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July 29, 2014

Chairman Herbert Hilliard
Tennessee Regulatory Authority
502 Deaderick Street
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Nashville, TN 37243

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 Hilliard:

We are writing jointly on behalf of AT&T Mobility ("AT&T") and the Tennessee Rural Coalition ("RLECs") in connection with the Authority's Motion adopted on July 22, 2014 that the parties file interconnection agreements ("ICAs") conforming with and incorporating the arbitration awards previously issued in this docket.

AT&T Mobility and the RLECs wish to submit such ICAs expeditiously for the Authority's review pursuant to section 252(e)(2) of the Telecommunications Act of 1996. However, while the parties have been able to reach agreement on contract language reflecting almost all of the Authority's resolutions of the issues in those arbitration awards, the parties have not been able to agree on language for one provision in their ICAs, namely, section 5.1.3, and the parties must ask the Authority to resolve this remaining disagreement before they can submit final, complete, ICAs for the Authority's review pursuant to section 252(e)(2).

Accordingly, AT&T Mobility and the RLECs are submitting today briefs explaining their remaining disagreement about contract language, with each side urging the Authority to rule, expeditiously, that its proposed language should be included in the ICAs. The parties have agreed to file reply briefs one week from today. Then, after the Authority has ruled on the disagreement that is the subject of these briefs, the parties will submit ICAs for the Authority's review under section 252(e)(2). The parties have agreed to use their best efforts to file those ICAs, which will reflect the Authority's decision on the remaining contract language dispute, within seven days, but in no event more than 10 days, after the Authority's ruling on the disputed contract language.

For the avoidance of doubt, the parties note that while the RLECs are filing the entire ICA today as an attachment to their brief in order to provide context for resolution of the remaining disagreement, the RLECs are not asking the Authority to approve that ICA at this time.

Thank you for your consideration.

Sincerely,

Robert G. Norred, Jr.

3BEFORE 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 IN OPPOSITION TO RLECS' PROPOSED LANGUAGE FOR INTERCONNECTION AGREEMENT

AT&T Mobility[1] respectfully submits this brief in opposition to language that the RLEC parties to this docket propose to include in their interconnection agreements ("ICAs") with AT&T Mobility in order to implement the Final Award of Arbitration the Authority issued in this proceeding on February 13, 2014 ("2014 Award").

INTRODUCTION

On July 22, 2014, the Authority voted to direct the parties to file ICAs conforming with the previous awards made in this docket, namely, the Order of Arbitration Award the Authority issued on January 12, 2006 ("2006 Award") and the Final Order or Arbitration Award the Authority issued on February 13, 2014 ("2014 Award").[2] The parties have agreed on contract language that implements the two Awards, with the exception of one provision – section 5.1.3 – for which the RLECs propose additional language that AT&T Mobility opposes. The parties are submitting this disagreement to the Authority by means of simultaneous initial briefs, with reply briefs to be filed seven days hereafter.

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

[2] A written order reflecting the July 22 directive has not yet issued.

After the Authority resolves the remaining contract language dispute, the parties will file ICAs for the Authority to review pursuant to section 252(e)(2) of the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. § 252(e)(2). Thus, the only question that is now before the Commission is whether or not to direct the parties to add to the agreed language of section 5.1.3 the additional language the RLECs have proposed, which is set forth below at page 7.

Identification of Current Dispute and Summary of AT&T Mobility Position

The 2006 Award resolved all the issues that AT&T Mobility and the RLECs submitted to the Authority concerning the ICAs they had negotiated. On Issue 8, which concerned reciprocal compensation rates, the Authority adopted an interim rate of $0.0024609 per minute, which the Authority ruled would be subject to true-up after the Authority established a permanent rate.

With the issuance of the 2006 Award, the RLECs had everything they needed to finalize their ICAs with AT&T Mobility. Thus, as the RLECs have acknowledged (*see infra* at 14), the appropriate next step was to prepare ICAs that conformed with the 2006 Award and to file them for TRA review and approval, as contemplated by the 1996 Act. Those ICAs would provide for the parties to pay each other reciprocal compensation at the interim rate the Authority set in the 2006 Award, and would further provide that upon the establishment of a permanent rate, the amounts billed and paid at that interim rate would be trued up.

