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November 6, 2003

Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless

Docket No. 03-00587

Please accept for filing the attached Petition for Arbitration submitted by AT&T Wireless. A \$25.00 filing fee is enclosed.

Respectfully submitted,

Beth Fujimoto / BK

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**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

Petition of:

AT&T WIRELESS PCS, LLC
d/b/a AT&T WIRELESS FOR
ARBITRATION UNDER THE
TELECOMMUNICATIONS ACT

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Docket No. _____

**PETITION FOR ARBITRATION OF
AT&T WIRELESS PCS, LLC D/B/A AT&T WIRELESS**

Pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) ("the Act"), AT&T Wireless PCS, LLC d/b/a AT&T Wireless ("AWS") petitions the Tennessee Regulatory Authority ("TRA") to arbitrate certain unresolved issues associated with negotiations for an Interconnection and Reciprocal Compensation Agreement (the "Agreement") between AWS and the members of the Tennessee Rural Independent Coalition ("ICOs") listed on Exhibit 1.

The Federal and Tennessee statutes are unclear whether an individual arbitration petition should be filed for each company with which an interconnection agreement is sought when negotiations have been conducted jointly. Because the filing of approximately twenty-one (21) substantially identical individual arbitration petitions would unnecessarily burden the TRA, AWS respectfully requests the TRA to treat this filing as an individual petition with respect to each ICO identified on Exhibit 1 and that it be considered in one Docket. Alternatively, if the TRA believes the proposed course of action is improper, the TRA could sever each company's proceeding into a separate Docket. In any case, the petition and the proposed form of agreement for each local exchange company would be the same with the exception of the reciprocal compensation transport and termination rate for that company.

PARTIES

AWS is a Commercial Mobile Radio Service ("CMRS") provider with its principal offices located at 7277 164th Avenue, N.E., Redmond, WA 98052. AWS and its affiliates are licensed to provide CMRS within the State of Tennessee. All correspondence, notices, inquiries and orders regarding this Petition should be directed to AWS's counsel:

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The ICOs are a group of local exchange carriers and cooperatives providing service throughout Tennessee. All correspondence, notices, inquiries and orders regarding this Petition should be directed to ICOs' counsel:

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BACKGROUND

On April 3, 2003, the ICOs filed a petition seeking an emergency standstill order to prevent BellSouth Telecommunications, Inc. ("BellSouth") from implementing certain billing provisions (a.k.a. "Meet-Point Billing" or "MPB") pursuant to its interconnection agreements with specific CMRS providers.¹ The ICOs alleged that such provisions would violate terms and conditions of the Primary Carrier Plan ("PCP") between the ICOs and BellSouth. Among other things, the ICOs alleged that the PCP arrangement has "rendered it unnecessary for the CMRS carriers to request interconnection terms and conditions directly with ICOs with respect to the termination of the CMRS traffic."² BellSouth filed a response on April 15, 2003 opposing the ICO request, arguing that its implementation of MPB in the context of interconnection agreements with CMRS providers did not violate the PCP and that the ICOs' rights and obligations for direct and indirect exchange of traffic with CMRS providers are subject to the reciprocal compensation provisions of the Act.³

On April 28, 2003, a joint group of CMRS providers filed Comments explaining that the jurisdictional nature of the traffic was subject to Federal Communications Commission ("FCC") rules governing the interconnection and reciprocal compensation of CMRS and LEC traffic.⁴ On May 5, 2003, the Prehearing Officer issued an Order requiring *inter alia* that the CMRS providers be notified "of the opportunity to participate in collective negotiations with the [ICOs'] Coalition". The date the ICOs received an acceptance from a CMRS provider, or the CMRS

¹ See *In Re: Generic Docket Addressing Rural Universal Service*, Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition, Tennessee Regulatory Authority, Docket No. 00-00523 (April 3, 2003) ("ICO Standstill Request").

² *Id.*, ¶ 5.

³ See *Response to Petition for Emergency Relief Filed by the Tennessee Rural Independent Coalition and Counterclaim of BellSouth, ICO Standstill Request*, p. 2.

⁴ See *Joint Comments of CMRS Carriers, ICO Standstill Request*, p. 4.

providers collectively, would in turn establish the date of receipt for the purpose of determining the time period contained in Section 252(b).⁵ Pursuant to this order, the CMRS providers issued a *bona fide* request to begin interconnection and reciprocal compensation negotiations to the ICOs under Section 252(b) of the Act on May 29, 2003. At the ICOs' request, on June 6, 2003 the CMRS providers confirmed that their request was for negotiations pursuant to Section 251 of the Act. By letter dated June 10, 2003, the ICOs agreed to the collective negotiation process.

Since that time, the CMRS providers and ICOs (individually "Party," collectively "Parties") have met to negotiate terms of an interconnection and reciprocal compensation agreement on several occasions. The first meeting was held in Nashville, Tennessee, on June 2-3, 2003 at BellSouth's facilities. A second meeting was held in Nashville on July 16, 2003. BellSouth was asked to participate at both of these negotiations sessions at the insistence of the ICOs, although the CMRS carriers have maintained that BellSouth's participation is unnecessary for the negotiations of interconnection and reciprocal compensation provisions between the CMRS and ICOs pursuant to Sections 251 and 252 of the Act. In addition to these two face-to-face negotiation sessions, the CMRS and ICOs have engaged in negotiations via teleconference on August 4, September 18, 30 and October 10, 2003 and via correspondence.

As proposed at the June 2, 2003 meeting in Nashville, the CMRS Providers sent a negotiation document to the ICOs on June 20, 2003. The negotiation document was based upon the interconnection and reciprocal compensation arrangement in effect between Verizon Wireless and TDS Telecom and approved by the TRA.⁶ The ICOs provided a redlined counter-

⁵ See *In Re: Generic Docket Addressing Rural Universal Service, Order Granting Stay, Continuance, Abeyance And Granting Interventions*, Docket No. 00-00523, p. 6 at fn. 15 (May 5, 2003) ("May 5, 2003- Order"). On May 12, 2003, in accordance with the Commission's May 5, 2003 Order, the ICOs sent correspondence notifying each affected CMRS provider of its opportunity to participate in collective negotiations with the ICOs.

⁶ The CMRS providers offered this agreement as a starting negotiation document. The document was based upon the current agreement governing the reciprocal compensation and exchange of indirect traffic between TDS and

proposal on July 10, 2003, which proposed terms and conditions for the establishment of a there way agreement between the ICOs, CMRS providers and BellSouth for the exchange of indirect traffic. The CMRS providers subsequently proposed a redline of the ICOs' July 10, 2003 draft on September 5, 2003. At no time have the Parties agreed to a "baseline" negotiation document, but instead have attempted to address the substantive disputes pursuant to an issues list.

Although several attempts have been made by both Parties to consolidate competing language into one document, neither side has agreed to a common document and, therefore, the issue of which document should govern is one of the disputed items in this arbitration petition.

In addition to a long term solution for the disputed traffic, CMRS providers have attempted to resolve issues of interim compensation for traffic terminated by the Parties prior to there being an effective interconnection agreement. On July 30, 2003, the CMRS providers made an offer for an interim reciprocal symmetrical compensation rate for the transport and termination of traffic prior to the adoption of an interconnection agreement between the Parties.⁷ On August 4, 2003, the ICOs rejected this offer, arguing that the FCC's rules governing interim interconnection rates did not apply where the Parties already had an existing arrangement. The CMRS providers dispute this interpretation of FCC Rule 51.715, because they do not have an interconnection arrangement with the ICOs at this time. A second offer for interim compensation was made by the CMRS providers to the ICOs at the October 10, 2003 negotiation session, where the CMRS carriers offered the additional compensation and agreed to omit any reference to the FCC's rules regarding intercarrier compensation. To date, that offer has not been accepted by the ICOs.

Verizon Wireless, as approved by the Commission in Docket No. 02-00973 (November 13, 2002). Both Verizon Wireless and TDS are parties to the collective negotiations.

⁷ See 47 C.F.R. § 51.715(a), (d).

JURISDICTION

AWS requested negotiations with the ICOs on May 29, 2003. Section 252 of the Act provides that a petition for arbitration must be filed between the 135th and 160th day after such a request, and in this case from October 12, 2003 to November 6, 2003 respectively. Accordingly, this Petition is timely filed.

AGREEMENT

Exhibit 2 is a copy of the best and final language AWS believes should govern the relationship of the Parties ("Agreement"). This Agreement is based upon the negotiation document provided by the CMRS providers to the ICOs on June 20, 2003⁸, with modifications and enhancements to reflect the issues discussed in the negotiations between the Parties. The Agreement does not contain any language that was agreed by the ICOs, but does address the disputed issues discussed herein.

