BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

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

COMMENTS 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

April 13, 2006

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to as the "Coalition" or the "Independents") respectfully submits these Comments regarding those matters that the five Commercial Mobile Radio Service providers ("CMRS providers")[1] have raised in their *Joint Petition for Reconsideration of January 12, 2006 Order of Arbitration Award* ("*Petition*") filed with the Tennessee Regulatory Authority ("TRA") on January 27, 2006.

I. PROCEDURAL BACKGROUND

The Independents respectfully submit that the time has long arrived that this matter should move forward for review and final resolution as required by statute. However, the CMRS providers have elected to ask the Authority to reconsider three of its determinations in the Arbitration and further delay a final resolution. On February 6, 2006, the Authority decided to hear the *Petition* and "to defer deliberations in this matter to a later date to be set by the panel."

The Coalition respectfully assumed that the TRA acted in accordance with Sec. 1220-1-2-20 of its rules, and in the manner that the Authority has previously processed Petitions for Reconsideration in which the Coalition has been a party. Accordingly, the Coalition anticipated that the panel would establish: 1) dates for the filing of comments both in support of and in opposition to the substantive issues raised by the *Petition*; and 2) a date for deliberations subsequent to the receipt and review of the comments. Contrary to this expectation, the Coalition learned on Friday, April 6, 2006, when the Authority's conference agenda for April 17, 2006 was made public, that the matter of the *Petition* is scheduled for deliberations as part of the April 17 Conference Agenda.

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

In its March 9, 2006 Order determining that the *Petition* will be heard subject to further deliberations, the Authority notes that the "Coalition did not file a response to the *Petition*." The Coalition had no objection to the Authority deciding to hear the matter in accordance with Sec. 1220-1-2-20(2)(b). The Coalition fully expected, based on the processes formerly followed by the Authority, that it would be afforded an opportunity to be heard on the matter when the Authority established a schedule for further deliberations. The placement of this matter on the April 17 Conference Agenda has given rise to concern by the Coalition that the opportunity to be heard will not otherwise be afforded. Accordingly, the Coalition takes this opportunity to provide the Authority with these comments so that its position regarding these matters is clear.

II. THE CMRS PETITION SHOULD BE DENIED IN ITS ENTIRETY

A year passed from the date that the Authority announced its decisions on the arbitration issues to the date on which the Authority issued its arbitration decision. Now two more months have gone by. The Independents have not asked the Authority to expend further resources on its deliberations. Enough resources have been expended already. There are neither considerations of new facts or changes in the law for the Authority to consider, and the CMRS Petition raises no such new facts or changes in the law.

The Coalition recognizes that the issues before the Authority in this proceeding are very complex. Throughout this proceeding, the CMRS providers have extracted statements out of context from FCC rules and decisions to weave these partial piece parts into arguments to support their positions. The patch-work quilt they have offered the Authority suggests that the difficult issues before the Authority are not only simple, but are already decided by the FCC. This is not the case.

The Coalition can point to specific aspects already in the record before the Authority

where each of the deficient arguments submitted by the CMRS providers has been addressed and rebuffed. The issues and the necessary application of complicated and detailed statute, regulation and policy established in detailed fact-laden proceedings requires rigorous review and detailed discussion as reflected in the multiple, lengthy submissions of the Coalition in this proceeding.

The Coalition recognizes the lure of the CMRS strategy to "simplify" the discussions and to appeal to a framework that disregards the very specific factual distinctions in the operations of a CMRS provider and a rural incumbent local exchange carrier. It is, in fact, these very specific factual operational distinctions that provide the policy basis for the distinct legal treatment afforded to rural telephone companies under the Telecommunications Act of 1996.

The Coalition also recognizes that the TRA is not the only forum where the tactics employed by the CMRS providers have succeeded. In this regard, the CMRS carriers largely rely on a decision issued by the Tenth Circuit of the U.S. Court of Appeals which addresses an arbitration proceeding held in Oklahoma. While the CMRS providers revel in the success of their persuasive skills in Oklahoma (and, now in Tennessee), the force of law and sound public policy has not been tempered either in other state forums or before the FCC. Contrary to the rhetoric of the CMRS providers, the very positions that they espouse as if they were simple and settled are neither established as a matter of statute or rules determined by the FCC. The Coalition has demonstrated this fact repeatedly throughout this proceeding and provided the Authority with the related legal support.

