

NEAL & HARWELL, PLC

LAW OFFICES  
150 FOURTH AVENUE, NORTH  
SUITE 2000

NASHVILLE, TENNESSEE 37219-2498

TELEPHONE  
(615) 244-1713

FACSIMILE  
(615) 726-0573

JAMES F. NEAL  
AUBREY B. HARWELL, JR.  
JON D. ROSS  
JAMES F. SANDERS  
THOMAS H. DUNDON  
RONALD G. HARRIS  
ALBERT F. MOORE  
PHILIP N. ELBERT  
JAMES G. THOMAS  
WILLIAM T. RAMSEY  
JAMES R. KELLEY  
MARC T. MCNAMEE  
GEORGE H. CATE, III  
PHILIP D. IRWIN  
A. SCOTT ROSS  
GERALD D. NEENAN  
AUBREY B. HARWELL, III  
W. DAVID BRIDGERS

KENDRA E. SAMSON  
DAVID G. THOMPSON  
CYNTHIA S. PARSON  
ELIZABETH S. TIPPING  
J. AARON MORRIS  
CHANDRA N.T. FLINT  
MASAMI I. TYSON  
LYNDSEY C. SMITH  
JONATHAN H. WARDLE

OF COUNSEL  
LISA B. TAPLINGER  
LARRY W. LINDEEN

STAFF ATTORNEY  
KRISTEN V. DYER

April 13, 2007

**VIA HAND DELIVERY**

Sharla Dillon, Docket Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: Tennessee Rural Independent Coalition  
Petition for Suspension and Modification  
TRA Docket No. 06-00228

Dear Ms. Dillon:

Enclosed is the original Response To The CMRS Providers' Motion To Compel On Behalf Of The Members Of The Tennessee Rural Independent Coalition for filing today in the above-captioned matter, along with four copies and a pdf-formatted disc containing an electronic version of the original.

As always, thank you for your assistance with today's filing.

Yours truly,



Sarah Martin McConnell  
Paralegal

SMM:bms  
Enclosures

cc: All Counsel 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**

---

**RESPONSE TO THE  
CMRS PROVIDERS' MOTION TO COMPEL  
ON BEHALF OF THE MEMBERS OF THE  
TENNESSEE RURAL INDEPENDENT COATLITON**

---

In accordance with the Procedural Schedule issued by the Hearing Officer in this matter, the members of the Rural Independent Coalition (the "Coalition"), by their attorneys, respond herein to the Motion to Compel (the "Motion") submitted by the CMRS Providers on April 9, 2007. For the reasons stated below, the Coalition respectfully requests that the Tennessee Regulatory Authority (the "Authority" or "TRA") reject the Motion.

**I. INTRODUCTION AND BACKGROUND**

In this proceeding, each member of the Coalition has sought relief pursuant to Section 251(f)(2) of the Communications Act of 1934 (the "Act")<sup>1</sup>, as amended, from the requirement established in the Arbitration Order in Docket No. 03-00585 to develop a rate for the transport and termination of traffic based on TELRIC cost methodology. The CMRS Providers have submitted discovery requests which are not relevant to the proceeding. Their discovery requests reflect an expedition to obtain information that will not have any bearing on the outcome of this

---

<sup>1</sup> 47 USC Sec. 251(f)(2).

proceeding. As discussed herein, the very words of their Motion to Compel suggests that the CMRS Providers apparently think they need the requested discovery information in order to demonstrate to the TRA that the members of the Coalition are not entitled to the suspension they have requested in this proceeding.

The CMRS Providers, however, have ignored a luxury that they have in this proceeding. They have nothing to prove. They do not need to spread a wide discovery net to extract unnecessary information from the members of the Coalition. Nor do the CMRS Providers need the information they seek to prove anything in this proceeding. The burden of proof in this proceeding is on the members of the Coalition and not the CMRS providers. As discussed below in response to each specific discovery item addressed in the Motion, none of interrogatories or request for documents is relevant to the showing of proof that will be proffered by each member of the Coalition.

