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June 8, 2007

Honorable Sara Kyle, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

**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 *Agreed Order Amending Procedural Schedule* in the above-captioned matter, enclosed please find an original and thirteen (13) copies of the CMRS Providers' Brief.

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.

Respectfully,


Melvin J. Malone

cc: Parties of Record

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

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

CMRS PROVIDERS' BRIEF

Cellco Partnership d/b/a Verizon Wireless; New Cingular Wireless PCS, LLC formerly doing business as Cingular Wireless, now d/b/a AT&T; Sprint Spectrum L.P. d/b/a Sprint PCS; and T-Mobile USA, Inc., (collectively referred to herein as “the CMRS Providers”) respectfully submit the *CMRS Providers’ Brief*.¹ For the reasons set forth below, the CMRS Providers respectfully request that the Tennessee Regulatory Authority (the “Authority” or “TRA”) deny the relief requested in the Petition for Suspension and Modification Pursuant to 47 U.S.C. § 251(f)(2) (the “*Petition*”).

I. SUMMARY

The Tennessee Rural Independent Coalition (the “Coalition” or “Petitioners”) has simply failed to provide any evidence that it is entitled to relief under 47 U.S.C. Section 251(f)(2). Instead, it relies on unsubstantiated statements of proposed public policy to suggest that rural carriers (apparently in Tennessee and elsewhere) should not have to abide by the pricing requirements of the Communications Act of 1934, as amended by

¹ In support of the arguments presented herein, the CMRS Providers rely on previous comments/briefs filed in this docket as if incorporated fully herein.

the Telecommunication Act of 1996 (the “Act”). As discussed below, such policy statements are insufficient to carry the specific burden set forth by the Federal Communications Commission (“FCC”) and Congress, and recognized by this Authority.

Specifically, the Coalition has requested the following:

- To be relieved of the obligation to perform TELRIC studies to support proposed Coalition Members’ transport and termination rates;²
- To have interim transport and termination rates established “consistent with the rate levels the Authority has previously determined applicable to the transport and termination of traffic on RLEC networks;”³ and
- To allow each Coalition member to establish permanent transport and termination rates “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.”⁴

In effect, Coalition Members are seeking an Order from the Authority allowing them to charge **access rates** (or some variation thereof) for the transport and termination of intraMTA, wireless-originated traffic. This is flatly prohibited by the Act, and the Coalition has not presented any evidence justifying such an extraordinary request. To the contrary, the record before the Authority clearly demonstrates that none of the required statutory elements – for the granting of a suspension or modification of the requirement to set transport and termination rates pursuant to TELRIC principles – has been satisfied. Requiring Coalition Members to conduct TELRIC studies and set their transport and termination rates pursuant to those studies (1) will **not** cause an adverse economic impact

² See *Petition*, p. 14.

³ *Id.*

⁴ *Id.*

on users of telecommunications services, (2) will **not** cause an undue economic burden, and (3) will **not** be adverse to the public interest.

In fact, requiring Coalition Members' transport and termination rates to be established pursuant to TELRIC is not only required by the law, but will also encourage competition and the development of wireless and other advanced telecommunications services in rural Tennessee. This policy is favored by the Tennessee General Assembly,⁵ the Authority,⁶ the FCC⁷ and Congress,⁸ and should not be frustrated by the Coalition's attempt to charge rates well in excess of forward-looking economic costs.

II. NO COALITION MEMBER HAS MADE A PROPER SHOWING OF SPECIFIC CIRCUMSTANCES THAT WOULD JUSTIFY A SUSPENSION OR MODIFICATION OF THE ACT'S REQUIREMENT TO CONDUCT A TELRIC STUDY AND SET RATES PURSUANT THERETO.

The interconnection regime established by the Act was intended to apply to **all** telecommunications carriers. Accordingly, Congress established stringent standards for a

⁵ Tenn. Code Ann. § 65-4-123 ("The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in **all** telecommunications services markets[.]") (emphasis added).

⁶ See, e.g., Order of Arbitration Award, *In Re: Cellco Partnership d/b/a/ Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585, pp. 39-40 (Jan. 12, 2006); and 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. 18 (Sept. 6, 2005) ("TRA LNP Suspension Order").

⁷ 47 C.F.R. § 51.705(a). See also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd. 15499 (1996) (the "Local Competition Order"); and *infra* nn. 12 and 13.

⁸ 47 U.S.C. §§ 251(a)(1), 251(b)(5) and 252(d).

rural carrier to obtain a suspension of its obligations under sections 251(b) or (c).⁹

Section 251(f)(2) of the Act permits state commissions to suspend a carrier's obligations under sections 251(b) or (c) only:

“to the extent that, and for such duration as, it determines that the suspension or modification”¹⁰ is both:

(A) necessary to avoid

(i) a significant adverse economic impact on users of telecommunications services generally;

(ii) imposing a requirement that is unduly economically burdensome; or

(iii) imposing a requirement that is technically infeasible;

AND

(B) consistent with the public interest, convenience, and necessity.¹¹

In fact, the FCC has stated:

We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the **exception** rather than the rule . . . We believe that Congress **did not intend** to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service.¹²

Hence, the FCC's rules place the burden squarely on *each* petitioning rural carrier to demonstrate that it meets the statutory and regulatory standards for a suspension under

⁹ 47 U.S.C. § 251(f)(2). Only local exchange carriers with fewer than 2 percent of the nation's aggregate installed subscriber lines (“two percent carriers”) are even permitted to request such a suspension.

¹⁰ 47 U.S.C. § 251 (f)(2).

¹¹ 47 U.S.C. §§ 251(f)(2)(A)(i)-(iii) and (B) (emphasis added). The CMRS Providers note that the Coalition does not (and could not) contend that the TELRIC requirement imposes a burden that is “technically infeasible,” and thus that issue is not addressed in this brief or otherwise relevant to this proceeding.

