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

REPLY IN SUPPORT OF MOTION FOR CLARIFICATION

AT&T Mobility had good reason to ask the Authority to clarify that the parties are to implement the Final Award of Arbitration (the "2014 Award") by submitting conforming interconnection agreements ("ICAs") for the Commission's review pursuant to Section 252(e) of the Telecommunications Act of 1996 – and it had nothing to do with delay.

The RLECs acknowledge that the 2014 Award did not instruct the parties to file conforming ICAs, but assert that "such a directive was implicit." [1] That supposedly implicit directive was not at all clear, at least to AT&T Mobility. Even though AT&T Mobility believed that the rates the Authority established for what the RLECs call the "Historic Period"[2] could be implemented only by means of a conforming ICA, it was not clear from the 2014 Award (implicitly or otherwise) that that was the Authority's intent – not only because the 2014 Award made no mention of a conforming ICA, but also because the tortured travel of this docket could easily have caused the Authority to lose track of the context.[3] AT&T Mobility needs

[1] Response of Tennessee Rural Coalition to AT&T Mobility Motion for Clarification, at 2.

[2] *Id.* at 1.

[3] The RLECs bear full responsibility for the fact that it will have taken more than ten years for this proceeding to yield interconnection agreements. As we explained in our Motion for Clarification (at 4),

confirmation that the Authority shares AT&T Mobility's understanding that the rates established in the 2014 Award must be implemented by means of a conforming ICA; it is not sufficient that the RLECs share that understanding.

In addition to the obvious desirability of having express instructions from the Authority, AT&T Mobility seeks clarification in order to make sure there is no misunderstanding about when a possible appeal from the 2014 Award must be filed. Under controlling federal law, decisions that a state commission makes in arbitrating terms and conditions for an interconnection agreement cannot be challenged in federal court until after the state commission approves the ICA.[4] Thus, any challenge that AT&T Mobility may wish to make to the 2014 Award cannot be made until after the Authority approves the yet-to-be-submitted ICA conforming with the 2014 Award.

Because the 2014 Award did not read like a typical arbitration award (which was understandable, in light of the travel of the case), and did not direct the parties to file a conforming ICA, AT&T Mobility was concerned that if it proceeded in accordance with its understanding as set forth in the preceding paragraph, someone – whether the RLECs or the Authority – might later take the position that Tennessee law required that the 2014 Award be

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the Authority's January 12, 2006, Order of Arbitration Award gave the parties everything they needed to finalize their ICAs. The RLECs could have demanded then that AT&T Mobility join them in preparing and filing conforming ICAs, including a true-up provision for reciprocal compensation, but they chose not to do so.

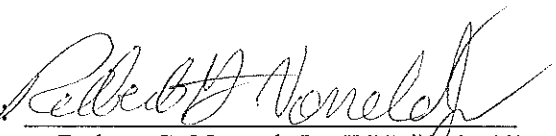
[4] *See, e.g., MCI Telecomm's Corp. v. Ohio Bell Tel. Co.*, 376 F.3d 539, 543 (6th Cir. 2004) ("After the state utilities commission arbitrates the open issues, the parties submit the completed interconnection agreement to the state commission, which either approves the final agreement or rejects it. . . . If either or both parties disagree with the interconnection agreement, as arbitrated by the state commission, they may seek review in federal district court. *Id.* at § 252(e)(6)"); *GTE South v. Breathitt*, 963 F. Supp. 610, 612 (E.D. Ky. 1997) (dismissing complaint seeking review of state commission arbitration decision before conforming ICA was approved or rejected, holds that 1996 Act "does not extend the scope of review to determinations prior to the state of approval or rejection of the agreement").

appealed, if at all, within 60 days' of its issuance,[5] without regard to the submission and approval of a conforming ICA. If the Authority grants the motion for clarification, as AT&T Mobility urges it to do, that would eliminate AT&T Mobility's concern by making clear that the Authority shares AT&T Mobility's understanding that the 2014 Order is not immediately appealable, but instead must be implemented by means of a conforming ICA, from the approval (or rejection) of which under Section 252(e) of the 1996 Act an appeal may be taken later.

It appears the RLECs do not disagree with any of the propositions AT&T Mobility has asked the Authority to clarify. Accordingly, if the RLECs thought that the 60 days that AT&T Mobility suggested in its motion for the preparation and submission of the multiple ICAs the Authority arbitrated was too long, they should have *agreed* with AT&T Mobility's request for an explicit direction that the parties file a conforming ICA, and proposed a shorter period. By instead urging the Authority to deny AT&T Mobility's motion, the RLECs are in effect advocating that there be no deadline for the submission.

Respectfully submitted,

AT&T MOBILITY

By: 

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March 10, 2014

[5] *See* TCA 4-5-322 (b)(1)(A).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been forwarded to opposing party by U.S. Mail with sufficient postage thereon to carry the same to its destination:

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This 10th day of March, 2014.

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By Robert B. Vonee Jr.