Some of the RLECs entered into such contracts with AT&T Mobility. Those RLECs (the "Conforming RLECs") billed the $0.0024609 interim rate the Authority set in the 2006 Award, as their contracts provided, and AT&T Mobility paid them that rate. The Conforming RLECs will be entitled to have the amounts that AT&T Mobility paid them trued up to the permanent rate the TRA established in the 2014 Award (subject to AT&T Mobility's right to appeal that Award).

Other RLECs, however (the "Non-Conforming RLECs"), chose not to enter into contracts with AT&T Mobility reflecting the 2006 Award. Consequently, the Non-Conforming RLECs did not bill AT&T Mobility the interim rate the Authority established in that Award. (Likewise, AT&T Mobility did not bill the Non-Conforming RLECs for terminating their traffic.)

Despite the fact that they did not bill AT&T Mobility the interim rates they were required to bill in order to qualify for the true-up the 2006 Award contemplated, *and* despite the fact that the parties agreed as early as 2005 that there would be no billing of traffic more than two years old, the Non-Conforming RLECs now contend that they are entitled to bill AT&T Mobility *for the first time* for traffic exchanged between October 1, 2004, and June 30, 2012 (the "Historic Period") at the rates the Authority established in the 2014 Award, and the RLECs have proposed ICA language reflecting that contention. As we demonstrate below, the Non-Conforming RLECs' proposed language must be rejected for three reasons:

First, the Non-Conforming RLECs, by choosing not to enter into contracts with AT&T Mobility to implement the 2006 Award and not to bill AT&T Mobility the interim rate the TRA established in that Award, waived their right to the true-up contemplated by the Award. Because those RLECs did not bill AT&T Mobility the interim rate, there can be no true-up to that rate, as the 2006 Award contemplated there would be if that rate was billed and paid.

Second, the parties long ago agreed to ICA language that prohibits the billing of traffic that is more than two years old. That language prohibits the RLECs that never billed AT&T Mobility for the traffic they terminated during the Historic Period from billing AT&T Mobility now. The Non-Conforming RLECs propose an exception to the agreed prohibition against

billing for traffic that is more than two years old, but there is no justification for such an exception.

Third, the contract language that the RLECs propose raises issues that the RLECs did not present to the Authority in the arbitration, and that the Authority therefore had no occasion to address. Under a controlling provision in the 1996 Act, it is too late for the Authority to resolve those issues in favor of the RLECs now.

Background: Interconnection Agreement Proceedings under the 1996 Act

The 1996 Act requires incumbent local exchange carriers ("ILECs"), such as the RLEC parties to this docket, to enter into ICAs with requesting carriers 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 the Current Disagreement

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]

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 Issue 8, which concerned reciprocal compensation rates, by adopting BellSouth's previously approved rate, $0.0024609 per minute of use, as an interim rate, but subject to true-up upon the setting of a permanent rate, which the Authority said it would establish in additional proceedings that the Panel voted to initiate.

With the issuance of the 2006 Award, the parties had everything they needed to finalize the contracts they had been negotiating. To conform with the resolution of Issue 8, those contracts would specify an interim reciprocal compensation rate of $0.0024609 per minute of use, and would provide that upon the establishment of a permanent reciprocal compensation rate, the amounts that had been paid in the interim would be trued up to that permanent rate. In

[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.

practice, however, some of the RLECs – the Non-Conforming RLECs – did not enter into such contracts in the aftermath of the 2006 Award. Those RLECs elected not to enter into an ICA with AT&T Mobility (interim or permanent) and consequently elected not to bill AT&T Mobility the $0.0024609 per minute of use interim rate the Authority established.

Eight years after the 2006 Award, the 2014 Award established (at 25) transport and termination rates of $0.012 per minute for indirect traffic and $0.008 per minute for traffic exchanged before July 1, 2012, at which point bill-and-keep (*i.e.* no charges for transport and termination) applies to all such traffic exchanged with AT&T Mobility pursuant to FCC Rule.[4] The Authority did not, however, direct the parties to take any specific action in light of that determination. Accordingly, AT&T Mobility moved the Authority on February 27, 2014, to clarify that the parties were required to prepare and submit for Authority review an ICA conforming with the 2006 and 2014 Awards.

On July 22, 2014, the Authority voted to grant in part and deny in part the Motion for Clarification. Pertinent here, the Authority voted to direct the parties to require AT&T Mobility and the RLECs to file an ICA incorporating all previous awards made in this docket.