ISSUES TO BE ARBITRATED **OVERVIEW**

There is no threshold dispute that the Parties are each subject to the Act. In this regard, AWS understands the Parties agree that:

- a) CMRS providers are "telecommunications carriers" within the meaning of Section 251(a) of the Act;
- b) The local exchange carriers that comprise the ICO Coalition are "telecommunications carriers" within the meaning of Section 251(a) of the Act; and,
- c) Each ICO is an incumbent local exchange carrier within the meaning of Section 251(h) of the Act.

There is however considerable disagreement over the Parties respective rights and obligations under the Act.

⁸ The June 2, 2003 document was in turn based upon the TDS-Verizon Wireless interconnection agreement for Tennessee, approved by the Commission in (Docket No. 02-00973 (November 13, 2002)).

47 U.S.C. § 251(a) of the Act requires all telecommunications carriers to interconnect, directly *or indirectly*, with the facilities and equipment of other telecommunications carriers. In addition, § 251(b)(5) of the Act imposes on all local exchange companies the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications, including for the termination of traffic on a CMRS provider's network.⁹ Despite these rules, the Parties have reached an impasse on the issue of reciprocity. Specifically, the ICOs deny any responsibility to pay for traffic which originates on their network and terminates on a CMRS provider's network where there is indirect interconnection, in particular in these cases where the traffic is carried by an interexchange carrier. The ICOs maintain instead that they should be compensated for such traffic via the access charge regime.

The ICOs' position, however, is directly at odds with the FCC's orders on this issue which prohibit the imposition of access charges on intraMTA traffic between a CMRS carrier and a LEC: "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges."¹⁰

It is this lack of reciprocity and the ICO's imposition of access charges on intraMTA traffic that are the source of most of the disputes between the Parties. Equally problematic is the fact that the ICOs maintain that financial and legal responsibility for traffic terminated indirectly on their network should ultimately be borne by the transiting provider, not by the CMRS provider. The Parties have also been unable to agree on the level of reciprocal compensation

⁹ 47 C.F.R. § 20.11(b)(1).

¹⁰ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*; FCC No. 96-325, 11 FCC Rcd 15499, ¶ 1043 (rel. Aug. 1, 1996). ("Local Competition I" Report and Order")

rates to be charged for transport and termination, or who bears responsibility for the facility transport costs beyond the ICO service territory. In addition, the ICOs claim that they are not required to treat CMRS provider numbers rated in the ICOs' rate centers (or EAS areas) in the same manner that the ICO's or an EAS ILEC's numbers are treated - from either a dialing parity or end user rate prospective. Finally, there are several miscellaneous unresolved issues.

Below are the issues that AWS requests the TRA to arbitrate and resolve. The discussion of each unresolved issue includes references, where applicable, to specific contract sections relating to the dispute.

SCOPE OF INTERCONNECTION OBLIGATION

ISSUE 1: Does an ICO have a duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?

- (i) **AWS's Position:** Yes. The FCC's rules expressly require the ICOs to interconnect directly or indirectly with AWS.
- (ii) **ICO's Position:** During negotiations, the ICOs appeared to agree that they have a duty to interconnect, both directly and indirectly. It is not clear, however, whether the ICOs would take this position in the context of an arbitration proceeding. Further, the ICOs position with respect to compensation arrangements, which is discussed more fully in Issues two (2) and eight (8) below would have the effect of requiring a CMRS provider to have a direct connection before the originating ICO would pay the CMRS provider reciprocal compensation.
- (iii) **Discussion:**

The Act defines the duty of all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."¹¹ In a decision implementing the interconnection provisions of the Act, the FCC reiterated this view:

[W]e conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices.¹²

¹¹ 47 U.S.C. § 251(a)(1). [Emphasis added.]

¹² *Local Competition 1st Report and Order*, ¶ 997.

Indirect interconnection, as the term is used in the industry, refers to traffic that one carrier sends to another through the tandem of a third party. Such interconnection is routinely employed by CMRS providers exchanging traffic with small independent telephone companies. The volume of traffic exchanged does not justify the expense of direct interconnection trunks. This arrangement is standard in the industry, and is recognized in the Act and FCC Regulations.

ISSUE 2a: Do the reciprocal compensation requirements of 47 USC § 251(b)(5) and the related negotiation and arbitration process in § 252(b) apply to traffic exchanged indirectly by a CMRS provider and an ICO?

- (i) **CMRS Position: Yes. The FCC rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered.**
- (ii) **ICO Position: No. The ICOs believe that reciprocal compensation for land-to-mobile traffic is due only when that traffic is delivered via a direct connection.**
- (iii) **Discussion:**

The ICOs argue that section 251(b)(5) reciprocal compensation requirements do not apply to traffic exchanged indirectly and that, instead, something like the FCC's access charge regime applies to such traffic. Thus, the ICOs claim that they should be allowed to charge the intermediate carrier for both calls they originate and terminate and should pay nothing for landline originated traffic to the terminating CMRS provider. The ICOs' position, however, is not supported by the Act or FCC regulations.

The obligation for indirect interconnection is set forth in Section 251(a)(1) of the Act and is applicable to all telecommunications carriers, including the ICOs. The FCC has issued a rule implementing this statutory requirement.¹³ Moreover, 47 CFR § 51.703 explicitly states:

- (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

¹³ See 47 C.F.R. § 51.100(a)(1) imposes a duty upon the ICOs "to interconnect directly or indirectly".

- (b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

Under these rules, reciprocal compensation arrangements, not access-like charges, apply to all "telecommunications traffic". The FCC defines "telecommunications traffic," when it involves a CMRS provider, to be:

. . . [t]elecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this Chapter.¹⁴

In addition, when a carrier originates "telecommunications traffic," it "may not assess charges on any other telecommunications carrier." No distinction is made in any of these rules between direct and indirect traffic.

In sum, then reciprocal compensation principles, not access-like charges, apply to all intraMTA traffic exchanged between the CMRS providers and the ICOs, regardless of who originates the call or how the call is routed.¹⁵ Several state commissions, including those in Oklahoma and Iowa, have recently issued arbitration decisions consistent with this conclusion.¹⁶

Moreover, to the extent the ICOs may claim status as a rural carrier, such status does not exempt them from their section 251(b) obligations. While rural carriers are exempt from direct interconnection provisions of Section 251(c)(2) until a state commission terminates the statutory

¹⁴ 47 C.F.R. § 51.701.

¹⁵ "Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges." Local Competition 1st Report and Order, ¶ 1036.

¹⁶ See Corporation Commission of Oklahoma, *In the Matter of: Application of Southwestern Bell Wireless L.L.C. et al. for Arbitration Under the Telecommunications Act of 1996*, Cause Nos. PUD 200200149, 200200150, 200200151, 200200153, Order No. 466613, p. 4 – Unresolved Issue No. 2 (August 9, 2002) ("[E]ach carrier must pay each other's reciprocal compensation for all intra-MTA traffic whether the carriers are directly or indirectly connected, regardless of an intermediary carrier.") and Iowa Utilities Board, *In Re: Exchange of Transit Traffic*, Docket No. SPU-00-7, TF-00-275, DRU-00-2, Proposed Decision and Order (November 26, 2001). The conclusions in this order were affirmed *In Re: Transit Traffic*, Docket, No. SPU-00-7, TF-00-275, DRU-00-2, Order Affirming Proposed Decision and Order (March 18, 2002).

exemption set forth in Sections 251(f)(1), the obligations set forth in Sections 251(a) and 251(b) are not subject to this exemption. Therefore, any "rural status" based objection the ICOs may make to the jurisdiction of the TRA to resolve this dispute under the process set forth in Section 252(b) should be rejected. Unless, the TRA determines under Section 251(f)(2) that an exemption from the requirements of Section 251(b) is warranted, ICOs are required to comply with the negotiation and arbitration process required by the Act for resolving disputes arising from reciprocal compensation negotiations.¹⁷

ISSUE 2b: Do the reciprocal compensation requirements of 47 USC § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an interexchange carrier ("IXC")?

- (i) **AWS Position: Yes. The FCC rules expressly provide for the payment of reciprocal compensation on all intraMTA traffic without regard to how it may be delivered.**
- (ii) **ICO Position: No. The ICOs believe that reciprocal compensation for land-to-mobile traffic is due only when that traffic is delivered via a direct connection, and in no case is due when such traffic is routed to an IXC.**
- (iii) **Discussion:**

As discussed in ISSUE 2a above, reciprocal compensation obligations apply to all intraMTA traffic regardless of whether the traffic is completed directly or indirectly.¹⁸ Moreover, the reciprocal compensation obligation is not affected by the type of intermediary carrier, be it a transiting carrier or an IXC. In this regard in the *Local Competition 1st Report and Order* the FCC determined that all traffic to or from a CMRS network that originates and

¹⁷ See 47 U.S.C. § 251(f)(2). This provision enables a local exchange carrier with fewer than 2% of the nation's subscriber lines to petition a state Commission for a suspension of the requirements of Section 251(b) or (c). A suspension of Section 251(b)(5) is not automatically afforded to a small local exchange carrier.