¹² *Local Competition Order*, ¶ 1262 (emphasis added).

section 251(f)(2).¹³ Specifically, the FCC stated:

A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide **must prove** to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.¹⁴

No Coalition Member, however, has made the individual showing required by the Act. Specifically, no Coalition Member has presented any evidence sufficient to satisfy even one of the statutory tests.

A. No Coalition Member Has Demonstrated That Basing Transport And Termination Rates On TELRIC Will Produce “A Significant Adverse Economic Impact On Users Of Telecommunications Services Generally.”

Coalition testimony on this issue does not assert a single Tennessee-specific fact. No witness for the Coalition alleges that requiring the Coalition Members’ transport and termination rates to be set pursuant to TELRIC will cause Tennessee consumers to be denied any specific telecommunications service, to pay any specific additional amount for any specific telecommunications service, or to otherwise suffer any specific economic detriment. Instead, Coalition witnesses make general and unsubstantiated allegations insufficient to meet the statutory requirement.

For example, Mr. Reynolds and Mr. Staurulakis claim that establishing Coalition Member rates pursuant to the TELRIC methodology will have an adverse impact on users of telecommunications services, because the FCC has refrained from applying TELRIC

¹³ 47 C.F.R. § 51.405(b). *See also Local Competition Order*, ¶ 1262; 47 C.F.R. § 51.401; and Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 7236, ¶ 112-23 (1997) (Blanket suspensions for smaller and/or rural LECs are “unnecessary and may hamper the development of competition in areas served by smaller and rural LECs that competing carriers want to enter.”).

¹⁴ 47 C.F.R. § 51.405(b) (emphasis added). *See also Local Competition Order*, ¶ 1262.

requirements on rural LECs in proceedings involving Universal Service and Unbundled Network Elements.¹⁵ As an initial matter, such proceedings are irrelevant to the establishment of transport and termination rates.¹⁶ More importantly, these statements by the Coalition witnesses are really a thinly veiled policy argument, which attempts to bootstrap selected statements about an unrelated proceeding to the *Petition*. Such “evidence,” however, in no way establishes a specific detriment on users of telecommunications services in Tennessee.

The Coalition also seems to rely on unsubstantiated statements by Mr. Watkins that TELRIC methodology will somehow cause Coalition Members’ rates for transport

¹⁵ See *Testimony of Jeffrey W. Reynolds*, pp. 5-8 (“*Reynolds*”). See also *Testimony of Emmanuel Staurulakis*, pp. 7-9 (“*Staurulakis*”). As an aside, the CMRS Providers note that from time to time in their testimony, and likely unintended, both Mr. Reynolds and Mr. Staurulakis appear to wrongly interpret the statutory requirement to only require an adverse impact upon a subset of telecommunications users (i.e., Coalition Members’ end-users). See *Reynolds*, p. 7 and *Staurulakis*, pp. 7-8. Although the Coalition Members failed to offer any credible evidence that the application of TELRIC would produce a significant adverse economic impact on their end-users (or any other end users), in order to determine if a suspension is necessary to avoid potential adverse impacts on users, the Authority must examine potential impacts on the “users of telecommunications services generally.” The statutory phrase “users of telecommunications services generally” cannot be interpreted as applying only to Petitioners’ customers, but must consider the impact broadly on all consumers. See, e.g. *Tennessee Mfr’d Housing Ass’n v. Metropolitan Gov’t*, 798 S.W.2d 254, 257 (Tenn. Ct. App. 1990) (Courts must take statutes as they find them.); and *State of Tennessee v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 754 (Tenn. Ct. App. 2001) (“The courts’ role is to ascertain and give the fullest possible effect to the intention and purpose of the General Assembly as reflected in the statute’s language.”). See also *TRA LNP Suspension Order*.

¹⁶ As Witness Conwell noted:

USF high cost support is to assist in the recovery of basic local exchange service costs in high cost areas. On the other hand, transport and termination rates are to recover the “additional costs” caused when one carrier terminates another’s traffic. FCC public policy considerations that affect high cost support mechanisms are not necessarily the same as the FCC’s pricing rules for interconnection. The latter are to compensate one carrier for only the additional costs it incurs and to charge the other for only the additional costs it causes.

Testimony of W. Craig Conwell p. 10 (citation omitted) (“*Conwell*”). See also *Testimony of Dr. Christopher C. Klein*, p. 11 (“These tasks, however, involve the determination of different costs in different contexts than the transport and termination costs for exchange of traffic that must be ascertained here.”) (“*Klein*”).

and termination to be too low¹⁷ (contrary to his prior inconsistent sworn testimony to the Authority on this point),¹⁸ thereby requiring the “shortfall” to be made up through an increase in the rates of other (undescribed) services,¹⁹ or an increase in demand on Universal Service funding.²⁰ Mr. Watkins alleges no facts in support of these sweeping claims. There was no evidence about the difference between the rate a Coalition Member might want to propose and a rate that might be expected based on forward-looking economic costs. Coalition witnesses did not estimate “lost revenues” due to the claimed difference in rates and the impact, if any, on users of telecommunications services – in terms of changes in service rates or service quality and availability. Indeed, the Coalition has not alleged that a single specific rate will increase as a result of the production of a TELRIC study.

¹⁷ *Testimony of Steven E. Watkins*, p. 4 (“Any requirement to apply TELRIC methods would result in transport and termination rates that, if applied here, would limit the RLECs in their recovery from CMRS Providers of the network costs incurred in transporting and terminating CMRS Providers’ wireless service calls. . . . This will, in turn, shift the RLECs’ total network cost recovery unfairly and inequitably to other service rates.”) (“*Watkins*”).

