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

FINAL BRIEF OF THE TENNESSEE RURAL COALITION

Ardmore Telephone Company
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
North Central Telephone Cooperative
Peoples Telephone Company
Tellico Telephone Company
Tennessee Telephone Company, Inc.
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative, Inc.

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Date: April 22, 2013

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I. SUMMARY OF POSITION

Pursuant to the Hearing Officer's "Order Setting Procedural Schedule to Completion" dated March 25, 2013, the Tennessee Rural Coalition ("Coalition" or "RLECs")[1] files this Brief before the Tennessee Regulatory Authority ("TRA" or "Authority").

Over an eight year period (2004-2012), Cingular Wireless PCS, LLC, d/b/a AT&T Mobility (*"AT&T Mobility") has sent almost one half billion minutes* of its customers' voice traffic to the thirteen Coalition RLECs for delivery to their called customers. For this privilege of using the RLECs' networks, *AT&T Mobility owes fair and reasonable compensation to the RLECs, but has paid nothing.* The RLEC Coalition has settled with all of the other wireless carriers who brought this arbitration action with the sole exception of AT&T Mobility.

Under Federal law and the rulings of this Authority, AT&T Mobility is obligated to pay a reasonable rate for terminating its calls. During the entire historic period of this dispute, applicable regulatory and statutory principals of "calling party pays" required the calling party's carrier to pay compensation to the called party's carrier and recover such cost from its own customer. By refusing to mutually agree upon a rate and delaying resolution of this arbitration, AT&T Mobility has pocketed the rates paid by its end-users and reaped the benefit of its non-payment to the RLECs.

Indeed, this reprehensible state of affairs has dragged on for so long now that the rules have changed dramatically in favor of the wholly different "bill-and-keep" regime where intercarrier compensation for CMRS-RLEC traffic is now zero. While this FCC ruling is highly

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[1] The Tennessee Rural Coalition includes the following rural incumbent local exchange carrier ("RLEC") members: Ardmore Telephone Company, DeKalb 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, Tellico 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.

controversial and under appeal, it only applies to traffic tendered after July 1, 2012 and not before.

The law which resolves this case predominantly includes the TRA's Decision in 2008 that it was necessary and in the public interest to suspend the otherwise applicable Federal reciprocal compensation pricing rules which would have required the RLECs to engage in costly and complex cost studies, the methodologies and formulae of which no one could agree. With that suspension, the TRA can now define a "reasonable rate" in its own fair-minded discretion.

The RLECs suggest that the TRA employ a two-prong test to determine a reasonable rate. First, the TRA should review the publically filed rates that the wireless carriers and RLECs have voluntarily agreed to or which have been determined in other similar situations. This market-based rate is at a mid-point of $0.02 (2¢). Secondly, the Authority should accept the RLECs' Federal interstate terminating access rate as a reasonable approximation of the cost of wireless-RLEC traffic termination, since it is cost-based and the rate elements are the same. The Coalition's witness provided record testimony in support of this view. The RLECs' interstate access rate mid-point during the historic period was $0.021 (2.1¢).

The RLECs propose, as their best and final offer, a rate of $0.012 (1.2¢),[2] well below both the market-based and interstate access benchmark standards, which are sixty percent higher. This offers AT&T Mobility a substantial cushion below what its competitors generally have paid the RLECs and, indeed, what AT&T Mobility has voluntarily agreed to pay elsewhere in essentially identical situations. This final resolution rate is a substantial compromise from the Coalition's prior position which was $0.021 (2.1¢) during the arbitration hearings and even the $0.015 (1.5¢) offered when this docket was reopened in June 2012. Such a facially reasonable,

[2] For indirect interconnection under which the majority of the traffic is exchanged and $0.008 (0.8¢) for direct interconnection.

intentionally low end, figure should not be compromised further by splitting the difference or otherwise giving any credence to the ridiculously low AT&T Mobility proposal, which to date has been zero – nothing (i.e., the retroactive application of bill-and-keep).

The RLECs own and operate networks serving rural Tennessee, incurring bills they themselves must pay. The Tennessee RLECs deserve to be paid by AT&T Mobility, the sole hold out carrier, when all other major wireless carriers in the state have done so. The Coalition further believes that most, if not all, other States' wireless-RLEC arbitration dockets have been resolved and closed. The fact that such a large and powerful carrier has been able to maintain a no pay (or low pay) stance and avoid finalizing an agreement in Tennessee is an unfortunate state of affairs which the TRA should now rectify.

II. INTERCARRIER COMPENSATION

The Coalition members are small, mostly unaffiliated, local exchange telephone companies and cooperatives providing services predominantly to rural Tennesseans:

Ardmore Telephone	2,200 access lines in 3 exchanges
Concord Telephone	12,000 access lines in 1 exchange
Crockett Telephone	3,000 access lines in 3 exchanges
DeKalb Telephone	18,000 access lines in 10 exchanges
Humphrey's County	1,500 access lines in 1 exchange
Loretto Telephone	4,400 access lines in 5 exchanges
North Central Telephone	13,000 access lines in 9 exchanges
Peoples Telephone	4,000 access lines in 3 exchanges
United Telephone	11,000 access lines in 10 exchanges
Tellico Telephone	7,500 access lines in 6 exchanges
Tennessee Telephone	40,000 access lines in 15 exchanges
West Tennessee Telephone	3,000 access lines in 4 exchanges
Yorkville Telephone	1,100 access lines in 4 exchanges

Although the Coalition represents less than ten percent of the traditional land lines/numbers in Tennessee (even less if cable voice and wireless carriers are included), they nonetheless

represent a critical segment of Tennessee's telecommunications infrastructure. The Coalition members are rural, serving approximately thirty access lines per square mile as compared to the largest Tennessee landline company, BellSouth d/b/a AT&T Tennessee, for example, whose average density in Tennessee is approximately one hundred thirty-five access lines per square mile. Rural carriers strive to provide excellent service at reasonable rates in a high cost environment.

While wireless and landline providers, such as the RLECs, compete, they also must cooperate to complete each other's calls. Wireless end user customers call landline customers and vice versa. Wireless (technically called commercial mobile radio service or "CMRS") carriers generate and deliver traffic for termination to the RLECs. Likewise, the RLECs generate and deliver traffic to the CMRS providers. However, the CMRS providers generate much larger volumes of the traffic exchanged than do the RLECs. RLEC-originated calling volumes are approximately sixty percent less than wireless calls.[3] Stated another way, the Coalition members are called upon to provide *over twice* the call completion service than does AT&T Mobility.[4]

Historically, telephone industry pricing was based upon the policy that the "calling party [originating carrier] pays" the terminating carrier.[5] Until the FCC's *USF/ICC Transformation Order*,[6] RLECs and CMRS carriers exchanging traffic paid each other a negotiated (or

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[3] The CMRS providers, including AT&T Mobility, and the RLECs have stipulated that CMRS-originated calls are 70% of all of the traffic exchanged and RLEC-generated volume is 30% (30/70=43%).

[4] 70/30 = 233%.

[5] "Under a typical reciprocal compensation agreement between two carriers, the carrier on whose network the call originates bears the cost of transporting the telecommunications traffic to the point of interconnection with the carrier on whose network the call terminates." *Atlas Tel. Co. v. Okla. Corp. Comm'n*, 400 F.3d 1256, 1260 (10th Cir. 2005). "Having been compensated by its customer, the originating network in turn compensates the terminating carrier for completing the call." *Id.*; *see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 F.C.C.R. 15499, 16013 ¶ 1034 (1996) ("*Local Competition First Report and Order*").

[6] *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,

arbitrated) rate stated on a per minute of use basis for every local call sent to the other for termination.[7]

Reciprocal compensation rates are stated in terms of fractions of pennies. These fractions are important and affect the outcome immensely, because the calling volumes are enormous. *Almost one-half billion minutes were sent to Coalition RLECs for termination during the historic eight year period at issue here (October 2004 - June 2012) by AT&T Mobility.* Thus, the *net* value of RLEC services provided to AT&T Mobility at a rate of $0.012 (1.2¢) per minute is cumulatively several million dollars, as would be expected at an asymmetrical flow rate (70/30) sustained over an almost eight year period. This is not unusual, as CMRS carriers are almost always net payers of reciprocal compensation.

Carriers may connect their networks directly or indirectly through a third party tandem provider. Typically, including in Tennessee, CMRS carriers prefer to economize on facilities costs and connect to the RLECs' networks indirectly through the tandem facilities (a big centralized switch) owned by AT&T Wireless' local exchange company affiliate, BellSouth d/b/a AT&T Tennessee.[8] Reciprocal compensation rates under an indirect connection arrangement are higher than would apply if the wireless carrier brought its facilities directly to the landline company.

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, 26 F.C.C.R. 17663 (2011) ("*USF/ICC Transformation Order*"). The *USF/ICC Transformation Order* was modified on reconsideration. *See id.*, Order on Reconsideration, 26 F.C.C.R. 17633 (2011) ("*CMRS Reconsideration Order*"). These Orders on appeal by various States and industry participants to the 10th Circuit Court of Appeals.

[7] For wireless CMRS originated calls the FCC uses Rand McNally's "Metropolitan Trading Areas" to define whether a CMRS-originated call is local. Hence, the terms for local and toll calling in the wireless industry are interMTA (toll and access) and intraMTA (local). *Local Competition First Report and Order*, 11 F.C.C.R. at 16017. The exception is where calls are sent by a third party interexchange carrier.

[8] Most CMRS-LEC interconnection in Tennessee is done on an indirect basis through BellSouth d/b/a AT&T Tennessee tandem switches using existing RLEC-BellSouth shared trunking, as was ruled proper by the Arbitration Panel. The TDS Companies have some direct connection with AT&T Mobility and are the sole exception.

It is this "reciprocal compensation" rate that is at issue in this proceeding. Under the Telecommunications Act of 1996 ("TCA-96"), States were given jurisdiction to arbitrate and resolve any contract (interconnection agreement) disputes between carriers that propose to exchange traffic.[9] In doing so, the States operate under a set of broad principles established by the Federal TCA-96 and the FCC within which they have discretion and the ability to exempt certain requirements.[10]

The FCC dramatically altered this landscape in November 2011, when it released the *USF/ICC Transformation Order*. Instead of a positive rate requiring payment, as had been applied since the enactment of the TCA-96 (and even before that), the FCC preempted what had been State jurisdiction,[11] and now directed that rates be set at zero ("bill-and-keep") on a prospective basis.[12] The new pricing policy was the elimination of all intercarrier compensation on an announced set of time tables. Under bill-and-keep, the end user customers now become responsible for all of their carrier's network costs.[13]

The *USF/ICC Transformation Order* expressly recognized the discretion historically granted States in the past to set local intercarrier compensation:

> Reciprocal compensation under section 20.11, however, is not currently subject to a federal pricing methodology. As we recently explained in the North County Order, we have instead traditionally regarded state commissions as the "more appropriate forum for determining the reasonable compensation rate [under

[9] 47 U.S.C. § 252.