Both litigants and the Federal Communications Commission (“FCC”) have previously confused the allocation of the burden of proof and the relevance of information with respect to decisions under Section 251(f) of the Act. There are two distinct and specific aspects of Section 251(f): Section 251(f)(1) “Exemption For Certain Rural Telephone Companies;” and Section 251(f)(2) “Suspensions And Modifications For Rural Carriers.” This proceeding addresses only Section 251(f)(2)

In general, Section 251(f) addresses the intent of Congress to limit the imposition of interconnection requirements on rural carriers like the members of the Coalition. Section 251(f)(1)(A) sets forth a specific exemption of rural carriers from certain interconnection

requirements. Section 251(f)(1)(B) sets forth the specific procedure pursuant to which a carrier requesting interconnection may seek to remove the exemption.<sup>2</sup>

When a carrier requesting interconnection seeks to remove an exemption pursuant to Section 251(f)(1)(B), it is the requesting carrier that has the burden of proof to sustain the request to remove the exemption.<sup>3</sup> The CMRS Providers have sought information through discovery as if they carried the burden in this proceeding to demonstrate whether the overall economic impact of the TELRIC requirement does or does not result in an undue economic burden or adverse economic impact on telecommunications users. In fact, as later discussed, the CMRS Providers even cite in support of their position a proceeding where removal of a rural exemption under Section 251(f)(1) was the issue and the requesting party had the burden to prove the exemption should be removed. This proceeding, however, is not a Section 251(f)(1) proceeding. It is a Section 251(f)(2) proceeding.

If this proceeding was one in which the CMRS Providers were attempting to remove an exemption under Section 251(f)(1), their broad discovery requests might be deemed to be “loosely construed” as relevant to the proceeding.<sup>4</sup> Under those circumstances, the requested discovery could potentially be “loosely construed” as relevant because the CMRS Providers would have the burden of proving that the relevant interconnection requirement was not unduly economically burdensome and that the exemption should be removed. If this were a Section

---

<sup>2</sup> While the Coalition members have maintained throughout Docket No. 03-00585 that they are not subject to the TELRIC requirement, and they have preserved their rights in that regard with respect to judicial review, this proceeding is exclusively about a request for a suspension of the TELRIC requirement imposed as a result of the Arbitration Order in Docket No. 03-00585. The Coalition notes that the Coalition members have consistently maintained to the CMRS Providers that they are exempt from the TELRIC requirements; the CMRS Providers never undertook to attempt to remove the exemption in accordance with Section 251(f)(1)(B) of the Act.

<sup>3</sup> *Iowa Utilities Board v. Federal Communications Commission*, 219 F. 3<sup>rd</sup> 744 at 762 (8<sup>th</sup> Cir. 2000) (hereafter “*Iowa Utilities Board*”), *rev’d in part on other grounds*, 535 U.S. 467 (2002). (“The plain meaning of the statute requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption.”)

<sup>4</sup> Motion at p. 3.

251(f)(1)(B) proceeding, the arguments set forth in the Motion would at least be colorable because the CMRS Providers would be trying to obtain information from the Coalition members to sustain their own burden of proof to demonstrate that an exemption should be removed.

But, this is not a Section 251(f)(1)(B) proceeding. The CMRS Providers have no need for a “loose” construction of relevance to obtain information to meet a burden of proof. This is a Section 251(f)(2) proceeding and the burden of proof resides with the Coalition members. The information sought by the CMRS Providers is not relevant to the proof that the members of the Coalition will offer to the Authority to demonstrate that the requested suspension should be granted. There is no basis in law or fact to sustain the Motion or to determine that the discovery requests addressed in the Motion are even “loosely” relevant to this proceeding. Moreover, the Authority should note that the discovery requests that are the subject of the Motion are requests for information, documents and financial information that pertain to the accumulation of data associated with performing a TELRIC cost study, the very requirement with respect to which the Petitioners each seek suspension.<sup>5</sup> The Coalition respectfully submits that the CMRS Providers should not be permitted to utilize the discovery phase of this Section 251(f)(2) suspension proceeding as an opportunity to gather information in anticipation of the TELRIC proceeding they seek to impose on the Coalition members and rural consumers.

