

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**In the Matter of** )  
**Petition of the Tennessee Rural Independent Coalition** )  
**Petition for Suspension and Modification** )  
**Pursuant to 47 USC § 251 (f)(2)** )

**IN RE:**

<b>Petition of Sprint Spectrum L.P. d/b/a Sprint PCS</b>	)	<b>Consolidated Docket No. 03-00585</b>
<b>for Arbitration under the Telecommunications Act</b>	)	
	)	
<b>Petition of T-Mobile USA, Inc. for Arbitration under the</b>	)	
<b>Telecommunications Act</b>	)	
	)	
<b>Petition of BellSouth Mobility LLC; BellSouth Personal</b>	)	
<b>Communications, LLC; Chattanooga MSA Limited Partnership;</b>	)	
<b>Collectively d/b/a Cingular Wireless, for Arbitration</b>	)	
<b>under the Telecommunications Act</b>	)	
	)	
<b>Petition of Cellco Partnership d/b/a Verizon Wireless for</b>	)	
<b>Arbitration under the Telecommunications Act</b>	)	
	)	
<b>Petition of AT&amp;T Wireless PCS, LLC d/b/a AT&amp;T Wireless for</b>	)	
<b>Arbitration under the Telecommunications Act</b>	)	

**PETITION**

The members of the Tennessee Rural Coalition, by their counsel, respectfully submit this Petition to the Tennessee Regulatory Authority (the "TRA") pursuant to 47 Section 251(f) (2), for modification of certain aspects of the requirements of 47 USC Section 251 (b) (5) of the Telecommunications Act of 1996 (the "Act")<sup>1</sup>.

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<sup>1</sup> The Coalition has filed this pleading as an Initial Petition pursuant to Chapter 1220-1-2 of the Rules of the Tennessee Regulatory Authority. This pleading is also filed in the pending proceeding, Consolidated Docket No. 03-00585 since the issues involved in this Petition are closely related to the issues in 03-00585.

The petitioners, each members of the Tennessee Rural Coalition (the “Coalition”), include the following member rural local exchange carriers (“RLECs”) companies: (1) Ardmore Telephone Company, (2) Ben Lomand Rural Telephone Coop., Inc., (3) Bledsoe Telephone Cooperative, (4) Century Telephone Enterprises, Inc. Companies in Tennessee consisting of CenturyTel of Adamsville, Inc.; CenturyTel of Claiborne, Inc.; CenturyTel of Ooltewah-Collegedale, (5) Dekalb Telephone Cooperative, (6) Highland Telephone Cooperative, (7) Loretto Telephone Company, Inc., (8) Millington Telephone Company, (9) North Central Telephone Cooperative, (9) TDS Telecom Companies in Tennessee consisting of Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tennessee Telephone Company, (10) Telephone Electronics Corp. (“TEC”) companies in Tennessee consisting of Crockett Telephone Company, Inc., Peoples Telephone Company, Inc. and West Tennessee Telephone Company, Inc. , (11) Twin Lakes Telephone Cooperative, (12) United Telephone Company, (13) Yorkville Telephone Cooperative. Each of these companies request suspension of the requirements of Section 251(b) of the Act to the extent that those requirements may be interpreted as requiring them to establish charges for transport and termination of any traffic on the basis of a Total Element Long Range Incremental Cost (“TELRIC”) methodology.<sup>2</sup>

In support of their request, Petitioners show the TRA as follows;

1. Each of the members of the Coalition is a rural company pursuant to the definition set forth in Section 3(37) of the Act.<sup>3</sup> Each RLEC provides service to far fewer

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<sup>2</sup> In the *Arbitration Order* in Docket No. 03-00585, the Authority determined that such charges should be based on TELRIC. While the Coalition respectfully disagrees and may pursue formal review of this determination pursuant to its rights under Section 252 of the Act, the Coalition submits that the public interest will be best served by the grant of the suspension requested herein.

<sup>3</sup> 47 USC 153(37).

than 2% of the nation's access lines. Accordingly, each RLEC is qualified to petition the TRA pursuant to Section 251.(f)(2) of the Act to seek suspensions and modifications of the interconnection requirements set forth in Section 251 (b) and (c) of the Act. The number of access lines served by the Coalition members range from 2,944 served by Ardmore<sup>4</sup>, to 64,932 access lines served by Tennessee Telephone Company<sup>5</sup>.