The disputed contract language

The parties' disagreement over ICA language to implement the Authority's arbitration awards centers on subsection 5.1.3. Section 5.1 is set forth below in its entirety. It includes agreed language and language recently proposed by the RLECs and opposed by AT&T Mobility. That disputed language is displayed in **bold underscore.** AT&T Mobility proposes no language that is opposed by the RLECs.

[4] FCC Rule 705(a), effective July 1, 2012, provides: "Notwithstanding any other provision of the Commission's rules, by default, transport and termination for Non-Access Telecommunications Traffic exchanged between a local exchange carrier and a CMRS provider within the scope of § 51.701(b)(2) shall be pursuant to a bill-and-keep arrangement . . . ."

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.

5.1.3 **Notwithstanding anything else in this Agreement, including but not limited to 5.3.1, and** [I]n accordance with the Tennessee Regulatory Authority's finding that "based on these findings and the record in this docket, the panel voted unanimously that the interim rates previously established in this docket should be trued-up to the proposed RLEC compensation rates of $0.012 (indirect) and $0.008 cents (direct) for traffic terminated between October 2004 and June 2012" the following rates are applicable to traffic exchanged between TN RLEC and AT&T during the Historic Period (October 2004 through June 2012) and are to be trued up to the interim rates paid by AT&T. **If AT&T has not paid anything to the TN LEC, whether or not TN LEC billed AT&T during the Historic Period, then the full reciprocal compensation rate is to be charged reciprocally for the Historic Period.**:

(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.

(c) 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%.

ARGUMENT

The disputed language reflects two disagreements. The two disagreements are related, but they are separate, and we address them separately below. The bottom line, however, is that

the Non-Conforming RLECs are not entitled to a true-up, because they voluntarily chose not to enter into ICAs with AT&T Mobility and not to bill AT&T Mobility for the traffic the parties exchanged during the Historic Period. As a result, there is nothing for them to true up. And in fact, the Non-Conforming RLECs are not actually seeking a true-up at all. Rather, they want to bill AT&T Mobility now for traffic from 2004-2012 for which they chose not to bill AT&T Mobility before. They should not be allowed to bill such old traffic for the first time. Indeed, the RLECs have agreed to language for the ICA that prohibits both parties from billing for traffic more than two years old, and there is no legitimate reason for creating the exception to that language that the RLECs are proposing. Furthermore, the Authority cannot properly entertain the RLECs' proposed language for the ICA because it raises issues that the RLECs did not present in the arbitration and that the 1996 Act does not permit the Authority to address now.

I. THE 1996 ACT PROHIBITS THE AUTHORITY FROM ADOPTING THE RLECS' PROPOSED LANGUAGE.

The RLECs' proposed language for the ICA presents two issues: (1) Should there be an exception to the agreed two-year limitation on back-billing for traffic exchanged during the Historic Period? (2) Are RLECs that never billed AT&T Mobility at the interim rate entitled to the benefits of a true-up that was intended to apply, and that the parties have agreed is to apply to "the interim rates paid by AT&T"?[5] The RLECs cannot lawfully present these issues to the Authority now, because the 1996 Act strictly limits the issues that a state commission can decide when it arbitrates an ICA. The 1996 Act provides, in Section 252(b)(4)(A):

> The State commission shall limit its consideration of any petition . . . (and any response thereto) to the issues set forth in the petition and in the response . . . .[6]

[5] The quoted language is agreed language in section 5.1.3.

[6] 47 U.S.C. § 252(b)(4)(A).

This Authority has scrupulously adhered to that prohibition against deciding issues not raised in the petition and response, and it should do so here to reject the RLECs' proposed language.

The petitions for arbitration in this docket were filed on November 6, 2003,[7] and the RLECs' response was filed on December 1, 2003. Neither the petitions nor the response presented either of the questions that the RLECs now seek to inject into the case with their proposed language for section 5.1.3. On the contrary, the ICA has included the agreed limitation on back-billing since 2005, and the RLECs have not at any time, until now, suggested that that limitation should not apply to traffic exchanged during the Historic Period. The 2014 Award is therefore silent on this point. Likewise, no party raised until now the question whether the benefits of a true-up should be made available to RLECs that declined to enter an ICA and bill the interim rate during the Historical Period, and the 2014 Award therefore does not address that issue either.

