

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 27, 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)	

HEARING OFFICER'S REPORT & RECOMMENDATION

This matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") to address any remaining procedural matters and to report on the status of the docket to the panel.¹

RELEVANT BACKGROUND

In 2003, several commercial mobile radio service providers ("CMRS Providers")² petitioned the Authority to arbitrate certain controversies that prevented the execution of interconnection and reciprocal compensation agreements ("ICAs") with many rural and small local exchange companies (collectively, the Tennessee Rural Coalition "Coalition" or

¹ *Order Appointing a New Hearing Officer* (October 27, 2008).

² 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").

“RLECs”³) (together with the CMRS Providers, “Parties”). On January 12, 2006, the Authority panel of Directors, serving as an arbitration panel, issued an *Order of Arbitration Award* memorializing its decisions on the numerous issues that were raised during the arbitration.⁴ As to the CMRS Providers’ Issue 8, which involved the pricing methodology to be used to set a reciprocal compensation rate for the transport and termination of non-access telecommunications traffic exchanged between the parties, a majority of the arbitration panel found that rates should be based on forward-looking economic costs and ordered the use of a Total Element Long Range Incremental Cost (“TELRIC”) study or price model, consistent with 47 C.F.R. § 51.705 (2001); and thereby, rejected the RLECs pricing proposal that incorporated embedded costs. Further, finding that the risk of either party being unduly enriched or left inadequately compensated would be mitigated, the panel adopted an interim reciprocal compensation rate equal to that established for BellSouth in Docket No. 97-01262,⁵ which is subject to true-up upon the setting of a permanent rate. Finally, the panel voted to commence additional proceedings in order to establish a permanent cost-based rate.⁶

On June 23, 2006, as provided under 47 U.S.C. § 251(f)(2) of the Telecommunications Act (1996),⁷ the Coalition filed a *Petition* (“*Petition for Suspension of TELRIC*”) that sought to

³ The Tennessee Rural Coalition consists of a group of rural and small local exchange companies as follows: 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”).

⁴ *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).

⁵ See *In re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish “Permanent Prices” for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 (June 23, 1997).

⁶ *Order of Arbitration Award*, p. 38-41 (January 12, 2006).

⁷ 47 U.S.C. § 251(f)(2), in pertinent part, states:

modify and suspend certain aspects of the requirements of 47 U.S.C. § 251(b)(5)⁸ insofar as those requirements could be considered to obligate Coalition members to establish charges for the transport and termination of telecommunications traffic on the basis of a TELRIC pricing methodology.⁹ On August 29, 2006, the arbitration panel designated Docket No. 06-00228 as the proceeding in which it would consider the *Petition for Suspension of TELRIC* and transferred all related filings to the new docket file. On July 9, 2007, a majority of the panel found that the existence, availability, and use of an alternative, less burdensome, pricing method would be consistent with the public interest, convenience, and necessity, and granted the Coalition's *Petition for Suspension of TELRIC*, as amended.¹⁰ In so doing, the panel effectively reversed its earlier decision that a TELRIC pricing methodology, specifically, must be used to establish reciprocal compensation traffic rates in ICAs between the CMRS Providers and RLECs.¹¹

Upon the resolution of Docket No. 06-00228, during which the instant docket had been held in abeyance, proceedings could commence to establish a permanent rate in accordance with the *Order of Arbitration Award*.¹² Following the departure of Director Pat Miller, who presided as Hearing Officer in this docket, the voting panel appointed the Authority's General Counsel, or

(2) SUSPENSION AND MODIFICATIONS FOR RURAL CARRIERS. - a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition....

⁸ 47 U.S.C. § 251(b)(5) assigns to local exchange carriers, "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

⁹ *Petition for Suspension of TELRIC* (June 23, 2006) (later amended to include a *Supplemental Statement*, filed in support of the RLECs' request to suspend the use of a TELRIC pricing methodology on October 2, 2006, that included company-specific information and documentation).

¹⁰ *In re: 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) (2-1 decision)(Dir. Ron Jones, dissenting).

