at&t

Robert Culpepper
General Attorney

AT&T Tennessee
333 Commerce Street
Suite 2101
Nashville, TN 37201-1800

T: 615.214.6300
F: 615.214.7406

Filed electronically in
TRA Docket Room
04/04/2014

April 4, 2014

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

Re: *Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act; etc.*
Docket No. 03-00585

Dear Chairman Allison:

Pursuant to the Authority's *Order Granting Motion for Clarification,* please find enclosed an original and four copies of *AT&T Mobility's Brief on Reconsideration* and *Proposed Order Granting Motion for Reconsideration.*

Very truly yours,

Robert Culpepper by Chanelle Wade w/permission

Robert Culpepper

1054426

USA Proud Sponsor of the U.S. Olympic Team

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

AT&T MOBILITY'S BRIEF ON RECONSIDERATION

Pursuant to the Authority's Order Granting Motion for Clarification, AT&T Mobility[1] respectfully submits its Brief regarding the need to clarify the Final Order of Arbitration Award issued February 13, 2014 in this docket ("2014 Award").

This case is, and has been since its inception more than ten years ago, an arbitration of terms and conditions for an interconnection agreement ("ICA") pursuant to section 252(b) of the Telecommunications Act of 1996 ("1996 Act"). Accordingly, the decisions the Authority made in the 2014 Award and in the Order of Arbitration Award issued in this docket on January 12, 2006 ("2006 Award") are decisions about what the parties' ICAs 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 under section 252(e) of that Act an ICA containing language that conforms with the decisions on the arbitration issues in the two Awards.

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

For this reason, the 2014 Award should be clarified to direct the parties to prepare and submit for Authority review, under 47 U.S.C. § 252(e), an interconnection agreement ("ICA") conforming with the 2014 Award and 2006 Award.

Background

A. Interconnection Agreement Proceedings Under the 1996 Act

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, must submit the ICA to the state commission to approve or reject 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). No such challenge is ripe, however, until after the state commission has approved or rejected the ICA submitted under Section 252(e). *E.g., GTE North, Inc. v. McCarty*, 978 F. Supp. 827, 833-34 (N.D. Ind. 1997); *GTE South, Inc. v. Breathitt*, 963 F. Supp. 610, 612 (E.D. Ky. 1997).

B. Travel of the Case

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.[2] 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?"[3]), 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

[2] 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.

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

hereto."[4] The AT&T Wireless petition included substantially similar language.[5] 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 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 adopted (at 25) transport and termination rates of $0.012 per minute for indirect traffic and $0.008 per minute for direct 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

[4] Cingular Wireless petition at 7, 31.

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

conforming language. AT&T Mobility then filed a motion for clarification. The Authority treated this as a motion for reconsideration and directed the parties to file briefs and response briefs to address the issues raised by AT&T Mobility's motion. Order Granting Motion for Clarification, at 4 (Mar. 21, 2014).

Argument

In order to avail themselves of the reciprocal compensation rates the Authority adopted 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.[6] If the Authority approves the ICAs, the parties will then be bound by the provisions of those contracts (subject to appeal, of course).

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 ICA that conforms with those determinations. *GTE North*, 978 F. Supp. at 833-34; *GTE South*, 963 F. Supp. at 612. 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

[6] 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).

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 approved 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 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.[7]

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 for traffic terminated between October 2004 and June 2012, and not prospectively. The RLECs agree that this is how the 2014 Award should be read,[8] but to make that clear, 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.

---

[7] AT&T Mobility does not waive, and expressly reserves, its right to oppose approval of the ICA the parties submit to the Authority, and to appeal from the 2006 and 2014 Awards and an Order, if any, approving an ICA reflecting those Awards.

[8] *See* Response of Tennessee Rural Coalition to AT&T Mobility Motion for Clarification, at 1 (filed Mar. 6, 2014).