This Authority has consistently enforced Section 252(b)(4)(A) of the 1996 Act by refusing to consider issues that were not set forth in the petition or response. For example, in *Petition for Arbitration of Aeneas Communications, LLC with BellSouth Telecomm's, Inc.*, Docket No. 04-00017, 2006 Tenn. PUC LEXIS 12 (Jan. 6, 2006), the petitioner and the respondent continued to negotiate after the petition for arbitration was filed, and the petitioner thereafter filed a Supplemental Petition raising an issue concerning a port charge that arose during those continued negotiations. The Authority refused to entertain the additional issue, based on Section 252(b)(4)(A). The Authority explained:

> [Petitioner] cites TRA Rule 1220-1-1-02 and TRA Rule 1220-1-2-.22(2) as authority for the proposition that the TRA can add issues in an arbitration proceeding . . . . The Authority's rules are not designed to, nor can they,

[7] There were two petitions, which were consolidated with a petition filed by Verizon Wireless. *See supra* n.2.

> expand the Authority's jurisdiction in a Section 252 arbitration beyond what has been delegated to the Authority under the Federal Telecommunications Act. Because Section 252(b)(4)(A) limits the Authority's consideration only to those issues raised in the Petition for Arbitration or the response, the . . . request to add the porting charge issue to this arbitration should be denied.

2006 Tenn. PUC LEXIS 12 at *7-8.

The January 14, 2005, Order in *Petition of KMC Telecom III, LLC et al. for Arbitration of an Interconnection Agreement with United Telephone Southeast, Inc.*, Docket No. 04-00136, 2005 Tenn. PUC LEXIS 42, is to the same effect. There, the parties to an arbitration moved to abate the proceedings so they could negotiate further in light of revised rules that the FCC issued in light of a court decision that vacated certain previous rules. In their motion, the parties stated that they "agree[d] that no new issues may be raised in the arbitration proceeding, other than those issues that result from their negotiations regarding the above referenced rules and orders." 2005 Tenn. PUC LEXIS at *3. The Authority granted the abatement, but ruled that no new issues could be raised – even if they resulted from the renewed negotiations in light of the recent changes in law. The Commission stated,

> Pursuant to 47 U.S.C. § 252(b)(4)(A), the Authority must limit its consideration to those issues for arbitration set forth in the petition or response. Because the arbitration must be limited to those issues set forth in the petition for arbitration and in the response, the . . . Parties may change or supplement their positions for the purpose of addressing the new FCC rules only as they relate to the issues previously raised in the petition or response.

Id. at *5.

The Authority has been unwavering in its enforcement of Section 252(b)(4)(A). Indeed, in this very case, the Pre-Arbitration Officer relied on that statute to deny a request by AT&T Mobility and other CMRS providers to add three sub-issues to arbitration Issue 8. *See* Order Denying Request to Add Issues to the Final Joint Issues Matrix (Aug. 2, 2004). Two of the sub-

issues related to the impact of the rural exemption on the appropriate pricing methodology for reciprocal compensation, and the third related to the pricing methodology for direct connection. *Id.* at 1. AT&T Mobility and the other CMRS providers argued that the sub-issues could properly be added because the rural exemption was raised in the RLECs' response to their arbitration petitions, and because the petitions themselves "dealt generically with the appropriate pricing regime for all reciprocal compensation," and because the issue of direct interconnection was set forth in the petition even though the word "indirect" was inadvertently omitted. *Id.* at 2. Nonetheless, the Order concluded, "After review of the petitions, the response, the authority cited by the CMRS Providers and a review of Section 252(b)(4)(A), the Pre-Arbitration Officer finds that the proposed Sub-issues . . . are not set forth in the petitions of the response thereto within the meaning of Section 252(b)(4)(A). Therefore, the request to add [the] proposed Sub-issues . . . to the Final Joint Issues Matrix is denied." *Id.* at 3.

