BEFORE THE TENNESSEE REGULATORY AUTHORITY

Petition of Cellco 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 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	:	Docket No. 03-00585 filed electronically in the docket room on 12-03-12

STATUS REPORT OF TENNESSEE RURAL COALITION AND MOTION TO SET STATUS CONFERENCE

I. Summary of Requested Next Steps

The Tennessee Rural Coalition ("Coalition" or "RLECs")[1] have continued their attempts to find resolution of the outstanding arbitration issues with the remaining commercial mobile radio service ("CMRS") providers ("wireless carriers") with whom they still have no finalized interconnection agreements ("ICAs"). The RLECs have successfully concluded several more ICAs recently[2] which have been approved or are in the process of being submitted for approval

[1] The Tennessee Rural Coalition includes the following rural incumbent local exchange carriers members: Ardmore Telephone Company, Ben Lomand Rural Telephone Cooperative, Inc., DeKalb Telephone Cooperative, Highland Telephone Cooperative, Loretto Telephone Company, Inc., North Central Telephone Cooperative, Yorkville Telephone Cooperative, Inc. 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] Traffic Exchange Agreement by and between Dekalb Telephone Cooperative Inc. and Sprint Spectrum, L.P. and Nextel South Corp (approved by order dated October 18, 2012 at Docket 12-00112); Traffic Exchange Agreement by and between Highland Telephone Cooperative, Inc. and Sprint Spectrum, L.P. and Nextel South Corp (approved by Order dated November 20, 2012 at Docket 12-00118) and Traffic Exchange Agreement by and between Loretto Telephone Company Inc. and Sprint Spectrum, L.P. and Nextel South Corp which has been executed and is expected to be filed this week. This concludes all outstanding matters and negotiations as to Sprint. The RLECs

by the Tennessee Regulatory Authority ("TRA"). The Coalition hopes that the TRA understands and appreciates the significant effort being expended by the RLECs to close this arbitration docket on a non-adversarial basis after being opened by the wireless carriers in 2003.

In order to provide every possible opportunity for the parties to resolve their disputes amicably, but still establish a definitive date for TRA consideration and ruling, the RLECs submit this motion to request that the TRA:

1. Set a date in December 2012 for a status conference of all unresolved parties to provide them with the opportunity to formally present their "best final offers" on any issue standing in the way of resolution of a final interconnection agreement;

2. Encourage the parties to resolve their differences prior to the status conference;

3. After the status conference has been held, set any unconcluded issues/parties for resolution at an Authority's Conference Agenda in February 2013 permitting the remaining parties to address the TRA as necessary during such proceedings; and

4. In such Arbitration Order, set a reciprocal compensation rate of $0.015 (1.5¢) per minute and direct payment for the historic period (October 2004 through June 2012).

II. The Issues to be Resolved

The parties and the Authority have already decided many of the significant arbitration issues, including:

- The RLECs have a duty to connect directly or indirectly with CMRS carriers to exchange traffic.[3]
- Reciprocal compensation will be paid by the originating carrier for the transport and termination of traffic by the terminating carrier.[4]

---

believe that they and Verizon Wireless are very close to finalizing their agreements and hope to have them filed soon.

[3] *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 14.

[4] *Id.* at 18 and 24 ("...the company that originates the call is responsible for paying the party terminating the call.").

- An originating traffic factor of 70% mobile and 30% landline will be applied.[5]
- An interMTA factor of 3% will determine the amount of traffic to which access rates apply (Split 50/50 between inter and intrastate).[6]

The most significant issue, however, has not yet been definitively determined by the TRA (and which some parties have not been able to conclude by negotiation) is the final reciprocal compensation rate to be employed for the historic period (October 2004 through June 2012).[7] The TRA originally (2004) set an "interim rate" of $0.015 (1.5¢) per minute of use ("MOU"),[8] which it then subsequently (2006) reduced to an amount equal to Bell South's (TELRIC[9]) rate of $0.002 (.2¢) per minute. However, the "interim rate" was always expressly subject to a final true-up with the permanently set rate.[10]

The TRA then, in 2008, subsequently ruled that TELRIC-based pricing models should not be imposed upon the RLECs because of the "significant adverse economic impact on users," the imposition of an "unduly economically burdensome" requirement and overall inconsistency

---

[5] Joint CMRS Provider (Paul Walters) and Rural Coalition (William Ramsey) Letter dated February 8, 2005 filed with Chairman Pat Miller.

[6] *Id.*

[7] "Bill and Keep" (zero compensation) is the appropriate rate for application on and after July 1, 2012, given the FCC's *ICC/USF Transition Order* entered on November 18, 2011, but *only on and after* July 1, 2012. *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 (Revised date to July 1, 2012). This Order is on appeal.

[8] *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.").

[9] 47 CFR 51.505(b) Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.