[10] For example, the TRA exempted the RLECs here from the requirement to set rates based upon federally required cost studies.

[11] *USF/ICC Transformation Order*, 26 F.C.C.R. at 18035 ¶ 991 ("[W]e find that it is in the public interest to establish a default Federal pricing methodology for determining reasonable compensation under section 20.11.").

[12] "Bill-and-keep" means that carriers bill all costs to the end-user customer and pay each other nothing (i.e., keep). *USF/ICC Transformation Order*, 26 F.C.C.R. at 18037 ¶ 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."); *CMRS Reconsideration Order*, 26 F.C.C.R. 17635-37 (revising effective date to July 1, 2012). These Orders are on appeal by various States and industry participants to the 10th Circuit Court of Appeals.

[13] *USF/ICC Transformation Order*, 26 F.C.C.R. at 17904 ¶ 737 ("Under bill-and-keep arrangements, a carrier generally looks to its end-users which are the entities and individuals making the choice to subscribe to that network—rather than looking to other carriers and their customers to pay for the costs of its network.").

> section 20.11] for . . . termination of intrastate, intraMTA traffic," and have to date declined to provide guidance to the states on how to carry out that responsibility.[14]

This State authority was preempted and prospectively replaced with federally imposed bill-and-keep.

Rather than implementing the more gradual transition afforded other types of calling (e.g., LEC-LEC and VoIP-PSTN), the *USF/ICC Transformation Order* made the default bill-and-keep methodology applicable to CMRS-LEC traffic "immediately"[15] as of the effective date of the rules change (December 29, 2011).[16] Not anticipating the volumes of traffic and money being exchanged by the industry under the old rules,[17] the FCC subsequently delayed the effective date of the bill-and-keep regime for six months until July 1, 2012.[18]

III. HISTORY OF DOCKET

The Authority's June 14, 2012 "Notice of Filing Comments" and the Hearing Officer's "Report & Recommendation" of March 27, 2013 accurately recite the extensive history of this and related TRA dockets, the key components of which are contained in three orders.

In the *Generic USF Docket*, the TRA ruled in September 2004 that an interim reciprocal compensation rate of $0.015 (1.5¢) per minute was just and reasonable based upon "approved

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[14] *Id.*, 26 F.C.C.R. at 18036 ¶ 992.
[15] *Id.*, 26 F.C.C.R. at 18037-38 ¶ 995.
[16] *Id.*, 26 F.C.C.R. at 18037-39 ¶¶ 995-97. This rule, 47 C.F.R. § 51.705(a), was published in the *Federal Register* on November 29, with an effective date of December 29, 2011. *See* 76 FR 73830, 3855 (Nov. 29, 2011).
[17] *CMRS Reconsideration Order*, 26 F.C.C.R. at 17636 ¶ 6 ("...the supplemental record suggests that the Commission did not accurately assess the impact of its decision to immediately move to bill-and-keep for all LECs for this category of traffic.").
[18] *Id.*, 26 F.C.C.R. at 17636-37 ¶ 7.

[CMRS-LEC] agreements in the BellSouth region for CMRS traffic transiting BellSouth's network."[19]

Subsequently, the Arbitration Panel in this docket ruled in January 2006, as argued by the wireless carriers, that the rate instead should be based upon a complicated (and expensive to undertake) FCC cost formula labeled "Total Element Long Range Incremental Cost" ("TELRIC")[20] and rejected the other forms of rate setting offered by the RLECs. The interim rate then was reset equal to "the reciprocal compensation [TELRIC-based] rate set for BellSouth in the TRA's Permanent Price proceeding (TRA Docket No. 97-01262) ***subject to true-up***."[21] This interim rate is approximately $0.002 (0.2¢) per minute, much lower than the $0.015 (1.5¢) interim rate previously set by the Panel.

As a result of the imposition of TELRIC pricing by the *Arbitration Order*, RLECs sought an exemption from the FCC's pricing formula. After multiple pleadings and testimony regarding the costs and burdens of TELRIC pricing, the TRA ruled in June 2008 that it had the authority to suspend the Federal rules regarding CMRS-LEC compensation and would do so:

> A majority of the voting panel found that the Petitioners [the RLECs] 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

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[19] *Generic Docket Addressing Rural Universal Service*, TRA 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.").

[20] 47 C.F.R. § 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.").

[21] *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,* TRA Docket No. 03-00585, Order Of Arbitration Award (January 12, 2006) ("*Arbitration Order*"), slip op. at 41 (Issue 8) (emphasis added). The Panel then stated that it would prepare the additional issues for hearing by the full panel, but these follow up proceedings were never convened.

> 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*** tor 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.[22]

As the Hearing Officer has recognized:

> 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.[23]

Nevertheless, the TRA's 2008 *Suspension Order* did not revise the interim rate set by the Arbitration Panel. Rather, it directed the parties to seek a negotiated resolution.[24] In the meantime, by July 2008 Order, the Authority had placed this arbitration docket "in abeyance." It was then reopened by the TRA in June 2012.

The Coalition does not disagree with AT&T Mobility's position that: "Once the TRA established an interim rate for that traffic, the docket stalled...."[25] In the Coalition's opinion, this is because the interim rate remained too low, particularly in view of the TRA's rejection of the TELRIC method that underlay the $0.002 (0.2¢) rate, a method the TRA found to produce a rate which was economically adverse (i.e. too low). This inconsistency gave AT&T Mobility an incentive not to negotiate a higher permanent rate, although the RLECs have been able to settle, as the Authority had urged in 2008, with all the other CMRS carriers.

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

[23] Hearing Officer's Report & Recommendation of March 27, 2013, slip op. at 3.

[24] *Suspension Order* at 20 ("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.").

[25] AT&T Mobility Comments at 2.

IV. ISSUE PRESENTED

The Hearing Officer's Report & Recommendation of March 27, 2013 accurately identifies the remaining issues at this docket:

> 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.

Attached (Appendix A) is an issue matrix for the remaining arbitration issue (Issue No. 8) and a listing of the RLEC/AT&T Mobility pairs with this issue outstanding (Appendix B). The RLECs propose that a rate of $0.012 (1.2¢) per minute be employed for indirect connection and a lesser rate of $0.008 (0.8¢) per minute for direct connection.

Also attached (Appendix C) is the interconnection agreement ("ICA") that the RLECs have proposed to AT&T Mobility and which the parties have been largely able to finalize. The only remaining issue in the ICA is the following language, which the RLECs request that the TRA resolve as a corollary to the rate issue:

> 5.1.2 Notwithstanding the foregoing, if as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, the FCC's provisions, in the USF/ICC Reform Order, regarding the bill-and-keep arrangements for Local Telecommunications Traffic are reversed or, remanded, then the Parties agree to comply with all requirements of the applicable decision, order or determination. In such event, the parties agree that:
>
> > (a) The rate for Reciprocal Compensation for Local Telecommunications Traffic exchanged via Direct Interconnection shall be $0.008 per minute; and
> >
> > (b) The rate for Reciprocal Compensation for Local Telecommunications Traffic exchanged via Indirect Interconnection shall be $0.012 per minute.

This ICA language addresses reciprocal compensation, in the event that the 10th Circuit or other appellate authority reverses the FCC's *USF/ICC Transformation Order* on appeal. The RLEC Coalition requests that the ICAs expressly identify the rate approved by the TRA for AT&T Mobility in the event of such reversal by approving proposed Section 5.1.2. AT&T Mobility desires that the ICA be silent on this issue.

V. POSITION

A. Status of Settlement between the RLEC and CMRS Providers

Since entry of the *Suspension Order* rejecting TELRIC pricing for the RLECs, the Coalition members have continued their efforts to negotiate ICAs with the CMRS providers consistent with the Authority's encouragement that they do so. Out of the four large CMRS carriers that brought this docket originally, the RLECs have completely settled with three of them (Verizon Wireless, Sprint and T-Mobile) and have resolved all but the rate issue with AT&T Mobility. Of course there are many other, smaller wireless carriers operating in Tennessee who did not file an arbitration petition with whom the Coalition members have also negotiated ICAs, which the TRA has approved.

The current status of the original Petitioning CMRS parties is as follows:

- Verizon Wireless. Fully settled with all RLECs. Final ICAs are approved or are pending TRA approval or are awaiting final execution. Final ICA rates for Verizon are agreed at $0.015 (1.5¢) (Loretto), $0.0125 (1.25¢) (United), and $0.0115 (1.15¢) (Highland) per minute for indirect interconnection. The language at Section 5.1.2 of Appendix C (proposed ICA with AT&T Mobility) is included in these finalized ICAs.

- Sprint. Fully settled with all RLECs. Final ICAs are approved or are pending TRA approval. Final rates for Sprint are agreed at $0.015 (1.5¢) (Loretto and DeKalb) and $0.0115 (1.15¢) (Highland) per minute for indirect interconnection. The language at Section 5.1.2 of Appendix C (proposed ICA with AT&T Mobility) is included in these finalized ICAs.

- T-Mobile. Fully settled with all RLECs (documents being prepared). Loretto, North Central, United, DeKalb and the TEC Companies (Crockett, Peoples and West Tennessee) have agreed to all major settlement terms and are in the process of finalizing the ICAs and settlement agreements.

- AT&T Mobility. Highland Telephone, another Tennessee RLEC, was paid by AT&T on the basis of a contract rate of $0.015 (1.5¢) negotiated with Cingular Wireless in 2001 prior to it being acquired by AT&T in 2003. AT&T Mobility paid these rates to Highland as a matter of contractual obligation and both parties agree that these rates will be used in the event to reversal of the FCC's *USF/ICC Transformation Order* in an ICA amendment recently approved by the Authority.[26]

  The following companies do not have 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.[27] The TDS Telecom companies are only being paid the $0.002 (0.2¢) interim rate under a separate interim billing agreement.

Out of the hundred or more of combinations of CMRS and RLECs operating in Tennessee, there are thirteen remaining unresolved RLEC ICAs; all of which are with AT&T Mobility.