¹⁸ See, also, Corporation Commission of Oklahoma, *In the Matter of: Application of Southwestern Bell Wireless L.L.C. et al. for Arbitration Under the Telecommunications Act of 1996*, Cause Nos. PUD 200200149, 200200150, 200200151, 200200153, Order No. 466613, p. 4 – Unresolved Issue No. 2 (August 9, 2002) ("[E]ach carrier must pay each other's reciprocal compensation for all intra-MTA traffic whether the carriers are directly or indirectly connected, regardless of an intermediary carrier.") See also the *Texcom Reconsideration Order*, discussed *infra* at footnote 21.

terminates within the same MTA is subject to transport and termination rates under section 251(b)(5) rather than interstate and intrastate access charges.¹⁹ Thus, for a call originated by an ICO customer that is carried by an IXC and terminates to a wireless carrier within the same MTA under the existing FCC's rules, the ICO is obligated to pay reciprocal compensation charges to the wireless carrier.

It should be noted, however, that AWS's position on this issue does not impact the originating ICO's ability to assess toll charges on its end-users for these calls (assuming they are toll calls) nor does it prevent the originating ICO from billing the IXC according to the current access charge regime.

ISSUE 3: Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO?

- (i) **AWS Position: The carrier on whose network a call originates is responsible for paying the carrier on whose network the call terminates.**
- (ii) **ICO Position: The carrier that delivers the traffic to the terminating carrier's network is responsible for paying the terminating carrier.**
- (iii) **Discussion.**

Under FCC rules, the originating party is clearly and unequivocally responsible to compensate the terminating carrier for all telecommunications traffic the carrier originates and terminates on the other carrier's network. The FCC's intercarrier compensation rules require that the calling party network pay ("CPNP") for the costs of terminating a call originated on a calling party network.²⁰ The transiting carrier bears no responsibility to compensate the terminating carrier.²¹

¹⁹ See *Local Competition 1st Report and Order*, ¶ 1043.

²⁰ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*; FCC No. 01-332, 16 FCC Rcd 9610, ¶ 8 ("Intercarrier Compensation NPRM") and *Local Competition 1st Report and Order*, ¶¶ 1056-1059.

²¹ See *Texcom., d/b/a Answer Indiana, Complainant v. Bell Atlantic Corp., d/b/a Verizon Communications, Defendant*, Order on Reconsideration, FCC No. 02-96, 17 FCC Rcd 6275, ¶¶ 3-4.

Thus when a CMRS provider sends a call through a third party tandem to an ICO, the CMRS provider must compensate the ICO for terminating the call. Neither the CMRS provider nor the ICO may charge the intermediary carrier. The principle is the same, but the charge is reversed, when an ICO sends a call through a third party tandem to a CMRS provider. Neither the CMRS provider nor the ICO may charge the intermediary carrier.

ISSUE 4: When a third party provider transits traffic, must the Interconnection Agreement between the originating and terminating carriers include the transiting provider? (Section I, Scope of Agreement)

- (i) **AWS's Position: No. Interconnection agreements between the CMRS providers and the ICOs should not include third party transiting carriers.**
- (ii) **ICOs' Position: Yes. Any agreement between ICOs and CMRS providers concerning traffic delivered through a third party tandem provider should include the third party.**
- (iii) **Discussion:**

The Act envisions that all carriers will interconnect "directly or indirectly"²² such that an end user of any carrier may call an end user of any other carrier. Because indirect interconnection is allowed, such calls will often transit the network of a third party. The third party may be any carrier with connections to the networks of the originating and terminating carriers.

Because the permutations of potential call routing are vast, the Act does not require interconnection agreements to include all carriers that may be involved in the routing of any particular call. If the law were otherwise, each jurisdiction would have one or at most a few gigantic agreements involving all the carriers that might participate in a call. Instead, the Act requires ILECs to negotiate agreements with each "requesting telecommunications carrier" for

²² 47 U.S.C. § 251(a)(1).

interconnection.²³ The Act thus presumes that each ILEC will execute a two party agreement with carriers that terminate or originate calls exchanged between the networks.

The FCC has specifically ruled that in transiting situations, the intermediary carrier neither originates nor terminates traffic. “In the transiting traffic context, however, the [intermediary] LEC does not ‘originate’ any traffic. Rather, the traffic originates with a third carrier, and terminates with the CMRS carrier.”²⁴ Therefore, there is no reason to require a third party transit provider, such as BellSouth, to be a party to a reciprocal compensation agreement between the originating and terminating carrier. Indeed, such a requirement would run afoul of the duality of the reciprocal compensation obligation, which contemplates only an originating and terminating carrier.

ISSUE 5: Is each party to an indirect interconnection arrangement obligated to pay for the transit costs associated with the delivery of intraMTA traffic originated on its network to the terminating party’s network? (Section IV.B.1&2)

- (i) **AWS’s Position: Yes. The originating party is responsible for paying applicable transit costs associated with the delivery of its traffic to a terminating carrier.**
- (ii) **ICO’s Position: No. An ICO is not responsible for paying any costs outside of its exchange boundary.**
- (iii) **Discussion:**

The FCC has established a “calling party network pays” (“CPNP”) regime for telecommunications traffic. This regime covers all parties that carry telecommunications traffic including both the ICOs and the CMRS providers. Traffic between ICOs and CMRS providers is considered to be telecommunications traffic when a call originates and terminates within the same MTA.²⁵

²³ See 47 U.S.C. § 252(a)(1).

²⁴ *Texcom Inc d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a/ Verizon Communications*, FCC 01-347 (November 26, 2001), ¶ 10.

²⁵ See 47 C.F.R. § 51.701(b)(2).

When an ICO or a CMRS provider is an originating party it is responsible for the costs of delivering its originated intraMTA traffic to a terminating party and compensating the terminating party for the use of its network in the termination of this intraMTA traffic. For CMRS provider originated indirect traffic routed through a third party tandem transit provider, CMRS carriers acknowledge their responsibility to pay the transit provider for their costs associated with delivery of CMRS provider originated traffic to the terminating party's network. These costs typically include a tandem switching charge and charges associated with the common transmission facilities to the subtending LECs' network. Likewise, the ICOs are obligated to pay any third party transit costs associated with delivering their originated traffic to the terminating party in addition to compensating the terminating party for the use of its network.

ISSUE 6: Can CMRS traffic be combined with other traffic types over the same trunk group?

- (i) **AWS's Position: Yes. There is no technological or legal reason for requiring CMRS provider traffic to be delivered over segregated trunk groups. It also would be economically inefficient to require separate and distinct trunk groups for CMRS traffic.**
- (ii) **ICOs' Position: ICOs appear to assert that CMRS traffic should be segregated on separate trunks or separate channels.**
- (iii) **Discussion:**

Today much of CMRS indirect traffic – especially that which is destined for rural ILECs – is carried over multi-jurisdictional trunks. Combining CMRS traffic with intraLATA toll traffic bound for the ICO on the same trunk group is efficient; by aggregating traffic, all traffic can be carried at a lower cost over fewer trunks. The ICOs would eliminate this efficiency by requiring separate trunks for different types of traffic based on the claim that the ICOs cannot measure and bill for multi-jurisdictional traffic carried over combined trunk groups.²⁶ As an initial matter, it remains unclear why the ICOs cannot use the industry standard 11-01-01 records

²⁶ It is unclear whether the ICOs would go further and require separation by individual carriers.

that they receive from the intermediary carrier to bill reciprocal compensation to the CMRS providers, since they appear to use these same records to bill switched access to IXCs. However, in any case the TRA should not mandate the implementation of more costly and inefficient network arrangements simply to facilitate the ICOs' billing.²⁷

DIRECT INTERCONNECTION

ISSUE 7:

- A. Where should the point of interconnection ("POI") be if a direct connection is established between a CMRS provider's switch and an ICO's switch? (Section IV.A1-A2, Definitions - Direct Interconnection, Interconnection)**
- B. What percentage of the cost of the direct connection facilities should be borne by the ICO? (Section IV.A.-A2; Definitions – Direct Connection, Interconnection)**
 - (i) AWS's Position: The POI for a dedicated two-way facility may be established at any technically feasible point on the ICO's network or at any other mutually agreeable point. Pursuant to applicable federal rules, the cost of the dedicated facility between the two networks should be apportioned between the Parties based upon their relative use of such facility.²⁸**
 - (ii) ICOs' Position: The POI must always be at the ICO switch. It is unclear to what extent, if any, the ICOs would ever agree to share in any facility costs.**
 - (iii) Discussion:**

"Direct" interconnection involves a dedicated facility between two carriers' networks without utilizing the network of a third party. Direct interconnection between an ICO and a CMRS provider would involve a dedicated facility from an ICO end office or tandem switch to the CMRS provider's Mobile Switching Center ("MSC"). Such dedicated facilities can be ordered either as one-way trunks (a single trunk group is required for land-to-mobile intraMTA traffic and a separate and distinct trunk group is required for mobile-to-land intraMTA traffic) or

²⁷ See *Local Competition Ist Report and Order*, ¶ 1369 (The FCC anticipated that complying with the interconnection requirements would require ILECs including small ILECs to "use ... engineering, technical, operational, accounting, billing, and legal skills.")

