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April 9, 2007

Honorable Sara Kyle, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
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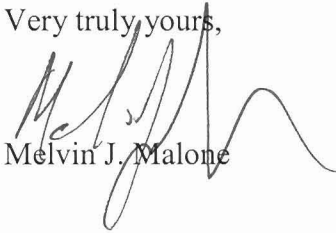
**RE: In the Matter of: Tennessee Rural Independent Coalition Petition for
Suspension and Modification Pursuant to 47 U.S.C. Section 251(f)(2)
TRA Docket No. 06-00228**

Dear Chairman Kyle:

Pursuant to the Procedural Schedule, enclosed please find an original and thirteen (13) copies of the *CMRS Providers' Motion to Compel*. An additional copy of this filing is enclosed to be "File Stamped" for our records.

If you have any questions or require additional information, please let me know.

Very truly yours,


Melvin J. Malone

cc: Parties of Record

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In the Matter of:

**Tennessee Rural Independent
Coalition Petition for Suspension
and Modification Pursuant to 47
U.S.C. Section 251(f)(2)**

Docket No. 06-00228

CMRS PROVIDERS' MOTION TO COMPEL

Pursuant to the Procedural Schedule issued by the Hearing Officer in this matter, Verizon Wireless, New Cingular Wireless PCS, LLC d/b/a Cingular Wireless; Sprint Spectrum L.P. d/b/a Sprint PCS; and T-Mobile USA, Inc., (collectively referred to herein as “the CMRS Providers”) respectfully submit this Motion to Compel. For the reasons set forth below, the CMRS Providers ask the Tennessee Regulatory Authority (“Authority” or “TRA”) to grant this Motion to Compel.¹

I.

INTRODUCTION AND BACKGROUND

In this proceeding, the Tennessee Rural Independent Coalition (“Coalition”) has sought a waiver or suspension of its members’ obligations to produce TELRIC studies in support of transport and termination rates to be set in a related arbitration docket (TRA Consolidated

¹ For their cause, the CMRS Providers also rely, as if set forth fully herein, on the grounds contained in the *CMRS Providers’ Response to the Tennessee Rural Coalition’s Supplemental Statement Regarding Petition for Section 251(f)(2) Suspension and Modification of Section 251(B)(5) TELRIC Pricing Methodology*, TRA Docket No. 06-00228 (Nov. 2, 2006).

Docket No. 03-00585). Specifically, the Coalition asserts that production of TELRIC studies would be “unduly economically burdensome” because (1) the alleged cost of such studies would be high, and (2) many of the Coalition members have never been required to collect cost data. To support its claim, the Coalition alleged (in its Petition and Supplemental Statement) that its members would incur costs ranging between \$18,750 and \$80,000 per carrier to prepare a TELRIC study, and that those alleged costs, in and of themselves, established that production of such a study was “unduly economically burdensome.”²

On February 26, 2007, the TRA established a Procedural Schedule to determine the merits of the Coalition’s Petition. The schedule contemplates discovery by the CMRS Providers on the issues raised by the Coalition’s Petition, as well as a hearing on the merits. Pursuant to the Procedural Schedule, the CMRS Providers served interrogatories and requests for production of documents upon the Coalition, inquiring about the financial resources of the Coalition members (in relation to the alleged burdensome cost of TELRIC studies), and about the availability of necessary cost data (in relation to the alleged burden of collecting such data).

The Coalition, however, has objected to the bulk of these requests as discussed more fully below. Instead of appropriately responding to the discovery submitted, it continues to insist that the estimated costs of a TELRIC study constitutes the only information that is relevant to this proceeding and thus has refused to produce anything other than what appear to be generic cost estimates of preparing such studies.³ Once again, the TRA and the CMRS Providers are left with

² *Supplemental Statement of the Rural Coalition*, TRA Docket No. 06-00228 at pp. 7-12 (Oct. 2, 2006) (“*Supplemental Statement*”).

³ The CMRS Providers note the Coalition discovery responses indicate cost estimates – dated anywhere between March 16, 2007 and March 22, 2007 - ranging from \$20,000 to \$80,000 from the two (2) outside consultants. Although the merits of those costs estimates will be explored more fully at the hearing, the CMRS Providers further note that many of the costs estimates seem to include projected legal costs (e.g., the Parish Blessing estimate for DeKalb indicates \$15,000 for the cost study and \$24,000 for litigation/hearing related costs).

no evidence from which they can understand or analyze the Coalition's claim of alleged undue economic burden. As a result, the CMRS Providers are forced to file this motion.

II.

DISCUSSION & ANALYSIS

Under TRA Rules, Chapter 1220-1-2-.11, discovery in a contested case "shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure." Under Tenn. Civ. Proc. Rule 26.02(1), "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." As the Authority has long and often acknowledged, the phrase "relevant to the subject matter involved in the pending action" has been construed to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.⁴ In fact, relying on well-established Tennessee precedent, the agency has noted on too many occasions to number that relevancy is "more loosely construed during discovery than it is at trial."⁵

The Coalition has not interposed any claim of privilege or undue hardship in objecting to the CMRS Providers' interrogatories and requests for productions. The objections are based

⁴ See, e.g., *Order Granting Motions to Compel in Part and Denying in Part*, TRA Docket No. 03-00118 at 2 (April 25, 2003) (quoting *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 220 n. 25 (Tenn. Ct. App. 2002)). See also *Price v. Mercury Supply Co.*, 682 S.W.2d 924 (Tenn. Ct. App. 1984).