2. Since 2003 the Coalition and the Commercial Mobile Radio Service ("CMRS") providers have attempted to negotiate various terms and conditions regarding traffic terminated to the Rural Coalition members through a third party intermediary local exchange provider (BellSouth), for termination by each Rural Coalition member<sup>6</sup>. These negotiations were initiated pursuant to an order issued by the Authority in Docket No. 00-00523. Unfortunately, the parties to the negotiations were unable to resolve all of the relevant issues and sought arbitration by the Authority. From August 9 through August 12, 2004, a panel of the Authority held arbitration hearings regarding the matters that were not resolved by negotiation. On January 12, 2005 the arbitration panel publicly deliberated and addressed the arbitration issues. On January 12, 2006 the TRA issued an Order of Arbitration Award in the arbitration proceeding, Docket No. 03-00585
3. On June 14, 2005, prior to the issuance of the Order of Arbitration Award, the arbitration panel conducted a status conference "for the purpose of discussing the

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<sup>4</sup> Ardmore Telephone Company's Tennessee access lines only as of 12/31/05.

<sup>5</sup> Tennessee Telephone Company access lines as of 12/31/05.

<sup>6</sup> On November 6, 2003, the Petition for Arbitration was filed by Cellco Partnership d/b/a Verizon Wireless. The petition for arbitration was filed as a result of the parties' inability to negotiate a resolution to the various interconnection issues.

process the authority should undertake to determine a permanent rate for reciprocal compensation.”<sup>7</sup> The Coalition members welcomed the opportunity to work with the other parties and the Authority to resolve this matter prior to the issuance of the Arbitration Award, recognizing that mutual resolution of this issue could avoid otherwise inevitable appellate review processes at least for the rate determination issue. While continuing to maintain to the Authority and all parties that TELRIC costing methodology is neither applicable to nor appropriate for the Coalition members, the Coalition agreed to a procedural schedule in the spirit of working toward resolution of the pricing issues.<sup>8</sup> In accordance with that procedural schedule, and notwithstanding their continuing objection to the utilization of TELRIC, the Coalition filed with the Authority on August 11, 2005 the “Proposed TELRIC Cost Study Methodology” for each Coalition member. Irrespective of the fact that the methodologies filed on behalf of the Coalition members were well recognized and utilized in circumstances where TELRIC was applied either by lawful requirements to larger non-rural carriers or by mutual agreement of the parties to rural carriers, the CMRS providers objected to each Coalition member’s model and cost methodology and maintained that none of the proposed methodologies was “TELRIC compliant.” Subsequently, the Hearing Officer issued an order suspending the procedural schedule regarding the filing of TELRIC compliant cost studies.<sup>9</sup>

4. On May 16, 2006, the CMRS Providers submitted a request to Chairman Jones asking that the Arbitration panel either determine “whether any of the ICOs’

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<sup>7</sup> Notice of Status Conference, Docket No. 00-00585, May 27, 2005.

<sup>8</sup> “Joint Procedural Schedule for Rate Phase of Proceeding,” August 4, 2005, Docket No. 03-00585.

<sup>9</sup> Order Suspending Procedural Schedule, Docket 03-00585, October 25, 2005.

proposed methodologies/models are TELRIC compliant.” In the alternative, the CMRS Providers asked that “the Arbitration Panel convene and direct the Coalition, consistent with the January 12, 2006, Order of Arbitration Award, to timely submit TELRIC-compliant cost studies subject to a full evidentiary hearing.”<sup>10</sup>

5. The Coalition responded to the CMRS Providers on May 23, 2006. Consistent with the spirit of working toward issue resolution reflected by the agreement of the Coalition to join in the filing of the “Joint Procedural Schedule for Rate Phase of Proceeding” prior to the issuance of the Order of Arbitration Award, the Coalition set forth a proposed meditative approach that would enable both the parties and the Authority to avoid the otherwise inevitable extensive and expensive investment of time and effort in lawful review processes.
6. The CMRS Providers again wrote to Chairman Jones on May 26, 2006, reiterating the requests they had set forth in their May 16, 2006 correspondence, and essentially rejected the meditative approach proposed by the Coalition.<sup>11</sup>
7. The Coalition members were disappointed that the CMRS Providers would not join in the proposed alternative approach proposed by the Coalition in its May 23, 2006 correspondence to the Authority. In that correspondence, the Coalition also noted the potential filing of this request for suspension under Section 251(f)(2) of the Act. Section 251(f)(2) of the Act provides as follows:

A local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification

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<sup>10</sup> Correspondence of May 16, 2006 from Melvin Malone to Chairman Jones, Docket No. 03-00585.