²⁸ AWS recognizes that it may be appropriate to impose a distance limitation on the facility for which proportionate use charges would apply.

two-way trunks (one single combined trunk group carries both mobile-to-land and land-to-mobile intraMTA traffic).

The facilities may be provisioned by a third party or by one of the interconnecting carriers. The charges for such dedicated transport facility links are to be flat-rated,²⁹ and are based upon the Parties' proportional use of the dedicated facility.³⁰

If a Party utilizes a one-way facility to deliver its originating traffic to a terminating Party, then the proportional use rules require the originating Party to pay one-hundred percent (100%) of that facility cost. If the Parties utilize a two-way direct interconnection facility, then the proportional use rule requires the Parties to split the cost based on their percentage of originated intraMTA traffic. This rule is applicable regardless of the provider of the facility.

The POI is the chosen demarcation point between the two carriers' networks and is significant for determining the minute of use (MOU) costs associated with "transport" and "termination" on a terminating carrier's network. Such transport and termination charges are an element of reciprocal compensation that the terminating carrier charges the originating carrier. Transport and termination charges are figured from the POI to the terminating end office. Under the Act the POI can be located at any technically feasible point on the ILEC's network.³¹ The parties, however, may also choose to locate the POI at a "meet point" between the two networks. Location of the POI off the ILEC network is a matter of negotiation.

COMPENSATION FOR INTRAMTA TRAFFIC

ISSUE 8: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic? (Appendix A)

(i) CMRS Position: The TRA should adopt bill-and-keep as the

²⁹ See 47 C.F.R. 51.509(c).

³⁰ See 47 C.F.R. 51.709(b).

³¹ See 47 U.S.C. § 251(c)(2)(B).

- appropriate reciprocal compensation method until the ICOs (1) produce appropriate cost studies, and (2) rebut the presumption of roughly balanced traffic.**
- (ii) **ICO's Position: Reciprocal compensation principles do not apply to traffic exchanged through indirect interconnection.**
- (iii) **Discussion:**

Under FCC regulations, 47 CFR 51.705, only three options are available to the TRA for establishing ICO reciprocal compensation rates:

- (a) An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state TRA, on the basis of:
- (1) the forward-looking economic costs of such offerings, using a cost study pursuant to §§51.505 and 51.511 of this part;
 - (2) default proxies, as provided in §51.707 of this part; or
 - (3) a bill-and-keep arrangement, as provided in §51.713 of this part.

The FCC's default proxy rates have been invalidated and never reinstated. Thus, the only option available to the TRA, in the absence of appropriate cost studies, is bill-and-keep.

Under 47 CFR § 51.713(b), a state commission may impose bill and keep as the required method of reciprocal compensation if the amount of telecommunications traffic between the Parties is "roughly balanced." The FCC recognized that where there is relatively balanced traffic, "bill and keep arrangements may minimize administrative burdens and the transaction costs."³² Under subsection (c) of § 51.713, a state commission may presume that traffic is roughly balanced "unless a party rebuts such a presumption." Moreover, the FCC did not require

³² *Local Competition I" Report and Order*, ¶ 1112.

that the traffic be exactly balanced and the TRA has discretion to establish thresholds for determining that the traffic is roughly balanced.³³

Since the ICOs have not provided any data to rebut the presumption of “roughly balanced” traffic, the TRA should approve bill and keep as the compensation method between the Parties.³⁴

To the extent that the rural carriers present cost data and the TRA decides to move forward with a cost study, the burden is upon each ICO to produce an appropriate cost study, not upon the CMRS providers. 47 C.F.R. § 51.505 provides:

Cost study requirements. An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and §51.511 of this part.

In response to a request from the CMRS providers, the ICOs represented that they did not have any cost studies to support their proposed transport and termination rates and have not produced any cost data at all. Thus, under FCC regulations, the establishment of a reciprocal compensation rate is not appropriate at this time. Bill-and-keep is the only appropriate method of intercarrier compensation until the ICOs produce appropriate cost studies.

ISSUE 9: Assuming the TRA does not adopt bill and keep as the compensation mechanism, should the Parties agree on a factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic? (Appendix A.I.B.2.)

- (i) **AWS’s Position: Yes. There are circumstances under which the Parties may need, or choose, to use factors.**

³³ See *Local Competition 1st Report and Order*, ¶¶ 1113-14. It should be noted that traffic balance is actually irrelevant for determining the efficiency of bill & keep as an intercarrier compensation system, if the assumption that underlies the CPNP system (originating party is the sole causer), is replaced with a more realistic assumption that both the caller and called party benefit from a call. See, e.g., *Inter-carrier Compensation NPRM*, ¶¶ 20-21.

³⁴ See, e.g., Corporation Commission of the State of Oklahoma, *In the Matter of the Application of Southwestern Bell Wireless L.L.C. et al. for Arbitration Under the Telecommunications Act of 1996*, Cause Nos. PUD 200200149, PUD 200200150, PUD 200200151, and PUD 200200153, Order No. 466613 (August 9, 2002).

- (ii) **ICO's Position: The ICOs oppose the use of a traffic factor in situations involving indirect interconnection, because the ICOs believe that reciprocal compensation principles do not apply in such cases.**
- (iii) **Discussion:**

In situations in which a CMRS carrier does not measure traffic it receives from an ICO, or in cases in which the Parties agree that the CMRS carrier will not measure such traffic, interconnection agreements usually contain a so-called "traffic ratio" stipulating the proportion of total traffic originated by the wireless and wireline carrier.

The traditional assumption has been that more wireless to wireline calls are originated, and the ratio has usually been set, by agreement, somewhere between eighty percent/twenty percent and sixty percent/forty percent. In the recent past, however, increasingly more landline to mobile calls have been originated. The CMRS providers believe that the current ratio is closer to fifty/fifty.

ISSUE 10: Assuming that the TRA does not adopt bill and keep as the compensation mechanism for all traffic exchanged and if a CMRS provider and an ICO are exchanging only a *de minimis* amount of traffic, should they compensate each other on a bill and keep basis? If so, what level of traffic should be considered *de minimis*? (Appendix A.1. Introduction and A.I.D.)

- (i) **AWS's Position: Bill and keep is appropriate when the amount of traffic does not justify the cost of recording traffic and producing bills. Less 50,000 minutes per month is clearly *de minimis*.**
- (ii) **ICO's Position: When reciprocal compensation principles apply to traffic exchanged between CMRS providers and ICOs, bill and keep principles are never appropriate.**
- (iii) **Discussion:**

If a CMRS provider and ICO exchange a *de minimis* level of traffic, they should compensate each other on a bill & keep basis. The FCC has recognized that transaction costs and administrative burdens are appropriate considerations when analyzing the merits of bill & keep proposals.³⁵ With many ICOs the CMRS providers exchange a tiny amount of traffic. If

³⁵ See *Local Competition Ist Report and Order*, ¶ 1112 and *Intercarrier Compensation NPRM*, ¶ 51.

the companies were to bill each other for such traffic, the costs of measuring usage, generating a bill, sending the bill, and ensuring collection would exceed the revenues collected from the billing. In such a case, bill and keep is the only reciprocal compensation principle that makes economic sense. Consistent with this analysis, the Oklahoma Corporation Commission has ruled that CMRS providers and ICOs should exchange traffic on a bill and keep basis "until an individual study shows that it is more economically and justifiably appropriate to do otherwise."³⁶ AWS recommends that the TRA make the same ruling.

COMPENSATION FOR INTERMTA TRAFFIC

ISSUE 11: Should the Parties establish a factor to delineate what percentage of traffic is interMTA and thereby subject to access rates? If so, what should the factor be? (Appendix A.II)

- (i) **AWS's Position:** Yes. AWS has negotiated interMTA factors with other similarly situated LECs in other states, and AWS would expect a negotiated interMTA factor to be within the zero to five percent range.
- (ii) **ICO's Position:** It appears the ICOs would like to negotiate an interMTA factor, but AWS does not know what factor they would accept.
- (iii) **Discussion:**

Under FCC regulations, reciprocal compensation principles apply to "telecommunications traffic," which in the case of CMRS providers is defined as "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area."³⁷ By definition, traffic that, at the beginning of the call, originates and terminates in different MTAs is not subject to reciprocal compensation principles. Instead, such traffic is subject to access charges.

