

**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	:	Docket No. 03-00585
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	:	

**REPLY BRIEF OF THE TENNESSEE RURAL COALITION  
RE AT&T MOBILITY MOTION FOR CLARIFICATION**

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 25, 2014

Pursuant to the “Order Granting Motion for Clarification” issued by the Tennessee Regulatory Authority (“TRA” or “Authority”) on March 21, 2014, the Tennessee Rural Coalition (“Coalition” or “RLECs”), whose members are listed on the cover sheet, files this Reply Brief.

AT&T Mobility’s Brief explains the obvious and then asks the TRA to confirm this “understanding.” There *never* was any dispute about the relief granted the RLEC Coalition in the TRA’s Final Award or the federal law requirement placed upon the parties to file a conforming interconnection agreement.<sup>1</sup> Yet, AT&T Mobility would force the TRA to provide such clarification before it will even consider responding to the RLECs proposed finalized interconnection agreement submitted two months ago.<sup>2</sup>

The one-sided nature of AT&T Mobility’s stance is most plain where it states that “*the RLECs* must finalize the interconnection agreements with AT&T Mobility.... and then join with AT&T Mobility” in submitting them to the TRA.<sup>3</sup> This never was in dispute. The RLECs have always been fully willing to do so and have attempted numerous times to advance this very objective to the stage of a finalized interconnection agreement. The RLECs were successful in negotiating, finalizing *and filing* interconnection agreements with *all the other* wireless carriers who brought this docket originally.

The party that actually needs to step up to address the finalized interconnection order, AT&T Mobility, has yet to respond to any of the RLEC overtures for final resolution. The

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<sup>1</sup> “The Coalition offered to stipulate the answers on February 26, 2014, prior to AT&T Mobility filing the Motion, a suggestion which AT&T Mobility peremptorily rejected.” RLEC Coalition Response to AT&T Mobility Motion for Clarification at 1.

<sup>2</sup> AT&T Brief on Clarification at 7 (“...it will be [sic] transmit its proposed conforming language to the RLECs on April 28...”).

<sup>3</sup> AT&T Brief on Clarification at 5 (emphasis added).

Coalition has *twice* formally submitted what is effectively a finalized interconnection agreement<sup>4</sup> in which the sole remaining language was redlined on April 22, 2013 as an attachment to its Final Brief and, then again, on March 6, 2014 with its Response to AT&T Mobility's Motion for Clarification redlined to reflect the TRA's resolution of the Historic Period rate issue.<sup>5</sup>

AT&T Mobility ignored the RLEC's proposed interconnection agreement during the final award phase one year ago. Similarly there was NO reply to the Coalition's February 26, 2014 overture or the language in the March 6, 2014 pleading. Now, AT&T has stated that it will only respond to the RLEC's proposed interconnection agreement after April 28, 2014 and that it seeks thirty days after the Authority rules to raise additional issues and file an opposing agreement.<sup>6</sup> This foot dragging is an obvious attempt to delay the final day of reckoning and implement the TRA Final Award.<sup>7</sup>

As the Coalition previously reported,<sup>8</sup> the RLECs were, in accordance with TRA Order, in the process of preparing invoices to AT&T Mobility seeking compensation for historic free service. These invoices were tendered to AT&T Mobility in early March 2014. AT&T has

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<sup>4</sup> During the period of August 2012 through March 2013, the RLECs and AT&T Mobility held various conference calls and exchanged numerous drafts to and mutually agreed that the Historic Period rate issue was "the last remaining unresolved issue" between them. See RLEC Coalition Response to AT&T Mobility Motion for Clarification at 3-4 (¶ 3).

<sup>5</sup> On February 26, 2014, prior to AT&T Mobility filing the Petition for Clarification, the Coalition distributed this same proposed final interconnection agreement to AT&T Mobility. RLEC Coalition Response to AT&T Mobility Motion for Clarification at 5 (¶5.a.).