⁵ See, e.g., *Order Resolving Discovery and Protective Order Disputes and Requiring Filings*, TRA Docket No. 05-00258 at 4 (June 14, 2006) (quoting *Boyd*, 88 S.W.3d at 220 n. 25); and *Order Denying the Request for Reconsideration of 'Order Granting Motion to Compel' Issued June 17, 2004 by the Pre-Arbitration Officer, In Re: Petition for Arbitration of Cellico Partnership d/b/a Verizon Wireless*, TRA Consolidated Docket 03-00585, p. 11 (Feb. 14, 2005) (quoting *Price*, 682 S.W.2d at 935).

solely on relevance.⁶ In each instance, the Coalition claims that the requested information is irrelevant to a decision in this matter.

Whether the requested information is relevant can only be decided in relation to the applicable legal standards and the relief requested in this docket.

A. Applicable Legal Standards

Petitioners seek relief pursuant to section 251(f)(2) of the Telecommunications Act of 1996, which provides:

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 of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition.⁷

The Act further permits a state commission to grant the petition if a suspension or modification 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.⁸

B. Requested Relief

The Coalition members have specifically requested 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 [sic] required to incur the otherwise unnecessary and

⁶ *Joint Response of the Tennessee Rural Independent Coalition to CMRS Providers' Interrogatories and Requests for Production of Documents to Rural Coalition Members*, TRA Docket No. 06-00228 (Mar. 23, 2007) ("*Joint Response of Coalition*").

⁷ 47 C.F.R. § 251(f)(2).

⁸ *Id.* Additionally, such suspension or modification must be consistent with the public interest.

unduly economically burdensome requirement of performing or providing TELRIC cost studies.⁹

In support of their claim that performing TELRIC studies would be “unduly economically burdensome,” the Coalition makes the following specific allegations:

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.¹⁰

[T]he 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.¹¹

Coalition members thus base their claim for a modification or suspension of the obligation to produce TELRIC studies upon two (2) theories. First, the cost of such studies, considered purely in isolation, is burdensome. Second, some Coalition members do not track cost information in the normal course of business; therefore, tracking such information would be unduly economically burdensome.

Each interrogatory and request for production objected to by the Coalition, however, seeks information directly related to the above two (2) claims. Thus, all requested information is relevant, and its production should be compelled.

C. Interrogatory Number 1

Interrogatory Number 1 seeks the following: “For each Rural Coalition member, identify all affiliated entities (excluding individuals) (1) that hold an ownership interest in a Coalition member, or (2) that a Coalition member holds an ownership interest in.”

⁹ *Coalition Petition for Suspension and Modification*, TRA Docket No. 06-00228 p. 11 (June 23, 2006).

¹⁰ *Id.*

¹¹ *Id.*, p. 9; see also *Supplemental Statement* at p. 6 (“Prior to the performance of the TELRIC study, these Petitioners [average schedule companies] will accordingly incur additional internal and external costs to compile data necessary for their respective TELRIC studies.”).

The Coalition objects that the requested information is irrelevant.¹² Specifically, the Coalition responded as follows:

RESPONSE: The Petitioners each object to this request on the basis that the requested information is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.¹³

In deciding this case, this Authority must determine if production of a TELRIC study would be “unduly economically burdensome” to any Coalition member. As recognized by both the Eighth Circuit Court of Appeals and the Texas Public Utility Commission, the Authority cannot credibly make that determination without understanding the relationship of the alleged costs of a TELRIC study to the overall economic situation of the individual Coalition members.¹⁴ In fact, the TRA has likewise acknowledged and pronounced the exact same principle under very similar circumstances.¹⁵

In determining whether a TELRIC study would be unduly economically burdensome to an individual Coalition member, questions of ownership and affiliation are clearly relevant,

¹² *Joint Response of Coalition*, p. 1.

¹³ *Id.*

¹⁴ See *CMRS Providers’ Response to the Tennessee Rural Coalition’s Supplemental Statement Regarding Petition for Section 251(f)(2) Suspension and Modification of Section 251(B)(5) TELRIC Pricing Methodology*, pp. 5-6.

¹⁵ As the Authority has already recognized in the context of the Coalition’s previous request to suspend the Act’s number portability requirements, alleged costs alone are not sufficient to satisfy a claim that a requirement is “unduly economically burdensome.” See *Order Denying Amended Petition and Establishing Dates For Implementation of Local Number Portability, In Re: Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1943, as Amended*, TRA Docket No. 03-00633, p. 17 (Sept. 6, 2005) (“TRA Suspension Order”) (“The Coalition did not submit data reflecting the financial impact of additional costs associated with the completion of wireless calls under an intermodal porting situation. Section 251 of the Act and the Authority’s instructions to file company-specific data require more than the anecdotal and general policy statements contained in this record. The panel determined that, in the absence of data to support specific contentions, conclusions with respect to public interest and sound policy are, at best, speculative.”).

because they provide some context for evaluating how “burdensome” potential costs associated with such a study would be to each carrier. For example, the recent Coalition filing in this docket (regarding Coalition reciprocal compensation billing to the CMRS providers), indicates that many Coalition members are owned by multi-state telecommunications corporations; therefore, the costs of a TELRIC study could theoretically be spread across the assets of each of these entities, contributing to a relatively lower economic burden for an affiliated group of carriers.