³⁶ See Corporation Commission of the State of Oklahoma, *In the Matter of the Application of Southwestern Bell Wireless L.L.C. et al. for Arbitration Under the Telecommunications Act of 1996*, Cause Nos. PUD 200200149, PUD 200200150, PUD 200200151, and PUD 200200153, Final Order, Order No. 468958 (Oct. 22, 2002).

³⁷ 47 CFR § 51.701(b)(2).

With current technology, neither the CMRS providers nor the ICOs are able to determine whether a call, at its inception, is interMTA or intraMTA. In theory, call details exist at the switch level to make such identification, but no software currently can produce usable records from the call detail. For that reason, interconnection agreements between CMRS providers and ICOs have traditionally included an "interMTA factor" delineating the percentage of total traffic exchanged between the Parties that, at the beginning of the call, originates in one MTA but terminates in another. Generally AWS has been able to negotiate an interMTA factor in the 0%-5% range and would be willing to agree to a factor in this range with the ICOs in this proceeding.

DIALING AND END USER RATE PARITY

ISSUE 12: Must an ICO provide dialing parity and charge its end users the same rates for calls to a CMRS NPA/NXX as calls to a landline NPA/NXX in the same rate center? (Section XV.B).

- (i) **AWS's Position: Yes. The FCC rules expressly require dialing parity and other state commission decisions and basic principles of fairness and non-discrimination requires the ICOs to charge the same end user rates.**
- (ii) **ICO's Position: There is no dialing parity requirement unless the CMRS provider has a direct connection and either NPA/NXXs in the ICO rate center or in an end office to which the ICO has an extended area calling agreement.**
- (iii) **Discussion:**

This issue is comprised of two sub-issues. On the first sub-issue, under existing law the ICOs are clearly required to provide dialing parity to CMRS providers. 47 C.F.R. § 51.207 provides that a "LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call *notwithstanding the identity of the customer's or the called party's telecommunications service provider.*"³⁸ This code section on its face precludes dialing distinctions based on the identity of the telecommunications

³⁸ Emphasis Added. See also 47 U.S.C. §251(b)(3).

service provider. Further, the FCC has specifically rejected ILEC claims that they do not have to provide dialing parity to CMRS providers.³⁹ AWS is not aware of any support for the ICO position.

With regard to the second sub-issue, rate centers are the fundamental building block of the wireline rating architecture. A number of state commissions have ruled that ILECs cannot charge different end user rates for calls to numbers associated with the same rate center. For example, the California Public Utilities Commission rejected ILEC claims that they should be allowed to rate calls to a CLEC NPA/NXX assigned to a local rate center as toll (even when the NPA/NXX was assigned to foreign exchange service).⁴⁰ Similarly in the context foreign exchange service, the New York Public Service Commission found that rating for calls to CLEC NPA/NXXs should be based on rate center assignment.⁴¹ In addition, allowing ICOs to rate calls to CMRS NPA-NXXs associated with rate centers within the ICO customer's local calling area differently than they rate calls to landline NPA-NXXs in that same rate center would be discriminatory and create widespread customer confusion. This problem will become particularly acute when wireless number portability is implemented because a given NPA-NXX could have numbers assigned to both wireless and wireline carriers.

³⁹ See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston*. CC Docket Nos. 96-98, 95-185, 92-237, Second Report and Order and Memorandum Opinion and Order, Release Number: FCC 96-333, 1996 FCC Lexis 4311 (Released: August 8, 1996), ¶ 68. ("We reject USTA's argument that the section 251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers.")

⁴⁰ See *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Rulemaking No. 95-04-043/Investigation No. 95-04-044, Interim Opinion, Decision No. 99-09-029, 1999 Cal. PUC LEXIS 649 (September 2, 1999), Section IV.B;

⁴¹ See *Case 00-C-0789 - Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies*, Order Establishing Requirements for the Exchange of Local Traffic (Issued December 22, 2000), 4.

SCOPE OF INTERCONNECTION AGREEMENT

ISSUE 13: Should the scope of the Interconnection Agreement be limited to traffic for which accurate billing records (11-01-01 or other industry standard) are delivered? (Section I Scope, Appendix A Section I.B.1.a-c. and Appendix A Section I.B.2.b(ii)).

- (i) **AWS's Position: No. All traffic exchanged between the Parties should be included in the scope of the Agreement.**
- (ii) **ICO's Position: Yes. The scope of the Agreement should be limited to that traffic for which the tandem provider delivers accurate 11-01-01 records.**
- (iii) **Discussion:**

The scope of an interconnection agreement should apply to all traffic exchanged by the Parties and terminated on each Party's respective networks. The transaction costs associated with the negotiation and arbitration of any interconnection agreement are quite high. It would be inefficient and wasteful of the TRA's and the Parties' resources to include and exclude certain portions of traffic exchanged depending on whether certain criteria are met. With regard to this particular limitation, AWS asserts that the agreement should cover all telecommunications traffic exchanged by the Parties regardless of whether correct billing records are exchanged. Disputes over billing accuracy can be handled by dispute resolution and audit provisions. In addition to these routine contractual remedies, the Parties can adopt billing record formats that are compliant with industry standards, which will further streamline the process and minimize the implementation costs to the Parties.

ISSUE 14: Should the scope of the Interconnection Agreement be limited to traffic transited by BellSouth? (Section I, Scope)

- (i) **AWS's Position: The Interconnection Agreement should apply to all traffic exchanged between the carriers, and it should not be limited to cover only specific transiting carriers.**
- (ii) **ICO's Position: The ICO position appears to be that it must agree which intermediate carrier a CMRS provider uses to originate its traffic.**
- (iii) **Discussion:**

The ICOs have argued that the Agreement should only cover indirect traffic transited by BellSouth, and that a CMRS provider must amend the Agreement if they wish to use an alternative transit provider for call completion to the ICO. The ostensible reason for this restriction is that the ICOs believe they should have control over how another carrier chooses to route calls to their networks. However, this restriction is clearly inconsistent with the statutory mandate that all telecommunications carriers provide indirect interconnection.⁴²

CMRS providers believe that each Party should be responsible for determining how to transport the traffic it terminates on the other Party's network. This interpretation is consistent with Section 251(a) and the FCC's reciprocal compensation rules, which obligate the originating carrier to pay the costs of transport and termination of traffic. Allowing a terminating ICO to dictate how CMRS traffic is routed to its network could impose greater costs on the CMRS provider under the reciprocal compensation rules, and therefore it should be rejected. There is simply no statutory or public policy support for the position being offered by the ICOs. In fact if the ICO's position were adopted by the TRA it would likely significantly increase the number of amendments to interconnection agreements or new interconnection agreements which must be negotiated by the parties and adopted or arbitrated by the TRA.

ISSUE 15: Should the scope of the Interconnection Agreement be limited to indirect traffic? (Section I, Scope, Section of Agreement, Section IV and Appendix A)

- (i) **AWS's Position: No. The scope of the Agreement should include both direct and indirect traffic.**
- (ii) **ICO's Position: Yes. The ICO position appears to be that a separate agreement is required for a direct interconnection scenario.**
- (iii) **Discussion:**

As stated above, CMRS providers believe that an interconnection agreement should cover all of the traffic exchanged pursuant to Section 251 of the Act. This would include direct and

⁴² See U.S.C. § 251(a)(1).

indirect traffic exchanged between the Parties. The agreement should be flexible enough to allow the Parties to connect their networks through dedicated facilities. A restriction of the agreement to "indirect traffic" would be inefficient and may even serve as a disincentive for the Parties to move traffic to direct trunks should the volumes justify the establishment of such trunk groups.

STANDARD TERMS AND CONDITIONS

ISSUE 16: What standard commercial terms and conditions should be included in the Interconnection Agreement? (See Exhibit 2 which contains all terms not specifically identified as a disputed issue herein.)

- (i) AWS's Position: The TRA should adopt the standard terms and conditions contained in Exhibit 2 which are typical in other commercial contracts.**
- (ii) ICO's Position: The ICOs appear desirous of standard terms and conditions.**
- (iii) Discussion:**

The CMRS providers and ICOs have discussed various standard contractual terms such as confidentiality, dispute resolution, indemnification and limitation of liability provisions. Although there was conceptual agreement on many of these issues, there is not agreed upon language for any of them. AWS is unaware of any substantive disputes regarding such terms and conditions and has submitted terms consistent with its best business practices in the attached Agreement. AWS requests the TRA adopt the terms and contained in the attached agreement which are standard in these types of commercial contracts. To the best of AWS's knowledge, the only general terms and conditions for which there were disagreements are discussed at ISSUES 17 and 18.