¹⁸ The CMRS Providers note that Mr. Watkins’ testimony in this proceeding directly contradicts his previous testimony before the Authority, in which Mr. Watkins testified that application of TELRIC principles will likely produce transport and termination rates **higher than** the rates he estimated using embedded costs and NECA rate methodology. More specifically, at the hearing on the merits in TRA Consolidated Docket 03-00585, Mr. Watkins testified as follows:

“Q. . . . you’re telling the panel that the rates you have proposed in Exhibit E are lower than the rates that would be produced by the application of the FCC’s forward-looking pricing methodology. Am I understanding that correctly?”

A. That is likely the case, yes.

Transcript of Proceedings, Hearing, TRA Consolidated Docket No. 03-00585, Vol. IX, pp. 20-21 (Aug. 11, 2004).

¹⁹ *Watkins*, p. 3 (“The cost to conduct TELRIC studies would create a significant adverse economic impact for end users in that ultimately they will have to pay for these costs through higher prices or through offsets in operations by the RLECs.”).

²⁰ *Id.*, p. 4 (“ . . . then there will also be greater demands on Universal Service sources of cost recovery, and all users will be called upon for further funding of these sources beyond that which would have been necessary.”).

As noted by CMRS Providers' witness Dr. Chris Klein:

First, no rate has been set yet – and no TELRIC cost determination has been made – so basing his [Watkins'] conclusion on a phantom rate is speculative. Second, it is unlikely that a TELRIC rate will cause the Coalition's members to realize inadequate earnings that would trigger a rate case leading to increases in rates for other services. As I have previously pointed out, the Coalition members do not claim financial distress now and they can expect their financial status to improve once a rate is set.²¹

Put simply, to the extent CMRS Providers send traffic to Coalition Members, those Members will be allowed to charge the CMRS Providers a rate that compensates the Coalition Members for the "additional costs" incurred in terminating such traffic.²² Again, the Coalition Members would suffer no "shortfall."

According to his testimony, Mr. Watkins' real complaint is that if Coalition Members' transport and termination rates are set pursuant to TELRIC, those rates will be lower than Coalition Members' access charges. TELRIC-based rates are lower because they contain no subsidies and allow no recovery for historical costs having nothing to do with the transport and termination of wireless traffic. Mr. Watkins, in short, is complaining that the Coalition Members want to recover the same subsidies and embedded costs from wireless carriers that the Coalition Members have historically recovered in the access charge regime. But, prohibiting Coalition Members from charging access rates to the CMRS Providers does not translate into an adverse economic impact on telecommunications users. As the CMRS Providers' witnesses explained:

In making this statement, Mr. Watkins seems to be indicating that transport and termination rates based on forward-looking economic costs are less than switched access rates. Generally, this is true. However, this

²¹ *Klein*, p. 12.

²² 47 U.S.C. § 252(d)(2)(A)(ii).

result was not unintended, and the result has not been to the detriment of telecommunications service users. Switched access rates are designed to recover the embedded costs of existing networks and business operations, regardless of their efficiency. They also include subsidies. The FCC specifically ruled in § 51.515 that switched access charges not be used for pricing exchange network elements, which include the same network elements used to provide transport and termination.²³

Mr. Watkins also ignores the potential detrimental effect of including “lost contribution” or embedded costs in the rate. As the FCC has found, in a passage quoted by several witnesses for the Coalition, “the inclusion of an element for the recovery of lost contribution may lead to significant distortions in the local exchange markets.” The Coalition members may very well suffer a “loss of contribution” as transport and termination rates for CMRS traffic fall below access rates, but as should now be obvious, this is very unlikely to cause financial distress to the Coalition members, and cannot justify distorting the rate for transport and termination upward above the appropriate forward-looking TELRIC rate. . . . Any such “loss of contribution,” if it exists, is the result of a change in national telecommunications policy, a policy embraced by the Tennessee General Assembly, intended to confer the benefits of competition – such as lower rates, more choice, a wider range of more advanced services – on the public at large.²⁴

The CMRS Providers’ witnesses also explained why the establishment of Coalition Members’ transport and termination rates at TELRIC will not cause those Members to make additional claims on Universal Service Support Funds:

Rates set at forward-looking economic costs compensate the Coalition Members for costs incurred in transporting and terminating mobile-to-land traffic. Therefore, rates based on proper TELRIC studies will not cause USF high cost support to be higher due to under-recovery of costs caused by the CMRS Providers, since those costs will in fact be recovered.²⁵

²³ *Conwell*, p. 15.

²⁴ *Klein*, p. 14 (citations omitted).

²⁵ *Conwell*, p. 16.

Accordingly, nothing in the record would support a finding that requiring Coalition Members to produce TELRIC studies would have “a significant adverse economic impact on users of telecommunications services generally.”²⁶

B. No Coalition Member Has Demonstrated That Basing Transport And Termination Rates On TELRIC Will Impose “A Requirement That Is Unduly Economically Burdensome.”

1. The Coalition Members’ preference to avoid the costs of a TELRIC study does not constitute evidence of an undue economic burden.

Coalition testimony on this issue is limited to allegations that TELRIC studies cost money. In particular, Mr. Staurulakis claims that TELRIC studies will cost approximately \$33,000 to \$36,000 per company.²⁷ Mr. Reynolds’ testimony contains four exhibits claiming that TELRIC studies will cost from \$39,000 to \$60,000 per listed company.²⁸ However, instead of trying to present evidence that such costs impose some

²⁶ If anything, granting the *Petition* would have an adverse impact on telecommunications end users in Tennessee. As Mr. Farrar stated:

It is also important to note that the RLECs’ end-users and the CMRS Providers’ end-users are often the same Tennessee individuals or businesses. Forcing the CMRS Providers to pay uneconomic reciprocal compensation rates artificially increases the cost to the CMRS Providers, as well as to their Tennessee end-users. RLEC protectionism in the form of improperly imposed excessive costs can directly hinder when and to what extent a CMRS Provider may be able to initially offer or otherwise expand wireless services to Tennessee end-users. Such delay is to the very detriment of Tennessee consumers in rural areas that could significantly benefit from greater, rather than less, wireless services.