<sup>11</sup> Correspondence of May 26, 2006 from Melvin Malone to Chairman Jones, Docket No. 03-00585.

of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The state commission shall grant such suspension petition to the extent, that and for such duration as, the State Commission determines that such suspension or modification

(A) is necessary --

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically infeasible; and

(B) Is consistent with public interest, convenience and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

By inclusion of this provision in the Act, Congress recognized that the duties generally imposed on local exchange carriers by Section 251(b) and (c) of the Act may likely be inappropriate for carriers like the Coalition members because the imposition of the requirements could have significant adverse economic impact, may result in undue economic burden, or could be technically infeasible. In order to avoid these adverse consequences that would be contrary to the overall public interest. Congress established a process by which Rural Telephone Companies would be exempt from many of the duties imposed by Section 251. Under the Act, the exemption remains in place until a carrier requesting an exempt interconnection service seeks the removal of the exemption. The State regulatory authority can remove the exemption when and only when the requesting party

demonstrates that the anticipated adverse consequences in areas served by the rural telephone companies will not result from the fulfillment of its specific interconnection request.<sup>12</sup> In addition, Section 251 further provides that the duties imposed on Rural Telephone Companies and other small carriers could be further suspended and modified, in recognition that while the imposition of certain duties might not be unduly burdensome for larger ILECs, they could be unduly burdensome for smaller rural local exchange carriers such as the Rural Coalition members.

9. Because the Coalition members are all Rural Telephone Companies, they are not subject to the obligations imposed by Section 251(c) of the Act, unless and until a requesting LEC complies with the requirements of Section 251(f)(1)(B), and the Commission has made the determinations required thereby. Accordingly, and as the Coalition has maintained throughout Docket No. 03-00585, the Coalition members are not legally obligated to produce TELRIC studies or price any service on the basis of TELRIC. Without waiver of this matter of law,<sup>13</sup> the process utilized within Docket No. 03-00585 has made it abundantly clear that as a practical matter, requiring each Coalition member to conduct a TELRIC cost study in order to secure reciprocal compensation from CMRS providers will impose a

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<sup>12</sup> See 47 USC 251(f)(1)(B).

<sup>13</sup> In the absence of the mutual resolution of the unresolved pricing issue in the Docket No. 03-00585 Arbitration, the Coalition respectfully recognizes that this issue will undoubtedly remain the subject matter of continued lawful review processes. Moreover, and irrespective of the fact that the CMRS Providers have summarily dismissed the meditative approach set forth by the Coalition in its May 23, 2006 Correspondence, the Coalition retains the right to seek independently a declaratory ruling from the FCC that TELRIC pricing has not been imposed on rural LECs or established by the FCC as a pricing standard to be applied to rural LECs in arbitrations conducted by state regulatory authorities.

requirement on the Coalition members that is unduly economically burdensome.<sup>14</sup>

To the extent that either §251(b)(5) of the Act, or any FCC implementing regulation associated with it, is interpreted to require the Coalition members to incur the cost of having forward looking TELRIC cost studies preformed, the Coalition members request modification of any such requirement.

10. In preparation of the August 11, 2005 "Proposed TELRIC Cost Study Methodology" in Docket No. 03-00585, many of the Coalition members contacted outside consultants that perform cost studies in an effort to ascertain the cost and input data required to produce a TELRIC study. They also sought to determine the cost of expertise to defend the model before the Authority, if required to do so. As a result of these inquiries, the Coalition members were informed that the cost of preparing such a study for each member would reasonably be expected to range from \$ 35,500 to \$ 45,500 for each company. The costs vary because different companies, depending on their current regulatory status, may have more or less cost data available of the type required for the completion of TELRIC cost studies already assembled. These cost estimates are for preparing a TELRIC cost study, and defending or revising the resulting cost study, preparing testimony or appearing to testify before the TRA. Accordingly, if the smallest Petitioner, Ardmore Telephone Company, was required to spend only a minimum estimated

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<sup>14</sup> The Coalition members submit that the cost of conducting the studies alone is sufficiently burdensome to warrant suspension and modification. In the event that the RLECs were wrongly required to incur this burden, they each further reserve the right to seek suspension of the utilization of any such studies. As noted throughout the arbitration proceeding in Docket No. 03-00585, the Federal Communications Commission has recognized fully that under the existing framework of interconnection and cost recovery, the utilization of TELRIC cost methodology is not appropriate for the pricing of interconnection to the networks of rural carriers.



amount for a TELRIC cost study, the cost of that study would be approximately \$12 per access line served by Ardmore.