Moreover, the Coalition members respectfully note that at the Status Conference held in this proceeding on February 26, 2007, the Coalition suggested an alternative discovery process to ensure that the discovery requests would be relevant to the offer of proof by the Coalition members. The Coalition offered to file testimony prior to discovery, and suggested that the CMRS Providers could then submit discovery in a manner that would better ensure that the discovery requests are relevant to the offer of proof set forth in the testimony of the Coalition

---

<sup>5</sup> See, e.g., “Joint Response Of The Tennessee Rural Independent Coalition To CMRS Providers' Interrogatories And Requests For Production Of Documents,” March 23, 2007, Response 7.

members. The CMRS Providers rejected this suggestion. The consequence, as anticipated by the Coalition, is that the CMRS Providers have submitted discovery requests that are not relevant to the proceeding.

## **II. ARGUMENT**

### **A. The Motion To Compel Should Be Denied With Respect To Each Discovery Request Addressed By The Motion.**

The CMRS providers are adept at building arguments upon faulty assumptions. The CMRS Providers argue that as a result of the responses of the Coalition members to the discovery requests, “the TRA and the CMRS Providers are left with no evidence from which they can understand or analyze the Coalition’s claim of alleged undue economic burden.”<sup>6</sup> The forcefulness of the CMRS Providers’ words is belied by the simple facts.

Thus far in this proceeding, the Coalition members have filed only their Petition for Suspension and a supplemental statement. The evidence will be presented in testimony and the CMRS Providers will have every lawful procedural opportunity to argue with respect to whether the Coalition members’ evidence supports the requested suspension. The CMRS contention not only pre-determines that the Coalition members will provide no evidence to support their request, but also implicitly suggests that the information sought by the CMRS providers is necessary to the showing of proof that the Coalition members will make. In fact, the information sought by the CMRS Providers is only potentially relevant to the development of a reciprocal compensation rate in Docket No. 03-00585. The information and documents sought by the CRMS Providers are not, however, relevant to this proceeding.

The entire Motion is based on a faulty premise. The CMRS Providers maintain that the discovery they seek is “directly related” to the basis upon which the Coalition Members have

---

<sup>6</sup> Motion at pp. 2-3.

sought their suspension. As discussed below with regard to each discovery request, the information and documents sought by the CMRS Providers are not directly related in any manner to the basis upon which the Coalition members have sought suspension.

**1. Interrogatory Numbers 1 and 2 and Request for Production of Documents Numbers 1 and 2**

Interrogatory Number 1 seeks identification of all affiliated entities of each Coalition member. The CMRS Providers claim that “In determining whether a TELRIC study would be unduly economically burdensome to an individual Coalition member, questions of ownership and affiliation are clearly relevant because they provide some context for evaluating how “burdensome” potential costs associated with such a study would be to each carrier.”<sup>7</sup>

Similarly, Interrogatory Number 2 seeks Coalition member-specific financial information including each company’s “after-tax surplus”, current book values, annual gross revenues, debt/equity ratios, corporate tax rate, and annualized cash flow amounts. The CMRS Providers claim they need this information to determine whether the “production of a TELRIC study would be unduly economically burdensome.”<sup>8</sup> The CMRS Providers also assert as fact that “the alleged cost of a study standing alone simply does not, and cannot, provide a basis to determine whether such costs are burdensome.”<sup>9</sup>

In response, the Coalition notes that this bald assertion is not a determination delegated to the CMRS Providers. Whether the costs of a TELRIC study and the associated rate-making proceeding constitute an undue economic burden or causes significant adverse economic impact on telecommunications users is a qualitative decision delegated to the TRA, and not to the sophistry of the CMRS Providers.

---

<sup>7</sup> Motion, p. 6.

<sup>8</sup> Motion, p. 9.

<sup>9</sup> *Id.*

Related to Interrogatory Number 2, the CMRS Providers submitted Request for Production of Documents Numbers 1 and 2. Document Request Number 1 seeks copies of each Coalition member's "three (3) most recent audited financial statements containing Part 32 - Uniform System of Accounts level detail."<sup>10</sup> Document Request Number 2 seeks "copies of all documents supporting answers to Interrogatory Number 2."<sup>11</sup> In support of their contention that each Coalition member should be required to provide this information, the CMRS Providers refer the Authority to the same arguments they offer in support of their Motion with respect to Interrogatory Number 2.<sup>12</sup>

The CMRS Providers assert that "The information requested is designed to provide company specific data necessary for a proper evaluation of the Coalition's claims."<sup>13</sup> None of the Coalition members, however, has contended that they could not afford a TELRIC proceeding or that such a proceeding by itself would result in economic hardship. The information sought by the CMRS Providers does not "bear[s] upon, or reasonably [could] lead to other matters that could bear on, the issues that are or may be in the case."<sup>14</sup> The information sought by the CMRS Providers is clearly of interest to them, but it is not relevant to this suspension proceeding unless a Coalition member claims that economic hardship or lack of economic resources is the basis for the suspension request. No Coalition member has made any such claim.