B. Final Resolution is Required

This docket was precipitated by the CMRS carriers for the express purpose of arbitrating all necessary terms and conditions of intercarrier services exchanged between the wireless and landline providers, including compensation. The parties and the Authority have already decided most of the significant arbitration issues, including:

- The RLECs have a duty to connect directly or indirectly with CMRS carriers to exchange traffic as they request.[28]

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[26] *Petition for Approval of The Traffic Exchange Agreement Between Highland Telephone Cooperative, Inc. and New Cingular Wireless PCS, LLC*, TRA Docket No. 13-00015.

[27] 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.

[28] *Arbitration Order* at 14.

- The point of interconnection for indirect interconnection is the existing meet point between BellSouth and the RLEC.[29]

- CMRS traffic may use the RLECs-BellSouth meet point trunks and the RLECs must separate it out from the other traffic on those trunks.[30]

- The originating party is responsible for transit costs.[31]

- Reciprocal compensation will be paid by the originating carrier for the transport and termination of traffic by the terminating carrier.[32]

- An originating traffic factor of 70% mobile and 30% landline will be applied.[33]

- An interMTA factor of 3% will determine the amount of traffic to which access rates apply (split 50/50 between inter and intrastate).[34]

In other words, the Arbitration Panel determined that the RLECs have an affirmative duty to accept and deliver the CMRS carriers' traffic on specific terms and conditions, which they have consistently fulfilled, but without a final decision on the aspect most important to them -- compensation for providing that service. The exceptionally low interim rate set by the Arbitration Panel (0.2¢) was based upon a rate setting methodology that was subsequently determined by the TRA to be "unduly economically burdensome" and not consistent with "the public interest, convenience and necessity."[35]

Fairness requires a final result. AT&T Mobility has had full and open access to the RLECs' networks, thus, expanding the calling scope of its wireless service, and enhancing the value of its own retail products. Intercarrier compensation is an important consequence of that network access. Under the "calling party pays" philosophy employed by the FCC during the

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[29] *Id.* at 24. This is subject to modification as a result of the latest FCC Order which required that the CMRS carrier is responsible for all transport and termination from the RLEC's network.
[30] *Id.* at 33.
[31] *Id.* at 31. Likewise this is subject to modification as a result of the latest FCC Order which mandates that the CMRS carrier is responsible for all transport and termination from the RLEC's network.
[32] *Id.* at 18 and 24 ("...the company that originates the call is responsible for paying the party terminating the call.").
[33] Joint Letter by CMRS Providers (Paul Walters) and Rural Coalition (William Ramsey), dated February 8, 2005, and filed with Chairman Pat Miller.
[34] *Id.*
[35] *Suspension Order* at 11.

historic period, AT&T Mobility has already (or should have) collected charges from its end-users sufficient to provide retail service, including the intercarrier compensation costs. These intercarrier compensation costs have been paid by other CMRS carriers. By not having paid those, AT&T Mobility has enjoyed a windfall.

Setting the rate is a critical part of the arbitration begun in 2003, which cannot be closed without final decision. The TRA has the obligation under Federal law to decide all issues presented to it under the interconnection provisions of Sections 251 and 252.[36] Prior to the *USF/ICC Transformation Order* and its preemptive effect, FCC policy fully acknowledged the State commissions' provenance to set the compensation rates for termination of local CMRS-RLEC traffic.[37]

The RLECs could not have simply tariffed reciprocal compensation and bypassed this proceeding. The FCC, in response to T-Mobile's 2005 Petition proposing to negate the efforts of ILECs seeking compensation where T-Mobile refused to negotiate,[38] held that the LECs could not tariff reciprocal compensation, ruling that the negotiation and arbitration procedures set forth in Section 252 of the TCA-96 apply. Instead, CMRS providers must negotiate in good faith and, if requested, agree to arbitration by the State commission.[39] The FCC then codified this holding by adding subsection (d) to Rule 20.11, which prohibits tariffs.[40]

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[36] 47 U.S.C. §§ 251 and 252.

[37] *North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order 24 F.C.C.R. 3807 (Enf. Bur. 2009) ("*North County Merits Order*") and *North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, 24 F.C.C.R. 14036 (2009) ("*North County Review Order*"); and *In the Matter of Developing a Unified Intercarrier Compensation Regime T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination*, Declaratory Ruling and Report and Order, 20 F.C.C.R. 4855 (2005) ("*T-Mobile Order*").

[38] *T-Mobile Order, supra.*

[39] *Id.* at 4864-65 ¶ 16.

[40] 47 C.F.R. § 20.11(d) ("Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs."). *See T-Mobile Order*, 20 F.C.C.R. at 4863 ¶ 14 n. 57 ("As discussed below, we also adopt new rules permitting incumbent LECs to invoke the Section 252 process and establish interim compensation arrangements, which are triggered by a request for negotiation from either carrier. For this reason, we reject claims that, in the absence of wireless termination tariffs,

The TRA should not allow the stalling tactics of AT&T Mobility to legitimize the unilateral seizure of free service and, thus, deny the very compensation that the FCC and the TRA have recognized the RLECs are entitled. AT&T Mobility has refused to agree to any reasonable result, and cynically delayed resolution. It continues to do so, arguing for example, that this docket case should be closed without resolution, and the RLECs forced to file a complaint. This is not negotiating in good faith.

AT&T Mobility's position that there *will be no payment without an agreement* is a circular trap of illogic. There *can be no agreement without a price* for the services offered. If there can be no price because one party refuses to agree to fair compensation, then service, apparently, is free. AT&T Mobility may not impose such confiscation.

The calling minutes exchanged by AT&T Mobility and the RLECs are known and have been agreed to by the parties. The only remaining issue, given that AT&T Mobility and the RLECs have been unable to reach "a mutually agreeable solution" as previously directed, is for the TRA to establish the per minute rate which should apply by order.

C. Proposed Resolution

1. The TRA May Accept Any Reasonable Evidence to Establish the Reciprocal Compensation Rates

There is no question that a State commission may relieve rural carriers from the otherwise applicable Federal pricing requirements, as the FCC first explicitly recognized in its 1996 *Local Competition First Report and Order*[41] and affirmed by Federal Courts:

LECs would be denied compensation for terminating this traffic."). AT&T Mobility is attempting to deny compensation for the RLECs termination of its traffic.

[41] *Local Competition First Report and Order*, 11 F.C.C.R. at 16026 ¶ 1059 ("We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.").

> Thus, the Local Competition Order leaves no doubt that the FCC intended state commissions to have the authority to modify the TELRIC pricing requirements for RLECs. As a result, the court concludes that the plaintiffs' [CMRS carriers] argument with respect to this issue must fail.[42]

The TRA eliminated this Federal pricing parameter by its *Suspension Order*. The only remaining, otherwise applicable, FCC regulation, Rule 20.11(b)(2), simply requires that compensation for CMRS-RLEC of traffic be "reciprocal" and "reasonable."[43]

The effect of the *Suspension Order* is that the TRA now has wide latitude to determine reasonable rates for the exchange of CMRS-LEC traffic for the period prior to the effective date of the FCC's preemption on July 1, 2012.[44] Prior to the *USF/ICC Transformation Order*, in the *North County* cases, the FCC expressly stated that it is for the State commission to decide the specific rate to be paid for terminating CMRS-LEC traffic, which determination would not be subject to reversal by the FCC.[45]

Within the parameter of "reasonable," there are a number of rate setting methodologies that may be acceptably relied upon by the Authority, including benchmarking, cost studies, proxies, and default rates. As the Authority has previously stated, "there are alternative, less costly and less burdensome, means to achieving the end result of determining an appropriate rate tor transporting and terminating telecommunications traffic."[46]

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[42] *New Cingular Wireless PCS, LLC v. Finley*, No. 5:09-CV-123-BR, 2010 WL 386038 (E.D.N.C. Sept. 30, 2010), slip op. at 28 ("*NC AT&T Appeal*").
[43] 47 C.F.R. § 20.11 (b)(1) and (2) (Emphasis added). *See also North County Merits Order*, *supra*; *North County Review Order*, *supra*.
[44] Tenn. Code Ann. § 65-5-101(a).
[45] *North County Merits Order*, 24 F.C.C.R. at 3811 ¶ 9; *North County Review Order*, 24 F.C.C.R. at 14040 ¶ 12.
[46] *Suspension Order*, slip op. at 11.

In Mississippi, the Mississippi Public Service Commission ("MS PSC") had granted their RLECs a broad suspension from the entirety of Sections 251(b) and (c) in 1996.[47] In a subsequent arbitration (in 2007) brought by AT&T Mobility, the MS PSC ruled that this prior suspension relieved the RLECs from TELRIC cost study methodologies.[48] With suspension, the MS PSC found that it was free to accept any reasonable evidence and methodology:

> As discussed above, the FCC has provided us with guidance with respect to our conclusion that the FCC's TELRIC pricing rules are not applicable standards to apply in this arbitration. The FCC has not, however, otherwise established a standard that we are required to apply in this case. Accordingly, we will proceed on the basis of the best information available to us, as both the CMRS providers and the RLECs have each suggested we should proceed.[49]

The MS PSC was reversed on appeal, but only because the Court found that no specific TELRIC suspension had been granted and that, in any event, the general suspension of the Section 251(b)[50] was waived by the RLECs such that TELRIC was not suspended. In distinguishing the Mississippi Commission's general suspension, the Court acknowledges the specific suspension granted by this Authority as necessary to overcome the FCC's pricing obligations. The Court did not criticize the MS PSC's implementation of alternative rate setting in the absence of TELRIC.

In North Carolina, the Utilities Commission ("NCUC") granted its RLECs a *modification*, rather than a suspension and tailored a different type of cost study, something that the TRA did not do. The NCUC found that it has the authority to shape a resolution that it considered fair.

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[47] *Petition of the Mississippi Independent Group for Commission Action Pursuant to Section 253(b) of the Telecommunications Act of 1996*, MS PSC Docket No. 96-UA-298, Final Order (December 31, 1996), *clarified by* Clarification Order, 1998 WL 987458 (June 2, 1998).

[48] *Petition for Arbitration under the Telecommunications Act with Cellular South and Cingular Wireless*, MS PSC Docket Nos. 2006-AD-430 and 2006-AD-431, Arbitration Order (October 10, 2007) ("*MS PSC AT&T Arbitration Order*"), slip op. at 7 ("Accordingly, the panel resolves Issue 6 by concluding that the Suspension Order granted by the Commission does relieve the RLECs of any obligation to establish transport and termination rates pursuant to FCC TELRIC standards to the extent that such obligations may otherwise be applicable to the RLECs.").