Specifically, it appears from the Coalition members’ recent filing that four (4) Coalition members (Concord, Humphrey, Tellico and Tennessee Telephone) are owned by, or otherwise affiliated with, the TDS companies; three (3) are owned by CenturyTel (Claiborne, Adamsville and Ooltewah-Collegedale); three (3) are owned by Telephone Electronic Corporation (Crockett, Peoples and West Tenn.); and one (1), Yorkville Telephone Cooperative, Inc., has recently been acquired by West Kentucky Rural Telephone Cooperative Corporation, Inc.¹⁶

Responses by these companies to Interrogatory Number 1 are clearly relevant, since whether the cost associated with a TELRIC study constitutes an undue economic burden will depend, to some extent, on the resources of the company involved, and those resources will depend in part on the resources of the owner – a much larger organization. Thus, consistent with well-established Tennessee case law, the ownership of each Coalition member, and the entities owned by each Coalition member, clearly bear upon, or reasonably could lead to other

¹⁶ See *Notice of Filing*, TRA Docket No. 06-00228 (Mar. 28, 2007) (Response of Coalition Members to TRA’s Request for Reciprocal Compensation Billing and Financial Recording of Associated Revenue and Expense). Though not clear from the filing, and perhaps remote, it also appears that there may be some type of relationship between the TDS Companies and DeKalb and Highland and that United Telephone may be part of a larger multi-state entity. *Id.*

matters that could bear on, the question of relative economic burden, and the Authority should compel each Coalition member to answer Interrogatory Number 1.¹⁷ Again, as the TRA has previously concluded, relevancy is more loosely construed during discovery.

D. Interrogatory Number 2

Interrogatory Number 2 reads as follows:

If not contained in the audited financial statements produced in response to Request for Production of Documents Number 1, identify the following for each Coalition member:

- a. After-tax earnings or “surplus” for the most recent three (3) years.
- b. Current book value of plant, equipment and other assets.
- c. Annual gross revenue for the most recent three (3) years.
- d. For the most recent three (3) years, equity (or “retained surplus”) as a proportion of the book value of equity and debt (i.e., return on equity).
- e. The effective corporate income tax rate.
- f. For the most recent three (3) years, annual cash-flow both before and after capital expenditures.

The Coalition objects to the requested information on the following grounds, quoted here in full:

The Petitioners each object to this request on the basis that the requested information is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The past financial and operational results of each company are not factors in the determination of whether a Coalition member should be subject to a suspension of the Authority’s decision to utilize TELRIC cost studies to determine the rate for reciprocal compensation. Nor is the requested information relevant to the ultimate establishment of a rate for reciprocal compensation. As set forth in Section 252(d)(2) of the Communications Act of 1934, as amended (the “Act”), the rate should be based on “a reasonable approximation of the additional costs of terminating such calls.” Moreover, the Act specifically does not “authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require

¹⁷ See *BellSouth Advertising & Publishing Corp. v. TRA*, 79 S.W.3d 506, 516 (Tenn. 2002) (“The filing of consolidated reports by parent and subsidiary corporations, both for tax purposes and regulatory purposes, is so commonplace as to be completely familiar in modern law and practice.”).

carriers to maintain records with respect to the additional costs of such calls.” (emphasis in original).¹⁸

First, the Authority has long rejected the Coalition’s “rate regulation” contention.¹⁹ Next, the Coalition does not allege that it does not have the requested information, or that production of the same would be burdensome, since all companies maintain the requested financial information in the normal course of business. Instead, the Coalition claims that the requested information is irrelevant.

The information requested by the CMRS Providers in Interrogatory Number 2, however, goes to the very heart of each Coalition member’s claim that production of a TELRIC study would be unduly economically burdensome, since the alleged cost of a study standing alone simply does not, and cannot, provide a basis to determine whether such costs are burdensome. For example, a \$35,000 study might be burdensome to a company with a yearly after-tax income of \$20,000. However, the analysis would be quite different for a company with more substantial yearly after-tax income. Thus, each Petitioner’s after-tax income is clearly relevant.

The same is true for every other item requested in Interrogatory Number 2. The Authority has made clear that claims of economic burden must be evaluated in light of “company

¹⁸ *Joint Response of Coalition*, p. 2. As the CMRS Providers will demonstrate when the merits are considered in this proceeding, the language quoted by the Coalition demonstrates precisely why TELRIC studies are **not** burdensome – because the Act does not require the Coalition members to “establish with particularity” their additional costs of transporting and terminating wireless traffic, nor does the Act require the Coalition members’ TELRIC studies to maintain records of such additional costs. TELRIC studies of transport and termination costs are rather based upon “reasonable approximations.” Thus, the Coalition members’ TELRIC studies need not be lengthy and arcane, and need not be based upon overly burdensome record-keeping requirements.

¹⁹ *Order Denying the Request for Reconsideration of ‘Order Granting Motion to Compel’ Issued June 17, 2004 by the Pre-Arbitration Officer*, TRA Consolidated Docket 03-00585, p. 12 (Feb. 14, 2005) (“The Coalition’s argument that the requested audited financial statements are not relevant because consideration of the information contained in those statements may not be used in traditional rate case proceedings using rate of return regulation and is prohibited by Section 252(d)(2)(B)(ii) of the Telecommunications Act of 1996 is without merit.”).

specific data.”²⁰ The information requested is designed to provide company specific data necessary for a proper evaluation of the Coalition’s claims. Certainly the requested information is such that it bears upon, or reasonably could lead to other matters that could bear on, the issues that are or may be in the case.