¹¹ *Id.*

¹² On September 11, 2006, the arbitration panel ordered that Docket No. 03-00585 be held in abeyance pending resolution of the RLECs' *Petition for Suspension of TELRIC*. *Order on Reconsideration and Holding Docket in Abeyance* (July 21, 2008).

designee, to serve as the new Hearing Officer on October 20, 2008.¹³ Thereafter, engaging in negotiations, the parties filed no requests, nor additional evidence of economic costs, to move the Authority to set a final rate. Thus, the docket file appeared dormant for a time.

In addition, as a result of the rapid rise in new telecommunications technology and the corresponding shift in consumer usage and demand, disputes occurred nationwide over the assessment of compensation for the exchange of telecommunications traffic between carriers. As a result, while filings were few in Docket No. 03-00585, the FCC was actively engaged in an ongoing and immense evaluation that, once concluded, was anticipated to comprehensively reform universal service and intercarrier compensation. Finally, on November 18, 2011, the FCC released its long-awaited *Report and Order and Further Notice of Proposed Rulemaking* (known as the “*USF/ICC Transformation Order*”). Since that time, the FCC has modified its Order several times.¹⁴

The *USF/ICC Transformation Order* contains the extensive (the initial order alone is over 1000 pages) and complex decision of the FCC to reform and modernize the federal universal service and intercarrier compensation systems. Over thirty (30) appeals for review of the *USF/ICC Transformation Order* are now consolidated in the U.S. Court of Appeals for the 10th Circuit, which has set briefing deadlines through June 2013 and oral argument on November 19,

¹³ *Order Appointing a New Hearing Officer* (October 27, 2008).

¹⁴ *In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC 17663 (November 18, 2011) (“*USF/ICC Transformation Order*,” a.k.a., the “*Connect America Fund Order*”); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011). *See also Connect America Fund et al.*, WC Docket 10-90 et al., *Order on Reconsideration*, 26 FCC Rcd. 17633 (Dec. 23, 2011); *Second Order on Reconsideration*, 27 FCC Rcd. 4648 (Apr. 25, 2012); *Third Order on Reconsideration*, 27 FCC Rcd. 5622 (May 14, 2012); *Fourth Order on Reconsideration*, 27 FCC Rcd. 8814 (July 18, 2012); *Fifth Order on Reconsideration*, 27 FCC Rcd. 14549 (Nov. 16, 2012); and *Sixth Order on Reconsideration*, 2013 WL 771888, *pending pub. in Fed. Register* (rel. Feb. 27, 2013).

2013.¹⁵ For purposes of this docket, the *USF/ICC Transformation Order* held that, as of July 1, 2012, “bill-and-keep”¹⁶ would be the default compensation methodology for transport and termination of non-access telecommunications traffic exchanged between local exchange carriers, including RLECs, and CMRS providers.¹⁷

On June 14, 2012, the Hearing Officer issued a *Notice of Filing Comments* requesting that the parties file comments identifying the outstanding issues, addressing the impact of the *USF/ICC Transformation Order* on those issues, if any, and recommending a process 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 noted that, in its *USF/ICC Transformation Order*, the FCC determined that non-access telecommunications traffic between CMRS providers and LECs is to be exchanged pursuant to a bill-and-keep arrangement.¹⁸ For carriers operating under the terms of an ICA, the FCC required transition to bill-and-keep by July 1, 2012.¹⁹ Further, the FCC reasoned that as carriers without an ICA already receive no compensation, implementation of bill-and-keep was not likely to disrupt these carriers’

¹⁵ *In re: FCC 11-161*, No. 11-9900 (10th Cir.) (*Summary of Deadlines for Uncited Briefing*, entered Oct.18, 2012; and, *Order Setting Oral Argument Date*, entered January 31, 2013).

¹⁶ In practice, “bill-and-keep” means that the parties will not charge one another for applicable telecommunications functions and services.

¹⁷ *In the Matter of Connect Am. Fund A Nat’l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund*, 26 FCC 17663, *USF/ICC Transformation Order*, ¶¶ 995-97 (November 18, 2011) (setting transition date on December 29, 2011); and , 26 FCC Rcd. 17633, *Order on Reconsideration*, ¶¶ 5-8 (December 23, 2011) (modifying transition date to July 1, 2012).

¹⁸ *Comments of AT&T Mobility* (July 23, 2012); *Comments of Joint CMRS Providers* (August 1, 2012).