[49] *MS PSC AT&T Arbitration Order* at 28.

[50] Including the reciprocal compensation obligations of 47 USC § 251(b)(5).

> The Rural ICOs plainly have the legal ability to assert their right to reciprocal compensation for termination of other carriers' traffic while at the same time asserting their right to petition for suspension or modification. The power to *modify* a reciprocal compensation obligation necessarily applies a power to *suspend* a TELRIC rate calculation requirement for good cause shown, given that the relevant statute authorizes *both suspension and modification*.[51]

Rejecting AT&T Mobility's continuing argument that the State's choice was either to require a TELRIC study or impose bill-and-keep, the NCUC found "no authority in the Act or an Order to support this premise."[52] Given the modification granted by the NCUC, the RLECs "do not *have* to comply with all of the requirements set forth in Section 252(d) of the Act and related FCC rules."[53]

These North Carolina regulatory orders were fully affirmed *twice*. The reviewing Federal District Court, on AT&T Mobility's complaint, recognized the North Carolina's clear authority to devise an alternative methodology,[54] applying only an evidentiary standard of appellate review.[55] The 4th Circuit agreed: "We find that the language of § 251(f)(2) is plain and unambiguous in authorizing State commissions to modify the TELRIC guidelines for the RLECs... The ability to modify the application of the requirement(s) of § 251(b)(5) must

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[51] *In the Matter of Petition of Rural Telephone Companies for Modification Pursuant to 47 U.S.C. 251(f)(2)*, NCUC Docket No. P-100, SUB 159, Order Granting Modification (March 8, 2006), slip op. at 13-14 ("*NCUC Modification Order*").

[52] *In the Matter of Petitions of Ellerbe Telephone Company, MebTel, Inc. and Randolph Telephone Company for Arbitration with ALLTEL Communications and Cingular*, NCUC Docket Nos. P-21, SUB 71, P-35, SUB 107, and P-61, SUB 95, Recommended Arbitration Order (December 20, 2007), slip op. at 28 ("*NCUC Recommended Order*").

[53] *NCUC Recommended Order* at 31; *see also id.* at 29 ("Congress, thus, allowed small and rural telecommunication providers either outright exemption from some requirements of the Act or the ability to apply to state commissions to opt out of or modify certain provisions of the Act that could be economically onerous if applied with unyielding rigidity.").

[54] *NC AT&T Appeal* at 27 ("Because both statutes [§ 252(d)(2) § 251(b)(5)] and refer to the same section of the Act, they are plainly meant to be construed together to give effect to each part. In other words, the pricing standards found in § 252(d)(2)(A) and the accompanying TELRIC regulations only have meaning in the context of the establishment of the reciprocal compensation arrangements required by § 251(b)(5) of the Act.").

[55] *NC AT&T Appeal* at 29 ("The court reiterates that the NCUC's findings of fact are reviewed under the substantial evidence standard. *GTE S., Inc. v. Morrison*, 199 F.3d 733, 745 (4th Cir. 1999). The court first notes that the NCUC had the authority to modify the pricing guidelines and that, as a result, the RLEC defendants were properly released from conducting TELRIC studies.").

therefore include the ability to modify the TELRIC pricing requirements for the RLECs."[56] Notably, the FCC filed a brief with the Court stating that it has never taken a position on the suspension of its pricing guidelines and did not oppose the NCUC's alternative rate setting based upon its own guidelines.[57]

In summary, the TRA's *Suspension Order* fully "suspends"[58] any costing requirement that might otherwise be required under Section 252(d) of the TCA-96[59] or the underlying FCC regulations at Part 51.[60] It was a full and complete remedy granted by the TRA to the RLECs after careful consideration. The TRA's 2008 *Suspension Order* was not appealed and may not now be challenged. The only task remaining is to determine the appropriate alternative basis to establish a "reasonable" reciprocal compensation rate, review the supporting evidence and, then, set the rate.

2. Reciprocal Compensation Rates Voluntarily Agreed to in the Industry Are Higher Than Proposed by the RLECs

The RLECs propose that the TRA, to resolve this docket, adopt a rate of $0.012 (1.2¢) as fair and reasonable based, in part, on comparing this to the rates voluntarily set in the open marketplace.

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[56] *New Cingular Wireless v. Finley*, 674 F.3d 225, 249-51 (4th Cir. 2012) ("*NC Appeal 4th Circuit*").
[57] *NC Appeal 4th Circuit* at 18-19 ("Prior to oral argument, we solicited an amicus brief from the FCC on the issues raised in this appeal. … 'Nor has the FCC clearly opined on whether the Communications Act authorizes state commissions to suspend or modify the application of Federal pricing requirements to small rural telephone companies.'") (citations omitted).
[58] *Suspension Order* at 20 ("For the reasons discussed above, the Coalition's request for suspension of the Authority's requirement to use a TELRIC costing methodology in the setting of transport and termination traffic rates is granted.").
[59] 47 U.S.C. § 252(d).
[60] Including, for example, 47 C.F.R. § 51.701 (the requirement to do cost studies) and § 51.505 (prescribing the methodology).

In addition to the rates described above in the settlements section of this Brief, the following rates have been otherwise accepted in Tennessee:[61]

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

Indeed the remaining CMRS protagonist, AT&T Mobility, has implicitly acknowledged market rates by agreeing to apply a $0.015 (1.5¢) rate in 2001 (i.e., before the arbitration commenced) with Highland Telephone, and which AT&T Mobility continued to pay until July 1, 2012 when the FCC's *USF/ICC Transformation Order* changed compensation. It has also agreed to rates in those same magnitudes elsewhere:

- AT&T Mobility:
  - TDS Telecom (2005) — Range of $0.005 to $0.044 with an average rate of $0.019
  - Industry Tel Co. (TX) (2006) — $0.012
  - Pennsylvania RLECs (2006) — $0.017
  - Riviera Tel (TX) (2007) — $0.022 (indirect) and $0.015 (direct)

[61] All ICA reciprocal compensation rates are the subject of approval by the jurisdictional State regulatory agency and judicial notice is requested.

Rates paid by AT&T Mobility to RLECs during the historic period ranged from $0.012 (1.2¢) to $0.022 (2.2¢).[62] The rates paid by AT&T Mobility to TDS *except* in Tennessee, ranged from $0.005 (.5¢) to $0.044 (4.4¢) with an average rate of $0.019 (1.9¢). The RLEC proposed rate of $0.012 (1.2¢) is much more akin to the $0.01 (1.0¢) that the CMRS carriers, including AT&T Mobility, offered to the RLECs in 2004, prior to the arbitration interim $.002 (0.2¢) rate.[63]

Market based pricing is good public policy, as it: maintains competitive neutrality among the CMRS carriers; provides the RLECs with marketplace determined value for their terminating services; allows the RLECs to maintain and improve their networks; avoids overly intellectualized and complex cost study exercises in futility; and helps maintain affordable local rates.

A market based approach to compensation has previously been adopted by the Authority. In its *Generic USF Docket*, the TRA ruled (September 2004) that an interim rate of $0.015 (1.5¢) was reasonable based upon "approved agreements in the BellSouth region for CMRS traffic transiting BellSouth's network."[64]

It has been used also in Mississippi, where RLECs were able to settle at $0.017 (1.7¢) with most CMRS carriers, including Verizon Wireless, Sprint, Alltel, Centennial, Rural Cellular and T-Mobile, but were not able to reach agreement with AT&T Mobility. The Mississippi

[62] *See* Coalition Comments at 5.
[63] *See* CMRS Providers' Position on Interim Compensation (filed March 2004).
[64] *Generic USF Docket* at 12 ("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.").

Commission in the ensuing arbitration endorsed the benchmarking[65] of this rate as part of the same two prong test of reasonableness proposed by the RLECs here.[66]

In summary, the proposed resolution rate of $0.012 (1.2¢) is at the low end of the rates that wireless carriers, including AT&T Mobility itself, have agreed to with rural local exchange companies during the historic period. The RLECs' resolution rate is reasonable.

3. Interstate Access Rates May be Used to Establish Reasonable Rates

The RLECs agree with the finding of the TRA's *Suspension Order* that cost proceedings are overly time consuming, tedious and prohibitively expensive. They also find themselves concurring with AT&T Mobility that "[i]t makes little sense for the Authority to reopen this docket for lengthy cost proceedings[.]"[67] To the extent that the TRA wishes to compare rates to cost-based pricing in some way, although there is no requirement to do so, it should reference the proposed resolution rate against the RLECs' Federal *inter*state access rates.

The RLECs operate under interstate switched access tariffs administered by the National Exchange Carrier Association ("NECA") or contained in separate company tariff. These access charges are based upon the cost filings of the RLECs participating in the NECA average schedule pool and cost studies presented by NECA to the FCC or by separate cost company filing. As RLEC witness Steven Watkins previously testified in this docket:

> The [RLECs] have proposed to utilize the per-minute rates for identical transport and termination as they use and apply for interstate access purposes. ... *The transport and local switching elements are, in fact, the very service elements used in the transport and termination of the CMRS traffic.* ... The [RLECs] remain willing to utilize the proposed rates set forth in Attachment E in conjunction with the other voluntary terms I have discussed that both accommodate the objectives

[65] *MS PSC AT&T Arbitration Order* at 30 ("The RLEC proposal is to utilize the 1.7 cent per minute rate that the RLECs have used in interconnection agreements with other CMRS carriers that are not parties to this arbitration.").
[66] *MS PSC AT&T Arbitration Order* at 30 ("We agree that the fact that the 1.7 cent rate was used in agreements with other CMRS carriers is not *by itself* a sufficient basis to adopt that rate in this proceeding.").
[67] AT&T Mobility Comments at 4.

> of the CMRS providers and BellSouth while protecting the fundamental rights of the [RLECs].[68]

For convenience, a copy of Attachment E to Mr. Watkins testimony is attached hereto as a *confidential* document (Appendix D), as it was marked during the arbitration hearings.

