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February 27, 2014

Hon. James M. Allison, Chairman
Tennessee Regulatory Authority
502 Deaderick Street
Nashville, TN 37238

In Re: *Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act; Petition for Arbitration of BellSouth Mobility, LLC, BellSouth Personal Communications, LLC and Chattanooga MSA Limited Partnership, collectively dba Cingular Wireless; Petition for Arbitration of AT&T Wireless PCS, LLC dba AT&T Wireless; Petition for Arbitration of T-Mobile, USA, Inc., Petition for Arbitration of Sprint Spectrum LP d/b/a Sprint PCS*
Docket No. 03-00585

Dear Chairman Allison:

Enclosed are the original and four copies of AT&T Mobility's Motion for Clarification in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Very truly yours,

Robert A. Culpepper
by Nyla Lanier
with permission

Robert Culpepper

RAC/nml
Enclosure
1100642

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act; Petition for Arbitration of BellSouth Mobility, LLC, BellSouth Personal Communications, LLC and Chattanooga MSA Limited Partnership, collectively dba Cingular Wireless; Petition for Arbitration of AT&T Wireless PCS, LLC dba AT&T Wireless; Petition for Arbitration of T-Mobile, USA, Inc., Petition for Arbitration of Sprint Spectrum LP d/b/a Sprint PCS*

Docket No. 03-00585

MOTION FOR CLARIFICATION

AT&T Mobility[1] respectfully moves the Authority pursuant to TRA Rule 1220-1-2-.20 to clarify its Final Order of Arbitration Award, issued February 13, 2014, in this docket ("2014 Award").[2] The 2014 Award should be clarified to direct the parties to prepare and submit for Authority review an interconnection agreement ("ICA") conforming with that Award, and with the Order of Arbitration Award the Authority issued in this docket on January 12, 2006 ("2006 Award"). This case is, and has been since its inception more than ten years ago, an arbitration of terms and conditions for an ICA pursuant to section 252(b) of the Telecommunications Act of 1996 ("1996 Act"). Accordingly, the decisions the Authority made in the 2006 Award and in the 2014 Award are decisions about what the parties' interconnection agreements should say – no more and no less. In keeping with the procedural scheme established by the 1996 Act, the next step is for the parties to submit for the Commission's approval or rejection an ICA conforming with the decisions in the two Awards.

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[1] Cingular Wireless and AT&T Wireless merged after this case began and now operate as AT&T Mobility.

[2] For purposes of compliance with the Authority's Rules, AT&T Mobility brings this Motion pursuant to the Rule governing petitions for reconsideration. This Motion does not argue that the Authority committed error

Interconnection Agreement Proceedings under the 1996 Act

As the Authority knows, the 1996 Act requires incumbent local exchange carriers ("incumbent LECs" or "ILECs"), such as the rural and small local exchange companies that are parties to this docket (the "RLECs"), to enter into ICAs with requesting competitive local exchange carriers and CMRS providers, such as AT&T Mobility. These agreements establish rates, terms and conditions on which, among other things, ILECs and requesting carriers interconnect their networks, so that traffic can flow between them. 47 U.S.C. § 251(c)(2). The 1996 Act also requires carriers whose networks are interconnected to make arrangements for the payment of reciprocal compensation (*id.* § 251(b)(5)) for the transport and termination of telecommunications that originate on one carrier's network and terminate on the other's (*id.* § 252(d)(2)).

The 1996 Act not only imposes substantive duties, but also sets forth the procedures by which a requesting carrier may arrive at an ICA with an incumbent LEC for the performance of those duties. Generally, the requesting carrier asks the incumbent LEC to negotiate an ICA. *Id.* § 252(a)(1). The parties may then arrive at an ICA through negotiation. *Id.* If the parties are unable to arrive at a complete agreement, either party may petition the state utility commission to arbitrate the parties' disagreements (*id.* § 252(b)(1)), in which event the commission resolves the issues in accordance with the requirements of section 251 (*id.* § 252(c)).

Parties to an ICA, whether arrived at by negotiation alone or through arbitration, submit the ICA to the state commission, which then approves or rejects the agreement in accordance with criteria set forth in the 1996 Act. *Id.* § 252(e). If either party is aggrieved by a determination the state commission makes in arbitrating or approving or rejecting an ICA, it may challenge the state commission's determination in federal district court. *Id.* § 252(e)(6).

Travel of the Case Relevant to this Motion

As the 2014 Award states (at 1-2), several CMRS providers petitioned the Authority in 2003 to arbitrate certain issues "that prevented the execution of interconnection and reciprocal compensation arrangements" with the RLECs. Two of those CMRS providers were AT&T Mobility's predecessors Cingular Wireless and AT&T Wireless.[3] Their petitions presented legal questions to the Authority (*e.g.*, Issue 1: Does an ICO have a duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?"[4]), but the ultimate question presented by the petitions – like all petitions for arbitration under the 1996 Act – was what language the petitioners' ICAs with the RLECs would include. Thus, the Cingular Wireless petition included proposed contract language for each disputed issue and "a copy of the [ICA] setting forth the terms and conditions that Cingular believes should govern the relationship of the parties," and urged the Authority to issue an Order "approving the Agreement attached hereto."[5] The AT&T Wireless petition included substantially similar language.[6] Likewise, the RLECs submitted proposed contract language for each disputed issue.