¹⁹ *Id.*, *Comments of AT&T Mobility* at 3-4; *Joint CMRS Providers* at 5-7.

operations, regardless of the date on which it became effective.²⁰ Thus, as to carriers operating without an ICA, bill-and-keep simply maintains the status quo.

In addition, the CMRS Providers asserted that, even if the TRA determined that it should proceed to set rates for the period prior to July 1, 2012, bill-and-keep is the appropriate method of compensation and should be imposed.²¹ In the absence of specific ICAs between the Parties, 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.²² Therefore, the CMRS Providers asserted that no further action is required by the TRA, and asked that the docket be closed.²³

In its comments, the RLECs noted that it had continued in its attempts to negotiate ICAs with the CMRS Providers, as encouraged by the Authority, but has achieved only limited success in resolving this matter.²⁴ Asserting that the interim rate established by the Authority was too low to entice some CMRS Providers to negotiate a settled rate, the Coalition urged the Authority to set a permanent rate for the historical period using, as a benchmark, the market-based rates that have come from successful carrier negotiations.²⁵ The RLECs acknowledged that the *USF/ICC Transformation Order* preempts state authority to prospectively set rates after June 30, 2012, but contended that state jurisdiction over rate disputes prior to July 1, 2012, is not affected.²⁶ As such, the RLECs requested additional time in which to attempt to reach an amicable resolution or conclude its negotiations with the CMRS Providers.²⁷ Thereafter, the

²⁰ *Comments of Joint CMRS Providers* at 5, footnote 13.

²¹ *Id.*, *Comments of AT&T Mobility* at 3-4; *Joint CMRS Providers* at 6-7.

²² *Id.*, *Comments of AT&T Mobility* at 3-4; *Joint CMRS Providers* at 5-7.

²³ *Id.*, *Comments of AT&T Mobility* at 4-5; *Joint CMRS Providers* at 8.

²⁴ *Comments of Tennessee Rural Coalition*, pp. 2-4 (August 1, 2012).

²⁵ *Id.* at 3 and 4-6.

²⁶ *Id.* at 7.

²⁷ *Id.* at 7-8.

RLECs, on behalf of the Parties, twice requested an extension of time to continue negotiations and postpone the deadline for reporting the progress of the parties' negotiations.²⁸

On December 3, 2012, AT&T Mobility reported that the Parties had tentatively come to agreement as to new ICAs, structured in compliance with the FCC's recent ruling and which would be effective for traffic exchanged after June 30, 2012, but continued to disagree about compensation for traffic *prior* to July 1, 2012.²⁹ AT&T Mobility asserted that, as the arbitration had been requested so that ICAs would be established with the RLECs as required under 47 U.S.C. § 252, and the FCC's *USF/ICC Transformation Order* has established bill-and-keep as the *de facto* compensation arrangement, it is a waste of TRA time and resources to engage in a lengthy cost proceeding to set rates for historical traffic that ultimately must be trued-up to bill-and-keep. In addition, AT&T noted that if the RLECs wish to litigate whether it is entitled to true-up interim compensation accrued during the historical time period to something other than bill-and-keep, it should initiate the appropriate complaint docket.³⁰

Also, on December 3, 2012, the RLECs reported that while several ICAs that had been successfully negotiated with Sprint have been approved, or are pending approval, by the Authority, it had not reached agreements with the other CMRS providers.³¹ The RLECs asserted that although many of the significant arbitration issues were determined by the Authority, the permanent reciprocal compensation rate to be employed during the historic period of October 2004 through June 2012 remained outstanding. Once the permanent rate was determined and the interim rate trued-up, this matter may be concluded.³² Further, the RLECs asserted that it

²⁸ 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).

²⁹ *Status Report of AT&T Mobility*, p. 1 (December 3, 2012).

³⁰ *Id.* at 1-2.

³¹ *Status Report of Tennessee Rural Coalition and Motion to Set Status Conference*, pp. 1-2 (December 3, 2012).

