

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

In the Matter of)
Petition of the Tennessee Rural Independent Coalition) **Docket No. 06-00228**
Petition for Suspension and Modification)
Pursuant to 47 USC § 251 (f)(2))

**REPLY BRIEF OF
THE TENNESSEE RURAL INDEPENDENT COALITION**

on behalf of

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

June 15, 2007

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The members of the Tennessee Rural Independent Coalition (collectively, the “Coalition” “Petitioners,” or “Rural LECs”), by their counsel, respectfully submit this Reply Brief in response to the “CMRS Providers’ Brief” (the “CMRS Brief”) submitted on June 8, 2007. The CMRS Brief is in large measure the mirror image of the “Brief of the Tennessee Rural Independent Coalition” (the Coalition Brief). The Coalition Brief recounts the evidence and arguments of law and policy set forth on behalf of each Petitioner in support of the suspension request. As would be expected, the CMRS Brief argues that the evidence presented is insufficient. And, as has come to be expected in both this proceeding and the Docket No. 03-00585 arbitration proceeding, the CMRS Brief is replete with “spin” and unsustainable assertions.

One significant aspect of the undue burden associated with the imposition of the TELRIC cost requirement is the specter of never-ending litigation and “he said/she said” vitriolic pleadings. The small rural LECs and Cooperatives that form the Rural Tennessee Coalition remain steadfast in their objectives in both this proceeding and in Docket No. 03-00585. The Petitioners simply seek equitable treatment **under applicable law**. Specifically, the Petitioners

seek to establish reciprocal compensation rates consistent with the range of rates that have been established in numerous, negotiated, signed and commission-approved agreements between rural telephone companies and CMRS providers both in Tennessee and throughout the nation. It is time for this matter, which began over four years ago, to be resolved equitably.

I. A PROPOSAL FOR RESOLUTION

Recognizing the need for resolution, the Coalition will initially respond to that portion of Section III of the CMRS Brief in which the CMRS providers describe their suggested “possible use of a ‘benchmark methodology’ to establish reciprocal compensation rates.”¹ The response of the Coalition, as set forth below, is a comprehensive and straight-forward proposal to resolve this matter utilizing the methodologies suggested by the CMRS providers, subject only to the condition that the CMRS providers agree that the parties may submit to the Authority for resolution in Docket No. 03-00585 any specific issues of fact that may arise in the application of the proposed methodologies. The proposal offered by the Rural LECs will serve the public interest by bringing finality to the long-standing conflict over reciprocal compensation rates.

Accordingly, the Coalition proposes the following:

1. That the Authority conditionally grant the requested suspension to modify the TELRIC methodology requirement established in Docket No. 03-585.
2. The suspension would be conditioned on the utilization of the methodology described in the *CMRS Providers' Response to Supplemental Statement*, pp. 17-20,² and the methodology described in the Testimony of CMRS Witness W. Craig Conwell in Exhibit WCC-6 to that testimony.³

¹ CMRS Brief, pp. 23 – 25.

² *Id.*, p. 23.

³ *Id.*, p. 25.

3. In order to ensure the timely resolution of the reciprocal compensation issues, the parties would follow the following time-frame:

1. The Rural LECs will have an opportunity for 30 days from the date of agreement to this proposal to review the methodologies set forth in item 2 above, and to submit to the Authority for resolution any issues of fact in the event that the Rural LECs determine that the proposed methodologies incorporate any specific factual aspect that would lead to an inaccurate result.⁴

2. In the event any such fact issue arises, the Rural LECs will, within 30 days of the date of agreement to this proposal, identify the specific section of the model in question, and submit a specific proposal for modification of each section in question together with written support for the proposed modification. The CMRS providers will have the opportunity to provide a written response in support of maintaining each section of the model in question as initially proposed. The CMRS providers' response will be due within 14 days of the date on which the Rural LECs submit their proposed modifications. The parties will jointly request that the Authority determine on an expedited basis whether to utilize the section of the model as proposed by the CMRS providers or the modification of the section proposed by the Rural LECs.

3. Within 60 days from the date of the agreement to this proposal, the Rural LECs will provide the CMRS providers with the necessary input information to be used to establish the reciprocal compensation rate through the application of the applicable methodology referenced in item 3 above. The CMRS providers will have an opportunity for 30 days from the date of the receipt of the input data information to review the data, and to submit to the Authority for resolution any issues of fact in the event that the CMRS providers question the utilization of any of the submitted input data.

