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TRA DOCKET # 06-00228 **Melvin J. Malone**

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June 15, 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' Reply 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
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' REPLY 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’ Reply Brief*.¹ For the reasons set forth below, and in the CMRS Provider’s Brief filed on June 8, 2007 (the “*CMRS Providers’ Brief*”), 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*”).

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, including, but not limited to, the *CMRS Providers’ Brief* in this docket. For administrative ease and due to the 15-page limitation set forth in the *Agreed Order Amending Procedural Schedule*, TRA Docket No. 06-00228 (May 16, 2007), the CMRS Providers have attempted not to repeat arguments made and matters addressed in the *CMRS Providers’ Brief*. Moreover, the purpose of TRA Docket No. 06-00228 is not, as we understand it, to re-litigate the issues in TRA Consolidated Docket No. 03-00585, but rather to address the merits of the *Petition*. To the extent the Coalition attempts to re-litigate issues resolved in Docket No. 03-00585, and it does, the CMRS Providers’ rely on both previous comments/briefs submitted in this docket and the same submitted in Docket No. 03-00585. For instance, the Coalition contends, as it did in Docket No. 03-00585, that the “*TELRIC costing methodology is . . . not a requirement of the Communications Act[.]*” *Brief of the Tennessee Rural Independent Coalition*, TRA Docket No. 06-00228, p.5 (June 8, 2007) (“*Coalition Brief*”). Finally, the *Coalition Brief* contains assertions and contentions with respect to 47 U.S.C. § 251 (f)(1). Since the *Petition* at issue is based upon Section 251(f)(2) , the CMRS Providers do not address the Coalition’s irrelevant (and inaccurate) Section 251(f)(1) statements. For the record, however, in doing so, the CMRS Providers do not concede the same.

I. SUMMARY

As set forth in the *CMRS Providers' Brief*, the Tennessee Rural Independent Coalition (the "Coalition" or "Petitioners") has failed, on the record before the Authority, to provide sufficient evidence to support the granting of relief under 47 U.S.C. Section 251(f)(2). The unsubstantiated policy statements asserted by the Coalition are insufficient to carry the specific burden set forth by the Federal Communications Commission ("FCC") and Congress, and recognized by this Authority.

The *Coalition Brief* confirms what the Coalition's testimony suggested - 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. In essence, the *Petition* is yet another attempt by the Coalition to avoid the pricing requirements of the Communications Act of 1934, as amended by the Telecommunication Act of 1996 (the "Act").²

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

² The travel of this case is well known to all the parties, and it is no secret that the Coalition Members have challenged the application of TELRIC principles at every turn of these related proceedings. See, e.g., *CMRS Providers' Brief on Selected Issues Set Forth By the Hearing Officer*, TRA Docket No. 06-00228, pp. 3-6 (Aug. 4, 2006); and *Transcript of Proceedings, Oral Arguments*, TRA Consolidated Docket No. 03-00585, p. 73 (Aug. 29, 2006) ("This is an interesting debate, but we've decided that TELRIC applies."). As before, the Authority should reject the Coalition's continuing efforts to avoid those obligations. " (Comments of Panel Member).

II. THE COALITION NOW COMPLAINS ABOUT THE VERY PROCESS IT REQUESTED TO DEMONSTRATE UNDUE ECONOMIC BURDEN.

Having failed to even proffer any evidence to support their claim that they are entitled to a suspension under section 251(f)(2), the Coalition Members now complain that the very “process” that they designed and championed failed solely because the CMRS Providers’ did not accept, without any questions, modifications, adjustments or clarifications, the cost models submitted by the Coalition in the arbitration proceeding.³ According to the Coalition’s argument, the only manner in which the process would have “worked” would have been for the CMRS Providers to accept the Coalition Members’ submissions, without any comments whatever.⁴ Such a contention not only fails to constitute evidence of an undue economic burden, it is also completely contrary to the factual record in this case and the process established by the Hearing Officer at the request of the Coalition.

