

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Petition of Celco Partnership d/b/a Verizon Wireless	:	
For Arbitration under the Telecommunications Act;	:	
Petition for Arbitration of Bell South Mobility, LLC,	:	
Bell South Personal Communications, LLC and	:	
Chattanooga MSA Limited Partnership, collectively	:	Docket No. 03-00585
d/b/a Cingular Wireless; Petition for Arbitration of	:	
A T & T Wireless PCS, LLC d/b/a AT&T Wireless;	:	
Petition for Arbitration of T-Mobile, USA Inc.,	:	
Petition for Arbitration of Sprint Spectrum LP	:	
d/b/a Sprint PCS	:	

COMMENTS OF TENNESSEE RURAL COALITION

I. History and Background

Pursuant to the “Notice of Filing Comments” (“Notice”) issued by the Tennessee Regulatory Authority (“TRA”) on June 14, 2012, the Tennessee Rural Coalition (“Coalition” or “RLECs”)¹ files these Comments. The above captioned docket is an Arbitration proceeding filed in November 2003 by various commercial mobile radio service (“CMRS”) providers.

The Notice accurately recites the extensive history of this proceeding, including the establishment of an interim rate in 2006 equal to “...the reciprocal compensation rate set for BellSouth in the TRA's Permanent Price proceeding (TRA Docket No. 97-01262) subject to true-up.”²

¹ The Tennessee Rural Coalition includes the following rural incumbent local exchange carrier members that are responding to the TRA's Notice: Ardmore Telephone Company, Ben Lomand Rural Telephone Cooperative, Inc., DeKalb Telephone Cooperative, Highland Telephone Cooperative, Loretto Telephone Company, Inc., North Central Telephone Cooperative, and United Telephone Company; TDS Telecom Companies consisting of Concord Telephone Exchange, Inc., Humphreys County Telephone Company, and Tennessee Telephone Company, Inc.; and the TEC Companies consisting of Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc.

² *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, 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, Docket No. 03-00585, Order Of Arbitration Award (January 12, 2006) (“Arbitration Order”) at 41 (Issue 8).* The Arbitrators then

Following this ruling, however, the TRA granted the Coalition's Petition for Modification and Suspension from being required to undertake Total Element Long Range Incremental Cost ("TELRIC") pricing studies or to set rates based upon TELRIC study results:

A majority of the voting panel found that the Petitioners produced evidence sufficient to demonstrate that users of telecommunications services generally would be adversely economically impacted if the TELRIC methodology was imposed on the members of the Coalition. Additionally, that the use of TELRIC is not required or necessary and, in fact, there are alternative, less costly and less burdensome, means to achieving the end result of determining an appropriate rate for transporting and terminating telecommunications traffic. To institute TELRIC despite these valid concerns would be detrimental to users of telecommunications services generally and the public at-large.³

As to next steps, the TRA *Suspension Order* directed that the parties seek to negotiate a resolution:

Further with the suspension of TELRIC-compliant costing studies, the parties are encouraged to continue productive negotiations in an attempt to bring about a mutually agreeable resolution of this litigation.⁴

II. Subsequent Negations

Since entry of the *Suspension Order* and the TRA's rejection of TELRIC pricing for the RLECs, the Coalition members have attempted to negotiate interconnection agreements with the CMRS providers consistent with the Authority's encouragement that they do so. The issue of the appropriate reciprocal compensation rate has been the stumbling block. The Interim Rate set in the *Arbitration Order* is completely inconsistent with the subsequent *Suspension Order's* flat rejection of the TELRIC pricing model for application to the RLECs. Clearly, the Interim Rate

appointed Chairman Miller to prepare the additional issues for hearing by the full panel, but these follow on proceeding were never convened.

³ *Petition Of The Tennessee Rural Independent Coalition For Suspension And Modification Pursuant To 47 U.S.C 251(f)(2)*, Docket No. 06-00228, Order Granting Suspension Of Requirement To Utilize TELRIC Methodology In Setting Transport And Termination Rates (June 30, 2008) ("*Suspension Order*") at 11.