AT&T Mobility and the other CMRS carriers opposed this approach on the ground that the analysis was not "TELRIC compliant." Mr. Watkins responded:

> As small carriers, the [RLECs] have voluntarily proposed rates that avoid the preparation of additional, very complicated and costly studies, which by their very nature would be burdensome to produce, *in favor of rates that are already justified by FCC accepted cost studies and data that underline the same functional network elements as provided for the transport and termination of interstate traffic.*[69]

Mr. Watkins' suggestion to employ the RLECs' interstate access rate elements was rejected by the Arbitration Panel:

> Although the [Coalition] members voluntarily proposed rates, the majority agreed with the CMRS providers that those rates are not compliant with the required TELRIC methodology. *The rates offered by the [Coalition] members were not based on forward-looking cost studies. Instead, they were derived from interstate access rates, which include embedded costs.* Embedded costs that are permissible in the calculation of access rates are not permissible in the calculation of rates based on forward-looking [incremental] costs.[70]

In view of the Authority's subsequent reversal in the *Suspension Order* of the Panel, the use of the RLECs' interstate access rates as a proxy for cost is, once again, a completely valid basis for comparison and the establishment of a reasonable reciprocal compensation rate.

The interstate access rates shown on Attachment E (Appendix D to this Brief) for the Coalition members are within a range of $0.014 (1.4¢) to $0.034 (3.4¢), with many companies

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[68] Testimony of Steven E. Watkins on behalf of the Coalition of Small LECs and Cooperatives (June 3, 2004) at 35 and 37 (emphasis added).
[69] Rebuttal Testimony of Steven E. Watkins on behalf of the Coalition of Small LECs and Cooperatives (June 24, 2004) at 20 (emphasis added).
[70] *Arbitration Order* at 40 (emphasis added).

above the $0.020 (2¢) level. The average of the Attachment E rates for the Coalition members is $0.021 (2.1¢).

Other States have followed this or a similar approach. When modifying the FCC's TELRIC requirement, the NCUC directed that alternative cost studies be employed under seven stated principals reflecting embedded and common costs.[71] The methods incorporated the data and the formulae filed by NECA with the FCC for rural carriers and resulted in final ICA rates of $0.015 (1.5¢).[72] Iowa has also based RLEC-CMRS reciprocal compensation rates upon the NECA interstate access tariffs.[73]

The MS PSC found interstate access charges to be a "reasonable approximation" of the cost of terminating intraMTA RLEC-CMRS traffic and combined with evidence of the rates contained in negotiated interconnection agreements justified a $0.017 (1.7¢) rate.

> On the basis of the best information on the record before us, we conclude that the 1.7 cent rate is "a reasonable approximation of the additional costs of terminating traffic subject to Section 251(b)(5). Consistent with applicable statutory criteria, the 1.7 cent rate can be established without any need to engage in "any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls. Accordingly, we resolve Issue 8 and 8c by establishing 1.7 cents per minute as the reciprocal compensation rate in the reciprocal compensation agreements between each RLEC and each CMRS provider.[74]
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> ***
>
> We do not propose that the Sec. 251(b)(5) reciprocal compensation traffic should be subjected to access charges in this proceeding. The fact that the 1.7 cent per

[71] *NC AT&T Appeal* at 25 ("As a result, the reciprocal compensation rates approved by the NCUC were not based on TELRIC studies but were based instead on alternative cost studies prepared pursuant to the NCUC guidelines set forth in the Modification Order.").
[72] *NC AT&T Appeal* at 31.
[73] *In re: Arbitration of Sprint Communications*, Iowa Utils. Bd. Docket Nos. ARB-05-2, ARB-05-5 and ARB-05-6, Arbitration Order (March 24, 2006), slip op. at 20 ("Sprint does not take issue with using the NECA Tariff to derive a reciprocal compensation rate, but it proposes adjustments to the rate. After adjusting the four components in the RLEC's rate, Sprint derives a reciprocal compensation rate of $0.013420 per minute. As noted above, both the Sprint rate and the RLEC rate are based on the NECA tariffed rates. Both rates are derived based on how four component parts, when totaled, equal the final rate.").
[74] *MS PSC AT&T Arbitration Order* at 31 ("The RLEC proposal is to utilize the 1.7 cent per minute rate that the RLECs have used in interconnection agreements with other CMRS carriers that are not parties to this arbitration.").

> minute rate approximates the rates charged by RLECs for interstate access charges is, however, a consideration in our evaluation that the rate is reasonable. The 1.7 rate is far lower than the intrastate access charge rates that each RLEC is authorized to charge for the intrastate access services each provides which are functionally equivalent to both interstate access service and the transport and termination of traffic subject to Section 251(b)(5) reciprocal compensation arrangements.[75]

The subsequent Mississippi District Court Appellate Opinion reversed the MSPSC on grounds that the RLECs had waived the suspension, but did not disturb the use of interstate access rates to determine reasonableness of reciprocal compensation.

In summary, the Coalition members' interstate access charges for the subject period (prior to the FCC's *USF/ICC Transformation Order*) were within a range of $0.014 (1.4¢) to $0.034 (3.4¢). The average Coalition members' interstate access rate was $0.021 (2.1¢). The RLEC's proposed indirect reciprocal compensation resolution rate of $0.012 (1.2¢) is almost fifty recent (50%) below this benchmark measure of cost and, thus, again validated as reasonable.

4. The RLECs' Claims Do Not Include the 3% Access Component or Interest, Thus, Rendering the Proposed Resolution Rate Even More Reasonable

In proposing a final reciprocal compensation rate of $0.012 (1.2¢), the RLECs do not seek compensation for either interest on the dollars owed them or the fact that AT&T Mobility previously agreed that three percent of the CMRS-RLEC traffic would be billed at the much higher access rate levels instead of reciprocal compensation.

The application of a six percent legal interest rate would add well over one-half million dollars to the amounts due and would be completely justified as AT&T Mobility has enjoyed the

[75] *Id.* at 31 ("The fact that the 1.7 cent per minute rate approximates the rates charged by RLECs for interstate access charges is, however, a consideration in our evaluation that the rate is reasonable. ... On the basis of the best information on the record before us, we conclude that the 1.7 cent rate is a reasonable approximation of the additional costs of terminating, traffic subject to Section 251(b)(5).").

use of the funds which it should have paid for the services provided by the RLECs. Application of the past due rate of .0292 (approximately 10.7% annual) contained in the RLECs' access tariff would yield an even higher amount due and also would be justified.

Also demonstrating their flexibility, the RLECs will agree to calculate *all* minutes on the basis of a $0.012 (1.2¢) rate rather than also seeking, as AT&T Mobility has already agreed they could, the imposition of switched access charges on three percent of the traffic sent to them. With one-half of that access traffic (1.5%) rated at the average interstate rate of $0.021 (2.1¢) per minute and the other half at an intrastate rate of approximately $0.050 (5¢), the RLECs are clearly foregoing substantial additional revenue from AT&T Mobility.

These concessions make resolution by the TRA easier by not unnecessarily complicating matters, and also demonstrate the Coalition's commitment to reasonable compromise.

5. Bill-and-Keep Does Not Apply

The FCC preempted the States and revised the law in its *USF/ICC Transformation Order* with prospective effect. In doing so, the FCC abandoned the "calling party network pays" model that dominated the intercarrier compensation regimes of the last thirty-plus years.[76] The RLECs acknowledge that the going-forward Federal "default" is now bill-and-keep for local LEC-CMRS traffic, but with an with an effective date of July 1, 2012 – not October 2004 – subject to pending appeals. The FCC's directive is "the bill-and-keep default should apply immediately."[77]

The FCC's preemptive change of tack is not retroactive. The United States Supreme Court has held that: "Where ... the field that Congress is said to have preempted has been traditionally occupied by the States 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest

[76] *FCC USF/ICC Transformation Order*, 26 F.C.C.R. at 17676 ¶ 34.
[77] *Id.* at 18037 ¶ 995.

purpose of Congress.'"[78] That such a Federal action occurred as to the compensation at issue in this proceeding cannot even be arguably maintained until after the *USF/ICC Transformation Order* became effective.

The many other CMRS carriers with whom the RLECs have settled post-*FCC USF/ICC Transformation Order* have not taken such a narrow and self-serving view of that FCC Order. AT&T Mobility should not be permitted to escape the true-up long ago promised by the TRA, which has been honored by all other CMRS carriers.

6. "True-Up" Payments Should be Made Immediately

The initial TRA rate of $0.015 (1.5¢) per minute has been billed by most Coalition members who have no ICA with AT&T Mobility over the historic period (October 2004 through June 2012). Upon receipt of these invoices, AT&T Mobility simply ignored the bills, not even bothering to register a dispute, and paid nothing -- not even the $0.002 (0.2¢) interim rate.[79] AT&T Mobility previously claimed that it had never received a bill from an RLEC and, thus, no charges apply.[80]

AT&T Mobility previously stated that it would not pay any bills, including at the TRA-established interim rate, until an interconnection agreement was completely finalized: "Cingular does not pay invoices for usage received from companies with which it does not have an interconnection agreement."[81]

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[78] *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 715 (1985) (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (citations omitted)).

[79] The TDS Telecom Companies have a separate, temporary "billing agreement" with AT&T Mobility at $0.002 (0.2¢) pending true-up.

[80] This claim is untrue. AT&T Wireless has been provided with copies of bills sent 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 AT&T Wireless if necessary.

[81] "Interim Rate Accounting For Cingular Wireless" filed by AT&T on April 19, 2007 ("AT&T Interim Accounting") at 1.

AT&T Mobility is able to pay from special reserve accounts that it assured the TRA would be set aside for the final true-up. As AT&T Mobility previously stated: "Generally, the accruals will be for the *full billed amount* of the usage charges – not as an admission that such charges are correct, but for accounting purposes."[82] Even if it did not follow this procedure, AT&T Mobility is a huge corporation with immense cash flow and profits.

By refusing to pay or set a reasonable price, this telecommunications giant has had use of the much smaller phone companies' money, forcing them to become involuntary lenders - without interest. This unfortunate situation is exacerbated each and every day AT&T Mobility withholds and refuses to tender payment. The RLECs have been denied payment by AT&T Mobility for ten years. Any payment directed by the TRA should be immediate.

VI. CONCLUSION

In summary, the final and unappealable *Suspension Order* provides the Authority with the wide discretion to determine a reasonable reciprocal compensation rate for CMRS-RLEC traffic. The case precedent and the record of hearing suggests that the Authority may ground its finding upon the rates widely in use in the industry (mid-point of approximately 2.0¢) and the RLECs' cost-based interstate access rates that were in effect during the historic period (2.1¢). The RLECs' proposed rate of 1.2¢ is well below (45% below) these benchmarks, forming a valid and lawful basis for the final resolution of this long-standing proceeding and reasonable compensation between the parties.