<sup>6</sup> AT&T Brief on Clarification at 7.

<sup>7</sup> As the Rural Coalition explained in its Final Brief over one year ago: "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 to which the FCC and the TRA have recognized the RLECs are entitled. AT&T Mobility has refused to agree to any reasonable result, and cynically continues to delay 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." Rural Coalition Final Brief at 15.

<sup>8</sup> RLEC Coalition Response to AT&T Mobility Motion for Clarification at 5.

disputed the invoices stating: “AT&T is not obligated to pay any charges until the parties have a final and approved interconnection agreement.”<sup>9</sup>

In other words, until the agreements are finalized AT&T Mobility views the almost ten year free ride as continuing. The game that AT&T Mobility seeks to continue has always been obvious -- the non-payment for eight years (2004-2012) of delivery of its customers’ voice traffic to the thirteen Coalition RLECs (almost one half billion minutes). AT&T seems to believe the game should continue by any means possible. This is an affront to the TRA and the opposing parties.

As the RLECs stated almost one year ago: “By refusing to pay or set a reasonable price, this telecommunications giant (AT&T) 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.”<sup>10</sup>

AT&T is clearly resolved to further delay the finalization of an interconnection agreement and can be expected to continue its procedural subterfuges in any number of ways. Most obviously, the next AT&T Mobility anticipated interruption will occur:

- By creating complex and unnecessary interconnection language controversies.<sup>11</sup>
- By refusing to enter into an interconnection agreement while the case is on appeal.<sup>12</sup>

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<sup>9</sup> See, for example, AT&T Dispute to Tellico Telephone March 2014 Invoice tendered under BAN 05780AMM-D14075.

<sup>10</sup> Tennessee Rural Coalition Final Brief at 28.

<sup>11</sup> There should be none as AT&T Mobility has previously conceded that Appendix C is an agreed to and largely finalized document with only the Authority’s resolution of the Historic Period rate missing. RLEC Coalition Response to AT&T Mobility Motion for Clarification at 4-5.

<sup>12</sup> AT&T Mobility must abide by the arbitrated terms of the final TRA-approved interconnection agreement pending appeal, unless stayed by the TRA or the Court.

- By refusing to pay the RLECs until the appellate process is finalized.<sup>13</sup>

The TRA must strongly resist these gambits and enforce its Final Award, providing the relief which was earned so long ago by the RLECs. The TRA Final Award is a very strong defensible document which will be upheld if appealed. There is no reason not to enforce it because of a hollow threat.

The machinations over the submission of interconnection agreements must stop. Indeed, the TRA should rule that AT&T Mobility has waived the right to contest the interconnection agreement offered by the RLEC Coalition. This case has always been designed as contract arbitration under which the parties were directed to exchange draft contract language for approval (“final best offer” or “FBO”). Such was clearly required in the Hearing Officer’s Scheduling Order<sup>14</sup> as fully adopted by the Authority.<sup>15</sup>

As the TRA noted in its final Award: “AT&T Mobility refused to submit a FBO...”<sup>16</sup> Therefore, the Final Order concludes that:

AT&T Mobility did not present FBOs and thus, proposed no viable alternative final rate, leads the panel to find that the RLECs proposed compensation rates of \$0.012 for indirect traffic and \$0.08 for direct traffic are just, reasonable and nondiscriminatory.<sup>17</sup>

The RLECs *did* file an FBO in the form of Attachment C, which AT&T Mobility ignored – as it does now.

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<sup>13</sup> Similarly the obligation to pay is enforceable absent an agency or court ordered stay.

<sup>14</sup> Hearing Officer’s Report & Recommendation at 9 (“April 15, 2013 Initial Briefs Due (which are to include legal argument, final best offers, and the factual/foundational basis supporting positions advanced, as applicable.)”).