Under Tennessee law, the requested information is relevant, and the Coalition should be compelled to respond to Interrogatory Number 2.

E. Interrogatory Number 5

Interrogatory Number 5(a) requests CenturyTel to:

Identify each cost study (by jurisdiction and date) that has been performed by or for CenturyTel to support any Transport and Termination rate(s) it has sought to charge any interconnecting Telecommunications Carrier in any jurisdiction.

CenturyTel did not interpose any objection to Interrogatory No. 5(a). Instead, CenturyTel provided an incomplete answer:

To the best of the Companies’ knowledge, CenturyTel has never performed a **TELRIC** study in the development of a reciprocal compensation rate. (emphasis added).

Interrogatory 5(a) does not qualify in any manner the type of cost study that CenturyTel was asked to identify. Therefore, a response limited to TELRIC studies is incomplete and allows

²⁰ See *supra* n. 15. See also, *Transcript of Authority Conference*, TRA Docket No. 06-00228, p. 15 (Sept. 11, 2006) (“[A Section 251(f)(2)] suspension or modification can only be granted pursuant to a *company-specific demonstration* that the TELRIC cost study requirements is unduly economically burdensome.”) (Comments of Panel Member/Hearing Officer) (emphasis added); *Transcript of Proceeding*, TRA Consolidated Docket No. 03-00585, pp. 66-68 (Aug. 29, 2006) (“Recovery . . . is one that’s rolled into the overall – the overall fitness of a company[.]”) (Comments of Panel Member); and Notice, *In Re: Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, As Amended*, TRA Docket No. 03-00633 (Aug. 20, 2004) (TRA advising, *sua sponte*, its intent to take administrative notice of certain financial reports relating to section 251(f)(2) petitioners).

CenturyTel to avoid identifying studies that may have been performed in other states involving many of the same principles and costs as a TELRIC study.

The requested information is relevant, and CenturyTel should be compelled to provide a complete answer to Interrogatory 5(a).²¹

F. Interrogatory Number 7

As shown by **Exhibit No. 1** attached hereto, Interrogatory Number 7 is a simple chart to be filled in by each Coalition member to verify what data are available from current Coalition member records, what data can be gathered by current Coalition member employees, and what data can only be collected by an outside consultant.²²

The Coalition members object to responding to Interrogatory Number 7 on the ground of relevance.²³ Specifically, the Coalition members responded as follows:

RESPONSE: The Petitioners each object to this request on the basis that the requested information is not relevant to the determination of whether the Authority should grant the requested suspension in accordance with Sec. 251(f)(2) of the Communications Act of 1934, as amended (the “Act”) in this proceeding. Accordingly, the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

The interrogatory requests information that pertains to the accumulation of data that is essentially the first steps in performing a TELRIC cost study, the very requirement with respect to which the Petitioners each seek suspension. Moreover, the availability of the information identified in items 1 through 20 of this interrogatory are not even relevant to the statutory standard that governs the establishment of a rate for reciprocal compensation. As set forth in Section 252(d)(2) of the Act, the rate should be based on “a reasonable approximation of

²¹ See, e.g., Order Granting Motion to Compel, *In Re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless*, TRA Consolidated Docket No. 03-00585, p. 5-6 (June 17, 2004) (Reviewing similar responses, the Hearing Officer concluded that the answers were “non-responsive.”).

²² A copy of the *CMRS Providers’ Interrogatories and Requests for Production of Documents to Rural Coalition Members* is attached hereto as **Exhibit 1**. The *Joint Response of Coalition* was filed by the Coalition with the Authority on March 23, 2007.

²³ *Joint Response of Coalition*, p. 6.

the additional costs of terminating such calls.” Moreover, the Act specifically does not “authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.” (emphasis in original).²⁴

The Authority should note that the CMRS Providers are not asking Coalition members to gather any data. The interrogatory merely inquires about the availability of certain listed data.

The Coalition has objected on the ground of relevance. The CMRS Providers have propounded this interrogatory, however, precisely because of the Coalition’s assertions, quoted above, that production of a TELRIC study would be unduly economically burdensome because “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.”²⁵ In order to evaluate whether data collection would constitute an undue economic burden, both the CMRS providers and this Authority are entitled to know what data are currently available in the business records of Coalition members, what data can be gathered by current employees, and what data can only be collected by an outside consultant. Clearly, if most information necessary for a TELRIC study is readily available to Coalition members, data collection will not create any undue burden. Since the Coalition members have raised data collection as an issue in this case, questions about data collection are clearly relevant.

For example, the chart asks about the availability of data identifying “host, remote and tandem switches by common name and CLLI Code.” This request is akin to asking a homeowner if she knows her street address or if she has to ask someone else for that information. It is highly unlikely that any Coalition member does not already have this information in its

²⁴ *Id.*

²⁵ *Coalition Petition for Suspension and Modification*, TRA Docket No. 06-00228, p. 9.

current records. Thus, to answer Interrogatory Number 7, each Coalition member need only check the first box for this data point. The Coalition members are **not** being asked to list and identify their switches. The same is true for every other item listed in the chart accompanying Interrogatory Number 7.

