

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 25, 2013

IN RE:

PETITION FOR ARBITRATION OF CELLCO)	
PARTNERSHIP D/B/A VERIZON WIRELESS, PETITION)	
FOR ARBITRATION OF BELL SOUTH MOBILITY LLC;)	DOCKET NO.
BELL SOUTH PERSONAL COMMUNICATIONS, LLC;)	03-00585
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		

ORDER SETTING PROCEDURAL SCHEDULE TO COMPLETION

This matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") during a status conference with the CMRS Providers¹ and the Tennessee Rural Coalition² (the "Parties") held on March 11, 2013, to consider the current status of the proceedings and finalize procedural matters in order to bring the docket to conclusion.

¹ BellSouth Mobility, LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership, collectively d/b/a Cingular Wireless; and AT&T Wireless PCS, LLC d/b/a AT&T Wireless (now together, "AT&T Mobility"), Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint"), CELLCO Partnership d/b/a Verizon Wireless ("Verizon Wireless"), and T-Mobile USA, Inc. ("T-Mobile") (collectively, "CMRS Providers" or "Petitioners").

² The Tennessee Rural Coalition is a group of rural and small local exchange telecommunications providers, consisting 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 (collectively, the "Coalition" or "RLECs").

RELEVANT BACKGROUND

On June 14, 2012, the Hearing Officer issued a *Notice of Filing Comments* requesting that the parties file comments identifying the outstanding issues, impact on those issues, if any, of the Federal Communications Commission's ("FCC") November 18, 2011, *Report and Order and Further Notice of Proposed Rulemaking* (known as the "*USF/ICC Transformation Order*"), and procedural steps needed to bring the docket to conclusion. Thereafter, comments were filed in the docket file by AT&T Mobility on July 23, 2012, and by Sprint, Verizon Wireless, T-Mobile, jointly, and the Coalition on August 1, 2012.

In their comments, the CMRS Providers, including AT&T Mobility filing separately, noted that, in its *USF/ICC Transformation Order*, the FCC determined that beginning July 1, 2012, transport and termination of non-access telecommunications traffic between CMRS providers and local exchange carriers ("LECs") is to be exchanged pursuant to a "bill-and-keep" arrangement; i.e., the parties will not charge one another for those functions and services.³ Further, the CMRS Providers asserted that, even if the TRA determined that it should set rates for the period prior to July 1, 2012, bill-and-keep is the appropriate compensation method to be imposed. In the absence of an interconnection and reciprocal compensation agreement ("ICA"), and asserting that the RLECs have failed to bill traffic at the interim rate set by the TRA, the CMRS Providers contended that bill-and-keep was already in effect between it and the RLECs.⁴ As such, the CMRS Providers asserted that no further action is required by the TRA, and asked that the docket be closed.⁵

In its comments, the RLECs noted that attempts to negotiate ICAs with the CMRS Providers have resulted in only limited success. Contending that the interim rate set by the

³ *Comments of AT&T Mobility* (July 23, 2012); *Comments of Joint CMRS Providers* (August 1, 2012).

⁴ *Id.*, *Comments of AT&T Mobility* at 3-4; *Joint CMRS Providers* at 5-7.

⁵ *Id.*, *Comments of AT&T Mobility* at 4-5; *Joint CMRS Providers* at 8.

Authority is too low to provide an incentive for some CMRS Providers to negotiate a settled rate, the Coalition urged the Authority to set a permanent rate for the historical period using market based rates derived from carrier negotiations.⁶ The RLECs conceded that the *USF/ICC Transformation Order* preempts state authority to prospectively set rates after June 30, 2012, but asserted that the state retains jurisdiction over disputes prior to July 1, 2012.⁷ Therefore, the RLECs requested additional time to continue its attempts to reach an amicable resolution of the remaining issues with the CMRS Providers.⁸ Thereafter, the RLECs, on behalf of the Parties, jointly, filed two additional requests to extend negotiations.⁹