As the record confirms, on May 27, 2005, the Hearing Officer in the arbitration proceeding issued, *sua sponte*, a Notice of Status Conference “for the purpose of discussing the process the Authority should undertake to determine a permanent rate for reciprocal

³ “The Authority witnessed first-hand the response that the Rural LECS received when they attempted to provide a TELRIC model prior to undertaking the burden of a TELRIC cost study and hearing.” *Coalition Brief*, p. 4. See also *id.* at 6 (“[E]ach Rural LEC offered a TELRIC model, but the CMRS providers maintained that ‘none of the models were TELRIC compliant.’”).

⁴ “The CMRS rejection of all of the models offered by the Rural LECs demonstrated the burdensome nature of the TELRIC Proceeding.” *Coalition Brief*, p. 7, n. 11.

In its brief, the Coalition makes several references to a model that it submitted in TRA Consolidated Docket No. 03-00585 that was “utilized previously by the Authority.” *Id.* at 4. Specifically, the Coalition refers to this model as the “HAI model.” *Id.* at 7, n. 11. Further, the Coalition offers that “[t]his was the very cost study model used by the Authority to establish TELRIC rates when CMRS witness [Dr. Klein] was an employee of the TRA.” The Coalition’s recitation of the Authority’s actions in TRA Docket No. 97-1262 is not entirely representative. In fact, although the agency initially proceeded with both the HAI model (“Hatfield”) and BellSouth’s TELRIC Calculator model still under consideration, the Authority later adopted only BellSouth’s model for the purpose of setting permanent UNE prices in that proceeding and dropped the Hatfield model. See *Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging*, TRA Docket No. 97-01262, p. 6 (Nov. 22, 2000). In doing so, the Authority noted that the two (2) companies that originally filed and advocated for the Hatfield model “now advocate the outputs of BellSouth’s Model[.]” *Id.*

compensation.”⁵ The Authority subsequently adopted the jointly proposed procedural schedule⁶ and otherwise established a process - *pursuant to a request by the Coalition* - for the parties to either agree to an appropriate TELRIC cost methodology or for the Arbitration Panel to make a determination as to the appropriateness of any particular Coalition proposal.⁷

In sum, the process referred to directly above, as expressly requested by the Coalition, was designed either to have the parties agree on a TELRIC-compliant model or to have the Arbitration Panel determine the appropriateness of a model *before* the Cost Phase hearing in TRA Consolidated Docket No. 03-00585. Pursuant to this process, the Coalition Members were supposed to file TELRIC-compliant methodologies,⁸ after which the CMRS Providers would file comments on whether the submitted methodologies/models were, in fact, TELRIC-compliant. As contemplated, the Coalition Members submitted what they contended were TELRIC-compliant models and the CMRS Providers responded thereto.

The Coalition’s own statements reflect that a possible outcome of this pre-hearing process might be that the parties could not agree on a cost model.⁹ Further, the process

⁵ Notice of Status Conference, *In Re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 (May 27, 2005). The stated purpose of the May 27th Notice for Status Conference was to discuss the process the Authority should undertake to establish a TELRIC-compliant permanent rate for reciprocal compensation.

⁶ Order Establishing Procedural Schedule for Rate Phase of Proceeding, *In Re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 (Aug. 24, 2005).

⁷ See, e.g., July 21, 2005, Transcript, *In Re: Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585, pp. 27:12 – 28:2. See also *id.* at 30:1-3 (“MR. RAMSEY: If we have a dispute on what the methodology proposals are, we would ask you to resolve that[.]”); *TRA Transcript of Proceedings*, TRA Consolidated Docket No. 03-00585, p. 70:9-11 (Sept. 7, 2005) (the “September 7, 2005 Transcript”) (“**And Mr. Ramsay, let me remind you that this – you know, settling on a formula was your idea.**”) (emphasis added) (Comment of TRA Director/Panel Member); and *September 7, 2005 Transcript*, p. 77:6-9.

⁸ See *supra* n. 6.