Having rigorously enforced Section 252(b)(4) in the past – including adversely to AT&T Mobility in this docket – the Authority cannot properly consider the issues the RLECs' proposed language now attempts to raise, neither of which was even arguably set forth in the 2003 petitions for arbitration or in the RLECs' response thereto. Accordingly, the Authority should reject the RLECs' proposed additional language for section 5.1.3. If a dispute subsequently arises concerning the two issues discussed above – and it may not – the aggrieved party may file a complaint with the TRA. Then and only then would the issue of application of section 5.1.3 to the Historical Period, and/or the effect of failure to bill the interim rate, be properly before the Authority.[8]

[8] The RLECs' request that the Authority adopt their proposed language is inconsistent not only with Section 252(b)(4)(A), but also with the Authority's July 22, 2014, directive that the parties submit an ICA with language conformed to all previous awards made in this docket. The language proposed by the

II. IF THE AUTHORITY ENTERTAINS THE RLECS' PROPOSED LANGUAGE, IT SHOULD REJECT THE RLECS' REQUEST FOR AN EXCEPTION TO THE AGREED TWO-YEAR LIMITATION ON BACK-BILLING.

The first disagreement about language for the ICA relates to the RLECs' proposal to insert the introductory clause, "**Notwithstanding anything else in this Agreement, including but not limited to 5.3.1 . . . .**" To understand the intended effect of that clause, one must know what section 5.3.1 says. That provision – which is agreed – provides, "Neither Party shall bill the other for traffic that is more than two (2) years old." The meaning of section 5.3.1 is clear and undisputed: Traffic that was exchanged in November, 2012, for example, must be billed by November, 2014; if it billed after that, the bill is invalid.

Section 5.3.1 will be included in the parties' ICAs, and assuming it is given effect, it means that as of the date of this brief, the Non-Conforming RLECs and AT&T Mobility cannot bill each other for traffic exchanged before July 29, 2012 – or, differently stated, the Non-Conforming ILECs will never be able to bill AT&T Mobility for traffic terminated by the Non-Conforming ILECs during the Historic Period.

This is as it should be. In fact this Authority has previously imposed an even shorter back-billing limitation. In Docket No. 03-00119, which was an arbitration of an ICA between ITC^DeltaCom ("DeltaCom") and BellSouth, BellSouth initially took the position that it should be able to back-bill for up to six years, which is the limitations period under the Tennessee statute of limitations for breach of contact claims. *See* Docket No. 03-00119, Final Order of Arbitration Award (Oct. 20, 2005) at 67. DeltaCom, on the other hand, proposed that back-billing be limited to ninety days. *Id.* The Authority, finding six years too long and ninety days too short, required the parties to submit final best offers. *Id.* at 69. At that point, BellSouth

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RLECs and shown in bold on page 7 of this brief does not reflect any determination the Authority has made.

proposed a two-year limitation, and DeltaCom proposed a much shorter period: three billing cycles. The Authority adopted DeltaCom's proposal, stating, "BellSouth should not penalize [DeltaCom] for its failure to bill for services in a timely manner. Two years is not a reasonable amount of time for a company to have to carry such liabilities on its books. Therefore . . . , the Arbitrators voted unanimously voted to accept DeltaCom's Final Best Offer to limit back billing to three billing cycles." *Id.* at 70. BellSouth moved the Authority to reconsider this decision, but the Authority affirmed it. Docket No. 03-00119, Order on Reconsideration (May 18, 2006), at 12.

Thus, the two-year limitation on back-billing that will be in the RLEC/AT&T Mobility ICAs is more forgiving than the limitation the Authority imposed in Docket No. 03-00119. This alone is ample reason not to allow the RLECs to escape that limitation. More important, though, is the fact that the RLECs, having *voluntarily* agreed to the two-year limitation, now seek to create an exception that would swallow the rule by exempting traffic exchanged between October, 2004, and June, 2012. The Authority should not permit this.

The RLECs seek to exempt traffic exchanged during the Historic Period from the two-year back-billing limitation by inserting the introductory phrase in the first sentence of section 5.1.3. The phrase should not be included, but even if it is, note that it does not accomplish the RLECs' intent, for that first sentence would then read, in pertinent part:

> Notwithstanding anything else in this Agreement, including but not limited to 5.3.1, . . . the following rates are applicable to traffic exchanged between TN RLEC and AT&T during the Historic Period (October 2004 through June 2012) and ***are to be trued up to the interim rates paid by AT&T.*** (Emphasis added.)

The underscored words make clear that any true-up is to the interim rates ***paid by AT&T***. To the extent that the Non-Conforming RLECs did not bill AT&T Mobility, so that AT&T did not pay the interim rates (or any other rates), the agreed contract language plainly

does not provide for a true-up. The introductory "Notwithstanding" phrase does not change that result.