For all of the above-stated reasons, the Rural Coalition requests that the Authority set a reciprocal compensation rate of $0.012 (1.2¢) per minute for indirect connection ($0.008 (.08¢) for direct) with AT&T Mobility and order the immediate net payment by AT&T Mobility to the

[82] AT&T Interim Accounting at 1 (emphasis added).

RLECs for the historic period (October 2004 through June 2012), as well as establish this rate for compensation in the event of reversal or modification of the FCC's *FCC USF/ICC Transformation Order* by approving the interconnection agreement attached (Appendix C).

Respectfully submitted,

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April 22, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of April, 2013, a true and correct copy of the foregoing document was served by U.S. Mail or e-mail to:

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Appendix A

Remaining Issue Matrix
Docket No. 03-00585

Issue 8: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect and direct traffic?

AT&T Mobility Position: Bill-and-keep arrangement is the appropriate compensation mechanism. Bill-and-keep methodology was set by the FCC in the *USF/ICC Transformation Order* and applies for both the future, as well as, the historic period. No provision should be made in the ICA for the potential reversal of by the 10th Circuit.

Rural Coalition Position: A reciprocal compensation rate of $0.012 (1.2¢) for indirect interconnection and $0.008 (0.08¢) is fair as measured both by rates voluntarily agreed to elsewhere and interstate access rates. With TRA's *Suspension Order*, the TRA may set rates using its own methodology including by benchmarking. Cost studies are not required and should not be. The ICA should include a provision (See 5.1.2. proposed) that includes a reciprocal compensation rate in the event the *USF/ICC Transformation Order* is reversed on appeal. Proposed ICA attached as Appendix C.

Ruling of Arbiters (January 12, 2006): (No opportunity to address the legal effect of the subsequent *USF/ICC Transformation Order* or the *Suspension Order*.) "The rates offered by the ICO members (rural Coalition) were not based on forward-looking cost studies.... State commissions may, consistent with the FCC rules, set interim rates subject to true-up during the process of establishing TELRIC rates.... Instead, they were derived from interstate access rates, which include embedded costs." *Arbitration Order* at 40. The Arbiters "voted to establish as the interim rate the reciprocal compensation rate set for BellSouth and the TRA's permanent party superseding subject to true-up." *Id.* at 41. This TELRIC-based rate is equal to approximately $0.002 (0.2¢) per minute of use.

Suspension Order (June 30, 2008): The RLECs are excused from TELRIC pricing as was required by the Panel. The interim rate was not amended accordingly, however, and no alternative basis for setting the rate was established.

Appendix B

AT&T Mobility/RLEC Pairs with Arbitration Issue 8 Unresolved

1. AT&T Mobility - Ardmore
2. AT&T Mobility - Concord
3. AT&T Mobility - DeKalb
4. AT&T Mobility - Crockett
5. AT&T Mobility - Humphreys County
6. AT&T Mobility - Loretto
7. AT&T Mobility - North Central
8. AT&T Mobility - Peoples
9. AT&T Mobility - Tellico
10. AT&T Mobility - Tennessee
11. AT&T Mobility - United
12. AT&T Mobility - West Tennessee
13. AT&T Mobility - Yorkville

APPENDIX C

(TN RLEC / AT&T Mobility Draft; March 29. 2013)

TRAFFIC EXCHANGE AGREEMENT

BY AND BETWEEN

TN RLEC

AND

NEW CINGULAR WIRELESS PCS, LLC

TABLE OF CONTENTS

I. Article I

1. INTRODUCTION

This traffic exchange and compensation agreement ("Agreement") is effective as of _____, 2013 (the "Effective Date"), by and between _____ ("TN RLEC"), with offices at _____, and New Cingular Wireless PCS, LLC, [Name all AT&T CMRS partners operating in TN here] d/b/a AT&T Mobility ("AT&T").

2. RECITALS

WHEREAS, TN RLEC is an incumbent Rural Local Exchange Carrier and a Rate of Return Carrier which provides Local Exchange Services in the State of Tennessee; and

WHEREAS, AT&T is a Commercial Mobile Radio Service provider of two-way mobile communications services operating within the State of Tennessee; and

WHEREAS, TN RLEC's entry into this Agreement does not waive its right to maintain that it is a rural telephone company exempt from § 251(c) under 47 U.S.C. 251 (f) of the Communications Act of 1934, as amended; and

WHEREAS, TN RLEC and AT&T respectively terminate traffic that is originated on the other's network and wish to establish traffic exchange and compensation arrangements for exchanging traffic as specified below.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TN RLEC and AT&T hereby agree as follows:

II. Article II

1. DEFINITIONS

Certain terms used in this Agreement shall have the meanings as otherwise defined throughout this Agreement. Other terms used but not defined herein will have the meanings ascribed to them in the Act or in the rules and regulations of the FCC or Authority. The Parties acknowledge that other terms appear in this Agreement, which are not defined or ascribed as stated above. The Parties agree that any such terms shall be construed in accordance with their customary usage in the telecommunications industry as of the Effective Date of this Agreement, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of

interpretation, the following terms used in this Agreement shall have the meanings as specified below:

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten percent (10%).

1.3 "Authority" means the Tennessee Regulatory Authority.

1.4 "Central Office Switch" means a switch used to provide Telecommunications services, including, but not limited to:

(a) "End Office Switch" is a switch in which the subscriber station loops are terminated for connection to either lines or trunks. The subscriber receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an End Office Switch.

(b) "Remote End Office Switch" is a switch in which the subscriber station loops are terminated. The control equipment providing terminating, switching, signaling, transmission, and related functions would reside in a host office. Local switching capabilities may be resident in a Remote End Office Switch.

(c) "Host Office Switch" is a switch with centralized control over the functions of one or more Remote End Office Switches. A Host Office Switch can serve as an end office as well as providing services to other remote end offices requiring terminating, signaling, transmission, and related functions including local switching.

(d) "Tandem Office Switch" is a switching system that establishes trunk-to-trunk connections. A Tandem Office Switch can provide host office or end office switching functions as well as the tandem functions. A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch.

1.5 "Commercial Mobile Radio Services" or "CMRS" has the same meaning as defined at 47 USC § 332(d). The FCC's ruling at FCC 11-161 (¶¶1003-1008) shall apply to the determination of whether a call originates/terminates as a CMRS call.

1.6 "End User" or "Customer" means the residence or business subscriber involved in dialing or accepting a call.

1.7 "Effective Date" means the date first above written.

1.8 "FCC" means the Federal Communications Commission.

1.9 "Jurisdiction Information Parameter" ("JIP") is the required signaling that should be provided to the terminating Party in the case of Direct Trunking and to the Tandem carrier for Indirect Trunking in order to determine appropriate terminating billing records.

1.10 "Local Routing Number" ("LRN") means local routing number and should be provided to the terminating Party in the case of Direct Trunking and to the Tandem carrier for Indirect Trunking in order to determine appropriate terminating billing records. Signaled JIP becomes an LRN when recorded

1.11 "Interconnection" for purposes of this Agreement is the indirect or direct linking of TN RLEC and AT&T networks for the exchange of Local Telecommunications Traffic described in this Agreement.

1.12 "Intermediary Traffic" is traffic that is delivered from a third-party Local Exchange Carrier or other telecommunications carrier such as a CMRS provider, through the network of either Party as an intermediate carrier to an end user of the other Party. In the event that "Intermediary Traffic" which is subject to tariffed access charges under the FCC's Inter-carrier compensation rules is routed over interconnection service facilities covered under this Agreement for any reason, each Party agrees that it will pay the applicable access compensation to the terminating Party for any and all such traffic it sends as an intermediate carrier.

1.13 "InterMTA Traffic" is Telecommunications traffic, which, at the beginning of the call, originates in one MTA and terminates in another MTA.

1.14 "Local Exchange Routing Guide" or "LERG" shall mean the Telcordia Technologies reference containing NPA/NXX routing and homing

1.15 "Local Service Area" means the Major Trading Area identified in Appendix A.

1.16 "Local Telecommunications Traffic" is defined for reciprocal compensation purposes under this Agreement, as Telecommunications traffic that is originated by an End User on one Party's network, and terminated to an End User on the other Party's network within the same

MTA (Local Service Area) at the beginning of the call as determined by the originating and terminating points of the call. For purposes of determining originating and terminating points, the originating or terminating point for TN RLEC shall be the end office serving the calling or called End User, and for AT&T shall be the cell site location which services the calling or called End User at the beginning of the call.

1.17 "Local Exchange Carrier" or "LEC" has the same meaning as defined in 47 U.S.C. § 153(26).

1.18 "Major Trading Area" or "MTA" means the Major Trading Areas as designated by the FCC in 47 C.F.R. § 24.202(a).

1.19 "Mobile Switching Center" or "MSC" is a switching facility that is an essential element of the AT&T network which performs the switching for the routing of calls between and among AT&T subscribers and subscribers in other mobile or landline networks. The MSC is used to interconnect trunk circuits between and among End Office Switches and Tandem Switches, aggregation points, points of termination, or points of presence and also coordinates inter-cell and inter-system call hand-offs and records all system traffic for analysis and billing.

1.20 "NPA" or the "Number Plan Area" also referred to as an "area code" refers to the three-digit code which precedes the NXX in a dialing sequence within the North American Numbering Plan (i.e., NPA/NXX-XXXX).

1.21 "NXX" means the three-digit code, which appears as the first three digits of a seven-digit telephone number within a valid NPA or area code.

1.22 "Party" means either TN RLEC or AT&T, and "Parties" means TN RLEC and AT&T.

1.23 "Point of Interconnection" ("POI") and "Meet Point" mean the location where an originating Party's traffic is deemed to be handed off to the terminating Party's network as specified in Appendix A.

1.24 "Rate Center" means a geographic area that is associated with one or more NPA-NXX codes that have been assigned to a Telecommunications Carrier for its provision of Telecommunications services.

1.25 "Reciprocal Compensation" means an arrangement between two carriers in which each receives compensation from the other for the Transport and Termination on each carrier's network of Local Telecommunications Traffic that originates on the network facilities of the other carrier. For the

purposes of this Agreement, such compensation, regardless of the Party that receives it, is symmetrical.

1.26 "Telecommunications" has the same meaning as defined in 47 U.S.C. § 153(43).

1.27 "Telecommunications Carrier" has the same meaning as defined in 47 U.S.C. § 153(44).

1.28 "Telecommunications services" has the same meaning as defined in 47 U.S.C. § 153(46).

1.29 "Termination" means the switching of Local Telecommunications Traffic at the terminating carrier's End Office Switch, or equivalent facility, and delivery of such traffic to the called End User's premises or mobile handset.