⁹ See, e.g., *July 21, 2005 Transcript*, p. 27:12 – 28:2. See also *id.* at 30:1-3 (“MR. RAMSEY: If we have a dispute on what the methodology proposals are, we would ask you to resolve that[.]”).

contained a safe harbor - to have the Arbitration Panel determine the appropriateness of a model - in the event the parties failed to agree. In fact, the Coalition filed its *Petition* before the process that it championed was concluded and requested suspension of that very proceeding.

Here, in this Section 251(f)(2) suspension proceeding, the Coalition attempts to attack the above-referenced process to demonstrate that the application of TELRIC is unduly economically burdensome.¹⁰ If nothing else, this attack confirms the Coalition Members' sole aim – state-sanctioned permission to charge **access rates** (or some variation thereof) for the transport and termination of intraMTA, wireless-originated traffic. Noticeably absent, however, from the Coalition's selected recitation of its submission of proposed cost models in TRA Consolidated Docket No. 03-00585 is the Arbitration Panel's conclusions regarding the same. In fact, the TRA's records demonstrate that the Arbitration Panel also found the Coalition's initial submissions to be insufficient.¹¹

In sum, the fact that the Coalition Members and the CMRS Providers were not able to agree on a TELRIC-compliant cost model does not equate to evidence that the application of TELRIC in TRA Consolidated Docket No. 03-00585 is unduly economically burdensome.¹²

¹⁰ *Coalition Brief*, p. 8 ("The Petitioners filed their suspension requests based on the knowledge and understanding of the undue economic burden imposed by the TELRIC requirement with which the Petitioners and the Authority have become all too familiar in the course of the good faith effort of the Rural LECs to participate in the TELRIC process in Docket No. 03-00585.").

¹¹ The Arbitration Panel rejected the initial cost study methodologies submitted by the Members of the Coalition. *See, e.g., September 7, 2005 Transcript* at 45-50, 53 and 61 (Arbitration Panel declaring that the Coalition's August 11th filing did not provide sufficient information for an evaluation of whether the Coalition's proposed methodologies were TELRIC-compliant). *See also, e.g., September 7, 2005 Transcript* at 75 ("[E]very model you submit . . . should stand on its own.") (Comment of TRA Director/Panel Member); *September 7, 2005 Transcript* at 50-53 (Arbitration Panel directing the Coalition to file all models); and *September 7, 2005 Transcript* at 74 ("[T]he whole idea is to be able to provide us - - the Agency as well as the CMRS Providers - - with the opportunity to evaluate the model.") (Comment of TRA Director/Panel Member). The Coalition filed its *Petition* before the Arbitration Panel substantively considered the Coalition's second submissions of proposed cost study methodologies.

¹² Notwithstanding the Coalition's characterization of the CMRS Providers' responses to the models submitted by the Coalition, the CMRS Providers did attempt to provide constructive comments with respect to the models offered by the Coalition in an attempt to reach a mutual resolution on TELRIC-compliant models. *See, e.g., Response of*

III. THE COALITION'S RELIANCE ON EXISTING NEGOTIATED AGREEMENTS TO DEMONSTRATE THAT A SUSPENSION WOULD SERVE THE PUBLIC INTEREST IS WITHOUT MERIT.

In its brief, the Coalition relies on “negotiated” agreements reached “throughout the nation”¹³ and “individually negotiated” agreements between certain Coalition Members and certain CMRS Providers in Tennessee¹⁴ to argue that granting its *Petition* will serve the public interest. The existence of the same is not determinative, or even supportive, of whether granting the *Petition* is in the public interest.

It is true that various rural carriers and CMRS providers have reached negotiated reciprocal compensation agreements in other states, and it is likewise true that some Coalition Members and some CMRS Providers have reached negotiated reciprocal compensation agreements.¹⁵ However, as the record in this case makes clear, for most of the parties, no such agreements were reached, and the Act provides a process and rules dictating how such disputes are to be resolved. In other words, the mere fact that some parties in some situations have been able to negotiate a resolution does not justify a suspension of the other parties’ rights under the Act. If the Coalition were correct, then the existence of a single interconnection agreement

CMRS Providers to Cost Study Methodologies and Model Descriptions Proposed by Rural Coalition, TRA Consolidated Docket No. 03-00585, p. 2 (Oct. 18, 2005) (“[A]ll the models submitted provide additional information beyond that provided in [the previous] filing[.]”). See also, e.g., *id.* (“Although certain of the models seem to be intrinsically inconsistent with TELRIC principles . . . , it is conceivable that others could be made TELRIC-compliant – at least from the vantage point of methodology – if these deficiencies are properly addressed.”).