The CMRS Providers' arguments incorrectly assume that in order for the Coalition members to prove undue economic burden, they must demonstrate that they cannot afford to conduct the study. The CMRS Providers apparently believe that imposing the TELRIC burden

---

<sup>10</sup> Motion, p. 13.

<sup>11</sup> Motion, p. 14.

<sup>12</sup> Motion, p. 14.

<sup>13</sup> Motion, p. 10.

<sup>14</sup> *Id.*

on a Coalition member is somehow justified if the Coalition member is financially able.<sup>15</sup> The CMRS Providers' assumption that proof of "undue economic burden" requires a showing of financial distress is incorrect. The Coalition members have not and do not claim financial distress or that they cannot afford to pay for a TELRIC study.

The CMRS Providers seek information about Coalition member affiliates and financial status solely for the purpose of evaluating the financial impact of imposing the cost of the TELRIC studies on the Coalition members, as if there may be some quantitative affordability test to determine if the TELRIC requirement is an undue economic burden. The CMRS Providers would potentially need this information only if the Coalition members were asserting that their enterprises do not have the financial resources to bear the imposition of the costs of the TELRIC proceeding. No Coalition member has offered this argument to sustain their burden of proof in this proceeding. Accordingly, the CMRS Providers have no need for the requested information since they have no need to disprove the red herring argument they suggest is necessary to warrant grant of the requested suspension.

In order to support their claim to broad discovery rights in this suspension proceeding, the CMRS Providers hope to find support by referring to their own prior filings citing bits and pieces of the *Iowa Utilities Board* decision and a Texas Commission decision. In their Motion, the CMRS Providers do not even provide the citation for the alleged support they seek. They simply mention these cases and refer the Authority to another of their pleadings, hereafter referred to as the *CMRS November 2, 2006 Response*.<sup>16</sup>

---

<sup>15</sup> See, e.g., Motion at p. 6

<sup>16</sup> Motion, p. 6 where the CMRS Providers at footnote 14 refer the Authority to "*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)(sic)(5) TELRIC Pricing Methodology*, pp. 5-6." (the "*CMRS November 2, 2006 Response*").

The CMRS Providers contend that information, data and documents relating to the overall financial condition of the Coalition members must be reviewed in considering the suspension request. In support of their contention, the CMRS Providers refer the Authority to the argument they set forth in the *CMRS November 2, 2006 Response*, wherein the CMRS Providers utilize a quotation from the *Iowa Utilities Board* decision out of context to suggest that the Authority “must look to the ‘whole of the economic burden the request imposes, not just a discrete part.’”<sup>17</sup> The CMRS Providers confuse the application of the cited passage to a request to remove a rural exemption (Section 251(f)(1)(B) as opposed to a suspension request (Section 251(f)(2).

The *Iowa Utilities Board* decision is clear in its intent to ensure that the Section 251(f)(1) rural exemptions are not improperly removed and that requests for Section 251(f)(2) suspensions are not improperly withheld.<sup>18</sup> The proper application of the *Iowa Utilities Board* decision makes certain that when a party tries to remove an rural exemption, that party cannot sustain its burden of proof by focusing on “just a discrete part” of the economic burden. As discussed below, the *Iowa Utilities Board* decision corrected an initial FCC rule that limited the consideration to “just a discrete part” of economic burden which essentially helped interconnecting carriers to remove the rural exemption, contrary to the intent of Congress. Similarly, the initial FCC rule restricted the rural carriers seeking a suspension by forcing them to carry their burden of proof by focusing only on “just a discrete part” of economic burden, thereby making it more difficult to support a suspension – again, contrary to Congressional intent. The *Iowa Utilities Board* decision made clear that the rural carrier seeking suspension

---

<sup>17</sup> *CMRS November 2, 2006 Response*, p. 5 citing “*Iowa Utilities Board*, 219 F. 3d at 760-62.”(Underscoring added.)