11. While the Coalition has had a continuing willingness to share existing data that each member company has available, consistent with the obligations of carriers pursuant to the FCC's rules, requiring each RLEC to perform a TELRIC study in accordance with standards and methodologies established by the CMRS providers will impose undue and unnecessary economic burden. In some instances, the imposition of any such requirement would force members of the Coalition to incur the burden of data collection and cost studies for the first time. This new burden is one that the FCC's existing rules have specifically been adopted to avoid imposing on small carriers. While the Coalition maintains that none of its members are required by law or regulation to conduct TELRIC cost studies or to utilize TELRIC for pricing, burden of any such requirement is exacerbated with respect to those members of the Coalition that are "average schedule companies" which in accordance with this status are not required to perform any cost studies to determine interconnection costs under existing FCC rules and standards.
12. While a "cost study" company performs a cost study on the basis of the FCC's Part 32 and 36 rules as part of the process of determining interconnection costs, "average schedule" companies use formulas, based on average costs, to establish their interstate costs which are utilized to determine the interstate settlements of each average schedule company from the NECA Common Line and Traffic Sensitive Pools. While other factors are involved, interstate switched access minutes and number of access lines served are the basis for the majority of the

interstate settlements. The interstate settlement revenue includes all forms of federal universal service funding, including Interstate Common Line Support, Local Switching Support and High Cost Loop Funding. Average schedule companies have elected to have their costs determined based on average schedule formulas, rather than company specific cost information. Accordingly, average schedule companies do not track cost information that would be utilized in the performance of any cost study. Small carriers were initially offered the choice of utilizing average schedules in lieu of company-specific costs because the FCC recognized that there would not be sufficient value to the public to require small carriers to incur the costs and administrative burden of performing studies. The very factors that led the FCC to permit and maintain average schedule status for small carriers is applicable in these circumstances to all Coalition members.

13. Throughout the Docket No. 03-00585 arbitration, the Coalition had often reminded the other parties and the Authority that the positions espoused by the CMRS providers have not been adopted by the FCC as standards that guide and determine the resolution of arbitration issues. In the FCC's CC Docket 01-92, *Developing a Unified Intercarrier Compensation Regime*, the FCC is undertaking to develop rules to establish a unified intercarrier compensation regime, including a regime for compensation relating to traffic passing between local exchange carriers like the Coalition members and CMRS providers. By its *Further Notice of Proposed Rulemaking* ("FNPR") released on March 3, 2005, the FCC began "the process of replacing the myriad existing intercarrier compensation regimes with a unified

regime designed for a market characterized by increasing competition and new technologies.”

14. The FCC’s *Further Notice of Proposed Rulemaking in the Unified Inter-carrier Compensation* proceeding requested comment on a broad range of issues relating to inter-carrier compensation, including both compensation schemes and other associated issues, including the responsibilities associated with indirectly exchanged “transit” traffic. The FCC’s final decision and resulting implementation rules that will be established in that proceeding are reasonably expected to resolve inter-carrier compensation issues relating to traffic exchanged between local exchange carriers and CMRS providers including many of the very same issues raised in the Docket No. 03-00585 arbitration before the Authority.
15. Based on the foregoing, the Coalition members respectfully request that the Authority find that and to the extent that the Authority would otherwise rely upon the interconnection requirements of Section 251 (b)(5) of the Act (and, derivatively, on the associated interconnection pricing standards set forth in Section 252 of the Act and the FCC rules and regulations implementing these standards), the Coalition members respectfully request that the authority determine that it is necessary and consistent with the public interest to suspend and modify any such requirements to ensure that none of the Coalition members are required to incur the otherwise unnecessary and unduly economically burdensome requirement of performing or providing TELRIC cost studies. Moreover, this suspension and modification should apply equally both to the establishment of

interconnection terms and conditions whether pursuant to mutual negotiation or by arbitration with any interconnecting carriers.