¹³ *Coalition Brief*, p. 3.

¹⁴ *Id.* at 4.

¹⁵ While the Coalition asserts that “[e]ach of these agreements was reached without the undue burden of performing a TELRIC cost study or any cost study” (*Coalition’s Brief* at 4), it does not assert, nor could it, that each of these agreements contain what the parties have agreed to be a TELRIC-based, Act-compliant rate.

Equally notable is the fact that rural carriers and CMRS providers have also been unable to reach negotiated reciprocal compensation arrangements in other states which, in turn, resulted in the need to arbitrate the establishment of TELRIC-compliant / forward-looking rates. See *CMRS Providers’ Brief*, pp. 21-22.

would bind all other requesting carriers. Carriers that exchange relatively little traffic in a state *may* find it cost-effective to agree to a negotiated, non-TELRIC-compliant transport and termination rate rather than arbitrating. That does not mean that carriers that exchange large amounts of traffic in the same state are bound to accept that same non-TELRIC-compliant rate. The Act does not bind requesting carriers in that manner.

Moreover, bald statements about the existence of interconnection arrangements between certain Coalition Members and certain CMRS Providers do not adequately inform the Arbitration Panel about matters not fully contained within the evidentiary record, such as the following: (1) whether the “negotiated” agreements were intended by the parties as a TELRIC-compliant agreement or simply as a mutual resolution in which the parties may have accepted less of one thing in a particular area to gain something else in another area;¹⁶ (2) whether the “negotiated” agreements are of an interim nature, potentially subject to true-up;¹⁷ (3) whether such negotiated agreements are related to the establishment of a permanent rate in TRA Consolidated Docket No. 03-00585;¹⁸ and (4) whether such “negotiated” agreements were entered into before or after arbitration.

¹⁶ See, e.g., *Response of Verizon Wireless with Respect to the Interim Rate Established by the Presiding Panel in TRA Consolidated Docket No. 03-00585*, TRA Docket No. 06-00228, p. 3, n. 6 (April 12, 2007) (“At present, Verizon Wireless is persuaded that it may be prejudicial to disclose such negotiated rates, absent a detailed explanation accompanying the same (i.e. the various factors, including timing and business concerns, underlying and related to the negotiated rates)).” See also, *id.* at 4, n. 7 (“The negotiated rates do not, and were not intended to, represent Verizon Wireless’ view of what a cost-based, TELRIC compliant rate in Tennessee should be.”).

¹⁷ See, e.g., *id.* at 4, n. 7 (“In entering into such interim agreements, Verizon Wireless did not, directly or indirectly, deviate from its position that a permanent reciprocal compensation rate in Tennessee must be a cost-based, TELRIC compliant rate. Verizon Wireless entered into such agreements as a temporary, interim business decision.”). See also, e.g., *Interim Rate Accounting for Sprint PCS*, TRA Docket No. 06-00228, p. 2 (April 12, 2007) (The TDS RLECs . . . are billing Sprint PCS monthly at [an] interim rate[.]”); *Interim Rate Accounting for T-Mobile USA, Inc.*, TRA Docket No. 06-00228 (April 12, 2007) (“T-Mobile has entered into an interim interconnection agreement with Twin Lakes Telephone . . . which rate is subject to true-up based on the ultimate rate approved in [TRA #03-00585].”).

¹⁸ *Interim Rate Accounting for Sprint PCS*, TRA Docket No. 06-00228, p. 1 (April 12, 2007) (“Sprint PCS has an interconnection agreement with the CenturyTEL RLECS . . . that has expired but remains in effect month to month until the present arbitration is complete.”).