<sup>18</sup> “There can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in § 251(b) or § 251(c).” *Iowa Utilities Board*, 219 F. 3d at 761.

may rely on any aspect of the “whole of the economic burden” imposed by the interconnection requirement from which the carrier seeks suspension.

The *Iowa Utilities Board* decision does not support the Motion. While each Coalition member has the right to rely on any aspect of the economic burden imposed by the TELRIC requirement in seeking the requested suspension, no Coalition member has claimed that it cannot afford to pay for a TELRIC proceeding, as suggested by the CMRS Providers in support of their contention of entitlement to the requested financial information regarding each Coalition member.<sup>19</sup> The information sought by the CMRS Providers is simply not relevant, and their reliance on the *Iowa Utilities Board* decision is misplaced.

The Coalition respectfully urges the Authority and its staff to review the entire context of the quoted citation the CMRS Providers have incorrectly cited in support of their arguments. The fact is that the Court in *Iowa Utilities Board* reviewed a now discredited FCC rule that improperly interpreted “the statutory phrase ‘unduly economically burdensome’ as ‘undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.’”<sup>20</sup> The Court determined that this interpretation and the associated FCC rule were unlawful. As the Authority will see when it reviews the *Iowa Utilities Board* decision, the Court did not give any support to the CMRS Providers’ contention that the suspension request by the Coalition members is an invitation to a discovery fishing expedition for the CMRS Providers.

To the contrary, the Court in *Iowa Utilities Board* made clear that when an interconnection party seeks to remove a rural carrier’s exemption under Section 251(f)(1), it must do much more than simply show that the economic burden on a rural carrier imposed by an interconnection requirement is no more than “the economic burden that is typically associated with efficient competitive entry.” The Court found that before removing an exemption, “It is

---

<sup>19</sup> Motion , p. 5.

<sup>20</sup> *Iowa Utilities Board*, 219 F. 3d at 760.

the full economic burden on the ILEC of meeting the request that must be assessed by the state commission.”<sup>21</sup>

In the context of a suspension request, such as that at issue here, the *Iowa Utilities Board* decision means that the requesting carrier does not have to demonstrate that the economic burden from which it seeks relief is “beyond the economic burden that is typically associated with efficient competitive entry.” As the bearer of the burden of proof with regard to a suspension request, the *Iowa Utilities Board* decision gave the requesting rural carriers the right to look at any and all aspects of the economic burden imposed by the interconnection requirement in order to support a request for a suspension or modification. Contrary to the implicit suggestion by the CMRS Providers that they are entitled to vast amounts of information and discovery rights as a result of the *Iowa Utilities Board* decision, this case determined that the FCC was incorrect in placing improper requirements on rural carriers to maintain exemptions under Section 251(f)(1) and to obtain suspensions and modifications pursuant to Section 251(f)(2).

The CMRS Providers similarly misuse a reference to a Texas Commission decision to support their Motion. They refer the Authority to their discussion of the August 14, 2006 order in Texas Docket 32582 set forth in the *CMRS November 2, 2006 Response*.<sup>22</sup> The CMRS Providers attached the entire Texas decision to the *CMRS November 2, 2006 Response*, but the Authority need not go beyond page 1 of the Texas decision to understand the inapplicability of this decision to the Motion. The Texas decision addressed a request to “terminate the rural exemption” of a rural carrier pursuant to Section 251(f)(1), and not a request for suspension under Section 251(f)(2). Neither this Texas decision nor the *Iowa Utilities Board* decision supports the notion that the CMRS Providers can claim that information and data related to a Coalition member’s financial resources is relevant in a suspension proceeding when the

---

<sup>21</sup> *Id.* at 761.

<sup>22</sup> *CMRS November 2, 2006 Response* pp. 5-6.

Coalition member is not claiming economic hardship or lack of resources as a basis for the requested suspension. The Coalition respectfully submits that there is no basis in fact or law to sustain the CMRS Motion with respect to Interrogatory Number 1, Interrogatory Number 2 or Request of Production of Documents Number 1 and Number 2.