<sup>15</sup> Order Approving Hearing Officer’s Report and Recommendation dated May 20, 2013 (“Based on the record, the panel found that the Report and Recommendation is well-reasoned and is the best method for bringing this docket to a close. Thereafter, the panel voted unanimously to accept the Hearing Officer’s Report and Recommendation, including the established briefing schedule, and to schedule this matter for deliberations at a future Authority Conference.”).

<sup>16</sup> TRA Final Award at 25

<sup>17</sup> *Id.*

This same result then should apply here. AT&T Mobility cannot continue to ignore the Authority's directives without having been deemed to have waived its right to further contest the issue – in this case the interconnection agreement language. *AT&T Mobility has previously conceded that it and the RLECs have agreed with all of Attachment C interconnection agreement<sup>18</sup> except for the Historic Period Rate language.<sup>19</sup>* Thus, the only aspect of the RLEC's suggested conforming language which can possibly be disputed by AT&T is at sections 5.1.2 and 5.1.3 of that document.<sup>20</sup> Section 5.1.3 provides:

5.1.3 The following rates are applicable to traffic exchanged between TN RLEC and AT&T during the Historic Period (October 2004 through June 2012) and shall not be subject to the billing limitation set forth in Section 5.3.1:

(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.

The following Traffic Ratio Factors shall be used to estimate the proportion of total Traffic exchanged between the Parties' networks during the Historic Period:

Mobile-to-Land	70%
Land-to-Mobile	30% <sup>21</sup>

Section 5.1.2 simply inserts these rates into the event of reversal of the FCC's *USF/ICC Transformation Order* bill-and-keep regime on appeal (now pending before the 10<sup>th</sup> Circuit). It is

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<sup>18</sup> Attached to RLEC Coalition Response to AT&T Mobility Motion for Clarification, which is the same version as was provided to AT&T Mobility on February 26, 2014.

<sup>19</sup> See RLEC Coalition Response to AT&T Mobility Motion for Clarification at 3-4 (¶3).

<sup>20</sup> See Attachment C (Revised) to RLEC Coalition Response to AT&T Mobility Motion for Clarification.

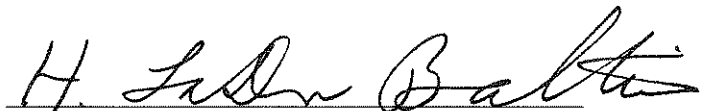
<sup>21</sup> AT&T Mobility previously stipulated in this docket that an originating traffic factor of 70% mobile and 30% landline will be applied. See, Joint Letter by CMRS Providers (Paul Walters) and Rural Coalition (William Ramsey), dated February 8, 2005, and filed with Chairman Pat Miller.

virtually the same, identical language contained in the RLECs agreements with all of the other CMRS carriers as has been approved by the Authority.

To state the obvious, there are no interconnection issues to argue about. The TRA disadvantages no party by deciding the interconnection language now and simply enforcing its Final Award. On the other hand, the delays enjoyed by AT&T Mobility's tactics continue to delay the compensation promised to the RLECs of Tennessee and to their respective customers and that every other wireless carrier has paid with the exception of AT&T Mobility. In response, the TRA needs to make it clear that the RLECs are due the compensation set by in the Final Award and direct AT&T Mobility to pay the amounts billed by the RLECs within thirty days of its order disposing of AT&T Mobility's frivolous motion.

The RLEC Coalition does not oppose the proposed order prepared by AT&T Mobility (attached to its Brief), except to point out that bill and keep is valid only so long as the FCC's *Transition Order* remains enforceable. This is why the RLECs have proposed language in the interconnection agreement which addresses reversal on appeal.<sup>22</sup> AT&T Mobility's draft order at proposed ordering paragraph two should not be read as negating that result.

Respectfully submitted,



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<sup>22</sup> See suggested language at § 5.1.2.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this the 25th day of April, 2014, a true and correct copy of the foregoing document was served by U.S. Mail or e-mail to:

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