In fact, the state of the law reflects that the CMRS providers have strived unsuccessfully to obtain sanction for their positions from the FCC. Throughout this proceeding, the Coalition has provided the Authority with support and citations to the pending proceedings at the FCC where the CMRS providers have initiated these efforts. Failing to succeed in their efforts before

the FCC, the CMRS providers have apparently turned to state forums where they have calculated that their rhetoric will succeed. The reconsideration *Petition* reflects this mindset and strategy. The CMRS providers have returned to the TRA to seek to convince the Authority to proceed, without regard to law or FCC interconnection standards, to establish even further expanded rights for CMRS providers.

The three primary issues presented for reconsideration by the CMRS providers reflect how audacious they are. From a legal perspective these three issues are related by a common theme: how far can the CMRS providers go in seeking to impose new obligations on rural incumbent telephone companies with respect to the routing and transport of traffic beyond the networks of each rural telephone company.

Contrary to the rhetoric of the CMRS providers, neither the law nor the associated FCC interconnection standards require a rural telephone company to take responsibility for the routing and transport of traffic to points of connection beyond their local networks. Moreover, neither the law nor FCC interconnection rules impose any requirements with respect to how a local exchange carrier handles traffic originated by its customer and destined to a CMRS customer.[2]

The fundamental flaw that is highlighted by the CMRS *Petition* is the incorrect assumption that Section 251(b) of the Act in any way mandates how a LEC treats, routes and transports traffic to a CMRS provider. Both the record before the Authority and the applicable law and regulations support fundamental principles that have been ignored by the arbitration decision in this proceeding:

1. 251(b)(5) gives carriers the right to terminate traffic through a reciprocal compensation. arrangement. It does not state that once a CMRS carrier elects to send traffic to a LEC through reciprocal compensation arrangement, that the LEC must send traffic back to that CMRS carrier in the same way that the CMRS carrier sent traffic to the LEC.

[2] The FCC has never established a rule to require a LEC to treat a call to a CMRS provider as "local." In fact, the FCC has not established a rule that would prevent a LEC from treating all traffic to CMRS providers (who are not holding themselves out as local exchange service providers) as interexchange toll traffic.

2. 251(b)(5) is permissive, not mandatory. It does not tell any carrier how it should interconnect its traffic to another carrier much less mandate how any carrier should charge for a call (i.e., it does not tell a LEC when it can send a call as "local" and when as "toll").

3. The FCC recognized that State regulatory authorities do not establish "local calling scopes" for CMRS providers. The FCC permitted (but, did not require) CMRS providers to use a reciprocal compensation arrangement to terminate any call that originates on the CMRS network and terminates on a LEC network within the same MTA.

4. Since the arrangement is permissively "reciprocal," a LEC is allowed to do the same – i.e, the LEC can choose to send traffic to a CMRS carrier subject to the reciprocal compensation arrangement if the call originates and terminates in the same MTA. The LEC is not required by statute or regulation to utilize the reciprocal interconnection arrangement to send traffic to a CMRS provider.

5. No LEC is required to interconnect with a CMRS provider directly or indirectly at a point beyond the LEC's network, nor is a LEC required to transport traffic beyond its network to a point designated by a CMR provider or any other telecommunications carrier.

The positions of the CMRS providers set forth in both the arbitration and in the *Petition* can not stand. Their positions are inconsistent with the fundamental principles set forth above.

The CMRS providers have not offered the Authority anything new in their *Petition* to support their efforts to convince the Authority to attempt to prejudice further the rights of the Independents. The Coalition will not burden the Authority by repeating the discussions, arguments, and citations to authority that the Coalition has already submitted on the record in this proceeding with regard to the issues presented by the CMRS providers in their *Petition*. Instead, the Coalition respectfully incorporates by reference all of the submissions and testimony previously provided.

Even if the record before the Authority was not replete with the prior submissions by the Coalition, a rigorous detailed analysis that applies the existing law and interconnection rules to the arbitration issues would inevitably lead to the determination that not only are the positions

espoused by the CMRS providers in the *Petition* deficient, but that the positions they have argued with respect to these and other issues in the arbitration are not sustainable. With respect to the latter, as indicated previously, the Coalition will seek to redress these matters through the review process afforded by law. With respect to the issues raised in the *Petition*, the Coalition offers these few additional comments with respect to each issue.

A. Issue 2(b): The CMRS providers want the Authority to impose responsibilities on the Independents even if a landline call to CMRS customer is treated as a toll call and carried by a long distance carrier.