4. In the event any such issue arises regarding the input data, the CMRS providers will identify the specific input data in question and submit a specific proposal for modification of the data in question together with written support for the proposed

⁴ Because these new CMRS models and methodologies were offered in the course of this Suspension proceeding, and not in that phase of Docket No. 03-00585 established to review cost study methodologies, the Rural LECs have not devoted resources to a thorough review of the CMRS models, and instead focused their resources on the request for suspension. Based on the representations of the CMRS providers and a preliminary review of the models, however, the Rural LECs do not anticipate any issues of fact with respect to the models themselves. It is more likely that any issues that arise would be fact issues based on the appropriate inputs to the models.

modification. The Rural LECs will have the opportunity to provide a written response in support of maintaining the utilization of the input data submitted. The Rural LECs' response will be due within 14 days of the date on which the CMRS Providers submit their proposed modifications to the input data. The parties will jointly request that the Authority determine on an expedited basis whether to utilize the input data submitted by the Rural LECs or the modification of the input data proposed by the CMRS providers.

4. All parties will agree that this compromise resolution concludes Docket No. 06-00228 and Docket No. 03-00585, and the parties will agree to refrain from pursuing any rights of appeal or further litigation of matters addressed in either of these proceedings with the exception of the specific factual matters that may be raised in accordance with item 3, sub-items 2 and 4, above.

This proposed resolution is offered in good faith on the basis of the representations of the CMRS providers regarding the methodologies that they have proposed, as referenced above in item 2. It is regrettable that the CMRS providers did not offer their proposed methodology during consideration of the cost methodology phase of Docket No. 03-00585 and, instead waited until a year later in the course of this suspension proceeding to suggest the alternative costing methodology. As the Authority will recall, when the Rural LECs offered their proposed TELRIC cost models in Docket No. 03-00585,⁵ the CMRS providers rejected each model claiming that none, including the HAI model previously used by the Authority, was "TELRIC-compliant." Instead of offering an alternative methodology at that time, the CMRS providers simply demeaned the efforts of the Rural LECs and asserted "methodological ground rules."⁶

⁵ See, "Proposed TELRIC Cost Study Methodology Filed On Behalf Of Each Member Of The Rural Coalition," September 28, 2005, Docket no. 03-00585.

⁶ See, "Response of CMRS Providers To Cost Study Methodologies And Model Descriptions Proposed By Rural Coalition," October 18, 2005, Docket No. 03-00585.

The proposed resolution is reasonable and equitable. Moreover, it will put an end to the otherwise never-ending pleadings and processes that have been associated with the matter of establishing reciprocal compensation rates between the Rural LECs and the CMRS providers. As a result of this proposal, the CMRS providers will obtain what they assert that they now want: the utilization of the methodologies they have proposed.⁷ The proposed resolution enables both the parties and the Authority to avoid further debate and litigation over TELRIC cost methodology.

The CMRS providers are free to call their models “TELRIC-compliant” if they choose, just as they took the liberty of claiming that the TELRIC model used in the past by the Authority was not “TELRIC-compliant.”⁸ Without regard to semantics, the proposed resolution enables the parties to utilize an agreed upon model and methodology. The proposed resolution does away with the need for the Authority’s processes to be taxed further with policy debates and litigation.⁹

Instead, the proposed resolution provides a forum that will (hopefully) lead expediently to mutually negotiated reciprocal compensation rates. To the extent that additional assistance from the Authority may be required, the matters before the Authority will be specific factual issues within the realm of the Authority’s ratemaking expertise.

⁷ CMRS Brief, pp. 23-25.

⁸ “The CMRS Providers do not believe that the HAI Model itself is TELRIC-compliant.” “Response of CMRS Providers To Cost Study Methodologies And Model Descriptions Proposed By Rural Coalition,” October 18, 2005, Docket No. 03-00585, p. 16.

⁹ By incorporating the conditional suspension and modification of the TELRIC requirement established in Docket No. 03-00585, the proposed resolution also eliminates the potential need for the Rural LECs to proceed with federal court appeal of the Arbitration Order in Docket No. 03-00585. As the Authority is aware, the Rural LECs have consistently maintained that the TELRIC methodology is not applicable to rural telephone companies, and noted that the Arbitration Order does not address any of the arguments of law and policy set forth in this regard by the Coalition.

II. A TEMPERATE RESPONSE TO “SPIN” AND UNSUSTAINABLE ASSERTIONS

A. In the event that the CMRS providers do not accept the resolution proposed above, the Rural LECs seek the unconditional grant of the requested suspension.

The Rural LECs have set forth the above proposal to resolve this proceeding with great care and in good-faith reliance that the methodologies proposed by the CMRS providers are as they have represented. The Rural LECs hope that the CMRS providers will quickly indicate to the Authority their agreement to the proposal set forth above. It is fair, equitable and protects the rights of all parties. The Rural LECs are not open to the possibility of “negotiating” the substantive aspects of this proposal.¹⁰ There is nothing to negotiate¹¹ – the Rural LECs have agreed in good faith to use the models now proposed by the CMRS providers, subject to the referral of factual rate-making issues to the Authority for resolution, if necessary. Should the CMRS providers reject the proposal and instead suggest alternatives and another round of pleadings, the Rural LECs will reluctantly be forced to insist on their statutory rights.