The existence of “negotiated” agreements neither addresses nor satisfies the statutory requirement that a requesting rural carrier must prove that a section 251(f)(2) petition for suspension or modification is “consistent with the public interest, convenience, and necessity.”¹⁹ To the contrary, as noted in the *CMRS Provider’s Brief*, the use of forward looking cost methodologies promotes the public interest,²⁰ and the Coalition has presented no evidence to suggest otherwise.

IV. THE COALITION’S CHARACTERIZATION OF THE PROPOSED METHODOLOGY SUBMITTED BY THE CMRS PROVIDERS IS IN ERROR.

The Coalition erroneously characterizes the benchmark cost model offered by the CMRS Providers as a model “in lieu of a . . . TELRIC cost study.”²¹ Nothing could be further from the truth. The benchmark cost model is a *complete TELRIC study* for RLEC transport and termination rates. In every respect, the model is *fully TELRIC-compliant*.

The aim of the benchmark cost model offered by the CMRS Providers was, among other things, to counter the Coalition’s incorrect suggestion that a TELRIC study of rural LEC transport and termination costs must be “a great expense” and to suggest at least one specific method by which appropriate *TELRIC-compliant* transport and termination rates for each Coalition member can be determined “as efficiently as possible.”²² Although the CMRS

¹⁹ 47 U.S.C. § 251(f)(2).

²⁰ *CMRS Providers’ Brief*, pp. 3, 9 and 17-19.

²¹ *Coalition Brief*, p. 5 (“Even the evidence offered by the CMRS providers demonstrates that it is unnecessary for the Rural LECs to perform a TELRIC cost study. The CMRS providers suggest in this suspension proceeding that in lieu of a costly TELRIC cost study, the reciprocal compensation rate can be established on the basis of ‘some simple cost algorithms.’”).

²² *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).

Providers acknowledge that TRA Docket No. 06-00228 is not the proper proceeding to adopt a TELRIC methodology to be used by the Coalition in TRA Consolidated Docket No. 03-00585, in their *Response to Supplemental Statement*, and in the testimony submitted by Mr. Conwell in this proceeding, the CMRS Providers demonstrated, in good faith, that TELRIC can be implemented with an easy-to-understand and user-friendly methodology.²³ The Coalition does not really contest the merits of the CMRS Provider's proposed TELRIC methodology; instead, it tries to distract the Authority by mischaracterizing the very essence of the model. Such actions should not be tolerated or condoned in any way.

Continuing their misguided assault, the Coalition further contends that the CMRS Providers' submission of their proposed benchmark cost model is a "significant departure from the position they took in Docket No. 03-00585."²⁴ This too is a misrepresentation. The Coalition has made no specific references or citations to the record that support a credible conclusion that the CMRS Providers' have departed, in any respect, from previous positions

At the August 29, 2006, Oral Arguments in TRA Consolidated Docket No. 03-00585, a member of the panel commented:

I am sympathetic with the CMRS providers, that they've got a liability out there and they need some finality to it. But I'm also sympathetic to the ICOs, that they've got to enter into a great expense in order to meet the TELRIC requirement. And I think it's incumbent upon the CMRS providers to work with them to come up with methodologies that everybody can agree to before they enter into this huge expense.

Id. at 74, ll. 3-11 (Comments of Panel Member).

²³ *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, pp. 16-21 (Nov. 2, 2006) ("*Response to Supplemental Statement*") ("Accordingly, in addition to Mr. Conwell's affidavit, the CMRS Providers attach hereto as **Exhibit 4** a model that develops benchmarks for rural ILEC transport and termination costs. This "benchmark methodology" provides a straightforward and easy to follow mechanism for an RLEC to prepare a **TELRIC** study for transport and termination.") (emphasis added). See also, e.g., *Testimony of W. Craig Conwell*, TRA Docket No. 06-00228 (May 15, 2007).