ISSUE 17: Under what circumstances should either Party be permitted to block traffic or terminate the Interconnection Agreement? (Section VII.B&D)

- (i) AWS's Position: A Party may terminate the Interconnection Agreement when the other Party defaults in the payment of any undisputed amount due under the terms of the Agreement, or upon**

providing requisite notice ninety (90) days prior to the end of the term. All other disputes should be resolved pursuant to the dispute resolution procedures proposed by the CMRS providers. Blocking of traffic should never be permitted.

- (ii) ICO's Position: The Agreement may be terminated for any reason. The ICOS should be allowed to block traffic if a CMRS provider defaults.**
- (iii) Discussion:**

CMRS providers assert that termination of the Agreement should be permitted only (i) at the end of the term of the agreement (or any subsequent renewal term); or (ii) when a Party defaults in the payment of any undisputed amount due and fails to cure the default after reasonable notice. Blocking of traffic should never be permitted as a remedy. In contrast, the ICOs argue that they should be able to terminate the Agreement for any reason upon notice to the other Party. The ICOs also claim the right to block traffic in case of *any* default under the Agreement. The ICO's position is contrary to the intent of the Act, inconsistent with Tennessee practice in this area, and contrary to the public interest.

If the ICOs position were adopted, the ICOs could terminate the interconnection agreement at will and block CMRS traffic whenever in its judgment a default had occurred. It seems highly unlikely that this is what Congress had in mind when they required ILECs to enter into *binding* interconnection agreements⁴³ and would significantly undercut the value of the interconnection agreement. Moreover, dispute resolution procedures, as opposed to unilateral termination or the blocking of traffic, appear to be the standard in Tennessee interconnection agreements.⁴⁴ Finally, giving ICOs the unilateral right to terminate the contract for any reason

⁴³ See 47 U.S.C. § 252(a)(1).

⁴⁴ See BellSouth/XO Agreement at General Terms and Conditions § 10 (Resolution of Disputes) and Attachment 7 § 11 (Billing Disputes); BellSouth/MCI Agreement at General Terms and Conditions § 22 (Dispute Resolution Procedures) and Attachment 8 § 4.2.12 (Billing Disputes); and BellSouth/AT&T Agreement at § 16 (Dispute Resolution Process) and Attachment 6 § 1.15 (Billing Disputes).

whatsoever or to block traffic would contravene the public interest by impeding the free flow of traffic over the telecommunications network.

The TRA should reject the ICOs' position and instead adopt the termination and dispute resolution provisions proposed by the CMRS providers, which are commercially reasonable and similar to those already approved by the TRA. In addition the Agreement should provide that if a Party requests renegotiation, the terms and conditions of the Agreement would continue to apply until a successor interconnection agreement becomes effective. This, too, is consistent with industry practice.

ISSUE 18: If the ICO changes its network, what notification should it provide and which carrier bears the cost? (Section XV.C)

- (i) **AWS's Position: The ICO must comply with the FCC's rules regarding notification of network changes and should bear the cost to AWS of implementing those changes. If a CMRS provider objects to a proposed change, the dispute should be handled pursuant to the dispute resolution provisions of the Agreement. The ICO may proceed with the network change, but should also maintain the existing network configuration until the dispute is resolved.**
- (ii) **ICO's Position: The ICOs have the absolute right to make network changes without interference from the CMRS providers and the CMRS providers should bear the costs.**
- (iii) **Discussion:**

An ICO should be permitted to make planned changes to its network as follows:

- a. ICO will comply with 47 C.F.R. §§ 51.325 through 51.335 as may be amended from time to time, regarding notification for network changes.
- b. Contemporaneous with the filing of any required public notice of network change, the ICO shall also provide a copy of such notice to the CMRS providers.

It is appropriate for ICOs to make network changes. The CMRS providers do not dispute this. However, if an ICO makes a change without the CMRS provider's consent, the ICOs should, at a minimum, bear any non-recurring costs necessitated by such change. For example,

the Parties may agree upon a POI for interconnection trunks. Once the facilities are in place, if the ICO unilaterally changes the POI, the ICO should pay to relocate these facilities.

If the CMRS provider objects to a proposed ICO network change, any required interconnection agreement amendments and any cost recovery issues should be handled pursuant to the dispute resolution process of the Agreement. The ICO may proceed with its proposed network change but at the same time it should be required to maintain the existing network configuration until the dispute is resolved.

REQUEST FOR RELIEF

AWS respectfully requests that the TRA:

1. Arbitrate the unresolved issues between AWS and the ILECs;
2. Issue its Order approving the Agreement attached hereto; and
3. Issue such other orders as are just and proper.

Respectfully submitted this 6th Day of November, 2003.

Beth Fujimoto /Bk

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Attorney for AT&T Wireless

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

☐ Hand ☒ Mail ☐ Facsimile ☐ Overnight	J. Barclay Phillips, Esquire Miller & Martin LLP 1200 One Nashville Place 150 Fourth Avenue North Nashville, Tennessee 37219
☐ Hand ☒ Mail ☐ Facsimile ☐ Overnight	Elaine Critides Verizon Wireless 1300 I. Street, N.W. Suite 400 West Washington, D.C. 20005
☐ Hand ☒ Mail ☐ Facsimile ☐ Overnight	Stephen G. Kraskin, Esquire Kraskin, Lesse & Cosson, LLP 2120 L Street NW, Suite 520 Washington, DC 20037
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☐	Facsimile	1600 Ute Avenue
☐	Overnight	Grand Junction, CO 81501

Brendan Kasper
(Name)

Exhibit 1

**to the Petition for Arbitration of AT&T
Wireless**

"EXHIBIT 1"

Tennessee Rural Independent Coalition (ICOs):

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Company, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

Exhibit 2

**to the Petition for Arbitration of AT&T
Wireless**

Exhibit 2

INTERCONNECTION AND RECIPROCAL COMPENSATION AGREEMENT TENNESSEE

This Interconnection and Reciprocal Compensation Agreement ("Agreement") is effective on the first day of _____, 2003, by and between _____, a [Tennessee corporation] and Incumbent Local Exchange Carrier (hereinafter "ILEC"), and _____, a [Delaware corporation] (hereinafter "CMRS Carrier"). ILEC and CMRS Carrier are referred herein collectively as "Parties" and individually as "Party."

RECITALS

WHEREAS, ILEC is a local exchange carrier in the State of Tennessee; and,

WHEREAS, CMRS Carrier is a commercial mobile radio service carrier licensed to operate in the MTAs that encompass the State of Tennessee; and,

WHEREAS, ILEC and CMRS Carrier desire to interconnect their networks for the purpose of exchanging Traffic between the Parties' customers.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

SECTION I SCOPE OF AGREEMENT

This Agreement shall cover Interconnection and Reciprocal Compensation arrangements between the Parties' respective networks in Tennessee.

SECTION II DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Section:

"Act" means the Communications Act of 1934 (47 U.S.C. 151 *et seq.*), as amended, and as from time to time interpreted in the duly authorized orders and regulations of the FCC.

"CMRS" or "Commercial Mobile Radio Service" is as defined in the Act.

"Direct Interconnection Facilities" means dedicated transport facilities installed between a CMRS Carrier Mobile Switching Center ("MSC") and any technically feasible point (i.e., point of interconnection) that CMRS Carrier may request on the ILEC network.

"FCC" means the Federal Communications Commission.

Exhibit 2

"Interconnection" is the linking of two networks for the mutual exchange of Traffic. This term does not include the Transport and Termination of Traffic.

"IntraMTA Traffic" is wireless to wireline and wireline to wireless calls which originate and terminate within the same MTA based on the location of the cell site serving the wireless subscriber at the beginning of the call and the central office for the landline end-user.

"InterMTA Traffic" is wireless to wireline and wireline to wireless calls which do not originate and terminate within the same MTA based on the location of the cell site serving the wireless subscriber at the beginning of the call and the central office for the landline end-user.

"Major Trading Area" (MTA) means a geographic area established by Rand McNally's 1992 Commercial Atlas and Marketing Guide, 123rd edition, at pages 38-39 and used by the FCC in defining CMRS license boundaries for CMRS carriers for purposes of Sections 251 and 252 of the Act.

"Reciprocal Compensation" means the arrangement between the Parties in which each Party receives compensation from the other for the Transport and Termination on each Party's network facilities of IntraMTA Traffic that originates on the network facilities of the other Party.

"Termination" means the switching of IntraMTA Traffic at the terminating Party's end-office switch, or equivalent facility, and the delivery of such IntraMTA Traffic to the called Party.

"TRA" means the Tennessee Regulatory Authority.

"Traffic" means all IntraMTA Traffic and InterMTA Traffic that originates on one Party's network, and terminates on the other Party's network.

"Transport" means the transmission and any necessary tandem switching by a Party of IntraMTA Traffic from the point of interconnection between the Parties, which point may be via the transit services provided by another carrier, to the terminating Party's end-office switch or equivalent facility that directly serves the called Party.