The information requested in Interrogatory Number 7 is relevant to the claimed burden of data collection, and the Coalition members should be compelled to respond.

G. Request for Production of Documents Number 1

The CMRS providers' first request for production of documents seeks copies of each Coalition member's "three (3) most recent audited financial statements containing Part 32 – Uniform System of Accounts level detail."²⁶ The Coalition again objects to the request on the grounds of relevance.²⁷ Specifically, the Coalition responded as follows:

RESPONSE: The Petitioners each object to this request on the basis that the requested information is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The past financial and operational results of each company are not factors in the determination of whether a Coalition member should be subject to a suspension of the Authority's decision to utilize TELRIC cost studies to determine the rate for reciprocal compensation. Nor is the requested information relevant to the ultimate establishment of a rate for reciprocal compensation. As set forth in Section 252(d)(2) of the Communications Act of 1934, as amended (the "Act"), the rate should be based on "a reasonable approximation of the additional costs of terminating such calls." Moreover, the Act specifically does not "authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."²⁸

²⁶ See Exhibit 1.

²⁷ *Joint Response of Coalition*, p. 7.

²⁸ *Id.* As the CMRS Providers will demonstrate when the merits are considered in this proceeding, the language quoted by the Coalition demonstrates precisely why TELRIC studies are **not** burdensome – because the Act does not require the Coalition members to "establish with particularity" their additional costs of transporting and terminating wireless traffic, nor does the Act require the Coalition members' TELRIC studies to maintain records of such

(continued...)

For all the reasons discussed earlier herein, each Coalition member's audited financial statements are clearly relevant in a proceeding that will determine if the production of TELRIC studies is "unduly economically burdensome." The CMRS providers therefore adopt herein the arguments made above in regard to Interrogatory Number 2.

The Authority should also note that in the related arbitration docket to this case –TRA Consolidated Docket No. 03-00585 – the CMRS Providers sought the production of audited financial statements for 2000, 2001, 2002 and 2003. The Coalition members refused to produce the requested information, the CMRS providers moved to compel, and the Authority ordered the Coalition to produce the requested audited financial statements.²⁹ Thus, the Coalition members have already produced audited financial information through 2003. The CMRS providers are now merely seeking to update that information – so that the Authority will have current financial data available when making its decision in this case.

Audited financial statements of the Coalition members are clearly relevant in a proceeding to determine questions of undue economic burden.

H. Request for Production of Documents Number 2

The CMRS providers' second request for production seeks "copies of all documents supporting the answers to Interrogatory Number 2." The Coalition interposed the same relevancy objection as to Interrogatory Number 2.³⁰

additional costs. TELRIC studies of transport and termination costs are rather based upon "reasonable approximations." Thus, the Coalition members' TELRIC studies need not be lengthy and arcane, and need not be based upon overly burdensome record-keeping requirements.

²⁹ See, *Order Denying the Request for Reconsideration of 'Order Granting Motion to Compel' Issued June 17, 2004 by the Pre-Arbitration Officer*, TRA Docket 03-00585 (Feb. 14, 2005).

³⁰ *Joint Response of Coalition*, p. 7.

The CMRS Providers incorporate herein the arguments made in support of compelling answers to Interrogatory Number 2. The financial information here requested is clearly relevant.

I. Request for Production of Documents Number 7

The CMRS providers' seventh request for production seeks "a copy of each cost study identified in response to Interrogatory 5(a)." CenturyTel interposed no objection, and instead stated: "See Response to Interrogatory 5."³¹

The CMRS providers incorporate herein the arguments made in support of compelling a responsive answer to Interrogatory Number 5. Prior cost studies prepared by CenturyTel, whether TELRIC or not, are clearly relevant.

III.

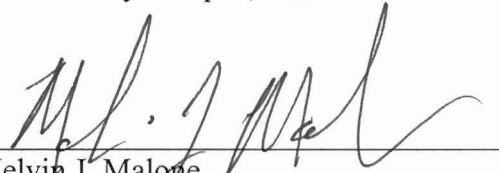
CONCLUSION

The Coalition members are affirmatively seeking a suspension under Section 251(f)(2) of the Telecommunications Act. As such, and as the Coalition has conceded, it bears the burden of proof in this docket.³² All the information sought by the CMRS providers is relevant to a determination whether the production of TELRIC studies constitutes an "undue economic burden" on any particular Coalition member. The information requested either goes to the financial circumstances of each company, or to the relative ease of gathering necessary cost data – the two (2) issues raised by the Coalition in this proceeding. Accordingly, the Authority should compel the Coalition members to provide the information requested in Interrogatories 1, 2, 5(a) and 7, and in Requests for Production of Documents 1, 2 and 7.

³¹ *Id.*, p. 8.

³² *Order Establishing Procedural Schedule and Other Preliminary Matters*, TRA Docket No. 06-00228 at 7 (Mar. 19, 2007) ("[T]he Rural Coalition acknowledged that it carries the burden of proof on this issue.").

Respectfully submitted this 9th day of April, 2007.

A handwritten signature in black ink, appearing to read 'M.J. Malone', is written over a horizontal line.