**2. Interrogatory Number 5 and Request for Production of Documents Number 7**

In Interrogatory Number 5(a), the CMRS Providers ask CenturyTel to identify all cost studies the company has performed in any jurisdiction where the study was used to support transport and termination rates. In document request 7, the CMRS Providers seek copies of each such cost study. CenturyTel provided a response indicating that it has not performed TELRIC studies to establish reciprocal compensation rates, and the CMRS Providers complain in their Motion that the response is “incomplete.”

The CenturyTel response, however, is complete. This proceeding is exclusively about a request for suspension from the TELRIC requirement established in the Arbitration Order in Docket No. 03-00585. CenturyTel’s response to Interrogatory Number 5 assumed that the reference in the Interrogatory to “cost study” must reasonably have been a reference to a TELRIC cost study, the subject matter of this proceeding. There is no doubt that the CMRS Providers are interested in CenturyTel’s cost studies from other jurisdictions. Understandably – but, only so from the perspective of the business interests of the CMRS Providers – the non-TELRIC cost studies from other jurisdictions may be useful to the CMRS Providers in their competitive operations in those other states.

The existence of unrelated cost studies from other states, however, has no bearing upon this suspension proceeding. In fact, the cost studies from other states would not have any relevance even if this proceeding was about setting a rate in Tennessee. The mere fact that

CenturyTel may have conducted non-TELRIC cost studies in other states has no relevance to the request for suspension in this proceeding or to CenturyTel's offer of proof to sustain the suspension request. CenturyTel has not claimed that the TELRIC requirement should be suspended because the company cannot afford to conduct cost studies or because they have not conducted costs studies. The cost studies from other jurisdictions sought by the CMRS Providers have no relevance to this matter. Accordingly, the Motion should be rejected with respect to Interrogatory Number 5 and Document Request Number 7.

### **3. Interrogatory Number 7**

According to the CMRS Providers, 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."<sup>23</sup> Irrespective of how "simple" Interrogatory Number 7 may be, simplicity does not render the Interrogatory relevant to this proceeding. The Interrogatory, as reflected by the "simple chart" is a laundry list of data accumulated in the first steps of performing a cost study. The availability of data may be of interest to the CMRS Providers in the context of a proceeding to establish a reciprocal compensation rate, but that matter is not the subject of this proceeding.

In trying to support their claim to force each member of the Coalition to fill out the "simple chart," the CMRS Providers once again draw a quote out of context and misuse it. Here is what the CMRS Providers state in their Motion:

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." (footnote omitted indicating

---

<sup>23</sup> Motion, p. 11.

that the quote is from the Petition for Suspension filed by the Coalition in this proceeding).<sup>24</sup>

The quote in the extract from the Motion above is taken out of context by the CMRS Providers to suggest that each Coalition member has maintained that a suspension is warranted because each member would otherwise be required to collect data and perform a cost study for the first time. The suggestion made by the CMRS Providers is misleading. As often the case, an important part of the quote was omitted. Here is what the Coalition actually stated in the Petition for Suspension:

**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.<sup>25</sup>

The entire quote, which was partially extracted by the CMRS Providers, indicates that the Coalition did not assert that the requested suspension is warranted because all of the Coalition members would have to collect data and perform a cost study for the first time. To the contrary, the language omitted by the CMRS Providers indicates that the *Petition* merely noted that the imposition of a TELRIC study would **in some instances** lead to this result.

The CMRS Providers could have simply asked which Coalition members would be forced to collect data and prepare a cost study for the first time if the suspension request is denied. Instead, they chose to attempt to require all the Coalition members to respond to the “simple chart” set forth in interrogatory number 7. When each Coalition member provides its offer of proof to sustain the suspension request each has made, the individual Petitioner will, if relevant to that Coalition member’s offer of proof, set forth the extent to which a requirement to

---

<sup>24</sup> Motion , p. 12 (underscoring added).

<sup>25</sup> *Coalition Petition for Suspension and Modification* ( the “*Petition*”), TRA Docket No. 06-00228, p. 9. (Underscoring added).

perform a TELRIC study will force that company to incur the burden of data collection and cost studies for the first time. The CMRS Providers will have the opportunity to cross examine the witnesses for each Petitioner and to brief the issue.