SECTION III INTERPRETATION AND CONSTRUCTION

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by federal or state government authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the Parties agree to negotiate in good faith toward an agreement to modify, in writing, any affected term and condition of this Agreement to bring them into compliance with such law, rule, regulation or guideline. The headings of the Sections of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of the Agreement.

Exhibit 2

The Parties enter into this Agreement without prejudice to any position they may take with respect to similar future agreements between the Parties or with respect to positions they may have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters including matters, related to the rates to be charged for Transport and Termination of IntraMTA Traffic or the types of arrangements prescribed by this Agreement.

In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of the Parties to perform any material terms of this Agreement, either Party may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute may be referred to the Dispute Resolution procedure set forth herein.

SECTION IV TRAFFIC EXCHANGE AND COMPENSATION

The Parties may elect to exchange Traffic directly and/or indirectly as specified in Sections A. and B. below. The Parties agree that they shall compensate each other for the Traffic exchanged on a reciprocal and symmetrical basis at the rates specified in Appendix A.

A. Direct Interconnection

1. Upon CMRS Carrier's request, ILEC and CMRS Carrier shall interconnect their respective networks via the installation of Direct Interconnection Facilities. CMRS Carrier may purchase such facilities from a third party or from ILEC. Rates for facilities purchased from ILEC are specified in ILEC's applicable local or access tariff. When Direct Interconnection Facilities are two-way facilities, ILEC shall pay/credit CMRS Carrier that share of the facility costs which represents the use of such facilities to deliver ILEC's originated Traffic to CMRS Carrier's Mobile Switching Center. When Direct Interconnection Facilities are one-way facilities, each Party shall pay 100% of the cost associated with the Direct Interconnection Facility over which that Party's Traffic is delivered to the other Party.
2. The points of interconnection between ILEC and CMRS Carrier for Reciprocal Compensation purposes will be defined by the Parties. This Agreement shall not preclude ILEC and CMRS Carrier from entering into additional direct interconnection arrangements in the future if such arrangements are technically feasible and economically beneficial.

B. Indirect Interconnection

1. All Traffic that is not exchanged via Direct Interconnection Facilities shall be exchanged indirectly, and the point of interconnection for both Parties for Reciprocal Compensation purposes shall be at the point where ILEC's

Exhibit 2

network interconnects with the network of an intermediate third party LEC to whom both ILEC and CMRS Carrier are each interconnected.

2. When Traffic is indirectly exchanged via an originating Party's use of one or more third parties, the originating Party shall be responsible for the cost to deliver that Party's originated Traffic to the point where the terminating Party's network interconnects with the network of the carrier that delivers the Traffic to the terminating Party (e.g. transit charges).
- C. **Billing.** Each Party shall bill the other for calls which the billing Party terminates to its own customers and which were originated by the billed Party. Rates and billing procedures are set forth on the attached Appendix A, which is incorporated by reference. The billed Party shall pay the billing Party for all undisputed charges properly listed on the bill. Such payments are to be received within forty-five (45) days from the effective date of the statement. The billed Party shall pay a late charge on the unpaid undisputed amounts that have been billed that are greater than thirty (30) days old. The rate of the late charge shall be the lesser of 1.5% per month or the maximum amount allowed by law. The billed Party shall pay the billing Party the reasonable amount of the billing Party's expenses related to collection of overdue bills, such amounts to include reasonable attorney's fees. Neither Party shall bill the other for Traffic that is more than one hundred and eighty (180) days old.
- D. **Taxes.** The Parties agree that the Party collecting revenues shall be responsible for collecting, reporting and remitting all taxes associated therewith, provided that the tax liability shall remain with the Party upon whom it is originally imposed.

SECTION V INDEPENDENT CONTRACTORS

The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind the other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

SECTION VI LIABILITY

- A. Neither Party nor any of their affiliates shall be liable for any incidental, consequential or special damages arising from the other Party's use of service provided under this Agreement. Each Party shall indemnify and defend the other Party against any claims or actions arising from the indemnifying Party's use of the service provided under this Agreement, except to the extent of damages caused by the negligence of the indemnified Party.

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- B. Neither Party makes any warranties, express or implied, for any hardware, software, goods, or services provided under this Agreement. All warranties, including those of merchantability and fitness for a particular purpose, are expressly disclaimed and waived.
- C. The liability of either Party to the other Party for damages arising out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of applicable tariff(s) of the Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro-rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors, or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors, or defects.

SECTION VII TERM OF AGREEMENT

- A. Either Party may submit this Agreement for approval by the TRA. This Agreement shall commence on the effective date stated on the first page, subject to its approval by the TRA and shall terminate two (2) years after the effective date.
- B. This Agreement shall renew automatically for successive one (1) year terms, commencing on the termination date of the initial term or latest renewal term. The automatic renewal shall take effect without notice to either Party, except that either Party may elect not to renew and terminate by giving the other Party written notice of its intention not to renew at least ninety (90) days prior to each anniversary date.
- C. Either Party may request for this Agreement to be renegotiated upon the expiration of the initial two (2) year term or upon any termination of this Agreement. Not later than forty-five (45) days from the receipt of initial request for renegotiations, the Parties shall commence negotiation, which shall be conducted in good faith. Except in cases in which this Agreement has been terminated for Default pursuant to Section VI.D., the provisions of this Agreement shall remain in force during the negotiation and up to the time that a successor agreement is executed by the Parties and, to the extent necessary, approved by the TRA.
- D. If either Party defaults in the payment of any undisputed amount due hereunder, and such default shall continue for sixty (60) days after written notice thereof, the other Party may terminate this Agreement and services hereunder by written notice provided the other Party has provided the defaulting Party and the appropriate federal and/or state regulatory bodies with written notice at least twenty-five (25) days prior to terminating service.
- E. Termination of this Agreement for any cause shall not release either party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination relating to an obligation which is expressly stated in this Agreement. The Parties' obligations under this Agreement which by their nature are intended to continue beyond

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the termination or expiration of this Agreement shall survive the termination of this Agreement.

SECTION VIII DISPUTE RESOLUTION PROCESS

- A. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be resolved by both Parties according to the procedures set forth below.
- B. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- C. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Prior to arbitration described below, the representatives will utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations will be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which will not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.
- D. If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, then either Party may pursue any remedy available pursuant to law, equity or agency mechanism; provided that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. Each Party will bear its own costs of these procedures. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.
- E. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the parties shall continue to perform their obligations, including making payments, in accordance with this Agreement.

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SECTION IX THIRD PARTY BENEFICIARIES

This Agreement is not intended to benefit any person or entity not a Party to it and no third Party beneficiaries are created by this Agreement.

SECTION X GOVERNING LAW, FORUM, AND VENUE

To the extent not governed by the laws and regulations of the United States, this Agreement shall be governed by the laws and regulations of the State of Tennessee. Disputes arising under this Agreement, or under the use of service provided under this Agreement, shall be resolved in state or federal court in Tennessee, the TRA or the FCC.

SECTION XI FORCE MAJEURE

The Parties shall comply with any applicable orders, rules or regulations of the FCC, TRA and federal and state law during the term of this Agreement. Notwithstanding anything to the contrary contained herein, a Party shall not be liable nor deemed to be in default for any delay or failure of performance under this Agreement resulting directly from acts of God, civil or military authority, acts of public enemy, war, hurricanes, tornadoes, storms, fires, explosions, earthquakes, floods, government regulation, strikes, lockouts or other work interruptions by employees or agents not within the control of the non-performing Party.

SECTION XII ENTIRE AGREEMENT

This Agreement incorporates all terms of the Agreement between the Parties, and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. This Agreement may not be modified except in writing signed by both Parties, which modification shall become effective thirty (30) days after its execution, unless otherwise mutually agreed by the Parties. The undersigned signatories represent they have the authority to execute this Agreement on behalf of their respective companies. This Agreement can be executed in separate parts which together will constitute a single, integrated Agreement.

SECTION XIII NOTICE

Notices shall be effective when received via fax or direct delivery or within three (3) business days of being sent via first class mail, whichever is sooner, in the case of CMRS Carrier to:

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Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:

With a copy to:

Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:

Notices shall be effective when received via fax or direct delivery or within three (3) business days of being sent via first class mail, whichever is sooner, in the case of ILEC to:

Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:

Bills and payments shall be effective when received via fax or delivery or within three (3) business days of being sent via first class mail, whichever is sooner, in the case of CMRS Carrier to:

Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:

Bills shall be effective when received via fax or delivery or within three (3) business days of being sent via first class mail, whichever is sooner, in the case of ILEC to:

Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:

or to such other location as the receiving Party may direct in writing. Payments are to be sent to the address on the invoice.