The Arbitration Order determined (and we believe incorrectly) that an Independent is responsible to pay terminating compensation to a CMRS provider for an intraLATA toll call carried by the originating customer's choice of long distance carrier. In the *Petition*, the CMRS providers now seek to require the Independents to also pay terminating compensation to a CMRS provider for an interLATA toll call carried by the originating customer's choice of long distance carrier.

The record in this proceeding and the FCC decisions (repeatedly cited by the Coalition) demonstrate that the position of the CMRS providers is incorrect. Reciprocal compensation does not apply when a call is carried by the customer's chosen long distance carrier, irrespective of whether the call is interLATA or intraLATA. The argument set forth by the CMRS providers ignores the fundamental fact that, pursuant to the FCC's interconnection rules and Section 251(b)(5) of the Act, the use of a reciprocal compensation arrangement is permissive, not mandatory. It does not tell any carrier how it should interconnect its traffic to another carrier much less mandate how any carrier should charge for a call (i.e., it does not tell a LEC when it can send a call as "local" and when as "toll"). If the LEC elects to deliver traffic to a CMRS provider, the LEC may avail itself of the reciprocal compensation arrangement provided that the

traffic terminates within the MTA in which it originates. The LEC is not required, however, to avail itself of this right. The LEC may instead treat the call to a CMRS provider as an interexchange call. In that instance, and regardless of whether the call terminates within or outside of the LATA in which it originates, the call is handled by the originating customer's chosen toll provider and not by the LEC. The FCC has affirmed, and the Coalition has fully discussed on the record in this proceeding, that when a call is handled as a toll call, reciprocal compensation does not apply.

The confusion that results from the arguments of the CMRS providers can be traced to their incorrect assumption that the "called number" somehow determines the jurisdiction of a call. The CMRS providers apparently believe that labeling a "called number" to a CMRS customer as local to a LEC somehow magically renders the call "local" and requires the LEC to treat the call as a "local" call instead of a toll call handled by the originating customer's chosen toll carrier. The law in this regard is immutable: the jurisdiction of a call is determined by the geographic originating and terminating points, and not by the number. Again, the law is not only readily available, but this matter was fully discussed in the proceeding and in the submissions of the Coalition on this issue are incorporated by reference.

Issue 7: The CMRS providers want the Authority to impose responsibilities on the Independents that technically exceed their existing networks and legally exceed the requirements of both statute and regulations.

The CMRS providers hope that they can convince the Authority to require an Independent to pay costs to transport traffic beyond a point of interconnection on the Independent's network. Unlike a large carrier like BellSouth that has network facilities throughout a LATA, the networks of the Independents are discrete and established within their certificated service areas. The Independents do not have facilities "dedicated to the transmission

of traffic between two carriers networks" likened to the BellSouth transport facilities.

Even with respect to the non-rural telephone companies, under the Telecommunications Act, a CMRS provider or any other telecommunications provider requesting interconnection must arrange to establish facilities to meet at a point of interconnection "within the carrier's network." When the CMRS providers elect to use BellSouth or another carrier to carry their traffic to meet an Independent at a "point within the carrier's (i.e., the Independent's) network," the CMRS providers want the Independent to pay a portion of the costs they incur.

In a reciprocal compensation arrangement, two carriers interconnect at a point of interconnection and each charges the other for the transport and termination of the traffic they choose to send through the arrangement. The reciprocal compensation charge includes the cost of transport from the point of interconnection to the terminating point. The CMRS providers apparently want to recover twice: once through the application of the reciprocal compensation arrangement and once through the application of the "sharing of costs" they proposed in the arbitration and now again in the *Petition*.

The argument of the CMRS providers in support of their position is a good example of the strategy they have employed throughout this proceeding. They begin with the incorrect notion that the facilities that they will use to connect to a point of interconnection on the networks of the Independents must be subjected to cost sharing. To this incorrect assumption, they apply in support of their argument FCC Rule 51.507(c).[3] This rule, however, applies "to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation."[4] The rule addresses the pricing of interconnection elements from which the rural telephone companies are exempt in accordance with Section 251(f) of the Telecommunications Act. Other than in the minds and

[3] *Petition* at p. 8.
[4] 47 CFR 51.501(a).

now the submissions of the CMRS providers, the rule has nothing to do with reciprocal compensation. The CMRS providers essentially add 1 and 1 and proclaim to the Authority that the sum is 11! Sec. 51.507(c) is simply not applicable here and should not be used to impose additional financial burdens on the Coalition Members.