Testimony of Randy G. Farrar, p. 18 (“Farrar”). See also, e.g., *Klein*, p. 14.

²⁷ *Staurulakis*, p. 10.

²⁸ The CMRS Providers note that Mr. Staurulakis and Mr. Reynolds simply allege that studies will cost a certain amount. No details or evidence is provided to substantiate the estimates. For example, there is no information regarding required activities, activity times, labor costs for Coalition Member personnel and consultants, or expenses. See *Conwell*, pp. 19-20. Thus, even if it were necessary to do so, it is not possible for the Authority to evaluate the cost estimates for reasonableness. Cf. *Conwell*, p. 20 (detailed estimate of costs to produce TELRIC study). See also *Conwell*, Exhibit WCC-2.

type of undue economic burden, the Coalition witnesses essentially concede that the Coalition Members can afford to conduct TELRIC studies but that they should not be required to do so because such studies are irrelevant and unnecessary:

The CMRS providers will undoubtedly argue that the rural companies identified in this testimony can ‘afford’ to conduct a TELRIC study, presumably funding such a study out of its earnings. Not only is this line of reasoning self-serving, it is also flawed. The economic burden is not measured by whether a company can or cannot afford to pay for a TELRIC study but goes to the burden of imposing unnecessary, unwarranted and inefficient costs on a company.²⁹

The CMRS providers may contend that the company could ‘afford’ the costs of the study out of its earnings. I respectfully recommend the Authority reject any such argument. It is self-serving on the part of the CMRS providers to suggest that the shareholders of member owners of the JSI Coalition Members should subsidize the interests of the CMRS providers by underwriting an unnecessary cost study to establish a reciprocal compensation rate that is ‘a reasonable approximation of the additional costs of terminating such calls.’³⁰

However, regardless of whether the Coalition witnesses, or the Coalition Members, would prefer to use their resources for something other than a TELRIC study, the Act requires such studies, unless an individual Coalition Member proves that it is entitled to a suspension or modification by satisfying the statutory requirements. The claim that the statutory requirements should be ignored, because their own witnesses believe that requiring the Coalition Members to conduct TELRIC studies would be “unnecessary, unwarranted and inefficient,” is not proof of an undue economic burden.

In addition, the estimates provided by the Coalition witnesses include the costs of producing TELRIC studies and defending the studies in hearings. See *Reynolds*, Exhibits. Litigation expenses are not proper components of TELRIC study costs.

²⁹ *Reynolds*, p. 11.

³⁰ *Staurulakis*, p. 12.

This is a policy argument, which goes well beyond the scope of this proceeding and is more properly made, if at all, before Congress.

Although the Act itself does not provide explicit guidelines for determining what constitutes an “unduly economically burdensome” requirement, both general regulatory principles and precedent dictate that an “undue economic burden” must have a significant impact on the overall economic condition of the requesting carrier. For example, the Eighth Circuit Court of Appeals held that “it is the **full** economic burden on the ILEC of meeting the request that must be assessed by the state commission” such that one must look to the “**whole** of the economic burden the request imposes, not just a discrete part.”³¹

In addition, the Texas Public Utility Commission (the “Texas Commission”) recently applied the Eighth Circuit’s guidelines in the context of a 251(f)(1) proceeding to determine if a request by Sprint’s CLEC for interconnection with a rural LEC imposed an “undue economic burden” upon Consolidated Telephone, the affected rural LEC. Evidence included a Commission Staff assessment that Consolidated’s current profits would enable Consolidated to withstand the economic impact of interconnection with Sprint. The Commission Staff’s assessment included, among other things, a showing of Consolidated’s financial condition for calendar years 1999 through 2005, which included information regarding the company’s rates of return through such period. Based on evidence of the *overall financial condition* of Consolidated, the Texas Commission found

³¹ *Iowa Utilities Board v. FCC*, 219 F.3d 744, 761 (8th Cir. 2000) (emphasis added), *rev’d in part on other grounds*, 535 U.S. 467 (2002). *Cf. Teamsters Local Union No. 171 v. NLRB*, 863 F.2d 946, 957-58 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1065 (1989) (To demonstrate “undue economic burden,” the employer must show that “the Board’s [remedial] order would require a substantial outlay of new capital or otherwise cause undue financial hardship.”). *See also, Power, Inc. v. NLRB*, 40 F.3d 409, 425 (D.C. Cir. 1994) (need to establish specific showing of substantial capital outlay or some other undue hardship to satisfy burden).

that Consolidated's prediction that it could suffer line losses of 20 percent after only two (2) years (and a 30 percent loss of revenue over 5 years) following interconnection with Sprint to be *insufficient to show an undue economic burden*.³²

Moreover, fairly recently, the Authority considered and unanimously rejected an argument similar to the one at hand with respect to the Coalition's request under section 251(f)(2) to suspend its 251(b)(2) obligation to provide intermodal local number portability. In that proceeding, the Authority held that the mere claim of undue economic burden, without actual proof supported by individual company financial records, was an insufficient showing to establish entitlement to a suspension under section 251(f)(2):

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.³³

In this case, the Coalition has simply failed to meet its burden. In fact, the testimony filed by the Coalition in this case makes no credible attempt whatsoever to show that any Petitioner will suffer any specific harm as a result of producing a TELRIC study. Not one Coalition Member has demonstrated how the alleged cost of a TELRIC study is unduly economically burdensome, whether in comparison to that company's annual gross revenues, or to any other company-specific, economic indicator. Even at the most basic level of analysis, the impact of an alleged \$30,000 expense on a company with

³² Order, *Petition of Sprint Communications Company L.P. to Terminate Rural Exemption as to Consolidated Communications of Fort Bend Company and Consolidated Communications of Texas Company*, Public Utility Commission of Texas, Docket 32582, pp. 7-8 (Aug. 14, 2006) ("*Consolidated Order*") (A copy of the *Consolidated Order* is attached to the *CMRS Providers' Response to the Tennessee Coalition's Supplemental Statement Regarding Petition for Section 251(f)(2) Suspension and Modification of Section 251(B)(5) TELRIC Pricing Methodology* (Nov. 2, 2006)).