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SECTION XIV ASSIGNABILITY

Either Party may assign this Agreement upon the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent shall be required for the assignment of this Agreement in the context of the sale of all or substantially all of the assets or stock of either of the Parties. Notwithstanding the foregoing, either Party may assign this Agreement or any rights or obligations hereunder to an affiliate of such Party without the consent of the other Party.

SECTION XV MISCELLANEOUS

- A. Nothing in this Agreement shall prohibit CMRS Carrier from enlarging its CMRS network through management contracts with third parties for the construction and operation of a CMRS system under the CMRS Carrier's brand name and license. Traffic originating on such extended networks shall be treated as CMRS Carrier Traffic subject to the terms, conditions, and rates of this Agreement. Traffic traversing such extended networks shall be deemed to be and treated under this Agreement as CMRS Carrier Traffic when it originates on such extended network and terminates on ILEC's network, and as ILEC's Traffic when it originates upon ILEC's network and terminates upon such extended network. Traffic traversing on such extended networks shall be subject to the terms, conditions, and rates of this Agreement.
- B. An NXX assigned to CMRS Carrier shall be included in any ILEC extended area calling service, optional calling scope, or similar program to the same extent as any other ILEC's NPA-NXX in the same rate center. ILEC shall perform all necessary translations at its own expense to provide its end users the same dialing and rate treatment to call a CMRS Carrier assigned NXX that such end user is provided when calling an NXX assigned to an incumbent LEC in the same rating center as CMRS Carrier's NXX.
- C. ILEC shall have the right to make network changes as follows:
 - 1. ILEC will comply with 47 C.F.R. §§ 51.325 through 51.335 as may be amended from time to time, regarding notification for network changes.
 - 2. Contemporaneous with the filing of any public notice of network change required by Subsection 1., ILEC shall also provide a copy of such notice to CMRS Carrier pursuant to Section XIII.
 - 3. Any objection CMRS Carrier may assert in response to receiving an ILEC network change notice shall be handled as a disputed matter pursuant to the Section VIII Dispute Resolution Process of this Agreement. Until final resolution of any such disputed matter, ILEC shall not discontinue any Interconnection arrangement or Telecommunications Service provided or

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required under this Agreement as of the date of ILEC's network change notice.

SECTION XVI NONDISCLOSURE OF PROPRIETARY INFORMATION

The Parties agree that it may be necessary to exchange certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Communications Act of 1934, as amended, and the rules and regulations of the FCC and similar information ("Confidential Information"). Confidential Information shall include (i) all information delivered in written or electronic form and marked "confidential" or "proprietary" or bearing mark of similar import; or (ii) information derived by the Recipient from a Disclosing Party's usage of the Recipient's network including customer account data and CPNI. For purposes of this Section XVI, the Disclosing Party shall mean the owner of the Confidential Information, and the Recipient shall mean the Party to whom Confidential Information is disclosed. Information disclosed orally shall not be considered Confidential Information unless Disclosing Party advises Recipient prior to disclosure that such information is Confidential Information and such information is reduced to writing by the Disclosing Party and delivered to the Recipient within seventy-two (72) hours of disclosure. The Confidential Information is deemed proprietary to the Disclosing Party and it shall be protected by the Recipient as the Recipient would protect its own proprietary information. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

Information shall not be deemed Confidential Information and the Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by Recipient, (iii) after it is rightfully acquired by Recipient free of restrictions by the Disclosing Party, or (iv) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency provided the Recipient shall give at least thirty (30) days notice (or such lesser time as may be sufficient based on the time of the request) to the Disclosing Party to enable the Disclosing Party to seek a protective order. Each Party agrees that the Disclosing Party would be irreparably injured by a breach of this Agreement by Recipient or its representatives and that Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this paragraph. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

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SECTION XVII COMPLIANCE WITH SECTION 252(i)

In accordance with Section 252(i) of the Act, ILEC shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to CMRS Carrier upon the same terms and conditions as those provided in the agreement.

By: ILEC

Signature (date)

Printed name and title: _____

By: CMRS Carrier

Signature (date)

Printed name and title: _____

Signature Page dated _____, 2003 to Interconnection Agreement between ILEC and CMRS Carrier.

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APPENDIX A **Rates and Billing Procedures**

I. INTRAMTA TRAFFIC

Subject to the *de minimis* exception set forth below in section I.D. below, the Parties shall reciprocally and symmetrically compensate one another for IntraMTA Traffic terminated to their respective customers at the rates set forth below:

A. Rates

- 1) Indirect Interconnection: [TBD]
- 2) Direct Interconnection: [TBD]

B. Billing Method

1. Based on Measurement/Records

- a. ILEC may measure, or obtain either Category 1101 records or a monthly traffic distribution report ("Tandem Records") from the tandem operator summarizing Traffic originated by CMRS Carrier and terminating to ILEC. This information shall be used by ILEC for billing CMRS Carrier for Traffic terminating to ILEC.
- b. CMRS Carrier may measure, or obtain either Category 1101 records or a monthly traffic distribution report from the tandem operator summarizing Traffic originated by ILEC and terminated to CMRS Carrier. This information may be used by CMRS Carrier for invoicing ILEC for terminating Traffic to CMRS Carrier.
- c. To the extent that the Parties rely on records or reports supplied by the tandem operator, the Parties agree to accept those reports or records as an accurate statement of Traffic exchanged between the Parties. Either Party may perform an audit of the other Party's billing information related to terminating minutes of use of the billed Party. The Parties agree that such audits shall be performed no more than one time per calendar year. Each Party shall bear its own expenses associated with such audit. The audits shall be conducted on the premises of the audited Party during normal business hours.

2. Based on Factors

- a. *Traffic Ratio*: If CMRS Carrier elects not to measure or obtain information provided by the tandem operator, the Parties agree to the following initial Traffic Ratio Factors to estimate the

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proportion of total Traffic exchanged between the Parties' networks to be:

Mobile-to-Land	60%
Land-to-Mobile	40%

The Parties agree to revise the Traffic Ratio Factors not more frequently than semi-annually, based upon mutually agreed to traffic studies.

- b. *Form of Billing:* When billing is based on Traffic factors, the CMRS Carrier may elect to use either the Mutual Billing or Net Billing option as specified below.

(i) **Mutual Billing**

- (a) ILEC shall bill for 100% of the Traffic originated by CMRS Carrier and terminated to ILEC.
- (b) CMRS Carrier shall calculate estimated ILEC terminating Traffic to CMRS Carrier using the following formula: CMRS Carrier shall bill ILEC based on the MOUs in (a) above, divided by 0.60 (sixty percent). The total of the calculation shall then be multiplied by 0.40 (forty percent) to determine the Traffic originated by ILEC and terminated to CMRS Carrier.

(ii) **Net Billing**

ILEC shall calculate and render a "net bill" to CMRS Carrier by applying the Traffic Ratio Factors to the total MOUs of Traffic originated by CMRS Carrier and terminated to ILEC, as measured by ILEC or summarized in Category 1101 records or Tandem Records provided to ILEC by the tandem operator. ILEC shall calculate its "net bill" to CMRS Carrier using the following formula:

- (a) CMRS Carrier MOUs terminated by ILEC;
- (b) Divide "(a)" MOUs by Mobile-to-Land factor 60%;
- (c) Multiply "(b)" MOUs result by Land-to-Mobile factor 40%;
- (d) Net MOUs by subtracting "(c)" MOUs result from "(a)" MOUs; and

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(e) Multiply "(d)" MOUs result by Rate in Appendix __, \$0.0XX.

- C. **Billing Interval:** Either Party may elect to bill on a monthly or quarterly basis. If either Party wishes to revise its billing method it may do so upon (30) thirty days' written notice to the other Party.
- D. **De Minimis Exemption:** In the event the Traffic exchanged between the Parties is *de minimis* such that the total minutes exchanged between the Parties is less than 50,000 minutes of use for a one-month period, the Parties agree that the only compensation for such Traffic will be in the form of the reciprocal Transport and Termination service provided by the other Party, and no billings will be issued by either Party.

II. INTERMTA TRAFFIC

The Parties agree to exchange incidental InterMTA Traffic exchanged over the local interconnection facilities pursuant to a bill and keep arrangement. This InterMTA Traffic is deemed to be in balance and/or negligible. Either Party may request reconsideration and renegotiation of the compensation arrangements for InterMTA Traffic if it believes that the volume of such traffic has increased to a significant level and is no longer in balance. If the Parties agree to replace the bill and keep arrangements with Reciprocal Compensation arrangements, the preferred method of classifying and billing Traffic shall be actual traffic measurements. If either Party cannot identify and measure InterMTA Traffic, then the Parties shall agree on a surrogate method of classifying and billing such traffic, taking into consideration the territory served (e.g., MTA boundaries, LATA boundaries and state boundaries) and traffic routing of the Parties.