In any event, however, the *intended* purpose of the RLECs' proposed introductory phrase is improper, for the reasons we have explained, and that phrase therefore should not be included in the ICA.

III. IF THE AUTHORITY ENTERTAINS THE RLECS' PROPOSED LANGUAGE, IT SHOULD REJECT THE RLECS' PROPOSAL TO APPLY A TRUE-UP TO TRAFFIC THAT WAS NEVER BILLED AT THE INTERIM RATE.

When the Authority established an interim transport and termination rate for the arbitrating parties in 2006, and provided for a later true-up to permanent rates, no one contemplated that eight or nine years later, the parties might bill each other *for the first time* for traffic dating back nearly 10 years. Rather, rational parties would have entered into agreements that provided for billing at the interim rates, and for a true-up after a permanent rate was set. Indeed, the RLECs were obliged to enter into such agreements, as the RLECs themselves have admitted. When they opposed AT&T Mobility's request, filed in February of this year, that the Authority clarify that the parties were to file conforming ICAs, the RLECs argued that clarification was unnecessary because "such a directive was implicit" in the arbitration award.[9] Moreover, the RLECs argued, "There can be no real question [of this], since federal law expressly and unambiguously requires that parties submit (and the TRA approve) an interconnection agreement."[10] That was just as true in 2006 as it is today: Even though the 2006

[9] Response to Tennessee Rural Coalition to AT&T Mobility Motion for Clarification (March 6, 2014), at 2.

[10] *Id.*

Award (like the 2014 Award) did not explicitly say so, it was implicit in the 2006 Award that the RLECs were to enter into ICAs reflecting that award.[11]

The Conforming RLECs entered into such contracts, one of which (the "TDS Agreement") is attached hereto as Exhibit 1. The TDS Agreement shows exactly how the true-ups contemplated by the 2006 Award were supposed to work. It recites that the TRA "has established an interim reciprocal compensation rate to be paid by the Parties hereto, subject to true-up, until the TRA establishes a permanent reciprocal compensation rate. " Exhibit 1, ¶ 2. The TDS Agreement then sets forth the interim rate (¶ 3) and other pertinent terms (¶¶ 4-6), and then provides: "This Interim Arrangement is intended as a temporary measure to remain in effect only until the TRA establishes a final reciprocal compensation rate between the parties. At that time . . . , ***the interim reciprocal compensation payments*** made pursuant to this Interim Arrangement ***shall be trued-up*** to the final rate established by the TRA." *Id.* ¶ 7. As the parties to that agreement correctly understood, the interim rate established in the 2006 Award was "to be paid by the Parties." Then, when the TRA established a final rate, ***the amounts paid*** would be "trued up to the final rate established by the TRA."

In order for payments to be trued up, however, there must be payments – and that means there must be bills. Again, this is reflected in the agreed language in section 5.1.3 that unambiguously states that payments "***are to be trued up to the interim rates paid by AT&T.***" The RLECs, however, are asking the Authority to impose a new reciprocal compensation payment obligation on AT&T Mobility by adopting the sentence that the RLECs propose to add to the tail end of section 5.1.3, namely: "If AT&T has not paid anything to the TN LEC, whether

[11] To be clear, those ICAs would have included interim rates, but they would not have been interim agreements. Instead, they would simply have provided for the payment of a true-up when the Authority set a permanent rate, and for an amendment to incorporate that new permanent rate into the ICA.

or not TN LEC billed AT&T during the Historic Period, then the full reciprocal compensation rate is to be charged reciprocally for the Historic Period." At bottom, in other words, the RLECs are asking the Authority to require AT&T Mobility to give a gift to the Non-Conforming RLECs – a multi-million dollar gift that has no basis in the 2006 Award, the 2014 Award, or the notion of a true-up. Simply put, the Non-Conforming RLECs are not entitled to a true-up because they chose not to contract with AT&T Mobility or to bill AT&T Mobility.

CONCLUSION

For the reasons set forth above, the Authority should direct the parties to submit for Authority review pursuant to Section 252(e) of the 1996 Act interconnection agreements that include the language on which the parties have agreed for section 5.1.3 and that exclude the language proposed by the RLECs and opposed by AT&T Mobility.