³³ *TRA LNP Suspension Order*, p. 17.

\$100,000 in annual revenues is far different than the impact of the same expense on a company with \$1,000,000 in annual revenues, or \$20,000,000, as the case may be.

2. The costs of a TELRIC study do not constitute an undue economic burden on any Coalition Member.

Although the Coalition Members did not submit any evidence that would allow the Authority to determine whether the production of a TELRIC study would constitute an undue economic burden, the CMRS Providers – using data provided by the Coalition – undertook such an analysis. The results are striking:

- the alleged costs of TELRIC studies (assuming that the Coalition Members' estimated costs are appropriate) are, on average, only one tenth of one percent (0.1% or 0.001) of the Rural Coalition Members' total revenues over the past three years.³⁴
- the alleged costs of TELRIC studies range between four one-hundredths of one percent (0.04% or 0.0004) to one and eighty-six one hundredths percent (1.86% or 0.0186) of the individual Rural Coalition Members' annual revenues for the most recent year for which the Coalition members provided data.³⁵
- If more realistic estimates of the cost of a TELRIC study³⁶ are compared to the annual revenue of each Coalition Member, the costs of TELRIC studies constitute less than one percent of the annual revenues for the most recent year for which the Coalition

³⁴ See *Farrar*, Exhibit RGF-1.

³⁵ See *Conwell*, Exhibit WCC-3.

³⁶ CMRS Providers' witness Mr. Conwell provided detailed testimony describing the tasks and times necessary for a Rural Coalition Member to complete a TELRIC study of transport and termination costs. Based on his analysis and his extensive experience in preparing such studies, Mr. Conwell estimates that the average cost to a Coalition Member to produce a TELRIC study would be approximately \$15,200. See *Conwell*, p. 20.

The CMRS Providers note that this estimate is consistent with the *only* evidence submitted by the Coalition of the costs of a study (not including litigation costs) as set forth in a letter from Coalition witness Reynolds to DeKalb Telephone Cooperative, attached to DeKalb's response to CMRS Data Requests. The letter estimates a cost to DeKalb to complete a TELRIC study of \$15,000(i.e., an amount virtually identical to the Conwell estimate). See, e.g., *Conwell*, pp. 20-21 and n. 17.

members provided data, and in most cases well below that percentage.³⁷

- the alleged costs of TELRIC studies constitute, on average, six tenths of one percent (0.6% or 0.006) of net income over the past three years.³⁸
- the alleged costs of TELRIC studies constitute, on average, only three tenths of one percent (0.3% or 0.003) of capital expenditures over the past three years.³⁹

Finally, even if a Coalition Member decided that it wanted to recover the costs of a TELRIC study from its end-users, the monthly costs per end-user over five years ranges from \$0.005 to \$0.279 (using the Coalition's "cost" estimates) or \$0.004 to \$0.129 using more realistic cost estimates.⁴⁰ In either case, that range is entirely consistent with the Authority's recent *TRA LNP Suspension Order*, in which it found that the costs associated with LNP implementation were not "unduly economically burdensome" since they would produce a customer surcharge of between four and 26 cents per month per access line for five years.⁴¹

Simply put, the record is devoid of any evidence demonstrating that the costs of TELRIC studies (whether based upon Coalition Members' or CMRS Providers' witnesses' testimony) constitute an undue economic burden. To the contrary, the record

³⁷ *Id.*, Exhibit WCC-3.

³⁸ *Farrar*, Exhibit RGF-2.

³⁹ *Farrar*, Exhibit RGF-3.

⁴⁰ *Conwell*, Exhibit WCC-3.

⁴¹ *TRA LNP Suspension Order*, p. 17. The CMRS Providers do not believe that any such surcharge is warranted or needed here, but note that the alleged costs of TELRIC studies are no more economically burdensome than the number portability costs previously reviewed by the Authority.

shows that the alleged costs would be *no significant burden at all* upon any of the Coalition Members.

C. No Coalition Member Has Demonstrated That Basing Transport And Termination Rates On TELRIC Is Not “Consistent With The Public Interest, Convenience, And Necessity.”

In addition to demonstrating that TELRIC studies impose an undue economic burden to the carriers or an adverse economic impact on telecommunications end users generally, a Coalition Member must – to be entitled to a suspension or modification of the requirement to conduct a TELRIC study and base its transport and termination rates thereon – also demonstrate that such is inconsistent with “the public interest, convenience and necessity.” The Coalition Members’ specific testimony on this issue is non-existent. Instead, as in the case of the other statutory elements discussed above, the Coalition’s witnesses allege broad generalities unsupported by specific facts.⁴²

Mr. Reynolds’ only comment on the public interest is as follows:

The public interest is not served by requiring rural Tennessee LECs to expend earnings to subsidize the interests of the CMRS providers by underwriting an unnecessary cost study. Such a requirement signals to rural Tennessee consumers and investors alike that dollars are being diverted that could be better used to support advanced communications networks in rural Tennessee.⁴³

⁴² *TRA LNP Suspension Order*, p. 17 (“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.”).