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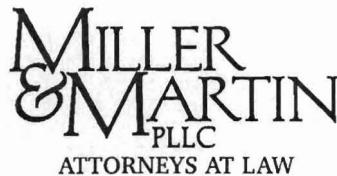
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EXHIBIT 1



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March 12, 2007

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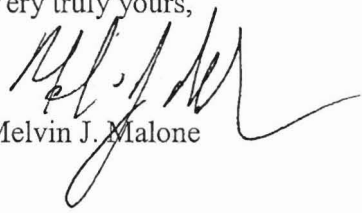
**RE: In the Matter of: Tennessee Rural Independent Coalition Petition for
Suspension and Modification Pursuant to 47 U.S.C. Section 251(f)(2)
TRA Docket No. 06-00228**

Dear Bill:

Pursuant to the Procedural Schedule established in the above-captioned matter, enclosed please find the CMRS Providers' Interrogatories and Requests for Production of Documents to Rural Coalition Members, the Motion Regarding CMRS Providers' Interrogatories and Requests for Production of Documents, along with an accompanying memorandum, and the CMRS Providers' Current Electronic Service List.

If you have any questions, please let me know.

Very truly yours,


Melvin J. Malone

c: Steve Kraskin
Other Parties of Record

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In the Matter of:

**Tennessee Rural Independent
Coalition Petition for Suspension
And Modification Pursuant to
47 U.S.C. Section 251(f)(2)**

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Docket No. 06-00228

**CMRS PROVIDERS' INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS TO RURAL COALITION MEMBERS**

Cellco Partnership d/b/a Verizon Wireless; New Cingular Wireless PCS, LLC d/b/a Cingular Wireless;¹ Sprint Spectrum L.P. d/b/a Sprint PCS; and T-Mobile USA, Inc., (collectively referred to herein as “the CMRS Providers”) submit their Interrogatories and Requests for Production of Documents separately and independently to each member of the Rural Coalition, referred to separately and individually herein as Petitioner, pursuant to the Rules of the Tennessee Regulatory Authority (“TRA” or “Authority”) and the Tennessee Rules of Civil Procedure. These Interrogatories include requests for copies of documents as provided by the Tennessee Rules of Civil Procedure. Answers must be served consistent with the Procedural Schedule established by the Hearing Officer in this matter. Each member of the Rural Coalition should provide separate answers to these Interrogatories and Requests for Production, except to the extent that the answer to a particular question is the same for all or some portion of the

¹ Following the December 29, 2006, merger of AT&T, Inc. and BellSouth Corporation, Cingular Wireless became a wholly-owned indirect subsidiary of AT&T, Inc.

Rural Coalition members. Consistent with Authority Rules, all responses shall be signed under oath.²

DEFINITIONS AND INSTRUCTIONS

1. "Affiliate" shall have the meaning as defined in 47 U.S.C. § 153(1).
2. "CMRS" and "Commercial Mobile Radio Service" shall have the meaning defined and used by the Federal Communications Commission. *See* 47 C.F.R. §§ 20.3, 20.9(a)(4), (7), (11).
3. "Communication" or "communications" shall mean all meetings, conversations, conferences, discussions, correspondence, messages, telegrams, telefax, mailgrams, and all oral and written expressions or other occurrences whereby thoughts, opinions or data are transmitted between two or more persons.
4. "Documents" as used herein shall mean every original and every non-identical copy of any original of all mechanically written, handwritten, typed or printed material, electronically stored data, microfilm, microfiche, sound recordings, films, photographs, slides, and other physical objects of every kind and description containing stored information, including but not limited to, all transcripts, letters, notes, memoranda, tapes, records, telegrams, periodicals, pamphlets, brochures, circulars, advertisements, leaflets, reports, research studies, test data, working papers, drawings, maps, sketches, diagrams, blueprints, graphs, charts, diaries, logs, agreements, contracts, rough drafts, analyses, ledgers, inventories, financial information, books of account, understandings, minutes of meetings, minute books, resolutions, assignments, computer printouts, purchase

² The CMRS Providers hereby agree to be bound in TRA Docket No. 06-00228 by the Protective Order entered into by the parties and approved by the Hearing Officer in TRA Docket No. 03-00585.

orders, invoices, bills of lading, written memoranda or notes of oral communications, and any other tangible thing of whatever nature.

5. "Person" or "Persons" shall have the meaning as defined in 47 U.S.C. § 153(32).
6. "Rural Coalition Member" or "Coalition Member" shall mean any Petitioner herein.
7. "Telecommunications carrier" shall have the same meaning as defined in 47 U.S.C. § 153(44).
8. "Telecommunications service" shall have the same meaning as defined in 47 U.S.C. § 153(46).
9. "Termination" shall have the meaning as defined in 47 C.F.R. § 51.701(d).
10. "Transport" shall have the meaning as defined in 47 C.F.R. § 51.701(c).
11. "CMRS Providers" shall mean Verizon Wireless, Cingular Wireless, Sprint PCS, and T-Mobile.
12. "Identify" or "state the identity of" means:

(a) In the case of a person, to state the name; last known residence; employer or business affiliation; and occupation and business position held.

(b) In the case of a company, to state the name; if incorporated, the place of incorporation; the principal place of business; and the identity of the person(s) having knowledge of the matter with respect to which the company is named.

(c) In the case of a document, to state the identity of the person(s) who prepared it; the sender and recipient; the title or a description of the general nature of the subject matter; the date of preparation; the date and manner of distribution

and publication; the location of each copy and the identity of the present custodian; and the identity of the person(s) who can identify it.