Assuming that the Authority provides the suggested clarifications (by adopting the proposed Clarifying Order on Reconsideration attached hereto), the parties would 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 thirty (30) days after the issuance of the clarifying Order. In its Motion for Clarification, AT&T Mobility proposed sixty days, but now believes that 30 days should be sufficient. In order to facilitate the process, AT&T Mobility has informed the RLECs that, rather than awaiting the issuance of the Authority's ruling on the present motion, it will be transmit its proposed conforming language to the RLECs on April 28, the first business day after the parties file their reply briefs on reconsideration, and will be prepared to discuss the language immediately thereafter. That should enable the parties to file conforming ICAs or, if the parties are unable to agree on conforming language, their competing language proposals for the Authority's consideration, within 30 days after entry of the Authority's order on reconsideration..

For the reasons stated, AT&T Mobility requests that the Authority adopt the attached proposed order to clarify the 2014 Award and follow the process established by the 1996 Act for creating and reviewing ICAs.

Respectfully submitted,

AT&T MOBILITY

By: Robert G. Norred Jr

Robert G. Norred, Jr. (BPR#012740)
Logan-Thompson, P.C.
30 2nd Street NW
Cleveland, TN 37311
423-7166261
rnorred@loganthompsonlaw.com
Counsel for AT&T Mobility

by Nanette Jr w/permission

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

_____, 2014

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**

[PROPOSED] ORDER GRANTING MOTION FOR RECONSIDERATION

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") to address issues raised in briefs filed on reconsideration of the Final Order of Arbitration Award issued February 13, 2014 in this docket ("2014 Award").

RELEVANT BACKGROUND

In 2003, several Commercial Mobile Radio Service ("CMRS") providers petitioned the Authority to arbitrate certain issues regarding agreements for interconnection and reciprocal compensation arrangements with the rural local exchange carriers ("RLECs"). These petitions presented legal questions to the Authority, but the ultimate question presented by the petitions – like all petitions for arbitration under the 1996 Act – was what language the petitioners'

interconnection agreements ("ICAs") with the RLECs would include. The parties submitted competing proposed ICA language for the issues identified for arbitration.

On January 12, 2006, the Authority Panel of Directors issued an Order of Arbitration Award ("2006 Award"), which resolved all the issues the parties presented. Among other things, the 2006 Award resolved the CMRS providers' Issue 8, which concerned reciprocal compensation rates, by adopting BellSouth's previously approved rate of $0.0024609 per minute of use as an interim rate, subject to true-up upon the setting of permanent rates, which the Authority would establish in additional proceedings that the Panel voted to initiate.

The parties, however, did not arrive at or submit to the TRA for review any ICAs to implement the 2006 Award. Instead, matters proceeded between 2006 and 2014 as described in the 2014 Award. The 2014 Award adopted (at 25) transport and termination rates of $0.012 per minute for indirect traffic and $0.008 per minute for direct traffic exchanged for the period from October 2004 to July 1, 2012 – the same rate for each RLEC. The Authority did not, however, direct the parties to take any specific action in light of that determination.

AT&T Mobility then filed a motion for clarification of the 2014 Order. Treating this as a motion for reconsideration, the Authority voted to require briefing on the issues raised in AT&T Mobility's motion and issued an Order Granting Motion for Clarification on March 21, 2014. We have now reviewed those briefs and address the issues they raise as follows.

FINDINGS

As noted above, this case is an arbitration of interconnection agreements under the 1996 Act, the purpose of which 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. An arbitration decision under the 1996 Act has no effect until it is implemented in an approved ICA.[1] Accordingly, we hereby direct the parties to submit, for our review under section 252(e) of the 1996 Act, ICAs to implement the 2006 Award and 2014 Award.[2] These ICAs are to be submitted within 30 days of this Order.

We also clarify the 2014 Award in one respect. To the extent this was not explicit in the 2014 Award, we now expressly state that the 2014 Award adopts different reciprocal compensation rates for different periods, specifically (1) for the period between October 2004 and June 30, 2012, inclusive, the rate for each RLEC would be as set forth on page 25 of the 2014 order ($0.012 for indirect and $0.008 cents for direct), and (2) for the period from July 1, 2012 going forward, the rate for reciprocal compensation for each RLEC shall be $0.00 in accordance with the FCC's decision,[3] because local traffic will continue to be exchanged on a bill-and-keep basis.