On January 12, 2006, the Authority Panel of Directors issued the 2006 Award, which resolved all the issues the parties presented. The 2006 Award resolved the CMRS providers' Issue 8, which concerned reciprocal compensation rates, by adopting BellSouth's previously approved rate, namely, $0.002 per minute of use, as an interim rate, but subject to true-up upon

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[3] Cingular Wireless' petition was assigned Docket No. 03-00586, and AT&T Wireless' petition was assigned Docket No. 03-00587. Both petitions were then consolidated with the Petition of Cellco Partnership d/b/a Verizon Wireless in this docket.

[4] Cingular Wireless petition at 9; AT&T Wireless petition at 8.

[5] Cingular Wireless petition at 7, 31.

[6] AT&T Wireless petition at 6, 29.

the setting of a permanent rate, which the Authority would establish in additional proceedings that the Panel voted to initiate.

With the issuance of the 2006 Award, the parties had all the input they needed from the Authority to finalize ICAs for submission to the Authority for review pursuant to section 252(e) of the 1996 Act. To conform with the resolution of Issue 8, those ICAs would have specified an interim rate of $0.002 per minute of use for the transport and termination of telecommunications traffic, and would have included language providing that upon the establishment of a permanent reciprocal compensation rate, reciprocal compensation amounts that had been paid in the interim would be trued up to that permanent rate. In practice, however, the parties did not arrive at such ICAs in the aftermath of the 2006 Award. Instead, matters proceeded as described in the 2014 Award (at 3-10), after which the Authority issued the 2014 Award.

The 2014 Award establishes (at 25) transport and termination rates of "$0.012 per minute for indirect traffic and $0.008 per minute for traffic exchanged." It does not, however, direct the parties to take any action in light of that determination. In particular, it does not adopt any language to be included in the parties' new ICAs, nor does it require the parties to file ICAs with conforming language.

Argument

In order to avail themselves of the reciprocal compensation rates the Authority established in the 2014 Award, and of the determinations the Authority made in the 2006 Award, the RLECs must finalize interconnection agreements with AT&T Mobility that conform with those Awards, and then join AT&T Mobility in submitting those ICAs to the authority pursuant

to section 252(e)(1) of the 1996 Act.[7] If the Authority approves the ICAs, the parties will then be bound by the provisions of those contracts.

The purpose of an arbitration under the 1996 Act is to establish terms and conditions for an interconnection agreement. Consequently, the determinations that a state commission makes when it resolves arbitration issues are implemented when, and only when, the parties enter into, and the state commission approves, an interconnection agreement that conforms with those determinations. Consistent with this fact, the Authority has in the past directed arbitrating carriers to file an ICA consistent with the Authority's arbitration decisions. For example, in Docket No. 99-00430, which was an arbitration between DeltaCom Communications, Inc. and BellSouth Telecommunications, Inc., the Authority's Final Order of Arbitration, dated February 23, 2001, concluded, "The foregoing Final Order of Arbitration reflects the resolution of Issue 1(a). Additionally, this Order incorporates, as if fully set forth herein, the Interim Order[s] of Arbitration. . . . *BellSouth and DeltaCom shall file their interconnection agreement within thirty (30) days of the entry of this Order* . . . ." (Emphasis added.)

The Authority did not include such language in its Awards in this case, but it would be appropriate to clarify the 2014 Award by doing so now. Indeed, the 2014 Award (like the 2006 Award) can be implemented only by the inclusion of language conforming with that Award in an ICA. As noted above, the 2014 Award does not direct the parties to do anything in light of the establishment of new transport and termination rates. In particular, the Award does not require the payment of any true-up amounts – nor could it properly do so, not only because no true-up amounts have been determined, but also because the only thing it is appropriate for a state

[7] Section 251(e)(1) provides, "Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies." 47 U.S.C. § 252(e)(1).

commission to do in an arbitration is to establish terms and conditions for an interconnection agreement, which binds the parties once the commission approves it.[8]

In addition, while the 2014 Award recognizes (at 19) that the FCC has ruled that all CMRS intraMTA traffic is to be exchanged on a bill-and-keep basis starting July 1, 2012, the 2014 Award does not expressly state that the reciprocal compensation rates established in the Award are to apply only for true-up purposes, and not prospectively or for traffic exchanged before July 1, 2012. Accordingly, AT&T Mobility respectfully requests that the Authority make explicit that the reciprocal compensation rates established in the 2014 Award do not apply to traffic exchanged after June 30, 2012.

Assuming that the Authority provides the suggested clarifications, AT&T Mobility will work with the RLECs to prepare ICAs conforming with the 2006 Award and the 2014 Award, so that the parties can then submit the ICAs to the Authority for review under section 252(e) of the 1996 Act.

The Authority may wish to set a date for the filing of conforming ICAs, though nothing in the 1996 Act requires the Authority to do so. If the Authority does set such a date, AT&T Mobility respectfully suggests that it be sixty days after the issuance of the clarifying Order, rather than the thirty days the Authority allotted in Docket No. 99-0430, both because many ICAs must be prepared here and because the parties will need to re-visit the more than eight-year-old issues that were the subject of the 2006 Order.

[8] AT&T Mobility does not waive, and expressly reserves, its right to oppose approval of the ICA the parties submit to the Authority, to appeal from the 2006 and 2014 Awards and an Order, if any, approving an ICA reflecting those Awards, and to argue that the establishment of a retroactive rate or true-up in an arbitration proceeding is unlawful.

Respectfully submitted,

AT&T MOBILITY

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February 27, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2014, a copy of the foregoing document was served on the parties of record, via the method indicated:

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