(d) In the case of an act or event, to state a complete description of the act or event; when it occurred; where it occurred; the identity of the person(s) performing said act (or omission); the identity of all persons who have knowledge, information or belief about the act; when the act, event, or omission first became known; the circumstances; the manner in which such knowledge was first obtained; and the documents or other writings which memorialize the instance.

13. If you object to any Interrogatory or Request for Production of Documents, or any subpart thereof, or otherwise withhold responsive information because of the claim of privilege, work product, or other grounds:

- (a) identify the Interrogatory or Request for Production of Documents to which objection or claim of privilege is made;
- (b) state whether the information is found in a document, oral communication, or in some other form;
- (c) identify all grounds for objection or assertion of privilege, and set forth the factual basis for assertion of the objection or claim of privilege;
- (d) identify the information withheld by description of the topic or subject matter, the date of the communication, and the participants;
and

- (e) identify all persons having knowledge of any facts relating to your claim of privilege.

14. If you object to any portion of an Interrogatory or Request for Production of Documents, explain your objection and answer the remainder.

15. The information requested herein is intended to include all knowledge and information of Petitioner in its corporate capacity, and includes, unless otherwise specifically indicated, Petitioner's predecessors, agents, legal representatives, divisions, subsidiary entities, both controlled and wholly-owned, and all other related companies (as defined by 15 U.S.C. § 1127), and the past and present officers, directors, employees, agents, representatives, attorneys and other personnel thereof, as well as each entity through which Petitioner provides telephone service.

16. These Interrogatories are deemed continuing in nature, requiring Petitioner to serve further responses promptly after Petitioner has acquired additional knowledge or information.

INTERROGATORIES

1. For each Rural Coalition member, identify all affiliated entities (excluding individuals) (1) that hold an ownership interest in a Coalition member, or (2) that a Coalition member holds an ownership interest in.
2. If not contained in the audited financial statements produced in response to Request for Production of Documents Number 1, identify the following for each Coalition member:
 - a. After-tax earnings or "surplus" for the most recent three (3) years.
 - b. Current book value of plant, equipment and other assets.
 - c. Annual gross revenue for the most recent three (3) years.
 - d. For the most recent three (3) years, equity (or "retained surplus") as a proportion of the book value of equity and debt (i.e., return on equity).
 - e. The effective corporate income tax rate.

- f. For the most recent three (3) years, annual cash-flow both before and after capital expenditures.
- 3. For each Rural Coalition member, provide:
 - a. The name of each entity from which an estimate was received of the cost to perform a forward looking study (e.g., LRIC, TSLRIC, TELRIC) of Transport and Termination.
 - b. Each and every cost estimate received for performing a forward looking study (e.g., LRIC, TSLRIC, TELRIC) from each entity identified in “a” above.
- 4. For TDS:
 - a. Identify each TELRIC cost study (by jurisdiction and date) that has been performed by or for TDS to support any Transport and Termination rate(s) it has sought to charge any interconnecting Telecommunications Carrier in any jurisdiction.
 - b. For each cost study, identify:
 - i. The name of the entity that performed the study.
 - ii. The cost of performing the study.
 - iii. Whether the study was filed in a state cost proceeding conducted under Section 252(d) of the Act.
 - iv. If answer to “iii” is yes, identify such state(s) and indicate whether such study was approved by such state commission(s) as producing TELRIC rates.
 - v. If answer to “iii” is yes, and such study was approved by such state commission(s) as producing TELRIC rates, identify with particularity such state commission order(s) approving such study.
- 5. For CenturyTel:
 - a. Identify each cost study (by jurisdiction and date) that has been performed by or for CenturyTel to support any Transport and Termination rate(s) it has sought to charge any interconnecting Telecommunications Carrier in any jurisdiction.
 - b. For each cost study, identify:
 - i. The name of the entity that performed the study.
 - ii. The cost of performing the study.
 - iii. Whether the study was filed in a state cost proceeding conducted under Section 252(d) of the Act;
 - iv. If answer to “iii” is yes, identify such state(s) and indicate whether such study was approved by such state commission(s) as producing TELRIC rates.

- v. If answer to “iii” is yes, and such study was approved by such state commission(s) as producing TELRIC rates, identify with particularity such state commission order(s) approving such study.

6. For each Rural Coalition member other than TDS and CenturyTel:

- a. Identify each cost study (by jurisdiction and date) that has been performed for the Coalition member or an Affiliate to support any Transport and Termination rate(s) that either the Coalition Member or an Affiliate has sought to charge any interconnecting Telecommunications Carrier.
 - b. For each cost study, identify:
 - i. The name of the entity that performed the study.
 - ii. The cost of performing the study.
 - iii. Whether the study was filed in a state cost proceeding conducted under Section 252(d) of the Act;
 - iv. If answer to “iii” is yes, identify such state(s) and indicate whether such study was approved by such state commission(s) as producing TELRIC rates.
 - v. If answer to “iii” is yes, and such study was approved by such state commission(s) as producing TELRIC rates, identify with particularity such state commission order(s) approving such study.
7. For each Coalition member, please, complete the following chart, which is not asking for production of company-specific data. This interrogatory merely asks that, as to each category of information described in Column (A), each Coalition member answer “Yes” or “No” to the questions respectively posed in Columns (B), (C) and (D). If Column (B) is answered “yes,” then Columns (C) and (D) need not be answered. If Column (C) is answered “yes,” then Column (D) need not be answered. Column (D) need be answered only if Columns (A) and (B) are both answered “no.”