On December 3, 2012, AT&T Mobility reported that the parties continue to disagree about compensation for traffic prior to July 1, 2012, and asserted that reopening this proceeding to set a historic rate that must be trued-up to bill-and-keep is an inefficient use of TRA time and resources.¹⁰ AT&T reiterated its position that the docket should be closed.¹¹ Also, on December 3, 2012, the RLECs reported that several ICAs had been negotiated with Sprint, but that it had not reached final agreements with the other CMRS providers.¹² The RLECs asserted that market based rates should be considered in the Authority's determination on a permanent rate, and suggested the parties exchange "final best offers" ("FBOs") as a way to resolve the docket.¹³

On December 10, 2012, T-Mobile filed opposition to the RLECs proposal for FBOs.¹⁴ While conceding that negotiations revived as of mid-October 2012, T-Mobile contended that the

⁶ *Comments of Tennessee Rural Coalition*, pp. 2-6 (August 1, 2012).

⁷ *Id.* at 7.

⁸ *Id.* at 8.

⁹ See Letter to Hearing Officer filed October 2, 2012 (notifying Hearing Officer that Parties are in agreement to extend time to continue negotiations through November 1, 2012); see also, Letter to Hearing Officer filed November 1, 2012 (notifying Hearing Officer that Parties agree to extend time for negotiations through December 1, 2012).

¹⁰ *Status Report of AT&T Mobility*, p. 1 (December 3, 2012).

¹¹ *Id.* at 1-2.

¹² *Status Report of Tennessee Rural Coalition and Motion to Set Status Conference*, pp. 1-2 (December 3, 2012).

¹³ *Id.* at 5-7.

¹⁴ *Response of T-Mobile USA, Inc. to Status Report and Motion to Set Status Conference of Tennessee Rural Coalition* (December 10, 2012).

outstanding issues in this docket have been resolved by the *USF/ICC Transformation Order*, and that the docket should be closed.¹⁵ On December 13, 2013, responding to AT&T Mobility's report, the RLECs generally disagreed that the issues to be addressed in order to establish new ICAs with AT&T Mobility had even tentatively been resolved.¹⁶ The RLECS assert that while they continue to negotiate, they are not close to agreement, and that the docket should proceed for resolution by the Authority.¹⁷

MARCH 11, 2013 STATUS CONFERENCE

In accordance with the public notice issued on February 27, 2013, the Status Conference was convened at 1:00 p.m. CDT on March 11, 2013, in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

For Verizon:

Via telephone: Dulaney O'Roark, Esq., General Counsel-South, One Verizon Place, Alpharetta, GA 30004;

For AT&T Mobility:

Joelle Phillips, Esq., 333 Commerce Street, Suite 2101, Nashville TN 37201; **via telephone: Bill Brown**, Lead Carrier Relations Mgr., 1055 Lenox Park Blvd NE, Atlanta, GA 30319; **J. Paul Walters, Jr., Esq.**, 15 East First Street, Edmond, OK 73034;

For T-Mobile:

Via telephone: Leon Bloomfield, Esq., Law Offices of Leon Bloomfield, 1901 Harrison Street, Suite 1620, Oakland, CA 94612; **William Haas, Esq.**, Senior Corporate Counsel, 2001 Butterfield Rd., Downers Grove, IL 60515; **Dan Williams, Esq.**, Principal Counsel, 7668 Warren Parkway, Bldg 1, Frisco, TX 75034;

For the RLECs:

H. LaDon Baltimore, Esq., Farris Mathews Bobango PLC, 618 Church Street, Suite 300, Nashville, TN 37219; **Bruce Mottern**, TDS Telecom, 10025 Investment Drive, Knoxville TN 37932; and, **via telephone: Norman J. Kennard, Esq.**, Thomas Long Niesen & Kennard, 212 Locust Street, Suite 500, Harrisburg, PA 17101; **Marty Passarella**, Loretto Telecom, 136 S. Main Street, P.O. Box 26, Loretto, TN 38469.