16. The Coalition respectfully submits that the requested modification and suspension should remain in effect until the FCC's final decision in CC Docket 01-92, *Developing a Unified Intercarrier Compensation Regime* becomes effective or three years if the FCC has not concluded its rulemaking by that time. If, at the end of the three years the FCC has not resolved these issues, the members of the Coalition would retain the right, in accordance with the Act, to request a continuation of this suspension and modification to the extent that any such continuation would be consistent with the requirements of Section 251(f)(2) of the Act.
17. In addition to the implementation of a suspension to the extent necessary to avoid the undue economic burden of TELRIC studies, the Coalition respectfully requests that the Authority implement several related modifications of the interconnection requirements established under Section 251(b)(5). Concurrent with the adoption of the requested suspension, the Coalition members additionally request that the TRA, consistent with its right to establish interim transport and termination rates pursuant to Section 51.715 of the FCC's Rules and Regulations,<sup>15</sup> further modify the interconnection requirements by establishing an interim reciprocal compensation rate based on the Authority's experience in the establishment of interconnection rates to the rural networks of the Coalition

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<sup>15</sup> 47 CFR 51.715

members.<sup>16</sup> The resulting interim rate would be available both to the Coalition members and any CMRS provider to utilize as the lawful charge for the transport and termination of traffic exchanged pursuant to Section 251(b)(5) of the Act until such time that a permanent rate is established. Finally, the Coalition additionally requests modification to the extent necessary to enable each Coalition member to establish permanent rates for the transport and termination of Section 251(b) (5) reciprocal compensation traffic on the basis of its costs by using data consistent with that which the FCC currently utilizes to determine the pricing of other forms of interconnection to the networks of each Coalition member.

18. Pending final action on this Petition the Coalition respectfully urges that the TRA, consistent with its authority pursuant to Section 251(f)(2)(B) of the Act, “suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers,” and that in so doing the Authority also modify accordingly the establishment of the interim rate as proposed above and consistent with the TRA’s prior and most recent findings regarding the appropriate level of charges for interconnection of the subject traffic to the Coalition members’ rural Tennessee networks.

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<sup>16</sup> The Coalition respectfully notes that the Authority’s utilization in the Order of Arbitration Award in Docket No. 03-00585 of the BellSouth reciprocal compensation rates as the interim rate for rural Tennessee service areas may have been based on the Authority’s understanding of the standards to which it was bound in the absence of a suspension or modification. As noted in the Coalition’s May 23, 2006 correspondence to the Directors regarding Docket No. 03-00585, and without waiver of rights, the most recent rate established by the Authority applicable to the transport and termination of CMRS traffic transmitted to the Coalition networks is 1.5 cents per minute. This rate is on the low end of a range of rates that have been used as permanent reciprocal compensation rates in agreements between rural carriers and CMRS providers throughout the nation.

WHEREFORE, Petitioners respectfully request that the Authority grant this request to suspend and modify the interconnection requirements otherwise imposed on the Coalition members to the extent necessary and consistent with the public interest:

1. To ensure that the RLECs are not required to incur the undue economic burden of undertaking TELRIC cost studies;
2. To ensure that the RLECs and interconnecting carriers are authorized to assess an interim rate consistent with the rate levels the Authority has previously determined applicable to the transport and termination of traffic on RLEC networks; and
3. To ensure that each Coalition member may establish permanent rates for the transport and termination of traffic subject to reciprocal compensation on the basis of the same data and cost methodology that the FCC permits each RLEC to utilize in establishing the price of other services until such time as the FCC has made its final ruling in CC Docket 01-92.

Respectfully submitted this 23<sup>rd</sup> day of June, 2006.

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### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on June 23, 2006, a true and correct copy of the foregoing was served on the parties of record via electronic mail delivery:

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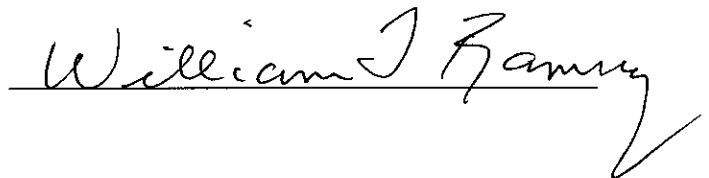
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