(A)	(B) Is This Information Currently Available Within Your Records?	(C) If the Answer in Column (B) is No, Can This Information be Collected by Current Employee(s)?	(D) If the Answer in Columns (B) and (C) is No, Can This Information be Collected by an Outside Consultant?
1. Identification of host, remote and tandem switches by common name and CLLI Code.			
2. For each identified tandem, whether wireless-originated traffic is switched by			

(A)	(B) Is This Information Currently Available Within Your Records?	(C) If the Answer in Column (B) is No, Can This Information be Collected by Current Employee(s)?	(D) If the Answer in Columns (B) and (C) is No, Can This Information be Collected by an Outside Consultant?
and transits that tandem.			
3. The year each switch was originally placed in service.			
4. Lines in service for each switch.			
5. Lines in service for each exchange.			
6. Host-remote trunks in service (DSOs) for each switch.			
7. Total interoffice trunks in service (DSOs) for each switch (i.e., trunks to other standalone/host switches or tandem switches).			
8. Total annual switched access minutes of use.			
9. Location of meet points with other landline carriers.			
10. Length of each interoffice cable route.			
11. Type of each interoffice cable (copper or fiber, buried, underground or aerial).			
12. Size of each interoffice cable (e.g. 24 fiber cable).			
13. Number of interoffice fibers assigned used for digital loop carrier systems.			
14. Number of interoffice fiber leased to third-parties.			
15. Number of interoffice fibers used by interoffice transport system.			
16. The size of transport transmission			

(A)	(B) Is This Information Currently Available Within Your Records?	(C) If the Answer in Column (B) is No, Can This Information be Collected by Current Employee(s)?	(D) If the Answer in Columns (B) and (C) is No, Can This Information be Collected by an Outside Consultant?
equipment located at each switch.			
17. Copy of continuing property record (CPR) for Central Office Switching (e.g., account 2212) for year end 2005.			
18. Composite interstate and intrastate access charges			
19. Total DS1 and DS3 circuits between each end office switch and its corresponding access tandem.			
20. Total DS1 and DS3 circuits between each host central office switch and its subtending remote switch(es).			

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. For each Rural Coalition member, produce copies of the three (3) most recent audited financial statements containing Part 32 – Uniform System of Accounts level detail.
2. Produce copies of all documents supporting the answers to Interrogatory Number 2.
3. Produce copies of all documents supporting the answers to Interrogatory 3(b).
4. Produce all documents supporting the cost estimates in Petitioners' Supplemental Statement filed herein.
5. Produce a copy of each cost study identified in response to Interrogatory 4(a).
6. Produce a copy of any orders supporting the answer to Interrogatory 4(b)(v).
7. Produce a copy of each cost study identified in response to Interrogatory 5(a).

8. Produce a copy of any orders supporting the answer to Interrogatory 5(b)(v).
9. Produce a copy of each cost study identified in response to Interrogatory 6(a).
10. Produce all documents supporting the answers to Interrogatory 6(b)(ii).
11. Produce a copy of any orders supporting the answer to Interrogatory 6(b)(v).



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DATED: March 12, 2007

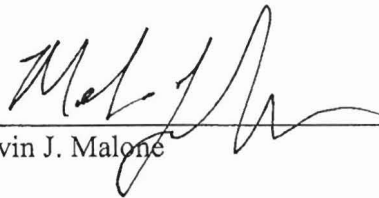
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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2007, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Stephen G. Kraskin Kraskin, Lesse & Cosson, LLC 2120 L Street NW, Suite 520 Washington, D.C. 20037
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	William T. Ramsey Neal & Harwell, PLC 2000 One Nashville Place 150 Fourth Avenue North Nashville, TN 37219
<input checked="" type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input type="checkbox"/> Electronically	Melvin Malone Miller & Martin PLLC 1200 One Nashville Place 150 Fourth Avenue North Nashville, TN 37219
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Bill Atkinson Sprint Spectrum L.P. d/b/a Sprint PCS 3065 Cumberland Cir., SE Mailstop GAATLD0602 Atlanta, GA 30339
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Elaine D. Critides Verizon Wireless 1300 I Street, NW, Suite 400 West Washington, DC 20005
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Paul Walters, Jr. 15 East First Street Edmond, OK 73034

<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Mark J. Ashby Cingular Wireless 5565 Glennridge Connector, Suite 1700 Atlanta, GA 30342
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Dan Menser, Sr. Corp. Counsel Marin Fettman, Corp. Counsel Reg. Affairs T-Mobile USA, Inc. 12920 Southeast 38 th Street Bellevue, WA 98006
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Leon M. Bloomfield Wilson & Bloomfield, LLP 1901 Harrison Street, Suite 1630 Oakland, CA 94612
<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Joe Chiarelli Spring 6450 Spring Parkway Mailstop: KSOPHN0212-2A671 Overland Park, KS 66251



Melvin J. Malone

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2007, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

<input type="checkbox"/> Hand <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Electronically	Stephen G. Kraskin Kraskin, Lesse & Cosson, LLC 2120 L Street NW, Suite 520 Washington, D.C. 20037
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