²⁴ *Id.* at 5 ("The CMRS providers' suggestions in this proceeding to establish a rate based on a mechanism other than a full costly TELRIC study is . . . a significant departure from the position they took in Docket No. 03-00585.").

regarding what constitutes a TELRIC-compliant model. In fact, as the Coalition well knows, the benchmark cost model is consistent with both the basic TELRIC costing standards previously advanced by the CMRS Providers²⁵ and the seven (7) TELRIC principles/ground rules previously outlined by the CMRS Providers.²⁶ The Coalition Members have every right to continue to refuse to use the methodology offered in good faith by the CMRS Providers; but, they should not be allowed to mischaracterize that methodology and then claim it somehow supports their *Petition* for a suspension. If anything, the CMRS Provider's proposed methodology is further evidence that the Coalition's *Petition* is without merit, since it clearly establishes that TELRIC compliant studies can be performed efficiently and with data that is readily available to the Coalition Members.²⁷

V. THE COALITION'S BRIEF CONTAINS SEVERAL MISSTATEMENTS.

In addition to those set forth above, the *Coalition Brief* contains several other misstatements, some of which merit comment. First, contrary to the implication given by the Coalition, the North Carolina Order cited by the Coalition did not expressly rely upon the proceedings in Tennessee.²⁸ The quotation cited by the Coalition appears in that portion of the North Carolina Order in which the Commission is merely reciting the various positions of the parties.²⁹ Said quotation does not appear in that portion of the Order in which the Commission

²⁵ See *Response of the CMRS Providers to Cost Study Methodologies Proposed by the Rural Coalition*, TRA Consolidated Docket No. 03-00585, p. 5-9 (Aug. 31, 2005).

²⁶ See *Response of CMRS Providers to Cost Study Methodologies and Model Descriptions Proposed by Rural Coalition*, TRA Consolidated Docket No. 03-00585, pp. 3 and 7 (Oct. 18, 2005).

²⁷ *CMRS Providers' Brief*, pp. 20-25.

²⁸ See *Coalition Brief*, p. 16.

²⁹ Order Granting Modification Under Section 251(f)(2), *In Re: Petition of Rural Telephone Companies for Modification Pursuant to 47 U.S.C. § 251(f)(2)*, NCUC Docket No. P-100 SUB 159, pp. 4-5 (Mar. 8, 2006).

outlines its action.³⁰ It is also misleading for the Coalition to create any impression that the North Carolina Order granted a “suspension” that would have authorized the establishment of access-based reciprocal compensation rates. The North Carolina Order granted a “modification” and, in doing so, expressly continued to require the North Carolina RLECs to prepare modified cost studies utilizing Public Staff recommended guidelines intended to generate forward-looking rates - - which, in and of itself is the intended result of using a TELRIC methodology.³¹

Second, yet again the Coalition contends that:

[T]he provisions of the Act specifically provide that the authority delegated to state regulatory bodies to establish the rates for reciprocal compensation does not authorize state regulatory bodies to require ‘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.’³²

On more than one occasion in these related proceedings, the Arbitration Panel has rejected this meritless contention.³³

Third, the Coalition’s attempts to discredit the testimony of Dr. Christopher C. Klein are misguided. The Coalition asserts that Dr. Klein “appears to acknowledge the burdensome nature

³⁰ *Id.* at 13-14.

Moreover, while the North Carolina Commission may have established a per-access line costs of TELRIC studies range that it relies upon in North Carolina in the context of an (f)(2) petition, so has the Tennessee Regulatory Authority established a per-access line costs range that it relies upon in Tennessee in the context of an (f)(2) petition. See *CMRS Providers’ Brief*, p. 15 (citing 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)).

³¹ See *Public Staff Comments*, NCUC Docket No. P-100 SUB 159, ¶ 43 (Dec. 14, 2005) (“[T]he guidelines impose the requirement for the study to be forward-looking to the extent practicable, without imposing undue expense on the Rural ICOs.”).

³² *Coalition Brief*, p. 17.