⁴³ *Reynolds*, pp. 11-12. The claim that “dollars are being diverted that could be better used to support advanced communications networks in rural Tennessee” is particularly striking given that the establishment of forward-looking costs for transport and termination is a key element of the FCC’s and Congress’ attempt to promote competition – including competition in rural Tennessee. As discussed above, the production of a TELRIC study will not impede “advanced communications networks in rural Tennessee,” it will promote them.

Mr. Staurulakis devotes one sentence of his testimony to the public interest:

Forcing the company to spend earnings on a TELRIC study would be an economic burden that has no public interest benefit.⁴⁴

These “comments” are nothing more than a rehash of the arguments made to support the idea that TELRIC studies will have an adverse impact on users of telecommunications.⁴⁵ Although the Coalition witnesses also seem to assert that requiring Coalition Members to conduct TELRIC studies is somehow “subsidizing” the interests of the CMRS Providers, the Coalition does not explain how the statutory requirement to conduct a TELRIC study constitutes a “subsidy,” nor the amount of the claimed “subsidy,” nor the service(s) claimed to be “subsidized.” If anything, the Coalition Members would enjoy a subsidy (if their requested relief were granted) by charging CMRS Providers inflated rates that recover embedded costs of equipment not used to terminate wireless traffic, plus the other subsidies inherent in the access charge regime. And the end result would be the Authority’s “signal[ing acceptance] to rural Tennessee consumers and investors alike that [wireless] dollars [can be] diverted that could be better used to support [both basic and] advanced [wireless] communications networks [that would provide economical choices] in rural Tennessee.”⁴⁶ This is simply

⁴⁴ Staurulakis, p. 12.

⁴⁵ See Section II A *supra*.

⁴⁶ See *supra* n. 43.

contrary to the law, as it would stifle rather than encourage competition. As noted by the Supreme Court:

The Telecommunications Act of 1996 . . . fundamentally restructures local telephone markets. States may no longer enforce laws that impede competition, and incumbent LECs are subject to a host of duties intended to facilitate market entry.⁴⁷

Clearly, Congress determined that it was in the public interest to encourage competition in telecommunications markets.⁴⁸ Accordingly, the FCC established the TELRIC methodology for determining the rates that carriers would pay to terminate each other's traffic in a competitive environment:

The 1996 Act encourages competition by removing barriers to entry and providing an opportunity for potential new entrants to purchase unbundled incumbent LEC network elements to compete efficiently to provide local exchange services. We believe that the prices that potential entrants pay for these elements should reflect forward- looking economic costs in order to encourage efficient levels of investment and entry.⁴⁹

The thrust of a “forward-looking” cost methodology – i.e., one not based on historical or embedded costs – is to ensure that incumbent carriers do not raise their rates to recover sunk investments, or in the words of the Supreme Court, “pass these [past] inefficiencies to competitors” and thereby “defeat the competitive purpose of forcing efficient choices on all carriers whether incumbent or entrants.”⁵⁰

In the present case, the Coalition asks the Authority to relieve its Members of the requirement to conduct TELRIC studies, thus to avoid the FCC's requirement, as well as

⁴⁷ *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366; 119 S. Ct. 721; 142 L. Ed. 2d 834 (1999).

⁴⁸ See also *cf.* Tenn. Code Ann. § 65-4-123 (“The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets[.]”).

⁴⁹ *Local Competition Order*, ¶ 672.

⁵⁰ *Verizon v. FCC*, 535 U.S. 467, 511, 122 S. Ct. 1646; 152 L. Ed. 2d 701 (2002).

the Authority's ruling in Docket No. 03-00585, that transport and termination rates be forward-looking. Relieved of the TELRIC requirement, Coalition Members would establish rates in excess of both what Congress and the FCC intended. Such higher rates would not encourage competition in rural Tennessee; certainly they would not encourage the development of wireless service in rural areas.⁵¹ The aim of competition is to benefit consumers through lower rates (prices) and more and/or better quality services. To frustrate the development of competing services in rural areas is to deny the aforementioned benefits, which are already available to urban consumers throughout Tennessee.⁵² Moreover, the lack of competitively provided telecommunications services may deter economic development in rural areas, which must compete with urban areas for new business and the jobs they create.

Thus, Dr. Klein has testified:

The general effect [of allowing Coalition Members' to set rates above TELRIC] will be to create isolated rural enclaves that are insulated from the pressures of competition and also insulated from the incentives to offer advanced services, improve service quality, and make available a full range of services. If the areas served by the Coalition members are to be full participants in the availability of services throughout Tennessee, then the best policy is to set the rate at the appropriate (TELRIC) level. To do otherwise will discriminate against these areas in the range and quality of services available, retarding economic development, job growth, and even the continued viability of some rural communities.⁵³

Clearly, the public interest will be served by encouraging competition in rural Tennessee. And, competition will be encouraged only by requiring the Coalition

⁵¹ See *supra* n. 26.

⁵² *TRA LNP Suspension Order*, p. 18 ("The panel recognized that rural customers are entitled to the same level of services and choices that are available in all parts of Tennessee and the nation and that the LNP mandate is but one step in ensuring that advanced services are available.").

⁵³ *Klein*, p. 14.

Members to conduct TELRIC studies to establish forward-looking, economic, transport and termination costs.

III. TELRIC STUDIES CAN BE PRODUCED BOTH ECONOMICALLY AND EFFICIENTLY

1. TELRIC studies for transport and termination are relatively straightforward and do not involve loop costs.

As discussed thoroughly above, the Coalition has failed to meet its burden under section 251(f)(2) and its *Petition* should be denied accordingly. However, the CMRS Providers note that in previous filings in this case, the Coalition has raised the specter of a TELRIC proceeding that could last two or three years, in which the Authority would be presented with conflicting cost models and “hundreds of inputs to those models,” all supported by conflicting expert testimony.⁵⁴ In making this claim, the Coalition has referred (inappropriately) to prior FCC statements relating to the general burden of setting RBOC rates for loops and other UNEs.⁵⁵

As discussed in prior filings by the CMRS Providers, however, the Coalition’s argument is misguided, if not misleading.⁵⁶ Among other things, TRA Consolidated Docket No. 03-00585 *does not involve RBOC loop costs*. Instead, it involves the

⁵⁴ *Coalition’s Supplemental Statement*, TRA Docket No. 06-00228, p. 3 (Oct. 2, 2006) (the “*Supplemental Statement*”).