[10] *Arbitration Order* at 41 (Issue 8).

with "the public interest, convenience and necessity."[11] However, the now completely inconsistent TELRIC-based "interim rate" of $0.002 (.2¢) was not specifically discontinued by the TRA.[12]

Frankly, negotiations have stalled with some CMRS providers because the $0.002 (.2¢) interim rate was too low and provided no incentive for these carriers to negotiate. Where the Tennessee parties have agreed on price, they have done so using prevalent industry rates within a mid-point range of $0.015 (1.5¢) and $0.02 (2¢) per minute, seven to ten times the interim rate. For those wireless carriers who insisted that the interim rate should become the final rate, negotiations have dragged on and all RLEC attempts at resolution have been unsuccessful.

For the reasons described in the Coalition's Comments, the RLECs propose to settle payment for the services provided by *both* parties during the historic period at a reciprocal compensation rate of $0.015 (1.5¢) to be collected by *both* RLECs and CMRS carriers for their originated traffic. This mutual rate would be billed by the terminating carrier (RLEC or CMRS provider regardless) and paid by the originating carrier (also regardless) consistent with the Authority's 2006 *Arbitration Order* based upon a 70/30 ratio of origination as previously stipulated by the parties.

The $0.015 rate has been billed by Coalition members over the historic period to the wireless carriers, including bills submitted to both AT&T Wireless and T-Mobile. Upon receipt, these CMRS carriers simply ignored the bills, not even bothering to register a dispute, and paid

---

[11] *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.

[12] *Arbitration Order* at 41 (Issue 8). The TRA Arbitrators then appointed Chairman Miller to prepare the issue for hearing by the full arbitration panel, but these follow on proceeding were never convened.

the Coalition members nothing -- not even the $0.002 (.2¢) interim rate. Some have even claimed that they never received a bill from an RLEC.[13]

The rate is fair and just. The $0.015 (1.5¢) rate is the exact same rate as was agreed to by AT&T Wireless in 2001 (i.e., before the arbitration commenced) for one Tennessee RLEC (Highland Telephone), and which AT&T Wireless continued to pay until July 1, 2012. Outside Tennessee, rates paid by AT&T to RLECs during the historic period, in the Coalition's research, ranged from $0.012 (1.2¢) to $0.022 (2.2¢).[14] The rates paid by AT&T to TDS under a national agreement that applied everywhere *except* Tennessee, ranged from $0.005 (.5¢) to $0.044 (4.4¢) with an average rate of $0.019 (1.9¢). Rates paid during the historic period to TDS Tennessee by T-Mobile (under a national agreement) was $0.0175 (1.75¢) per MOU.[15]

In summary, the reciprocal compensation rate of $0.015 (1.5¢) at which the Coalition has settled with many but not all of the CMRS providers, is in the mid-range, or even the low end, of the rates the wireless carriers have paid to other local exchange companies during the historic period. The RLECs are willing to pay these same rates to the wireless carriers and have done so in many ICAs.

The fractions of pennies in dispute under these rates affect the outcome immensely, because the volumes are enormous. In the instance of one large CMRS carrier, *almost one-half billion minutes* were sent to the Coalition RLECs for termination during the historic period with no final ICA in place. In another instance, *over 25 million minutes* were sent. Thus, the net value of RLEC services provided at the proposed rate of $0.015 (1.5¢) per minute is

[13] AT&T Wireless and T-Mobile have been provided with copies of sent bills in an attempt to rectify their mistaken claims that no bills were ever tendered. The Coalition will be glad to also provide the TRA with copies of the bills submitted by the RLECs to T-Mobile and AT&T Wireless for the record in this case if necessary.
[14] *See* Coalition Comments at 5.
[15] *Id.*

cumulatively several million dollars, as would be expected at an asymmetrical (70/30) flow rate sustained over an almost eight year period.

From the RLECs' perspective, it is a complete injustice that these large CMRS service providers obtained the RLECs' services for free (or near free) during an era in which the rules required mutual payment (i.e., before the FCC changed its pricing philosophy and the industry was compelled to change bill and keep[16]). The remaining CMRS carriers have simply ignored bills and refused payment to Tennessee RLECs while paying other RLECs in other states. To not pay a fair rate unjustly enriches the wireless carriers. Moreover, by not paying they have disadvantaged their wireless competition. It is economically unfair to allow the largest wireless carrier in the country to obtain local call termination services from the RLEC carriers at no charge where its competitors pay a legally obligated rate.

III. The Need for Resolution

This arbitration has been an open docket since 2003 and is in desperate need of the TRA's attention. The industry parties have attempted at various times to resolve their issues and have had partial, but not complete, closure. Since the beginning of this year, the RLECs have doubled down their efforts to find resolution and have enjoyed some success in doing so. At this point, all parties have resolved some issues and some parties have resolved all issues, but all issues with all parties are not resolved. The remaining parties need to go the final negotiation mile under the closer scrutiny and supervision of the TRA.

