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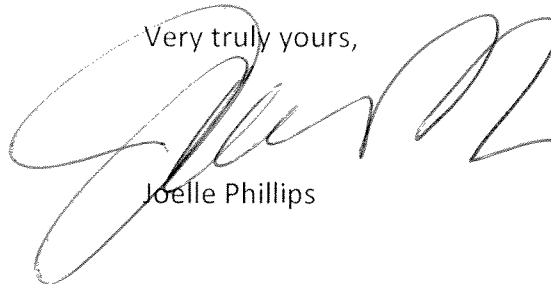
Hon. Kenneth C. Hill, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition of Cellco Partnership dba Verizon Wireless for Arbitration under the  
Telecommunications Act; etc.*  
Docket No. 03-00585

Dear Chairman Hill:

Enclosed are the original and four copies of the Comments of AT&T Mobility.

Very truly yours,



Joelle Phillips

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act; Petition for Arbitration of BellSouth Mobility, LLC, BellSouth Personal Communications, LLC and Chattanooga MSA Limited Partnership, collectively dba Cingular Wireless; Petition for Arbitration of AT&T Wireless PCS, LLC dba AT&T Wireless; Petition for Arbitration of T-Mobile, USA, Inc., Petition for Arbitration of Sprint Spectrum LP dba Sprint PCS*

Docket No. 03-00585

**COMMENTS OF AT&T MOBILITY**

New Cingular Wireless PCS, LLC, and its Commercial Mobile Radio Service ("CMRS") affiliates, d/b/a AT&T Mobility,<sup>1</sup> file these Comments in response to the Authority's recent order in the above-styled docket. As explained below:

1. There is no need for this docket to remain open or for further action from the Authority;
2. Because of recent rulings by the Federal Communications Commission ("FCC"), establishing bill-and-keep as the default compensation for the exchange of non-access wireless traffic between local exchange carriers and CMRS providers, beginning July 1, 2012, and because of the failure of the RLECs to bill AT&T Mobility the interim rate established earlier in this case, there is no need for the Authority to establish a rate for transport and termination to apply prior to July 1, 2012; and
3. Procedurally, the Authority should enter an order closing the docket, or in the alternative, rule as a matter of law, consistent with the recent FCC orders, that bill-and-

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<sup>1</sup> Since this docket was filed, Cingular Wireless and AT&T Wireless have merged and now do business as AT&T Mobility.

keep shall be the compensation applicable to all non-access traffic exchanged between AT&T Mobility and the RLECs prior to July 1, 2012. AT&T Mobility has no objection to withdrawing its requests for arbitration, as an administrative convenience, so that that the docket can be closed.

AT&T Mobility adopts the concise statement of the recent history of this Docket set out in the Authority's *Notice of Filing Comments* dated June 14, 2012. While the Authority's notice describes events that have occurred in this docket during the past six years, the docket has actually been pending since November of 2003, when a group of CMRS providers petitioned the Authority to arbitrate the unresolved issues that had prevented these companies from entering into Interconnection and Reciprocal Compensation agreements with the RLECs. Most of the dispute concerned the appropriate carrier-to-carrier compensation for wireless-originated, non-access traffic destined for RLEC landline subscribers (when a wireless subscriber called a landline provided by the RLEC). For most of the nearly ten years that this docket has been open, it has been largely inactive. Once the TRA established an interim rate for that traffic, the docket stalled, and, as explained below, AT&T Mobility had no reason to seek further action.

One reason that AT&T Mobility was satisfied for the docket to remain inactive was because, after the TRA established an interim rate for the traffic at issue, AT&T Mobility, at various times, attempted to enter into interconnection agreements with the individual RLECs, containing the Authority-established interim compensation rate, which would have been subject to true-up upon the Authority's adoption of a permanent rate. The RLECs universally, consistently and repeatedly refused to enter into any agreements containing the interim rate, challenging the rate's lawfulness and the Authority's jurisdiction to establish it.