³² *Id.* at 3.

considers a rate of \$0.015 (1.5¢) to be fair and just, and suggested the exchange of “final best offers” (“FBOs”) between the parties followed by a presentation of the FBOs for decision during a status conference before the Hearing Officer.³³

On December 10, 2012, responding to the Coalition’s report, T-Mobile opposed using FBOs and a status conference to bring the docket to conclusion, as proposed by the RLECs.³⁴ Despite mentioning that negotiations had revived mid-October 2012, T-Mobile contended that the outstanding issue in this docket has been resolved by the *USF/ICC Transformation Order*, and that the docket should be closed.³⁵ On December 13, 2013, in answer to AT&T Mobility’s report, the RLECs disagreed with the assertion that it had tentatively resolved the issues needed to establish new ICAs with AT&T Mobility.³⁶ In addition, the RLECS assert that while they continue to negotiate with the CMRS Providers, they are not close to agreement, and therefore agree that the docket should proceed for resolution before the Authority.³⁷

CURRENT STATUS & FINDINGS

In accordance with the public notice issued on February 27, 2013, the Hearing Officer convened a Status Conference with the Parties on March 11, 2013.³⁸ During the Status Conference, the RLECs confirmed, for the record, that it had resolved all outstanding claims with Sprint, and that Sprint has indicated that it would no longer be actively involved in the docket.³⁹ In addition, the Parties agreed that at the time the TRA adopted an interim rate for reciprocal compensation, subject to true-up, it also ordered, but has not yet convened, additional

³³ *Id.* at 5-7.

³⁴ *Response of T-Mobile USA, Inc. to Status Report and Motion to Set Status Conference of Tennessee Rural Coalition* (December 10, 2012).

³⁵ *Id.*

³⁶ *Response of Tennessee Rural Coalition to Status Report of AT&T Mobility*, p. 1 (December 13, 2012).

³⁷ *Id.* at 1-2.

³⁸ *Notice of Hearing* (February 27, 2013).

³⁹ 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.

proceedings to establish a permanent rate.⁴⁰ The Parties further agreed that, pursuant to the FCC's *USF/ICC Transformation Order*, beginning July 1, 2012, non-access telecommunications traffic is exchanged according to a bill-and-keep arrangement. Thus, the following issues remain for resolution by the Authority:

1. To establish a permanent reciprocal compensation rate and/or methodology to be applied to traffic exchanged between the Parties during the period *prior* to July 1, 2012 (historical period of October 2004 through June 2012); and
2. True-up of the interim rate, as necessary.

Nevertheless, despite their agreement, the Parties remain sharply divided as to the appropriate way in which the panel should resolve these issues, as shown by their distinctly contrasting recommendations noted in the Parties' filed comments, and discussed above. The CMRS Providers assert that, 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. Whereas, the RLECs urge the Authority to set a permanent rate, and calculate any true-up, using market-based rates as a benchmark.

Finally, to facilitate a clear understanding of the Parties' positions on the issues and bring this matter before the panel as soon as possible, the Hearing Officer entered a Procedural Schedule to finalize preliminary procedural matters and bring the docket before the panel for resolution. After much discussion with the Parties, the Hearing Officer ordered the following briefing schedule:

⁴⁰ *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).

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)


In addition, with the agreement of the Parties, the Hearing Officer further ordered that, after the briefing deadlines have passed, the docket should be presented on the briefs and written record alone, before the panel during an upcoming Authority Conference. In lieu of oral arguments, the Parties will be available before the panel's deliberations in the event that the panel or staff has any questions.

RECOMMENDATIONS

Based on the foregoing, upon the filing of briefs in accordance with the Procedural Schedule entered on March 25, 2013, the matter will be deemed ready to proceed on its merits before the voting panel of Directors. Therefore, the Hearing Officer files this report for the panel's consideration during its regularly scheduled Authority Conference on **April 8, 2013**, or anytime thereafter in the panel's discretion, and recommends that:

1. Upon the filing of initial and reply briefs in accordance with the Procedural Schedule ordered by the Hearing Officer in the *Order Setting Procedural Schedule to Completion*, entered March 25, 2013, the record in this matter shall be deemed complete and ready to proceed to the panel for consideration of the issues, 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.

2. In lieu of oral arguments, the Parties shall be available for questions by the panel or staff during an upcoming Authority Conference, in June 2013, if possible, before the panel's deliberations and final resolution of the docket.



Kelly Cashman-Grams, Hearing Officer