⁵⁵ See, e.g., *Brief of the Rural Coalition of Small LECs and Cooperatives*, TRA Docket No. 06-00228, pp. 8, 11 and 14 (Aug. 3, 2006); and *Supplemental Statement*, pp. 3-4.

⁵⁶ See, e.g., *CMRS Providers’ Response to the Tennessee 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, pp. 12-15 (Nov. 2, 2006) (“*CMRS Providers’ Response to Supplemental Statement*”).

establishment of reciprocal compensation rates for the transport and termination of wireless traffic by each Coalition Member – nothing more.⁵⁷

In sum, compared to an RBOC cost docket establishing UNE loop rates, the development of transport and termination rates for rural LECs is a relatively straightforward process. In fact, the experience of the CMRS Providers in other jurisdictions has been that hearings setting such rates generally take 1-2 days. As recently as October, 2006, AT&T, T-Mobile, Verizon Wireless and Sprint PCS participated in a hearing before the Kentucky Public Service Commission to address both the establishment of TELRIC-based rates for, and resolve non-cost issues with, eleven (11) RLECs. The hearing took less than two (2) full days.⁵⁸ In July, 2006, AT&T and T-Mobile, participated in a similar hearing before the California Public Utilities Commission to establish TELRIC-based transport and termination rates for eleven (11) different RLECs. The hearing took less than one day.⁵⁹ In January, 2006, T-Mobile and AT&T likewise participated in a hearing before the Missouri Public Service Commission

⁵⁷ For a more complete discussion of the limited requirements of a TELRIC study for these purposes, see *CMRS Providers' Response to Supplemental Statement*, TRA Docket No. 06-00228. See also, *Conwell*, p. 22.

⁵⁸ *In the Matter of: Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with America Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996*, Kentucky Public Service Commission, Consolidated Case Nos. 2006-215, et. al.

⁵⁹ *In the Matter of the Petition by the Siskiyou Telephone Company (U 1017 C) for Arbitration of a Compensation Agreement with Cingular Wireless Pursuant to 47 C.F.R. §20.11(e) and Consolidated Proceedings*, Public Utilities Commission of the State of California, Case No. A.06-02-028 et al.

to establish TELRIC-based transport and termination rates for, and resolve non-cost issues with, twenty-five (25) RLECs. That hearing took two (2) days.⁶⁰

CMRS Providers' witness Dr. Klein confirms that the process of establishing TELRIC transport and termination rates is nowhere near the same time and complexity level that parties and commissions experienced in establishing UNE rates:

Q. Did you participate in the process by which the TRA determined “permanent prices” for unbundled network elements for BellSouth?

A. Yes. I functioned as the Chief Economist for the TRA at that time and was intimately involved with the agency's review and analysis of the issues. TRA Docket No. 97-01262, Petition of Bellsouth Telecommunications, Inc. to Convene a Contested Case to Establish “Permanent Prices” for Interconnection and Unbundled Network Elements, consisted of two phases involving ten days of hearings and innumerable filings. Resolution of all the issues required three substantial interim orders followed by a Final Order.

Q. How does that proceeding compare to the setting of a rate for transport and termination of traffic exchanged between Coalition members and CMRS providers that is at issue here and in Docket No. 03-00585?

A. The use of a TELRIC cost methodology is almost the only common issue. The BellSouth proceeding set rates for well over 100 unbundled network elements and combinations, including various types of loops and loop combinations, collocation, vertical features, dark fiber, access to poles, ducts, and conduits, and many others that are not at issue here. Some elements were priced separately for three different geographic zones. The rate to be set between the Coalition members and the CMRS providers consists of basically one combination of network elements. Obviously, the task at hand, setting a rate for transport and termination of traffic, is far less complex and time-consuming than setting individual rates for over 100 elements and combinations of elements.

⁶⁰ *In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc.*, Public Service Commission of the State of Missouri, Case No. TO-2006-0147 *et al.* (consolidated).

Q. Is it misleading and unreasonable to equate the process of setting rates for unbundled network elements and combinations of elements to the process of establishing a rate for transport and termination?

A. Yes.⁶¹

Mr. Conwell further explains in his testimony:

For small RLECs, transport and termination may only involve a transport fiber cable from the meet point with a transit carrier for a few miles to a single end office switch. For other RLECs, additional transport cable and transmission equipment may be required to reach remote switches. BellSouth in Tennessee has many switches and hundreds of miles of interoffice cable in its interoffice networks. In addition, transport and termination does not involve loop plant, or the fiber and copper cables connecting end office switches to customer premises. Thus, the fewer network elements and the exclusion of loops from transport and termination make TELRIC studies for RLECs much less complicated than RBOC studies for a full set of unbundled network elements.⁶²

Thus, a TELRIC study for transport and termination rates need not be burdensome to any rural carrier. Such a study can be performed using a personal computer, Excel software, electronic accounting records and basic plant records that companies maintain in the normal course of business.

2. The CMRS Providers' Proposed Methodology

In response to the Authority's previously expressed concern with making the process for establishing reciprocal compensation rates efficient,⁶³ the CMRS Providers suggested the possible use of a "benchmark methodology" in earlier pleadings.⁶⁴ The

⁶¹ Klein, pp. 7-8.

⁶² Conwell, p. 22. See also *id.*, Exhibit WCC-4 (discussing and illustrating the only network elements involved in setting transport and termination rates).

