BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 21, 2008

IN RE:	)	
	)	
PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS	)	
	)	
PETITION FOR ARBITRATION OF BELLSOUTH MOBILITY LLC; BELLSOUTH PERSONAL COMMUNICATIONS, LLC; CHATTANOOGA MSA LIMITED PARTNERSHIP; COLLECTIVELY D/B/A CINGULAR WIRELESS	)	**DOCKET NO. 03-00585**
	)	
PETITION FOR ARBITRATION OF AT&T WIRELESS PCS, LLC D/B/A AT&T WIRELESS	)	
	)	
PETITION FOR ARBITRATION OF T-MOBILE USA, INC.	)	
	)	
PETITION FOR ARBITRATION OF SPRINT SPECTRUM L.P. D/B/A SPRINT PCS	)	

ORDER ON RECONSIDERATION AND HOLDING DOCKET IN ABEYANCE

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the Arbitrators assigned to this docket, on April 17, 2006 for reconsideration of the determination of Issues 2(b), 12(b), 7(b) and 14 in the *Order of Arbitration Award*, and on September 11, 2006 to consider holding this docket in abeyance in light of the suspension granted in a related docket, No. 06-00228.

TRAVEL OF THE CASE

On November 6, 2003, CELLCO Partnership d/b/a Verizon Wireless ("Verizon Wireless"); BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership,

BellSouth Mobility, LLC d/b/a Cingular Wireless (collectively "Cingular Wireless"); AT&T Wireless PCS, LLC d/b/a AT&T Wireless ("AT&T Wireless"); T-Mobile USA, Inc. ("T-Mobile"); and Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint") each filed a petition for arbitration.[1] The petitions requested that the Authority assist in matters relating to the negotiation of Interconnection and Reciprocal Compensation Agreements between the petitioners, commercial mobile radio service providers (collectively, the "CMRS Providers") and members of the Tennessee Rural Independent Coalition ("Coalition" or "ICO members").[2] Each petition explained that although the Coalition is made up of twenty-one independent companies, the negotiations have been conducted jointly. As such, the CMRS Providers asserted that it would be an unnecessary burden for the TRA to consider individual petitions as to each of the twenty-one ICO members.

On November 18, 2003, Verizon Wireless, on behalf of the CMRS Providers and the ICO members jointly, filed a motion in Docket No. 03-00585 requesting that the TRA consolidate all five petitions for arbitration (Docket Nos. 03-00585, 03-00586, 03-00587, 03-00588, and 03-00589) into one Arbitration Proceeding.[3] On December 8, 2003, during a regularly scheduled Authority Conference, Chairman Deborah Taylor Tate consolidated all of the petitions for arbitration under the first docket opened, Docket No. 03-00585. During the December 8, 2003 Authority Conference, the panel assigned to Docket No. 03-00585 voted unanimously to accept the petitions for arbitration, to

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[1] *In re: Petition for Arbitration of CELLCO Partnership d/b/a Verizon Wireless*, Docket No. 03-00585 (November 6, 2003); *In re: Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless*, Docket No. 03-00586 (November 6, 2003); *In re: Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless*, Docket No. 03-00587 (November 6, 2003); *In re: Petition for Arbitration of T-Mobile USA, Inc.*, Docket No. 03-00588 (November 6, 2003); and *In re: Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00589 (November 6, 2003).

[2] The Coalition is comprised of the following companies: 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; Tennessee Telephone Company; Twin Lakes Telephone Cooperative Corporation; United Telephone Company; West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative.

[3] *Joint Motion to Consolidate Petitions for Arbitration*, p. 1 (November 18, 2003).

designate themselves as Arbitrators and to appoint General Counsel or his designee as the Pre-Arbitration Officer to hear preliminary matters prior to the Arbitration hearing.

After discovery and the submission of prefiled testimony, the Hearing in this proceeding commenced on August 9, 2004 and concluded on August 12, 2004 before the panel of Arbitrators: Chairman Miller, Director Tate and Director Jones. The parties filed post-hearing briefs and supplemental testimony. The Arbitration panel deliberated the issues in this proceeding during a public meeting held on January 12, 2005. The final *Order of Arbitration Award* ("*Final Order*") was issued on January 12, 2006. On January 27, 2006, the CMRS Providers filed a *Joint Petition for Reconsideration of January 12, 2006, Order of Arbitration Award Submitted on Behalf of CMRS Providers* ("*Petition for Reconsideration*") seeking reconsideration of Issues 2(b), 7(B), and 12(B) and clarification of the Arbitration panel's decision regarding Issue 14. The Coalition filed Comments on April 13, 2006 addressing the issues being reconsidered.