1.30 "Transport" means the transmission and any necessary tandem switching of Local Telecommunications Traffic from the Point of Interconnection between the two carriers to the terminating carrier's End Office Switch that directly serves the called End User, or equivalent facility provided by a carrier other than an incumbent LEC.

2.0 INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument or other third party offering, guide or practice, statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

3.0 SCOPE

3.1 This Agreement relates to exchange of Local Telecommunications Traffic originated on the Parties' respective networks. This Agreement sets forth the terms, conditions, and rates under which the Parties agree to interconnect the CMRS network of AT&T and the ILEC network of TN RLEC for purpose of exchanging Local Telecommunications Traffic, provided that the service provided by AT&T to its Customer is a two-way CMRS. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement does

not address either fixed wireless or WiMax traffic and no right to deliver such traffic is conveyed by the Agreement. The Parties shall not pass Intermediary Traffic to one another.

3.2 AT&T represents that it is a CMRS provider of Telecommunications services to End Users in Tennessee. Additions or changes to AT&T's NPA/NXXs will be as listed in Telcordia's LERG. AT&T's NPA/NXX(s) are listed in the LERG under the OCN(s) set forth in Appendix A. With respect to wireless-to-landline traffic, AT&T shall not deliver traffic to TN RLEC that originates on a non-Party carrier's network.

3.3 TN RLEC represents that it is an incumbent Rural Local Exchange Carrier and a Rate of Return Carrier, under FCC regulatory classifications, which provides Local Exchange Services in the State of Tennessee. TN RLEC's NPA/NXX(s) are listed in the LERG under the OCN(s) set forth in Appendix A. With respect to landline-to-wireless traffic, this Agreement is limited to TN RLEC end user customers' traffic for which TN RLEC has authority to carry.

3.5 Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party.

4.0 SERVICE AGREEMENT

This Agreement provides for the following Interconnection and arrangements between the networks of TN RLEC and AT&T. Additional arrangements that may be mutually agreed to by the Parties in the future will be documented in a separate written amendment to this Agreement.

4.1 Indirect Interconnection. Unless otherwise specified in Appendix A and subject to Section 4.2 below, the Parties shall exchange all Local Telecommunications Traffic indirectly. AT&T shall be responsible for all transport obligations under 47 CFR Section 51.709(c). TN RLEC will be responsible for transport of TN RLEC's originating traffic within the scope of §51.701(b)(2) to an interconnection meet point located within TN RLEC's incumbent service area specified in Appendix A.

When the interconnection point is not located within TN RLEC's incumbent service, area, TN RLEC's responsibility for transport of TN RLEC's originating traffic within the scope of §51.701(b)(2) shall be no more than transport to its meet point at the border of its incumbent service area. For transport obligations and costs that may arise beyond such meet point, the Parties will work cooperatively to consider and if mutually agreeable, to implement, interconnection arrangements that minimize transport costs to both parties, provided that TN RLEC has no

responsibility for any costs related to such alternative arrangements, unless TN RLEC specifically agrees to such responsibility.

If TN RLEC's originated intraMTA traffic, being routed through a third-party transit provider, cannot be distinguished from TN RLEC's originated interMTA traffic, and any other TN RLEC-originated, non-intraMTA traffic, being routed through a third-party transit provider, TN RLEC shall cooperate with the third-party transit provider and AT&T to develop a mutually agreeable traffic study that identifies the percentage of TN RLEC-originated, intraMTA traffic being routed to AT&T through the third-party transit provider, compared to the total, TN RLEC-originated traffic being routed through that transit provider. Company and AT&T will use all reasonable efforts to complete and implement the initial traffic study no later than six months after the initial request for the study by AT&T. Upon request, such study may be updated annually.

4.2 Direct Interconnection. If the combined Local Telecommunications Traffic between the Parties equals 200,000 or more minutes of use per month, for three consecutive months, then the Parties will establish appropriate size, two-way, direct interconnection trunks with the POI designated at a technically feasible meet point on TN RLEC's network as specified in Appendix A. Each Party shall be responsible for one hundred percent (100%) of all the transport facility costs both to (a) deliver traffic originating on its network to and (b) receive traffic originated on the other Party's network from, the meet point POI. This Agreement shall not preclude TN RLEC and AT&T from entering into additional mutually agreed upon direct interconnection arrangements in the future.

4.2.1 If or when established, both Parties will use best efforts to route Local Service Area calls to the other Party over the direct interconnection facilities except in the case of an emergency or temporary equipment failure. Should either Party determine that the other Party is routing its originated Local Service Area calls indirectly, the originating Party agrees to update its routing and translations tables to move such traffic to the direct interconnection facilities within five (5) business days.

4.2.2 Where direct interconnection has been established, each Party will only route traffic over the direct interconnection facilities to the extent the terminating number, based upon NPA-NXXs, has been assigned to the other Party in the originating Party's Local Service Area.

5.0 COMPENSATION

5.1 Traffic Subject to Reciprocal Compensation:

5.1.1 Pursuant to the FCC's Report and Order and Further Notice of Proposed Rulemaking in CC Docket Nos. 96-45 and 01-92; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135 and 10-90; and WT Docket No. 10-208, adopted October 27, 2011 and released November 18, 2011 (FCC 11-161), and as amended by the FCC (the "USF/ICC Reform Order"), effective for traffic exchanged on and after July 1, 2012, bill-and-keep shall be the compensation methodology for Local Telecommunications Traffic exchanged between TN RLEC and AT&T. Under bill-and-keep, neither Party bills the other Party for Transport and Termination of Local Telecommunications Traffic.

5.1.2 Notwithstanding the foregoing, if as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, the FCC's provisions, in the USF/ICC Reform Order, regarding the bill-and-keep arrangements for Local Telecommunications Traffic are reversed or, remanded, then the Parties agree to comply with all requirements of the applicable decision, order or determination. In such event, the parties agree that:

(a) The rate for Reciprocal Compensation for Local Telecommunications Traffic exchanged via Direct Interconnection shall be $0.010 per minute; and
(b) The rate for Reciprocal Compensation for Local Telecommunications Traffic exchanged via Indirect Interconnection shall be $0.015 per minute.

5.2 InterMTA Traffic:

5.2.1 The Parties agree that traffic that is directly or indirectly delivered, may be rated and recorded as Local Telecommunications Traffic, but may have originated and terminated in different MTAs and therefore, is InterMTA Traffic and not Local Telecommunications Traffic. Recognizing that neither Party currently has a way of accurately measuring this InterMTA Traffic, the Parties agree, for the purposes of this Agreement, to a factor of 3% as an estimate of InterMTA Traffic sent by AT&T (TN RLEC will have no InterMTA traffic being sent by it) and that such traffic will be compensated at TN RLEC's switched access rates as set forth in Appendix A split evenly (i.e. 50%) between intrastate and interstate tariffed switched access rates.

5.2.2 At any time after this Agreement is approved by the Authority, but not more often than once every twelve months, either Party may request the creation of joint traffic studies to determine if the percentage of interMTA traffic sent by AT&T to TN RLEC over local interconnection trunks has changed. If those joint studies demonstrate a change from the current applicable interMTA factor in this agreement, the Parties will amend the agreement to reflect the changed factor.

5.3 Calculation of Payments and Billing:

5.3.1 Neither Party shall bill the other for traffic that is more than two (2) years old.

5.3.2 The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

5.3.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment of the disputed amount is required, whether for the original full amount or for the settlement amount, the Non-Paying Party shall pay the full disputed or settlement amounts with interest at the lesser of (i) one and one-half percent (1½%) per month or (ii) the highest rate of interest that may be charged under Tennessee applicable law. In addition, the Billing Party may initiate a complaint proceeding with the appropriate regulatory or judicial entity, if unpaid undisputed amounts become more than ninety (90) days past due, provided the Billing Party gives an additional thirty (30) days' notice and opportunity to cure the default.

5.3.2.2 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of: (i) one and one-half percent (1½%) per month; or (ii) the highest rate of interest that may be charged under Tennessee applicable law.

5.3.2.3 Undisputed amounts shall be paid within thirty (30) days of receipt of invoice from the Billing Party.

5.3.3 All invoices under this Agreement shall be sent to:

AT&T	TN RLEC
Name: _____ Address: _____ _____ Phone: _____	Name: _____ Address: _____ _____ Phone: _____

6.0 NOTICE OF CHANGES

If a Party contemplates a change in its network, which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party, provided, however, that this provision shall not apply to changes necessitated by emergencies or other circumstances outside the control of the party modifying its network.

7.0 GENERAL RESPONSIBILITIES OF THE PARTIES

7.1 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting and, consistent with § 5, measuring and billing traffic from the other Party's network and subject to Section 4 for delivering such traffic to the other Party's network in an acceptable industry standard format, and to terminate the traffic it receives in that acceptable industry standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan. Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.2 Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.

7.3 Each Party is responsible for managing NXX codes assigned to it.

7.4 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of the Common Language Location Identifier ("CLLI") assigned to its switches.

7.5 Each Party agrees to adhere to the blocking requirements for interconnection (P.01) as provided in Telcordia documentation GR145 - Core Compatibility for Interconnection of a Wireless Services Provider and a Local Exchange Company Network.

7.6 SS7 Out of Band Signaling (CCS/SS7) shall be the signaling of choice for interconnecting trunks where technically feasible for both Parties. Use of a third-party provider of SS7 trunks for connecting AT&T to the TN RLEC SS7 systems is permitted. Such connections will meet generally accepted industry technical standards. Each Party is responsible for its own SS7 signaling and therefore, neither Party will bill the other SS7 signaling charges.

7.7 The originating party will be responsible for providing the terminating party with JIP, LRN or other data reasonably agreeable to the terminating party to allow for billing. The terminating party may bill the originating party using the tandem operator's transit reports, or any other data reasonably available to the terminating party.

7.8 Each Party shall be responsible for its own independent connections to the 911/E911 network.

7.9 All originating traffic shall contain basic call information within the Initial Address Message (IAM) such as the calling number and will meet generally accepted industry technical standards. Altering of data parameters within the IAM shall not be permitted.

7.9 The Parties will offer service provider local number portability (LNP) in accordance with FCC rules and regulations. Service provider portability is the ability of users of Telecommunications services to retain, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one Telecommunications Carrier to another.

7.10 The Parties shall provide LNP query, routing, and transport services in accordance with rules and regulations as prescribed by the FCC and guidelines set forth by the North American Number Council ("NANC").