Respectfully submitted,

AT&T MOBILITY

By: _____

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July 29, 2014

Interim Arrangement

1. This Interim Arrangement is entered into by and between TDS Telecommunications Corporation on behalf of its operating entities in Tennessee listed on Attachment A ("TDS Telecom") and New Cingular Wireless PCS, LLC, on behalf of its related operating entities in Tennessee ("Cingular"). This Interim Arrangement shall be deemed effective as of the date executed by the parties.

2. TDS Telecom and Cingular are currently involved in an arbitration proceeding before the Tennessee Regulatory Authority (TRA), Docket No. 03-00585. In that matter, the TRA has established an interim reciprocal compensation rate to be paid by the Parties hereto, subject to true-up, until the TRA establishes a permanent reciprocal compensation rate to be paid by the Parties. The interim rate is equal to "the reciprocal compensation rate set for BellSouth in the TRA's Permanent Price proceeding (TRA Docket No. 97-01262) subject to true-up."

3. The Parties hereto agree that the interim reciprocal compensation rate to be paid to each other, subject to true-up, consists of the following elements:

A. Local switching:	$0.0008041 / MOU
B. Tandem switching:	$0.0009778 / MOU
C. Common Transport (Facilities Termination)	$.0003871 / MOU
D. Common Transport	$.0000064 / MOU per mile

4. The Parties agree that the reciprocal compensation traffic ratio to be applied to total local tandem routed traffic pursuant to this Interim Arrangement shall be 70% wireless-originated / 30% landline originated.

5. The Parties agree that the interMTA traffic factor to be applied pursuant to this Interim Arrangement shall be 3%, to be paid only by Cingular, split 2% to the interstate and 1% to the intrastate jurisdiction.

6. The Parties further agree that the reciprocal compensation traffic ratio of 70%/30% and the interMTA traffic factor of 3% shall become provisions of an interconnection agreement between the parties, to be executed after completion of Docket No. 03-00585, plus appeals, if any.

7. This Interim Arrangement is intended as a temporary measure to remain in effect only until the TRA establishes a final reciprocal compensation rate between the parties. At that time, or such other time as agreed by the parties, the interim reciprocal compensation payments made pursuant to this Interim Arrangement shall be trued-up to the final rate established by the TRA.

8. The parties agree that Interim Arrangement shall apply to monthly invoices issued by the parties from one day following the date payment of compensation to TDS Telecom by Bellsouth ceased pursuant to order of the TRA in Docket No. 00-00523: October 1, 2004 until the effective date of a permanent interconnection agreement between the parties or as otherwise ordered by the TRA. Payment for all past invoices rendered pursuant to the terms of this Interim Arrangement shall become due within 30 days of the effective date of this Interim Arrangement.

9. There shall be no true-up of payments made pursuant to the interMTA traffic factor of 3%.

10. By entering into this Interim Arrangement, neither Party is waiving any claim, right or argument it may choose to make during subsequent proceedings in Docket No. 03-00585, or appeals, if any.

New Cingular Wireless PCS, LLC	TDS Telecommunications Corporation, as agent for the companies listed on Attachment A
By: Michael J. VanWeelden	By:
Name: Michael VanWeelden	Name: Louis D. Reilly, III
Title: Directory – SCM – Network	Title: Director- Carrier Relations
Date: 4/16/07	Date: 4/24/07

Signature page to the Interim Traffic Arrangement between TDS Telecom (TN Cos) and New Cingular Wireless PCS, LLC.

Attachment A

Concord Telephone Exchange, Inc.

Humphreys County Telephone Company

Tellico Telephone Company, Inc.

Tennessee Telephone Company

NEWDOC

cingular™ WIRELESS

Routing Sheet

TDS Tennessee Interim Interconnection Agreement

Attached is the interim interconnection agreement between Cingular Wireless and four TDS companies in Tennessee to exchange traffic pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and the interim Order of the TRA. The rates include a mileage sensitive element, and will average less than $.0025 per MOU.

The key elements of the agreement include:

- This agreement is effective until replaced by a TRA ordered agreement in the current arbitration.
- The intraMTA traffic ratio is 70/30.
- The interMTA factor is 3%.

Should questions arise, please contact Bill Brown at 404-236-6490.

Name	*Title*	*Signature*	*Date*
Bill Brown	Sr. Interconnection Manager	Bill Brown	4/11/07
Michael Van Weelden	Director-Wholesale Services	MVW	4/16/07
Michael vanEckhardt	Senior Attorney – Supply Chain Management	See attached e-mail.	

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 29th day of July, 2014.

By _____