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the docket office on
12/10/2012

December 10, 2012

VIA EMAIL & U.S. MAIL

Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN

Re: Docket No. 03-00585 - *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*

Dear Ms. Dillon:

Enclosed please find an electronic copy of T-Mobile USA, Inc.'s Response to the Status Report and Motion to Set Status Conference filed by the Tennessee Rural Coalition filed on December 3, 2012. I understand that the Authority allows parties, like T-Mobile, to file electronically provided we also provide you with an original and 4 copies of the document by mail which is also being done this afternoon.

Thank you for your assistance with this matter; it is particularly helpful given that my offices are located here in California and my client is headquartered in Washington.

As always, please let me know if you have any questions about the enclosed filing.

Sincerely,

/s/

Leon M. Bloomfield

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

Response of T-Mobile USA, Inc. to Status Report and Motion to Set Status Conference of Tennessee Rural Coalition

T-Mobile USA, Inc. (“T-Mobile”) respectfully submits the following limited response to the Status Report and Motion to Set Status Conference filed by the Tennessee Rural Coalition (the “TN RLECs”) on December 3, 2012.

I. Introduction

In brief, T-Mobile submits this response to reiterate that this proceeding should be closed since the FCC has resolved the rate for non-access telecommunications traffic as described below and thus no status conference is necessary. In addition, T-Mobile seeks to otherwise clarify the procedural status of the settlement negotiations between the TN RLECs and T-Mobile and to address the TN RLEC’s suggestion that the Tennessee Regulatory Authority (the “Authority”) impose all-party settlement discussions – or otherwise endorse the TN RLEC’s attempt to dictate the outcome of this proceeding - under the guise of a status conference.

II. The FCC Has Determined that Bill and Keep is the Appropriate Compensation Mechanism for Non-access Telecommunications traffic.

As an initial matter, and as previously noted in the comments filed by the Joint CMRS Providers¹ in August of this year, there is no need for this docket to remain open or for any further substantive action by the Authority. The only substantive outstanding issue in this proceeding since the issuance of the Authority's Order of Arbitration Award in January 2006 has been the establishment of an appropriate, permanent compensation rate for the termination of intraMTA traffic exchanged between the parties. That issue was critical both in terms of how the parties would compensate one another on a prospective basis and how the parties would "true up" the differences, if any, between the interim rate established in the *Arbitration Order* and that permanent rate.² However, as acknowledged by all parties, the Federal Communications Commission's ("FCC") *Connect America Fund Order* established bill and keep as the appropriate form of compensation for traffic to or from a CMRS provider that is otherwise subject to reciprocal compensation. Thus, the sole outstanding critical issue has been resolved.³

¹ The Joint CMRS providers are Cellco Partnership d/b/a Verizon Wireless; T-Mobile, USA, Inc. dba T-Mobile; and Sprint Spectrum LP d/b/a Sprint PCS. Since this docket was filed, Cingular Wireless and AT&T Wireless have merged and now do business as AT&T Mobility. AT&T Mobility filed separate comments on July 23, 2012.

² The interim rate established in the *Arbitration Order* was the reciprocal compensation rate set for BellSouth in the Authority's Permanent Pricing proceeding, Docket No. 97-01262. See *Arbitration Order* at p. 41. As discussed in the Joint CMRS Provider's Comments, the almost universal refusal/failure of the RLECs to bill the CMRS providers at the interim rate established in the *Arbitration Order* only simplifies the process of closing this docket since *no true-up* is apparently necessary.

³ Indeed, bill and keep is the appropriate form of compensation in this docket regardless of the FCC's recent actions and its application seems appropriate in this case. See e.g., *Connect America Fund Order*, FCC 11-161, at ¶¶ 740-759 (discussing the public policy benefits of bill and keep); see also, Joint CMRS Comments at Section III.2.

At most, all that is required of the Authority at this time is to enter an order closing the docket confirming, consistent with the *Connect America Fund Order*, that bill and keep shall be the permanent form of compensation applicable to all intraMTA traffic exchanged among CMRS Providers and RLECs on a prospective basis and for purposes of true-up.⁴ Alternatively, the Authority could simply close the docket.

