTA traffic that the RURAL Independents send via a toll provider by "agreeing to disagree." Pursuant to this proposal, the issue need not be further addressed. The Parties' reciprocal compensation obligations will be determined by the application of a mutually agreeable traffic factor of 75/25 to all of the mobile to land traffic terminated on the RURAL Independent's network (i e., 75% mobile to land and 25% land to mobile).

b) InterMTA Traffic: 2% applied to the total mobile to land traffic terminated on the RURAL Independent's network CMRS Providers will compensate rural carriers for interMTA

traffic pursuant to the RURAL Independents' access tariffs and will also use a factor to estimate the percentage of inter- versus intra-state traffic. As a matter of compromise, the Coalition proposes establishing a 50/50 factor; i.e., of the inter-MTA factor of 2%, half of this would be considered interstate and half will be considered intrastate.

5. Traffic Exchanged as "Local" - The Independents will, during the term of this agreement, transmit traffic to the CMRS Providers where the traffic is destined to NPA-NXXs that the CMRS Provider has associated with the Independent's local calling scope (including geographic rate centered EAS points).

6. Rates. The rates in the confidential proposal will be the effective initial rates.

7.Responsibility for transit charges:

This is another issue with respect to which the Coalition offers a practical solution while preserving the rights of all parties The parties can "agree to disagree," but still enter into a workable agreement.

As of today, BellSouth does not assess transit charges to the knowledge of the Coalition on the Independents in any state with contractual arrangements similar to those that are effective in Tennessee between the Independents and BellSouth.

In the event that BellSouth determines to assess a transit rate charge on the Independents, and such charges are approved by the TRA, the Coalition proposes the following as part of this complete compromise proposal:

a) During the remaining term of the agreement when any such BellSouth transit charge on the INDEPENDENT would be effective, the CMRS Provider would agree to pay any such charges; or

2) In the event that the CMRS Provider does not agree to pay such charges, the remaining term of the Agreement will be modified to permit the INDEPENDENT to elect to hand the traffic off to the originating customer's chosen toll provider or to assess the originating customer a charge associated with the traffic.

3) In the event that the FCC issues an Order addressing this subject matter, either party may elect to terminate this agreement with 9 months notice and a concurrent request for a new agreement which all parties will agree to subject, if necessary, to the arbitration processes set forth in Section 252 of the Act. The purpose of the proposed 9 month notice is to allow for the Section 252 process; from the date of the notice of termination, the parties can begin a new negotiation which will lead either to a mutually agreed upon new agreement or a new agreement established by arbitration within the 9 month time-frame. While the Independents have agreed to utilize the Section 252 arbitration process, no INDEPENDENT has waived its rights to exemption and suspension pursuant to Section 251(f)(1)and(2).

Finally, with respect to this entire proposal, all parties agree that the resulting agreement represents a voluntary arrangement for a limited (2 year) period of time; and that this

arrangement is reached consistent with the intent of Section 252 of the Act to promote voluntary arrangements, and without regard to the specific standards set forth in Section 251; and that, except for the application of the agreed upon voluntary terms of the compromise arrangement, all parties have reserved all of their rights with respect to future negotiations and the advocacy of their positions in any regulatory, legislative or judicial forum.

IV. CONCLUSION

As discussed from the outset of the status conference hearing in Docket No. 00-00523 that resulted in the negotiations that, in turn, produced this arbitration proceeding, the rural Independents have been and remain willing to establish reciprocal compensation arrangements that are consistent with existing statutory and regulatory standards and requirements. The Coalition members, however, have never been willing to submit issues to arbitration that are not within the parameters of the established interconnection standards.

As discussed herein and throughout this proceeding, the CMRS Providers have sought in this arbitration to impose terms and conditions on the rural Independents that go far beyond the established standards of interconnection. The single specific interconnection arrangement under consideration is the indirect interconnection through a BellSouth common trunk group that the CMRS Providers already utilize This arrangement is not within the established standards that address the transport facilities used in a lawful reciprocal compensation arrangement. Accordingly, and for all the reasons provided both herein and in the Coalition's Initial Post-Hearing Brief, the Coalition submits that each of the arbitration positions of the CMRS Providers should be rejected. In the alternative, the Coalition proposes the adoption of the compromise proposal it has set forth in Section III, *supra*. This voluntary proposal offered outside the scope of Section 252 arbitration represents a workable and genuine compromise of the issues in a manner that will truly serve the public interest

Respectfully submitted,

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CERTIFICATE OF SERVICE

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