On February 1, 2006, Director Sara Kyle was assigned to the arbitration panel following the resignation of Director Tate. On February 6, 2006, the Arbitrators voted unanimously to grant the *Petition for Reconsideration* and then deliberated the merits of the *Petition for Reconsideration* on April 17, 2006 as set forth herein.

ISSUES FOR RECONSIDERATION

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

***Final Order* Determinations**

In resolving this issue, a majority of the Arbitrators voted that the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC) unless the call crosses a LATA boundary. Director Jones did not vote with the majority, taking the position that the reciprocal compensation

requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an interexchange carrier. Director Jones rejected the Coalition's position that "telecommunication traffic" does not include traffic carried by an interexchange carrier and relied instead on the definition of telecommunications traffic contained in Rule 51.701(b)(2).

Positions of the Parties on Reconsideration

In the *Petition for Reconsideration*, the CMRS Providers argue that all traffic exchanged within an MTA, including traffic exchanged via an IXC, is subject to the rules of the Federal Communications Commission regarding reciprocal compensation and which would preclude the application of access charges.[4] The Coalition argues that the use of reciprocal compensation is not mandatory and "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."[5]

Findings and Conclusions

After consideration of the filings of the parties, Directors Miller and Kyle voted that the decision as to Issue 2(b) stand as decided in the *Final Order*. Consistent with his original vote, Chairman Jones did not vote with the majority.

ISSUE 7(B): What percentage of the cost of the direct connection facilities should be borne by the ICO?

***Final Order* Determinations**

In resolving this issue, a majority of the Arbitrators voted that "the cost for direct connection facilities should be borne by the CMRS provider to the point of interconnection and facilities on the other side of the CMRS provider's point of interconnection should be borne by the ICO member."[6] Director Jones did not vote with the majority as to Issue 7(B), because the record did not contain sufficient evidence to specify a percentage of the cost of the direct connection facilities to be borne by the ICOs. Instead, Director Jones directed the parties to the standard in 47 C.F.R. § 51.709(b).

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[4] *Petition for Reconsideration*, pp. 5-6.
[5] *Comments of the Rural Coalition of Small LECS and Cooperatives'*, p. 7 (April 13, 2006).
[6] *Final Order*, p. 37.

Positions of the Parties on Reconsideration

The CMRS Providers argue that the Arbitrators' decision as to this issue violates 47 C.F.R. § 51.703(b) by shifting the cost for originating traffic over direct facilities onto the terminating carrier. The Coalition responds that the CMRS Providers are asking the Arbitrators to impose requirements on the ICO members that exceed the technology limits of their existing networks and that exceed the responsibilities of ICO members established in statutes and regulations.

Findings and Conclusions

In reconsidering this issue, Director Miller and Director Kyle voted to clarify the decision in Issue 7(B) by stating that each party is responsible for the cost of transporting the traffic originated on its network to the point of interconnection with the terminating party. The majority determined that the originating party is responsible for the payment of reciprocal compensation to the terminating party from the point of interconnection to the switch of the terminating party pursuant to 47 C.F.R. Section 51.703(b), which is consistent with the Arbitrators' resolution of Issue 3 in this proceeding. The cost of the shared direct connection facility used to transport traffic from the point of interconnection between the two carriers to the terminating party's switch may be apportioned based upon its use by both parties in a manner agreeable to the parties pursuant to 47 C.F.R. 51.507(c). It is not intended for each party to pay for all costs of transport facilities from traffic both to and from the location of the interconnection point pursuant to 47 C.F.R. 51.703(b) as the CMRS providers have alleged. While Chairman Jones substantially agreed with the majority, he stated that in his opinion, consistent with his original deliberations, the costs of the shared direct connection facility should be apportioned consistent with 51.709(b).

ISSUE 12(B): Must an ICO charge its end users the same rates for calls to a CMRS NPA/NXX as calls to a land line NPA/NXX in the same rate center?

***Final Order* Determinations**

In resolving this issue, the Arbitrators voted unanimously that "the ICO members are not required to charge end users the same rate for calls to a CMRS NPA/NXX as calls to landline

numbers, unless the calls originate and terminate within the rate center of the LEC." [7] The Arbitrators also found that ICO member end users may be charged toll charges for calls that terminate outside of the ICO member's rate center.