⁴ *Id.*, *Suspension Order* at 20.

is too low, which provides no real incentive for some CMRS providers to negotiate a settled rate. Where the parties have agreed on price, they have done so using market based rates benchmarked from prices mutually negotiated by RLECs and CMRS carriers.

Verizon Wireless Status. The majority of the Coalition members have successfully negotiated interconnection agreements with Verizon Wireless, including North Central, DeKalb, the TEC Companies (Crockett, Peoples and West Tennessee) and the TDS Telecom companies (Concord, Humphreys County, Tellico and Tennessee Telephone). Two companies, Highland and United previously executed a “Memorandum of Understanding” with Verizon Wireless, which established a reciprocal compensation rate, subject to possible true up and a definitive agreement. Loretto is actively negotiating an initial agreement. These negotiations are continuing and mutual resolution is anticipated.

Sprint Status. Among the major CMRS carriers, Sprint does not generally appear to deliver significant amounts of wireless traffic to most of the Coalition members and, therefore, interconnection agreements are being pursued only by Highland, Loretto, and DeKalb. The TEC Companies (Crockett, Peoples and West Tennessee) and TDS Telecom Companies (Concord, Humphreys County, Tellico and Tennessee Telephone) all have executed interconnection agreements in place.

AT&T Mobility Status. With respect to AT&T, less progress has been made. Highland is in the process of updating an old agreement is being negotiated with AT&T with the expectation that this will become a template for the other RLECs that also have unpaid invoices

and for which payment is still being sought. Only one other RLEC, Ben Lomand, has a final, executed interconnection agreement with AT&T. Both Ben Lomand and Highland are being paid by AT&T on the basis of those contract rates.

The following companies do not yet have negotiated, final resolution with AT&T Wireless: Loretto, North Central, United, and DeKalb; the TDS Telecom Companies (Concord, Humphreys County, Tellico and Tennessee Telephone); and the TEC Companies (Crockett, Peoples and West Tennessee). All have submitted invoices to AT&T for payment and none of them, with the exception of TDS Telecom, are being paid anything for the local transport and termination services provided to AT&T.⁵ The TDS Telecom Companies are only being paid the Interim Rate.

Industry, Market Based Pricing. The RLECs agree with the TRA's *Suspension Order* that cost proceedings are overly time consuming, tedious and expensive. They also agree with AT&T that "[i]t makes little sense for the Authority to reopen [sic] this docket for lengthy cost proceedings..."⁶ However, the absence of a cost study does not mean that the Interim Rate is the rate that should be used on a permanent basis.⁷ As noted previously, the Coalition's position is that it is simpler, more competitively neutral and fairer to use a market-based pricing approach. The Interim Rate was expressly "subject to true-up" and, in view of the *Suspension Order*

⁵ The Coalition has approached AT&T to seek clarification of the statement made in its Comments filed July 23, 2012 alleging "the RLECs' refusal to accept interim compensation for the past six years..." AT&T Comments at 4. From the RLECs' perspective, they have attempted to negotiate interconnection agreements and billed AT&T. AT&T, with one exception, has neither agreed to establish an agreement nor pay anything (including the interim rate) for the RLECs' termination services.

⁶ AT&T Comments at 4.

⁷ The Coalition does not disagree with AT&T's position that: "Once the TRA established an interim rate for that traffic, the docket stalled ..." AT&T Comments at 2. In the Coalition's opinion, this is because the Interim Rate was set too low, which gave AT&T and others an incentive not to negotiate a permanent rate.

finding, the Interim Rate should be adjusted upward.⁸ It clearly is not a mandatory maximum rate.⁹

The industry has long since moved to negotiated, market based pricing. While not legally binding precedent, these rates demonstrate that the long term market rate is much higher than the \$0.002 (0.2¢) per minute Interim Rate:

TN carriers' negotiated market rates with other CMRS carriers

West Kentucky and VZW (2011)	\$0.0150 (indirect) and \$0.0125 (direct)
Ardmore and VZW (2011)	\$0.0150 (indirect) and \$0.0125 (direct)
DeKalb and VZW (2009)	\$0.0125 (indirect) and \$0.010 (direct)
TEC Companies and VZW (2010)	\$0.0125 (indirect) and \$0.010 (direct)
TEC Companies and Sprint (2011)	\$0.0125 (indirect) and \$0.010 (direct)
North Central and VZW (2009)	\$0.0125 (indirect) and \$0.010 (direct)
United and VZW (2009)	\$0.0125 (indirect) and \$0.010 (direct)
Ben Lomand and Nextel (2005)	\$0.020
TDS Companies and Sprint (2011)	\$0.010
TDS Companies and T-Mobile (2005)	\$0.0175
TDS Companies and VZW (2002)	\$0.00830
TDS Companies and US Cellular (2005)	\$0.009 to \$0.020

Other states' rates between RLECs and other CMRS carriers

TX Industry Tel Co. and Nextel (2005)	\$0.020
PA RLECs and VZW (2004)	\$0.021 - 0.025 (all indirect)
PA RLECs and Sprint (2010/11)	\$0.017
PA RLECs and Dobson (2007)	\$0.017
NY RLECs and various CMRS carriers	\$0.020

AT&T (including Cingular) rates with RLECs

Highland and Cingular (2001)	\$0.015
Industry Tel Co. (TX) and Cingular (2006)	\$0.012
PA RLECs and Cingular (2006)	\$0.017

⁸ The TELRIC-based rate developed for Bell South in the Permanent Price Proceeding (TRA Docket No. 97-01262) was \$0.002 (0.2¢) per minute.

⁹ AT&T appears to disagree, arguing that: "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." AT&T Comments at 4.

Riviera Tel (TX) and Cingular (2007) \$0.022 (indirect) and \$0.015 (direct)

The market based approach to compensation has been previously approved by the Authority. In its *Generic USF Docket*, the TRA ruled in September 2004 that an Interim Rate of \$0.015 was just and reasonable for the RLECs' call transit and termination services based upon "approved agreements in the BellSouth region for CMRS traffic transiting BellSouth's network."¹⁰

Market based pricing is also good public policy, as it: maintains competitive neutrality among the CMRS carriers; provides the RLECs with market value for their terminating services; allows the RLEC to maintain and improve their networks; avoids the overly intellectualized cost study exercise; and helps maintain affordable local rates. As shown above, the market based rate (including what AT&T has elsewhere agreed to pay) is no lower than 1¢ per minute and as high as 2.5¢ per minute.

At the present time, many of the RLECs have been able to negotiate rate true ups and agreements with most CMRS carriers and are actively involved in negotiations with others. The Coalition proposes to continue these efforts for the next sixty (60) days and then report back to the Authority regarding next steps. During that period the Coalition members will diligently maintain their attempts to seek resolution with AT&T and the few remaining others.

III. Answers to Questions

The RLECs submit the following answers to the TRA's four questions:

1. Issues that must be resolved in order to bring this docket to resolution.

¹⁰ *Docket Addressing Rural Universal Service*, Docket No. 00-00523, Order Reconsidering Hearing Officer's Initial Order Addressing Legal Issue 2 And Amending The Hearing Officer's Order Issued May 6, 2004 (September 1, 2004) ("*Generic USF Docket*") ("The majority of the panel found that the 1.5 cent interim rate is just and reasonable because it reflects negotiated rates existing in approved agreements in the BellSouth region for CMRS traffic transiting BellSouth's network.").

Response: Unless wireline and CMRS carriers can mutually resolve past compensation, then past pricing and true up will continue to be at the forefront of the issues to be resolved.

2. The impact, if any, of the Federal Communications Commission's Order on Intercarrier Compensation and Universal Service on this proceeding;

Response: The FCC's ICC/Access Transition Order preempts state authority to set compensation for intrastate wireline-CMRS traffic prospectively after June 30, 2012.¹¹ The FCC's Order does not affect state jurisdiction over compensation disputes for traffic exchanged prior to July 1, 2012.