III. Status of Settlement Discussions

Although T-Mobile has no comment on the status of the TN RLECs' settlement negotiations with other CMRS carriers, T-Mobile notes that it was only in mid-October of this year that it was contacted by the TN RLECs to begin discussing settlement.⁵ Since that time, offers and counteroffers have been exchanged, alternate forms of interconnection agreements have been exchanged and T-Mobile is currently in the process of preparing another redlined form of interconnection agreement for the TN RLECs's consideration.

Although T-Mobile will not characterize the nature of the discussions, or the parties' respective positions on the issues, it does note that the TN RLECs broad-based insinuation as to the "reason" for any barriers to reaching a settlement⁶ is both inaccurate and inappropriate at

⁴ As noted above, the concept of a true-up is misplaced where, as is generally the case, the RLECs failed to bill at the interim rate.

⁵ T-Mobile actually contacted the TN RLECs after receiving a copy of their October 1, 2012 letter to the Authority indicating that all the parties that filed comments in response to the June 14, 2012 Filing Notice had agreed to an extension. Although T-Mobile had no issue with providing such an extension, it had not previously been contacted by the TN RLECs regarding any such agreement. Prior to October 2012, the last contact between T-Mobile and the TN RLECs involved unsuccessful settlement negotiations that ended in mid-2009.

⁶ See e.g., TN RLECs's Status Conference Statement at p. 4: "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."

least as it relates to T-Mobile. At its core, the settlement negotiations with the TN RLECs, even at this relatively early stage, seem to be proceeding in the normal course.

IV. Status Conference

After failing to comply with TRA's 2006 order with respect to the interim rate, the TN RLECs recent filing confirms their apparent intention to ignore the fact that the FCC has determined that bill and keep is the appropriate form of compensation for the traffic at issue in this proceeding. The TN RLECs similarly seem to ignore that the Authority's *Suspension Order* *did not and could not* alter federal law under which the only rate-setting methodology currently available is bill and keep.⁷

Instead, the TN RLECs now seek to stage-manage the Authority's process to compel a "voluntary" negotiated resolution of this matter and/or to impose a "final rate" where no such rate is warranted.⁸ To the extent any further action is required of the Authority, it is to determine how best to close this docket in light of the recent developments at the FCC.⁹

⁷ See 47 C.F.R. § 51.705(a) ("Notwithstanding any other provision of the Commission's rules, by default, transport and termination for Non-Access Telecommunications Traffic exchanged between a local exchange carrier and a CMRS provider within the scope of §51.701(b) (2) shall be pursuant to a bill and keep arrangement, as provided in §51.713."); see also *Connect America Fund Order*, *supra*, FCC 11-161 at ¶1995.

Even under the prior rules, the Authority would still be required to establish rates based on some form of forward-looking cost studies or to adopt bill and keep. See Joint CMRS Providers Comments at Section II.2-3. Indeed, in the *Suspension Order*, the Authority recognized this when it decided to suspend the requirement to use a TELRIC costing methodology but acknowledged that neither the parties nor the Authority was foreclosed from using a "forward looking model or a variation thereof."

⁸ See TN RLEC Status Statement and Motion at pp. 7-8 (proposing December 2012 status conference for "best and final" offers and an order adopting a \$.015 rate from 2004-2012).

⁹ Although the FCC initially made bill and keep the default as of December 29, 2011, it subsequently determined that the transition to bill and keep for carriers that were *already operating under the terms of an interconnection agreement* would be July 1, 2012. As the FCC noted in discussing extending the effective date of the bill and keep default to parties with interconnection agreements, "[i]n contrast, carriers exchanging LEC-CMRS non-access traffic without an interconnection agreement [like the vast majority of RLECs in this proceeding] do not receive such compensation today, so we find no likelihood of marketplace disruption." *Id.* at ¶ 8.

In addition, as noted in AT&T's recently filed Status Conference Statement, the issue of past compensation, if any, for traffic exchanged prior to July 1, 2012 is not germane to the establishment of interconnection agreements on a going-forward basis.

V. Conclusion

For the reasons discussed above, T-Mobile requests that the TN RLECs motion be denied and that Docket 03-00585 be closed consistent with the comments previously filed by the Joint CMRS Providers.

Respectfully submitted,

By: /s/

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2012, a copy of the foregoing document was served on the parties of record via email:

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