IT IS THEREFORE ORDERED THAT:

1. Within 30 days of the issuance of this Order, the parties are to submit conforming interconnection agreements for review under 47 U.S.C. § 252(e), or, if the parties are unable to agree on conforming language, submit their competing language proposals for the Authority's consideration; and

---

[1] *See GTE North, Inc. v. McCarty*, 978 F. Supp. 827, 833-34 (N.D. Ind. 1997); *GTE South, Inc. v. Breathitt*, 963 F. Supp. 610, 612 (E.D. Ky. 1997).

[2] By directing the parties to submit ICAs implementing the 2006 and 2014 Awards, we do not mean to prohibit the parties from agreeing on language that departs from the Authority's determinations in those Awards. *See* 47 U.S.C. § 252(a)(1) (permitting parties to negotiate and enter into binding ICAs "without regard to the standards set forth in subsections (b) and (c) of Section 251."). Other than pursuant to mutual agreement, however, the ICAs the parties submit are to conform with the 2006 and 2014 Awards.

[3] See 2014 Award at 19-20, discussing *In the Matter of Connect America Fund*, 26 FCC Rcd. 17663 (2011).

2. We clarify that, to the extent it was not explicit in the 2014 Award, the reciprocal compensation rates reflected in the ICAs should be as follows: (i) for the period between October 2004 and June 30, 2012, inclusive, the rate for each RLEC should be as set forth on page 25 of the 2014 Order ($0.012 for indirect and $0.008 cents for direct), and (i) for traffic terminated from July 1, 2012 forward, the rate for reciprocal compensation for each RLEC shall be $0.00, because local traffic will continue to be exchanged on a bill-and-keep basis.

Chairman James M. Allison, Director Kenneth C. Hill and Director David F. Jones acting as Arbitrators concur.

ATTEST:

_____

Earl R. Taylor, Executive Director

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:

[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronic	Mark J. Ashby, Esq. Cingular Wireless 5565 Glenridge Connector, #1700 Atlanta, GA 30342 mark.ashby@cingular.com
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronic	James L. Murphy, III, Esq. Bradley, Arrant, et al. PO Box 198062 Nashville, TN 37219-8062 jmurphy@babc.com
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronic	Henry Walker, Esq. Bradley, Arrant, et al. PO Box 198062 Nashville, TN 37219-8062 hwalker@babc.com
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronic	Sue Benedek, Esq. CenturyLink 14111 Capitol Blvd. Wake Forest, NC 27587 sue.benedek@centurylink.com
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronic	Donald L. Scholes, Esq. Branstetter, Kilgore, et al. 227 Second Ave., N Nashville, TN 37219 dscholes@branstetterlaw.com
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [✓] Electronic	Don Baltimore, Esq. Farris Mathews Bobango, PLC 618 Church St., Ste. 300 Nashville, TN 37219 dbaltimore@farrismathews.com

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[✓] Electronic

Bill Ramsey, Esq.
Neal & Harwell, PLC
150 Fourth Avenue North, #2000
Nashville, TN 37219-2498
ramseywt@nealharwell.com

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[✓] Electronic

Melvin Malone, Esq.
Butler, Snow, et al.
150 Fourth Ave., N, #1200
Nashville, TN 37219-2433
Melvin.malone@butlersnow.com

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[✓] Electronic

Dulaney O'Roark, Esq.
Verizon
5055 North Point Parkway
Atlanta, GA 30022
de.oroark@verizon.com

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[✓] Electronic

Paul Walters, Jr., Esq.
15 E. 1st St.
Edmond, OK 73034
pwalters@sbcglobal.net

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[✓] Electronic

Bill Atkinson, Esq.
Sprint
3065 Akers Mill Road, SE
MailStop GAATLD0704
Atlanta, GA 30339
Bill.atkinson@sprint.com
Susan.berlin@sprint.com
Joseph.cowin@sprint.com

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[✓] Electronic

Norman J. Kennard
Thomas Long Niesen & Kennard
212 Locust Street, Ste. 500
Harrisburg, PA 17101
mkennard@thomaslonglaw.com

This 4th day of April, 2014.

LOGAN-THOMPSON, P.C.

By _____