8.0 TERM AND TERMINATION

8.1 Subject to the provisions of § 14, the initial term of this Agreement shall be for a two-year term ("Term"), which shall commence on the Effective Date. Absent the receipt by a Party of written notice from the other Party at least ninety (90) days prior to the expiration of the Initial Term to the effect that such Party does not intend to extend the Initial Term of this

Agreement, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Initial Term. If this Agreement continues in full force and effect after the expiration of the Initial Term, either Party may terminate this Agreement ninety (90) days after delivering written notice to the other Party of its intention to terminate this Agreement.

8.2 If prior to termination other than for default, either Party has requested the negotiation of a successor agreement, then during the period of negotiation of the successor agreement, each Party shall continue to perform its obligations and provide the services described herein until such time as the successor agreement becomes effective. The rates, terms and conditions applying during the interim period between the end of the then-current term of this Agreement and when the successor agreement is executed shall be trued-up to be consistent with the rates, terms and conditions of the successor agreement reached through negotiation or arbitration. The negotiation of such successor agreement shall follow the procedures set forth in Section 252 of the Act, with the date of "request for negotiation" under Section 252 being the date upon which the notice of intention to terminate is submitted.

8.3 If the Parties are unable to negotiate a successor agreement within the statutory time frame set for negotiations under the Act, then either Party has the right to submit this matter to the Authority for resolution pursuant to the arbitration procedures under the Act. If the Parties are unable to negotiate a successor agreement by the end of the statutory time frame, or any mutually agreed upon extension thereof, and neither Party submits this matter to the Authority for arbitration, then the Agreement shall terminate at the conclusion of the statutory time frame or at the end of the extension to the statutory time frame.

8.2 The Parties have worked cooperatively to ensure there are no outstanding balances for the period prior to the Effective Date

8.3 Upon termination or expiration of this Agreement in accordance with this Section:

(a) Each Party shall comply immediately with its obligations as set forth in this Agreement;

(b) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;

(c) The provisions of § 11.0 and § 12.0 shall survive termination or expiration of this Agreement.

8.4 Either Party may terminate this Agreement in whole or in part in the event of a material default of the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and the defaulting Party does not implement mutually acceptable steps to remedy such alleged default within thirty (30) days after receipt of written notice thereof.

9.0 CANCELLATION CHARGES

Except as provided herein, no cancellation charges shall apply.

10.0 SEVERABILITY

10.1 The services, arrangements, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable. However, if any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable time period, either Party may invoke dispute resolution procedures as set forth in this Agreement.

11.0 INDEMNIFICATION

11.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim liability, damage, and expense (including reasonable attorney's fees) to customers and other third parties for:

(1) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;

(2) claims for libel, slander, or infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's customers; and

(3) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.

Notwithstanding this indemnification provision or any other provision in the Agreement, neither Party, nor its parent, partners, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages (as defined in § 12.3).

11.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by customers or other third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand.

(1) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense.

(2) In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

(3) The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

12.0 LIMITATION OF LIABILITY

12.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

12.2 Except as otherwise provided in § 11.0, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

12.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue

or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

13.0 DISCLAIMER

EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD-PARTY.

14.0 REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the Authority, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Authority or the FCC under § 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Authority or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

15.0 CHANGE IN LAW

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Authority as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or

in which the FCC or the Authority makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules), either Party may, by providing written notice to the other party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

If any subsequent regulatory, judicial or other governmental decision, order, determination or action interprets, clarifies, reconsiders, modifies, augments, reverses or vacates the USF/ICC Reform Order, as modified from time to time, either Party make invoke this Section with respect to such subsequent regulatory, judicial or other governmental decision, order, determination or action. If such subsequent regulatory, judicial or other governmental decision, order, determination or action states that it does not abrogate existing commercial contracts or interconnection agreements or otherwise require an automatic "fresh look" at such agreements, such statement shall not, by itself, bar either Party from invoking this Section.

16.0 MOST FAVORED NATION PROVISION

To the extent required by § 252(i) of the Act and 47 C.F.R. § 51.809, AT&T shall be entitled to adopt from TN RLEC any entire Interconnection/Compensation agreement provided by TN RLEC that has been filed and approved by the Authority, for services described in such agreement, on the same terms and conditions. The term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

17.0 DISPUTE RESOLUTION

Except as provided under § 252 of the Act with respect to the approval of this Agreement by the Authority, the Parties desire to resolve disputes arising out of or relating to this Agreement without, to the extent possible, litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

17.1 Informal Resolution of Disputes:

At the written request of a Party, each Party will, within thirty (30) days of such request, appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that non-lawyer, business representatives conduct these

negotiations. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

17.2 Formal Dispute Resolution:

If negotiations fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

17.3 Continuous Service:

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their payment obligations including making payments in accordance with this Agreement.

18.0 MISCELLANEOUS

18.1 Authorization:

18.1.1 TN RLEC is a corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

18.1.2 AT&T is duly organized, validly existing and in good standing under all applicable laws and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

18.2 Compliance:

Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

18.3 Independent Contractors:

Neither this Agreement, nor any actions taken by AT&T or TN RLEC in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between AT&T and TN RLEC, or any relationship other than that of co-carriers. Neither this Agreement, nor any actions taken by AT&T or TN RLEC in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between AT&T and TN RLEC end users or others.

18.4 Force Majeure:

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions or any other circumstances beyond the reasonable control and without fault or negligence of the Party affected (collectively, a "Force Majeure Event"). If any Force Majeure Event occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the Force Majeure Event. During the pendency of the Force Majeure Event, the duties of the Parties under this Agreement affected by the Force Majeure Event shall be abated and shall resume without liability thereafter.

18.5 Confidentiality:

18.5.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a "Disclosing Party") that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary

Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with § 18.5.2 of this Agreement.

18.5.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief, which such Disclosing Party chooses to obtain.

18.5.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

18.6 Governing Law:

This Agreement shall be governed by Federal law, where applicable, and otherwise by the domestic laws of the State of Tennessee without reference to conflict of law provisions. Notwithstanding the foregoing, the Parties may seek resolution of disputes under this Agreement by the FCC, the Authority, or the Tennessee state court, or federal court, as appropriate.

18.7 Taxes:

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide such sale for resale tax exemption certificate may result in no exemption being available to the purchasing Party.

18.8 Assignment:

This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a non-affiliated party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

18.9 Non-Waiver:

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be

construed as a continuing or future waiver of such term, condition, right or privilege.

18.10 Notices:

Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; or (ii) delivered by overnight express delivery service; or (iii) mailed, certified mail, return receipt requested to the following addresses of the Parties:

To: AT&T	To: TN RLEC
Name: _____ Address: _____ Phone: _____ Attn: _____	Name: _____ Address: _____ Phone: _____ Attn: _____
With a copy to: Name: _____ Address: _____ Phone: _____ Attn: _____	With a copy to: Name: _____ Address: _____ Phone: _____ Attn: _____

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the date of actual receipt.

18.11 Publicity and Use of Trademarks or Service Marks:

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

18.12 Joint Work Product:

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

18.13 No Third Party Beneficiaries; Disclaimer of Agency:

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be

construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

18.14 No License:

No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

18.15 Technology Upgrades:

Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise, provided it is to industry standards, and that the Party initiating the upgrade shall provide the other Party written notice at least ninety (90) days prior to the incorporation of any such upgrade in its network which will materially impact the other Party's service. Each Party shall be solely responsible for the cost and effort of accommodating such changes in its own network.

18.16 Trouble Reporting:

In order to facilitate trouble reporting and to coordinate the repair of Interconnection Facilities, trunks, and other interconnection arrangements provided by the Parties under this Agreement, each Party has established contact(s) available 24 hours per day, seven days per week, at telephone numbers to be provided by the Parties. Each Party shall call the other at these respective telephone numbers to report trouble with connection facilities, trunks, and other interconnection arrangements, to inquire as to the status of trouble ticket numbers in progress, and to escalate trouble resolution.

24-Hour Network Management Contact:

For TN RLEC:

NOC/Repair: _____
Fax: _____

For AT&T:
NOC/Repair: _____
Fax: _____

Before either party reports a trouble condition, it must first use its reasonable efforts to isolate the trouble to the other Party's facilities, service, and arrangements. Each Party will advise the other of any critical nature of the inoperative facilities, service, and arrangements and any need for expedited clearance of trouble. In cases where a Party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other party shall use its best efforts to expedite the clearance of trouble.

18.17 Entire Agreement:

The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by writing signed by an officer of each Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates listed below.

AT&T Wireless		TN RLEC	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

TRAFFIC EXCHANGE AGREEMENT
BETWEEN TN RLEC AND AT&T

APPENDIX A

1. Indirect Point of Interconnection (Meet Point): _____. The Parties shall/shall not indirectly interconnect subject to the terms of Section 4 of this Agreement.

2. Direct Point of Interconnection (Meet Point): _____. The exchange boundary meet point between BellSouth (AT&T Tennessee) and TN RLEC is a technically feasible point of interconnection.

3. TN RLEC OCN: _____, including successor OCNs.

4. AT&T OCNs: : 4036, 6534, 6214 and 6010, including successor OCNs.

5. Local MTA: _____

6. Switched Access Rates: Switched access charges shall apply to all traffic that is not Local Telecommunications Traffic and be billed and administered pursuant to the rates, terms and conditions specified in the state and federal tariffs of the Parties. Neither Party shall bill the other for traffic that is more than two (2) years old.

7. Service Order Processing Charges. The Parties shall reciprocally compensate each other for Service Order Processing at the rates provided below. When a Party (the Requesting Party) receives an End User request to change service from the other Party, the Requesting Party will submit a LSR to the other Party to commence the process to effect the service change. Service Order Processing Charges associated with the processing of a LSR order are:

   (a) Basic Initial Service Order Processing Charge equal to $25.00 (Manual) and $3.50 (Electronic) per each initial request by the Requesting Party to the other Party per End User. To be billed to and paid by the Requesting Party. The Service Order Processing Charge, for an LSR will be billed, regardless of whether that LSR is later supplemented, clarified or cancelled.

   (b) Basic Subsequent Service Order Processing Charge equal to $12.50 (Manual) and

$3.50 (Electronic) per each time the Requesting Party submits a revised LSR per End User. To be billed to and paid by the Requesting Party.

PETITION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR ARBITRATION

DOCKET NO. 03-00585-00039

RLEC BRIEF

APRIL 22, 2013

APPENDIX D

CONFIDENTIAL AND PRIVILEGED IN SEPARATE ENVELOPE