⁶³ *Transcript of Proceedings, Oral Arguments*, TRA Consolidated Docket No. 03-00585, p., 58, ll. 13-16 (Aug. 29, 2006) ("But we've still got to do these studies, and we've still got to do them – as long as I'm hearing officer, we're going to do them as efficiently as possible.") (Comments of Panel Member).

⁶⁴ *CMRS Providers' Response to Supplemental Statement*, pp. 17-20. The proposed methodology is straightforward and easy to follow. Three (3) spreadsheets are involved: one for end office switching, one

methodology provides a straightforward and easy to follow mechanism for a Coalition Member to prepare a TELRIC study for transport and termination. For example, the methodology uses publicly available data for certain key inputs used to determine a Coalition member's particular costs. A Coalition Member could adopt the benchmark methodology "as is," using the publicly available data as appropriate for the size of the company, and produce TELRIC-consistent transport and termination rates without the need of producing its own methodology or extensive gathering of company-specific information.⁶⁵

A Coalition Member could also adopt the benchmark methodology but substitute company-specific data for some or all of the publicly available data in the model. Mr. Conwell's estimate of 11.75 days to complete a TELRIC study was based upon the assumption that a Coalition Member would use the benchmark methodology but substitute all company-specific data in place of publicly available data. The more publicly available data a Coalition Member adopted in the benchmark methodology, or the more company specific data already available to the Coalition Member, the shorter amount of time a TELRIC study would take.⁶⁶

for interoffice fiber cable and one for interoffice transmission equipment. Each spreadsheet takes a single page. The spreadsheet for transmission equipment includes approximately forty (40) lines. The spreadsheets for switching and fiber cable include approximately sixty (60) lines. Many of the factors used, such as common cost factors, are identical in all three (3) spreadsheets. All three (3) spreadsheets allow for the use of publicly available generic data for various items – in the event an RLEC does not want to use actual, company-specific data or vendor quotations.

⁶⁵ Some company-specific data is of course required in either situation.

⁶⁶ Clearly, the current proceeding is not the appropriate vehicle for the Authority to rule on the appropriateness of cost studies produced by the Coalition members. *See CMRS Providers' Response to Supplemental Statement*, pp. 3 and 19. Moreover, the CMRS Providers are not suggesting that the Coalition Members be required to use the proposed methodology. *Id.* at 19 and 21.

In addition, the CMRS Providers have suggested an even more simplified methodology (consisting of one-half of one page) that can be employed by those Coalition Members with only a single switch and a single interoffice cable to a meet point with BellSouth Telecommunications, Inc. or another tandem provider.⁶⁷

Although the CMRS Providers are not suggesting that any Coalition Member should be required to use these proposed methodologies, or that these are the only manner in which to prepare a TELRIC-compliant study, the proposed methodologies do outline TELRIC-compliant, good faith options which are available to the Coalition Members.⁶⁸

And finally, should the Coalition Members simply persist in their refusal to follow the Authority's Orders and perform appropriate TELRIC-compliant studies, the means continue to be available for the Authority itself to solicit the best available evidence in TRA Consolidated Docket No. 03-00585 and establish permanent TELRIC-compliant rates without imposing *any burden, much less an "undue" burden*, upon the Coalition Members.⁶⁹

⁶⁷ Conwell, Exhibit WCC-6.

⁶⁸ The Coalition Members have also previously insinuated that gathering the data necessary to conduct TELRIC studies would constitute an undue burden:

[T]he imposition of any such requirement would force [certain] members of the Coalition to incur the burden of data collection and cost studies for the first time.

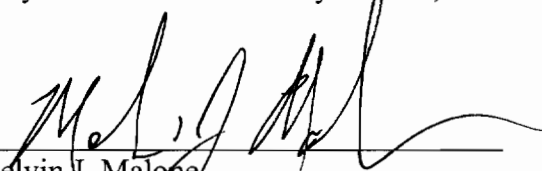
Supplemental Statement, pp. 6 and 9. Interestingly, the Coalition witnesses do not make any such claim nor do they submit any testimony to this effect. Moreover, the responses of Coalition Members to the CMRS Providers' Data Request No. 7, a simple chart asking each Coalition Member to identify whether the various items of information necessary to complete the benchmark methodology are available, clearly establishes that the earlier insinuation is unsubstantiated. See Conwell, Exhibit WCC-7

⁶⁹ As explained by Mr. Farrar, in the face of the RLECs' refusal to prepare TELRIC cost studies, the Kentucky Public Service Commission relied on 47 U.S.C. § 252(b)(4)(B) to establish permanent TELRIC based rates utilizing an analysis Mr. Farrar prepared based upon the proxy rate approach authorized by 47 C.F.R. § 51.715.(b)(3). The Kentucky Commission adopted forward looking rates ranging from \$0.004318 to \$0.009581. *Farrar*, pp. 23-24.

IV. CONCLUSION

For the reasons discussed above, the Coalition's *Petition*, as amended, for relief under section 251(f)(2) should be denied in its entirety. Granting the *Petition* on the record before the Authority in this particular case would render - contrary to the FCC and Congress' intent - a request for suspension or modification the rule rather than the exception.⁷⁰

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⁷⁰ *Local Competition Order*, ¶ 1262.

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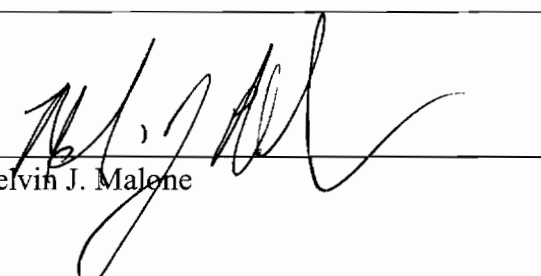
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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2007, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

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