3. Rate-setting methodologies available to the Authority given its decision suspending the use of TELRIC in Docket No. 06-00228; and,

Response: In setting rates for the pre-July 1, 2012 termination of CMRS traffic, the TRA has latitude to choose a method which results in just and reasonable rates under Tennessee law.¹² In the *North County* cases, the FCC expressly stated it is for the state commission to determine the appropriate rate to be paid by the CMRS carrier for terminating traffic.¹³ The rates set must be reasonable,¹⁴ but within that parameter there are a number of rate setting methodologies that may be used by the Authority, including benchmarking, cost studies, proxies, and default rates. The Authority has previously acknowledged the burden of the cost study approach and rejected the use of the TELRIC method.¹⁵ The Authority has previously adopted a benchmarking approach to market rates.¹⁶ The RLECs are negotiating on the basis of market rates.

4. The procedural steps necessary to bring this matter to conclusion.

¹¹ *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 a 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 No. 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 (rel. Nov. 18, 2011) (“*FCC ICC/USF Transition Order*”) at ¶ 995 (“We further conclude that, under either section 20.11 or the Part 51 rules, for traffic to or from a CMRS provider subject to reciprocal compensation under either section 20.11 or the Part 51 rules, the bill-and-keep default should apply immediately.”); and *Id.*, Order on Reconsideration released December 23, 2011 at ¶ 4.

¹² Tenn. Code Ann. § 65-5-101 (a).

¹³ *North County Merits Order*, 24 F.C.C.R. at 3811, ¶ 9; *North County Review Order*, 24 F.C.C.R. at 14040, ¶ 12.

¹⁴ 47 C.F.R. § 20.11(b)(2) (“A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial radio service provider.”).

¹⁵ *Petition Of The Tennessee Rural Independent Coalition For Suspension And Modification Pursuant To 47 U.S.C 251(f)(2)*, Docket No. 06-00228, Order Granting Suspension Of Requirement To Utilize TELRIC Methodology In Setting Transport And Termination Rates (June 30, 2008).

¹⁶ *Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, Order Reconsidering Hearing Officer's Initial Order Addressing Legal Issue 2 And Amending The Hearing Officer's Order Issued May 6, 2004 (September 1, 2004) (“The majority of the panel found that the 1.5 cent interim rate is just and reasonable because it reflects negotiated rates existing in approved agreements in the BellSouth region for CMRS traffic transiting BellSouth's network.”).

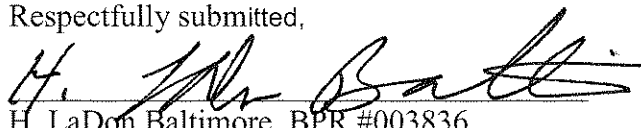
Response: The docket should remain open as to all CMRS providers and RLECs. The RLECs and the CMRS carriers have been pursuing negotiations and mutually agreeable resolution is contemplated. Both the RLECs' and CMRS carriers' legal and contract resources have been seriously stretched by the demands of the FCC's *ICC/Access Transition Order*. The RLECs, therefore, request an additional sixty (60) days within which to attempt to conclude negotiations with all CMRS providers, at which time the RLECs propose to report back to the Authority as to status and further suggested steps.

IV. Conclusion

For all of the above-stated reasons, the Authority should:

1. Keep this docket open;
2. Strongly encourage the parties to promptly settle disputes over compensation for past transport and termination services on the basis of fair, market-based compensation and to negotiate interconnection agreements;
3. Require all involved carriers to report the status of their negotiating efforts and identify any outstanding issues by September 30, 2012; and
4. After consideration of said reports, determine whether further proceedings are necessary and the best means by which to resolve any outstanding issues.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of August 2012, a true and correct copy of the foregoing document was served by U.S. Mail or e-mail to:

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