Thus, no agreement exists today, between AT&T Mobility and an RLEC, containing the interim rate established by the Authority. Several years ago, AT&T Mobility executed an agreement with one RLEC, containing a final reciprocal compensation rate, but with the exception of that one agreement, AT&T Mobility and the RLECs have by default relied exclusively upon bill-and-keep to compensate each other since the Authority's Order of January 12, 2006. This default method of compensation has been caused exclusively by the RLECs' adamant refusal to enter into agreements containing the interim rate.

As the Authority is aware, the FCC, in a *Report and Order* released November 18, 2011 (FCC 11-161), as supplemented by an *Order on Reconsideration* released December 23, 2011 (FCC 11-189), revised 47 C.F.R. § 51.705(a) to provide by default that CMRS providers and LECs shall not bill each other (i.e., shall use "bill-and-keep") for the exchange of Non-Access Telecommunications Traffic within the scope of 47 C.F.R. § 51.701(b)(2). The FCC established July 1, 2012, as the effective date for the transition to bill-and-keep.

Accordingly, from that date forward, the Authority has no jurisdiction to establish reciprocal compensation rates between AT&T Mobility and the RLECs. Thus, the only issue arguably still open in this Docket is the compensation mechanism, and resulting rates, if any, that should apply to the RLECs and AT&T Mobility prior to July 1, 2012. For the following reasons, the Authority should simply recognize that the appropriate compensation for that period is bill-and-keep and close this docket.

- The FCC has determined that bill-and-keep is the appropriate compensation mechanism for wireless traffic. The FCC has now ruled that, as of July 1, 2012, bill-and-keep is the appropriate compensation mechanism for all local exchange

carriers, including the RLECs, exchanging non-access traffic with CMRS Providers. If bill-and-keep is the appropriate compensation going forward from July 1, 2012, then it is also reasonably the appropriate compensation prior to that date. In its 11-161 Order, the FCC enumerates numerous public policy benefits that support its decision to move all wireless intercarrier compensation to bill-and-keep.<sup>2</sup>

- The RLECs have never complied with the TRA's direction to bill at an interim rate and have consequently been compensated at bill-and-keep since the TRA ruled. The RLECs' refusal to accept interim compensation for the past six years has effectively established bill-and-keep as the appropriate compensation for the interim period. Indeed, the RLECs, by refusing to accept interim compensation, have waived any right to claim, at this late date, that they are entitled to anything other than bill-and-keep.
- Further action in this docket would be a needless waste of TRA time and resources. In previously ruling that the RLECs should not be required to develop TELRIC-based cost studies to support reciprocal compensation rates, the Authority noted that cost proceedings, regardless of the methodology employed, are inevitably time-consuming, tedious and expensive. It makes little sense for the Authority to reopen this docket for a lengthy cost proceeding to establish rates that will apply *only retroactively* for a period during which the RLECs

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<sup>2</sup> See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket N). 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10- 208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶¶ 740-759 (rel. Nov. 18, 2011).

refused to accept interim compensation and thus tacitly implemented bill-and-keep. Such a proceeding would be a significant waste of resources of the Authority and all parties.

For all of these reasons, the Authority should close this docket without taking further action, effectively establishing the existing *de facto* bill-and-keep arrangement as the appropriate compensation for the interim period. In the alternative, if the Authority feels that simply closing the docket is not sufficient to adjudicate the rights of the parties, the Authority should enter a final order in this Docket, ruling as a matter of law, consistent with the recent FCC orders and the existing *de facto* bill-and-keep arrangement, that bill-and-keep shall be the compensation mechanism applicable to all non-access traffic exchanged between AT&T Mobility and the RLECs prior to July 1, 2012. AT&T Mobility has no objection to withdrawing its petition to arbitrate if that will assist the Authority administratively.

Respectfully submitted,

AT&T MOBILITY

By: 

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## CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2012, a copy of the foregoing document was served on the parties of record, via the method indicated:

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A handwritten signature in black ink, appearing to read 'LB', is written over a horizontal line.