¹⁵ *Id.*

¹⁶ *Response of Tennessee Rural Coalition to Status Report of AT&T Mobility*, p. 1 (December 13, 2012).

¹⁷ *Id.* at 1-2.

Findings & Conclusions

During the status conference, the RLECs affirmed, for the record, that Sprint, one of the CMRS Providers whose petition for arbitration is consolidated in this docket,¹⁸ had resolved all claims with the RLECs and would no longer be actively involved in the docket.¹⁹ As to the issues remaining for resolution by the Authority, the Parties agreed that in its *Order of Arbitration Award*, the TRA, along with adopting an interim rate that is subject to true-up, ordered, but has not yet instituted, proceedings to determine a permanent rate for reciprocal compensation between the Parties.²⁰ Further, the Parties agreed that, beginning July 1, 2012, the *USF/ICC Transformation Order* controls the exchange of compensation for non-access telecommunications traffic and that the FCC has established bill-and-keep as the default compensation methodology to be applied between the Parties.

Nevertheless, the Parties continue to disagree, in light of the *USF/ICC Transformation Order*, as to how the remaining issue, i.e., the setting of a permanent reciprocal compensation rate for the period *prior* to July 1, 2012 (historical period of October 2004 through June 2012) and the subsequent true-up thereto of the interim rate, should be framed and resolved by the Authority. That is, whether, consistent with the FCC's order, the Authority should close the docket and/or find that bill-and-keep should be applied to traffic exchanged prior to July 1, 2012, as advocated by the CMRS Providers; or, instead that the Authority should set the permanent rate and true-up compensation using market-based rates as a benchmark, as urged by the RLECs.

¹⁸ *Order Accepting Arbitration, Appointing Arbitrators and Appointing Pre-Arbitration Officer* (March 4, 2004) (at the parties' request and in order to reduce administrative burdens, the panel consolidated five petitions for arbitration filed by CMRS providers, separately, for resolution in the instant docket, No. 03-00585; including Sprint's petition originally filed in Docket No. 03-00589).

¹⁹ By email on February 27, 2013, Ms. Susan Berlin, Counsel for Sprint PCS, informed the Hearing Officer that, as Sprint had resolved all of its outstanding issues with the RLECs in this docket, it would not be participating in the status conference.

²⁰ *Order of Arbitration Award* (January 12, 2006) (memorializing decisions rendered by the TRA Arbitration panel during its regularly scheduled Authority Conference held on January 12, 2005).

Despite their differing views as to the manner in which the Authority should resolve the docket, the Parties agreed to the following procedural process for bringing this matter before the panel for decision:

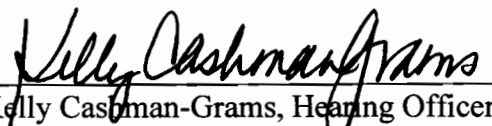
PROCEDURAL SCHEDULE

Due Date	Filing Action
April 15, 2013	Initial Briefs Due* (which are to include legal argument, final best offers, and the factual/foundational basis supporting positions advanced, as applicable)
April 29, 2013	Reply Briefs Due* (limited to 10 pages)
TBD	Panel Deliberations upon the Briefs and written Record, <i>in lieu of oral arguments</i> , during an upcoming Authority Conference (June AC/target date for final resolution) *Parties shall be available in the event of questions from the panel or staff.

*All filings are due at 2:00 p.m. CDT on the designated due date.

IT IS THEREFORE ORDERED THAT:

1. The Procedural Schedule, as set forth herein, is established in full force and effect;
2. Upon the filing of initial and reply briefs in accordance with the Procedural Schedule, the matter shall be deemed complete and ready to proceed, solely on the written record, to the panel for its consideration of the issues and resolution of the docket, as follows: 1) to establish the permanent reciprocal compensation rate/methodology for the period *prior* to July 1, 2012 (specifically, the historical period of October 2004 through June 2012), and 2) for true-up of the interim rate, as necessary.



Kelly Cashman-Grams, Hearing Officer