³³ See, *cf.*, *Order Denying the Request for Reconsideration of ‘Order Granting Motion to Compel’ Issued June 17, 2004 by the Pre-Arbitration Officer*, TRA Consolidated Docket No. 03-00585, p. 12 (Feb. 14, 2005).

of the TELRIC model[.]”³⁴ Plainly, Dr. Klein testified that the application of TELRIC in setting UNE rates for ILECs on “well over 100 unbundled network elements and combinations” is a substantial task.³⁵ Further, however, Dr. Klein noted that “setting a rate for transport and termination of traffic [as is required in this context], is far less complex and time-consuming than setting individual rates for over 100 elements and combinations of elements.”³⁶ Once again, the Coalition has mischaracterized the evidence before this Authority.³⁷

The Coalition also maintains that “Dr. Klein offers no explanation of why the model was useful when the TRA was his ‘client’ and not acceptable to him [now].”³⁸ It appears that the Coalition is referring to the HAI model. Nowhere in his testimony does Dr. Klein advocate for any one model over another.³⁹ Further, as set forth earlier herein, the Authority did not adopt the HAI model, as erroneously, and repeatedly, asserted by the Coalition.⁴⁰

Fourth, the Coalition claims that “[a]ny 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

³⁴ *Coalition Brief*, p. 6, n. 11.

³⁵ *Testimony of Dr. Christopher C. Klein*, p. 7 (“Klein”).

³⁶ *Id.* at 8.

³⁷ *See Klein*, p. 8.

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

³⁸ *Coalition Brief*, p. 7, n. 11.

³⁹ *Klein*.

⁴⁰ *See supra* n. 4.

CMRS providers' wireless service calls."⁴¹ This statement is utterly false and not supported by the record.⁴² As the evidence and the law clearly establish, TELRIC compliant rates provide Coalition Members with the ability to recover the forward-looking, economic costs of transport and termination as provided under the Act.

Finally, the Coalition Members assert – without the support of any evidence in the record or any testimony from their witnesses – that “[t]he cost of the TELRIC study by itself is excessive, representing an enormous portion of the net revenues that each Petitioner anticipates it would receive from the assessment of a reciprocal compensation rate if the rate was established in the range of rates commonly used throughout the nation.”⁴³ Even if this assertion were true, this is an extremely odd comparison, since reciprocal compensation rates recover only the RLECs' forward-looking, economic costs of transporting and terminating wireless traffic. By definition, reciprocal compensation rates *do not recover TELRIC study costs*. As the Eight Circuit has made clear, and as the Authority has recognized, undue economic burden can be judged only by looking at a company's entire financial condition – not just a tiny, isolated sample. As noted in the *CMRS Provider's Brief*, the evidence in this record clearly establishes that the costs of a TELRIC study do not impose any type of undue economic burden on Coalition Members.⁴⁴

⁴¹ *Coalition Brief*, p. 23.

⁴² See, e.g., *CMRS Providers' Brief*, p. 8 (“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.”).

⁴³ *Coalition Brief*, pp. 18 (emphasis added).

⁴⁴ *CMRS Providers' Brief*, pp. 14-16. See also *Testimony of Randy G. Farrar*, Exhibit RGF-1, RGF-2 and RGF-3; *Testimony of W. Craig Conwell*, Exhibit WCC-3.

VI. THE COALITION'S DISCUSSION OF CONFIDENTIAL SETTLEMENT NEGOTIATIONS SHOULD BE DISREGARDED.

The Arbitration Panel has, from time to time, reminded the parties that they are free to engage in settlement discussions at any time.⁴⁵ Still, the Arbitration Panel has also declared that this matter must proceed, irrespective of such negotiations, unless, of course, a public, joint announcement is made by the parties that the remaining outstanding issues have been resolved. Notwithstanding the foregoing, the Panel is well aware that settlement negotiations are strictly confidential.⁴⁶