If a company asserts as part of its offer of proof that data collection adds to the undue economic burden caused by the imposition of a TELRIC study, the CMRS Providers will have the opportunity to ask that company's witness whether it has any or all of the data set forth in the "simple chart" available or not. Unless and until a Coalition member asserts that the additional cost of data collection is evidence of the undue economic burden resulting from the TELRIC requirement, there is no basis in fact or law to require any Coalition member, much less all of them, to provide the information that would be required by the CMRS Providers' "simple chart" set forth in Interrogatory Number 7.<sup>26</sup>

### **III. CONCLUSION**

The Motion seeks to compel the Coalition members to provide data and information that may be relevant to a rate case, but it is not relevant to this suspension proceeding. The CMRS Providers conclude that they are entitled to the information because "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."<sup>27</sup> The CMRS Providers are incorrect. The Coalition members have not claimed that their individual "financial circumstances" form the basis for the requested suspension. Nor have all the Coalition members claimed that the suspension is warranted because of the burden of "gathering necessary cost data." Accordingly, the basis upon which the CMRS Providers claim to seek discovery is

---

<sup>26</sup> The Coalition again respectfully notes that it was the insistence of the CMRS Providers to establish the schedule for discovery prior to the provision of testimony by the Coalition members.

<sup>27</sup> Motion, p. 15.

- 16 -

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 16, 2007, a true and correct copy of the foregoing was served on the parties of record via the method indicated:

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Stephen G. Kraskin, Esq.  
Kraskin, Moorman & Cosson LLC  
2120 L Street NW, Suite 520  
Washington, DC 20037  
[skraskin@klctele.com](mailto:skraskin@klctele.com)

☒ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Melvin J. Malone  
Miller & Martin  
1200 One Nashville Place  
150 Fourth Avenue North  
Nashville, TN 37219  
[mmalone@millermartin.com](mailto:mmalone@millermartin.com)

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Bill Atkinson  
Sprint  
3065 Cumberland Cir., SE  
Mailstop GAATLD0602  
Atlanta, GA 30339  
[Bill.Atkinson@sprint.com](mailto:Bill.Atkinson@sprint.com)

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Elaine Critides, Esq.  
Verizon Wireless  
1300 I Street N.W.  
Suite 400 West  
Washington, D.C. 20005  
[elaine.critides@verizonwireless.com](mailto:elaine.critides@verizonwireless.com)

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Paul Walter, Jr.  
15 E. First Street  
Edmond, OK 73034  
[pwalters@sbcglobal.net](mailto:pwalters@sbcglobal.net)

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Mark J. Ashby  
Cingular Wireless  
5565 Glenridge Connector  
Suite 1700  
Atlanta, GA 30342  
[mark.ashby@cingular.com](mailto:mark.ashby@cingular.com)

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

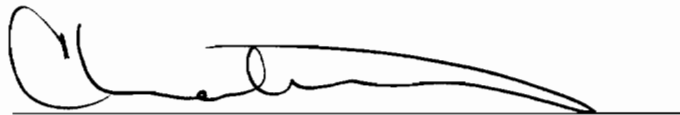
Dan Menser, Sr. Corp. Counsel  
Marin Fettman, Corp. Counsel Reg. Affairs  
c/o T Mobile USA, Inc.  
12920 SE 38<sup>th</sup> St.  
Bellevue, WA 98006  
[dan.menser@t-mobile.com](mailto:dan.menser@t-mobile.com)  
[marin.fettman@t-mobile.com](mailto:marin.fettman@t-mobile.com)

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Leon M. Bloomfield  
Wilson & Bloomfield, LLP  
1901 Harrison St., Suite 1620  
Oakland, CA 94610  
[lmb@wblaw.net](mailto:lmb@wblaw.net)

☐ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight  
☒ Electronically

Joe Chiarelli  
Sprint  
6450 Sprint Parkway  
Mailstop: KSOPHN0212-2A671  
Overland Park, KS 66251  
[Joe.M.Chiarelli@sprint.com](mailto:Joe.M.Chiarelli@sprint.com)



---