C. Issue No. 12: The CMRS Providers want the Authority to ignore all consideration of existing law and regulation by requiring the Independents to treat calls to CMRS providers as "local."

The *Petition* of the CMRS providers seeks to require the Independents to treat calls to CMRS providers as "local" when the call terminates "within the rate center of the LEC." As a matter of law and established interconnection rules, the rates charged for calls to and from customers of CMRS providers are not regulated. The record in this proceeding is complete with references to the applicable state of the law in this regard.

The CMRS providers wish that the state of the law was otherwise. The *Petition* demonstrates that the CMRS providers hope that the Authority will impose additional requirements on the Independents that are not established by any statute or FCC interconnection rule.

In the Petition, there was no commensurate consideration of how CMRS providers treat their customers. There is no similar request to CMRS providers to provide expanded local calling for rates comparable to those offered by the Independents. Nor is there any indication of consideration of the additional costs that would be incurred by Independents to rate and transport traffic as the member of the Panel urged. There is no mention of the existing law or interconnection rules.

In support of the position on local calling requirements that the CMRS providers set forth in their *Petition*, they again ignore the state of existing law and interconnection rules. Instead,

the CMRS providers make bold statements: "there is no doubt that carriers are required to use the rating points for determining the local nature of the call."[5]

They look for support for their bold statements to a single CLEC arbitration conducted by the FCC, the outcome of which is limited only to the facts regarding that arbitration which did not involve CMRS traffic. The reference of the CMRS providers to a CLEC arbitration dispute as the sole support for their position is another example of how the CMRS providers have submitted citations to cases and regulation in piece parts to craft their arguments to suggest misleadingly that settled regulation and authority supports their positions; it does not.

The implicit argument proffered by the CMRS providers is that as "telephone exchange carriers," they should be afforded the same dialing parity on wireline to wireless calls that LECs provide to other local exchange carriers. The position overlooks the basic premise of parity: that there should be uniformity in the manner in which the customers of local exchange carriers call the customers of other carriers and access the services of competing toll carriers.

A casual and non-rigorous review of parity requirements may lead to the incorrect and non-sensible conclusion that the CMRS providers espouse. The position proffered by the CMRS providers both throughout the arbitration proceeding and in the *Petition*, however, leads to disparity – not parity.

The Independents are not reluctant to treat all similarly situated carriers equally with respect to dialing parity requirements. Specifically, the Independents understand that dialing parity requires the availability of the same dialing patterns on calls to all CMRS carriers. This is far different, however, from the imposition of a requirement to provide the CMRS providers with the same dialing parity that is given to local exchange service competitors.[6]

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[5] *Petition* at 11.

[6] The Coalition again respectfully notes that this and other issues in the arbitration proceeding are detailed and complex. In regard to this issue, it is essential that the TRA not overlook the well established distinction between "telephone exchange service" and "local exchange service." The CMRS providers do not provide "local exchange

When two competing local exchange carriers provide dialing parity to one another, they enable their respective customers to reach one another within a specific geographic area without an additional charge. The geographic area is most often defined by a state regulatory authority and includes calls between originating and terminating geographic points where fixed landline local exchange service is provided. The local exchange service is provided by each carrier to its respective customers in parity: neither carrier charges its customer an additional fee to call customers of the other local exchange service provider when the call is made to a geographic point within the local exchange service area. Neither party charges their own customer when that customer receives a call from a customer of the other carrier when the call is between geographic points within the local exchange service area.

In contrast, the CMRS providers – which are not local exchange service providers – seek disparate treatment that is favorable to them:

1. While the CMRS providers seek to require the Independents to treat all calls to their networks as "local," the CMRS providers do not provide parity. The CMRS providers do not provide their customers with calling to the customers of Independents on a "free" basis.[7]

2. The CMRS providers in this proceeding have neither provided nor offered to provide the equivalent of local exchange service by providing customers with unlimited dialing plans (with no time of day restrictions) within a defined geographic service area.

3. The CMRS providers charge their own customers for the termination of the same call from an Independent customer that they want to convince the TRA to require the Independent to provide for free.

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service," nor do they want to be considered "local exchange carriers." Yet, with respect to the issue of dialing parity they essentially demand to be treated as a competing local exchange carrier while still shielding themselves from the responsibilities and regulation imposed on a local exchange service provider. Several of the significant customer-oriented distinctions are identified below.