As grounds for its one-sided representation of confidential settlement negotiations between the Coalition and the CMRS Providers, the Coalition states, without any reference whatsoever, that it “has been concerned that the Authority has somehow been given the impression that the Coalition has been recalcitrant and unwilling to cooperate and compromise.”⁴⁷ This statement is nothing more than an excuse for the Coalition to attempt to improperly paint a picture that the CMRS Providers have failed to engage in good faith negotiations. Rather than join the Coalition in encroaching upon the confidential nature of settlement discussions, the CMRS Providers simply state that from time to time during the pendency of both Docket Nos. 03-00585 and 06-00228, the parties have engaged in amicable settlement discussions.⁴⁸ Some discussions have been more fruitful than others, but none has led to a mutually satisfactory resolution. That the

⁴⁵ See, e.g., *Order Suspending Procedural Schedule*, TRA Consolidated Docket No. 03-00585 (Oct. 25, 2005).

⁴⁶ *Letter from CMRS Providers to the Authority*, TRA Consolidated Docket No. 03-00585 (Dec. 12, 2005) (“The whole of settlement negotiations are confidential in all respects and should not be disclosed in any manner, directly or indirectly, absent the express agreement of the parties involved therein.”).

⁴⁷ *Coalition Brief*, p. 7.

⁴⁸ See, e.g., *CMRS Providers’ Status Report and Request for Consideration of the Parties Respective September 28 and October 18, 2005 Filings Regarding Cost Methodologies*, TRA Consolidated Docket No. 03-00585, p. 3 (Nov. 30, 2005) (“[T]he CMRS Providers and the ICOs recently engaged in efforts to resolve all, or some, of the outstanding issues. Though well-intended, to date those efforts have failed.”).

parties have not been able to resolve the remaining outstanding issues does not translate into a foregone conclusion that either party “has been recalcitrant and unwilling to cooperate and compromise.”⁴⁹

VII. CONCLUSION

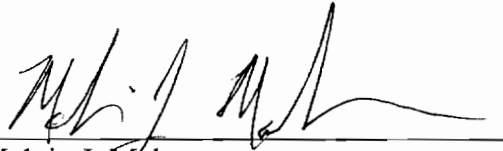
Relieved of the TELRIC requirement, Coalition Members would establish rates in excess of both what Congress and the FCC intended. Such higher rates would not encourage competition in rural Tennessee; certainly they would not encourage the development of wireless service in rural areas. To frustrate the development of competing services in rural areas is to deny rural consumers the benefits that are already available to urban consumers throughout Tennessee. Moreover, the lack of competitively provided telecommunications services may deter economic development in rural areas.

For the reasons discussed above, and as set forth in the *CMRS Providers’ Brief*, the Coalition’s *Petition*, as amended, for relief under section 251(f)(2) should be denied in its entirety.⁵⁰

⁴⁹ See, e.g., *Response of the Rural Coalition of Small LECs and Cooperatives*, TRA Consolidated Docket No. 03-00585, p. 9 (Nov. 28, 2003) (“Although the ICOs and the CMRS providers have met to negotiate the terms of interconnection, the discussions have not produced a resolution of all the outstanding issues. ***The Parties did not fail, however, to exercise good faith*** in their attempt to identify and address the issues that remain unresolved.”) (emphasis added).

⁵⁰ Engaging in pure conjecture and speculation, the Coalition suggests that “the requested suspension will lead to resolution of the prolonged process that started over four years ago.” *Coalition Brief*, p. 4. See also, *id.* at 4 (“The grant of the requested suspension will remove the TELRIC obstacle and foster productive negotiations[.]”). One could just as easily “guess,” we suppose, that the converse is true - a denial of the requested suspension, coupled with the requirement to file TELRIC-compliant cost studies in Consolidated Docket No. 03-00585, would also likely result in the prompt resolution of the underlying arbitration proceeding and/or productive negotiations. In either event, such conjecture is not a basis for granting the requested relief.

Respectfully submitted this 15th day of June, 2007.

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

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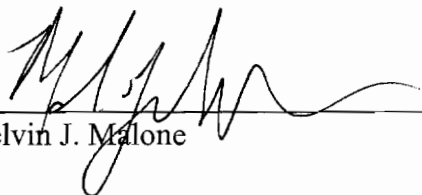
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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 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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