The framework suggested by the Coalition is to use the Authority's powers to guide the parties first to a "final best offer" and, failing that, to the issuance of a TRA Arbitration Order. The practice of final best offer has previously been used by the TRA to successfully drive

[16] As noted in footnote 7, prospectively effective after June 30, 2012.

resolution, for example in the matter of the proper MTA factor.[17] At this point, all parties have both exchanged draft ICAs and discussed settlement of the historic period. Differences have been explored by the parties already and only a few, very well defined issues remain outstanding. In other words, a best final offer on what remains should not be difficult or complex.

The Coalition suggests that a status conference be held in December 2012 among the remaining parties under the supervision of the Hearing Officer during which time they would be directed to present their offers. The Parties should be required to circulate these offers prior to the status conference. One intended effect is to prompt the parties to efficiently conclude their discussions if at all possible. The other purpose is to compel the parties that are far apart in their negotiations to accurately articulate their positions and be prepared to defend them. This will further serve an educational purpose and give the Hearing Officer and Staff the opportunity to ask questions and understand from all remaining parties what is at stake. It will also force self-reflection by the parties and present one last final opportunity for mutual agreement. Failing this effort, the Coalition requests that the TRA render an Arbitration Order directing payment of $0.015 (1.5¢) during the historic period.

IV. Conclusion

For all of the above-stated reasons, the Rural Coalition requests that the Authority:

1. Set a date in December 2012 for a status conference of all unresolved parties to provide them with the opportunity to formally present their "best final offers" on any issue standing in the way of resolution of a final interconnection agreement;

2. Encourage the parties to resolve their differences prior to the status conference;

[17] *Arbitration Order* at 42-43 (Issue 9) ("The Arbitrators established January 25, 2005 as the date by which the factor shall be filed with the Authority. The Arbitrators further determined unanimously that if an agreement on a factor has not been reached by January 25, 2005, the parties shall submit this information through final best offers ("FBOs") no later than February 8, 2005."). As noted previously the parties stipulated a 70/30 factor in a joint letter dated February 8, 2005. *See* footnote 5).

3. After the status conference has been held, set any unconcluded issues/parties for resolution at an Authority's Conference Agenda in February 2013 permitting the remaining parties to address the TRA as necessary during such proceedings; and

4. In such Arbitration Order, set a reciprocal compensation rate of $0.015 (1.5¢) per minute and direct payment for the historic period (October 2004 through June 2012).

Respectfully submitted,

H. LaDon Baltimore, BPR #003836
FARRIS MATHEWS BOBANGO PLC
618 Church Street, Suite 300
Nashville, TN 37219
(615) 726-1200
Fax: (615) 726-1776
dbaltimore@farrismathews.com

Norman J. Kennard, Pa. ID No. 29921
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street, Suite 500
Harrisburg, PA 17101
(717) 255-7627 telephone
(717) 236-8278 facsimile
nkennard@thomaslonglaw.com

Attorneys for The Tennessee Rural Coalition

CERTIFICATE OF SERVICE

I hereby certify this 3rd day of December, 2012, a copy of the foregoing document was served, via electronic mail, to the following parties:

Mr. Stan Pace
Frontier Communications
5003 S. Miami Boulevard
Durham, NC 27702
stan.page@ftr.com

Scott Seab, Esquire
Level 3 Communications
1025 Eldorado Boulevard
Broomfield, CO 80021
scott.seab@level3.com

Pamela Wescott
CenturyLink
Post Office Box 680644
Franklin, TN 37068
pam.a.wescott@centurylink.com

Charles B. Welch, Jr.
Farris, Mathews, Bobango, PLC
618 Church Street, Suite 300
Nashville, TN 37219
cwelch@farrismathews.com

Mr. Bruce Mottern
TDS Telecom
10025 Investment Drive
Knoxville, TN 37932
bruce.mottern@tdstelecom.com

Ryan McGehee
Consumer Advocate Division
Post Office Box 20207
Nashville, TN 37202
ryan.megehee@ag.tn.gov

Mr. Larry Drake
TN Telecommunications Association
150 Fourth Avenue North, Suite 480
Nashville, TN 37219
tta.dtccom.net

Zsuzsanna E. Benedek, Esquire
CenturyLink
240 North Third Street, Suite 300
Harrisburg, PA 17101
Sue.Benedek@CenturyLink.com

Joelle Phillips
AT&T
333 Commerce Street, Suite 2101
Nashville, TN 37201
jp3881@att.com

Leon M. Bloomfield
Law Offices of Leon M. Bloomfield
1901 Harrison Street, Suite 1620
Oakland, CA 94612
lmb@wblaw.net

H. LaDon Baltimore (BPR #003836)