[7] The rates of CMRS providers are not regulated. Even where the CMRS provider creates an appearance of free calling by offering bundles of minutes, the calls from CMRS customers to Independent customers are not free, the calls both from and to the CMRS customers count against the package of minutes the customer buys and additional charges apply when the customer uses more minutes

Dialing parity under Section 251(b)(3) of the Act results in a requirement that a LEC must upon request treat calls to all competing CMRS providers equally. The Independents, however, are not required to treat the CMRS providers as if they were local exchange service providers. The Independents are not adverse to the negotiation of arrangements whereby the Independents would treat a defined mutually agreed upon scope of traffic to CMRS providers as if it were "local" traffic. Under existing law and regulation, however, it remains the right, but not the obligation, of the Independents to determine what traffic (if any) to a CMRS provider will be treated as "local," just as it remains the right, but not the obligation of a local exchange carrier to utilize a Section 251(b)(5) reciprocal compensation arrangement to terminate traffic to a CMRS provider.

Rural telephone companies have endeavored to establish mutually agreeable interconnection terms and conditions that incorporate agreement to treat a defined scope of wireline to wireless traffic as "local." This fact is reflected in the numerous agreements that have been brought to the attention of the Authority throughout this proceeding. These agreements, however, reflect a balanced set of terms and conditions that address the concerns and issues of all parties. The imposition of a requirement on the Independents to provide calling to CMRS providers as "free" in the absence of consideration of costs, the impact on consumers and the imposition of a commensurate requirement on CMRS providers is inequitable. Moreover, it is inconsistent with existing regulation and contrary to law.

The CMRS providers failed to point out candidly, as is their responsibility, that the position they have asked the Authority to adopt (the very position about which they claim "there is no doubt") is the subject of a long-pending request for declaratory ruling that one of the CMRS providers submitted to the FCC.[8] If "there is not doubt" about the CMRS position, it is

[8] The above-referenced "Sprint Petition" has often been raised and discussed by the Coalition in this proceeding.

difficult to imagine why the FCC did not provide the CMRS providers with the answer they sought.

The fact is, however, that "there is no doubt" that the CMRS providers are wrong. If they were correct and the TRA or the FCC could regulate how a LEC rates a call, both the Authority and the FCC would find themselves entrapped in a legal quagmire: a telecommunications service provided between two service users would be fully regulated or not regulated for rate-making purposes on the basis of which customer initiated the call. The FCC, however, has already determined in one context that a call between a CMRS customer and a wireline customer is treated as CMRS traffic and not subject to rate regulation irrespective of whether the call was initiated by the CMRS customer or the wireline customer.[9]

In summary, the CMRS providers have failed in a pending proceeding to obtain FCC concurrence in their position that would require the Independents to treat traffic to CMRS providers as local; and, in at least one instance, the FCC has recognized that landline to wireless traffic is CMRS traffic and, consequently, not subject to state rate regulation. Given the state of the law, it would appear non-sensible that the CMRS providers would ask the TRA to compound the error of the arbitration proceeding as they have requested in the *Petition*.

[9] Ironically, that decision was made in the FCC's "Calling Party Pays" decision which the CMRS providers have freely extracted from throughout this proceeding. ***In the Matter of Calling Party Pays Serivce Offering Int the Cmmercial Mobile Radio Services***, WT Docket No. 97-207, FCC 99-137, Adopted: June 10, 1999 and Released: July 7, 1999. (*See, e g* para. 16-17.) In addition, the Coalition respectfully notes that even if the Authority could generally set rates for local exchange carrier traffic to CMRS providers, the statutory authority of the TRA does not extend to rate-making authority over those Independents that operate as cooperatives.

CONCLUSION

For the foregoing reasons, the Petition should be denied in its entirety.[10]

Respectfully submitted,

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April 13, 2006

[10] In addition to the three issues raised by the *Petition*, the CMRS providers additionally have the gumption to ask the TRA to re-write sentences of it arbitration decision. *Petition*, p. 12. The CMRS providers wish that the TRA had not recognized the fact that "interconnection agreements are, by design, for direct interconnection. They also wish that the TRA had not made a reference to " 'CMRS to LEC' calling" and insultingly ask that the Authority treat the statement as "a scrivener's error " No decision will change the validity of the statements to which the CMRS providers take exception.

CERTIFICATE OF SERVICE

I , the undersigned, hereby certify that on April 13, 2006, a true and correct copy of the foregoing was served on the parties of record via electronic mail delivery, or U.S. Mail as indicated:

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