Positions of the Parties

The CMRS Providers argue that to the extent that a call to a similarly rated landline number would be treated as local, the assessment of toll charges by ICO members to locally rated CMRS numbers is discriminatory. To avoid this, the CMRS Providers assert that the Arbitrators should apply statutory requirements of nondiscrimination to the rating of wireless traffic thereby preventing ICO members from acting in a discriminatory manner in the way call completion services are provided to CMRS Providers. The Coalition argues that the CMRS providers are seeking to impose on ICO members requirements that are not found in statutes or interconnection rules of the FCC.

Findings and Conclusions

First the Arbitrators reaffirmed unanimously that this is a proper issue for arbitration, as it directly relates to the manner in which the parties may choose to interconnect. As with local number portability, where the FCC decided that a number ported to a CMRS provider must remain rated to the original rate center, a call to a number ported to an end user of a CMRS provider is billed no differently than if the number was still assigned to a land line end user. The FCC proceeded in this manner to avoid customer confusion. The FCC also at that time was relying on the completion of the intercarrier compensation docket in order to realign what the originating and terminating payments are between carriers.

Because of the unknown anticipated date of the FCC resolution of the intercarrier compensation issue, and the fact that the parties, in the meantime, are entitled to recover costs, the Arbitrators voted unanimously to let the decision of Issue 12(B) stand as decided in the *Final Order*.

[7] In the context of this arbitration, the term "rate center" is equivalent to "local exchange area." *Final Order*. p. 52.

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

***Final Order* Determinations**

In deciding this issue, the Arbitrators found that "interconnection agreements are, by design, for direct interconnection and, therefore, are intended to be two-party agreements."[8] The party originating the transit traffic must ensure that the transiting carrier has established a connection with the terminating carrier and that traffic is identified in a manner that allows the terminating carrier to bill for such traffic. For these reasons, the Arbitrators unanimously determined that the scope of the interconnection agreement is a two-party agreement and is not limited to traffic transited by a third party. The Arbitrators also determined that if an ICO member is receiving transit traffic, such traffic is subject to the agreement between the terminating carrier and transiting carrier. Finally the Arbitrators concluded that third-party transit traffic may be routed in the way that either party to an interconnection agreement sees fit, provided that the transited traffic reaches the terminating carrier and that such traffic is properly identified and billed. The Arbitrators voted unanimously to require that the originating carrier ensure that the transiting carrier has established a connection with the terminating carrier and that traffic is sufficiently identified to allow the terminating carrier to bill for such traffic.

Positions of the Parties on Reconsideration

While the CMRS Providers are in agreement with the ultimate decision of the Arbitrators as to this issue, they disagree with the Arbitrators' statement that the interconnection agreements are designed for direct interconnection and seek clarification of the decision by having that language deleted from the *Final Order.*

Findings and Conclusions

The Arbitrators unanimously denied the request of the CMRS Providers, and reaffirmed the statement in the *Final Order*, declining to delete the phrase "by design, for direct interconnection,

[8] *Final Order*, p. 56.

and therefore are" from the *Final Order.* The Arbitrators voted unanimously that the decision as to Issue 14 stand as decided in the *Final Order.*

SEPTEMBER 11, 2006 AUTHORITY CONFERENCE

This matter was considered by the panel during the September 11, 2006 Authority Conference in conjunction with a request for suspension of this docket filed by the Coalition in Docket No. 06-00228.[9] Based on the Directors decision to grant an interim suspension in Docket No. 06-00228 pending consideration of the merits of the suspension request, the panel voted unanimously to hold Docket No. 03-00585 in abeyance until a resolution of the issue in Docket No. 06-00228

IT IS THEREFORE ORDERED THAT:

1. The decisions of the Arbitrators as to the CMRS providers' request to reconsider Issues No. 2(b), 7(B), 12(B) and 14 are set forth herein and the decisions as to those issues in the *Order of Arbitration Award* shall not be modified.

2. This docket shall be held in abeyance pending resolution of the issue of Suspension in Docket No. 06-00228.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS ARBITRATORS

Ron Jones 6·30·06
Ron Jones, Chairman

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Pat Miller, Director[10]

Sara Kyle, Director

[9] *See In re: Petition of the Tennessee Rural Independent Coalition for Suspension and Modification Pursuant to 47 U.S.C. 251(f)(2)*, Docket No. 06-00228.
[10] Director Miller resigned his position as Director before the issuance of this order.