If the CMRS providers reject the above-proposed offer,¹² the Rural LECs continue to seek a full and non-conditional suspension of the TERLIC requirement. The Rural LECs are extremely concerned that the CMRS providers will attempt to “beat them down” further with proposals for more costly pleadings and hearings. These processes are expensive in terms of time and money, especially for Rural LECs with limited resources. It is, in part, this very concern with the ongoing undue burden of these endless litigation processes that led the Rural

¹⁰ Within reason, the Rural LECs would, of course, entertain revisions to the time-frames set forth in the proposal.

¹¹ The Coalition trusts that in addition to the proposal set forth above, the Authority is aware of the many efforts of the Rural LECs to seek a mutually acceptable resolution to this matter and to avoid further burden on the Authority. These efforts have been reflected, in part, on the record in Docket No. 03-00585. (*See, e.g.*, Letter To Directors From Bill Ramsey On Behalf Of The Rural Coalition, May 23, 2006, Docket No. 03-005865, pp. 4-5.) The Coalition would be pleased, if requested by the Authority, to provide more information regarding the efforts of the Rural LECs to resolve these matters.

¹² The Coalition respectfully notes that a counter-proposal constitutes a rejection of the initial offer.

LECs to file the request for suspension. The Rural LECs simply do not have the “deep pockets” that the CMRS providers must have.¹³

B. The Coalition offers illustrative examples of the deficiencies in the arguments presented by the CMRS providers in their Brief.

While it is obvious that each party’s Brief reflects the zeal of their beliefs, the Rural LECs readily acknowledged that the grant or denial of the requested suspension is a matter delegated to the discretion of the Authority.¹⁴ In its exercise of its discretion, the Rural LECs respectfully request that the Authority recognize and acknowledge that:

1. Irrespective of the protestations of the CMRS providers, another state regulatory authority has found a similar request for suspension justified on the basis of an evidentiary showing similar to the evidence provided in this proceeding by the Rural LECs.¹⁵
2. Contrary to the suggestions of the CMRS Providers, there is no proceeding to which they can point in which the FCC has imposed TELRIC methodology on rural telephone companies for any purposes. To the contrary, the FCC has refrained from imposing TELRIC cost methodology in several instances and articulated its concern regarding the potential adverse impact on telecommunications users.¹⁶
3. The grant of the requested suspension will serve the public interest by removing a costly burdensome obstacle to resolution of an already prolonged process that started over four years ago. Reciprocal compensation rates, consistent with statutory requirements, can be set without incurring the costs of TELRIC methodology; the large number of interconnection agreements reached between rural telephone companies and CMRS providers without the costs of a TELRIC study provide the best evidence of that fact.¹⁷

¹³ Contrary to the dismissive tact of the CMRS providers, the fact is that in the rural areas of Tennessee served by the Rural LECs, forcing that person to spend money to fix a problem when less costly solutions are available would most assuredly be considered an “undue burden” regardless of a person’s financial condition, whether the amount involved is the \$33,000 to \$69,000 per cost study estimated by the Rural LEC advisors to perform a TELRIC study or the more “modest” \$15,000 range estimated by CMRS Witness Conwell (Testimony of W. Craig Conwell, p.20).

¹⁴ See, Coalition Brief, p. 14.

¹⁵ See, Coalition Brief, pp. 14-22.

¹⁶ *Id* at pp. 22-26.

¹⁷ *Id*, pp. 3-9; see also Individual Discovery Responses of TDS Companies and CenturyTel, referencing negotiated interconnection agreements between those companies and CMRS providers..

The Rural LECs recognize that the Authority undoubtedly finds it tiresome to review vitriolic “he said / she said” pleadings. Accordingly, the Rural LECs will refrain from taxing the Authority with an exhausting rebuttal of each and every argument set forth in the CMRS Brief. The Coalition respectfully refers the Authority to its initial Brief which anticipated each of the arguments set forth in the CMRS Brief. The Coalition trusts that the Authority will not accept without rigorous review the CMRS arguments based on quotations used out of context or assertions made without support. In order to illustrate the concern of the Rural LECs in this regard, the Coalition will set forth below examples that arise in each section of the CMRS Brief by simply quoting the CMRS Brief and offering FACTS in response.

1. The CMRS Brief “Summary”

(a) Summary - Throughout their Brief, the CMRS providers incorrectly assert that the Rural LECs have not provided evidence to support the suspension request. They ignore the facts.

CMRS Providers’ Argument: “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).”¹⁸

FACTS

1. The fact is that each Petitioner has submitted evidence¹⁹ to demonstrate the undue economic burden imposed in the absence of the grant of suspension of the TELRIC cost methodology requirement established in the Arbitration Order in Docket No. 03-00585. The evidence submitted by each Petitioner is similar to the evidence submitted by rural telephone companies in North Carolina that sought suspension of a TELRIC requirement.

¹⁸ CMRS Brief, p. 1,

¹⁹ See, Testimony of Jeffrey W. Reynolds; and Testimony of Emmanuel Staurulakis.

2. The North Carolina Commission granted the similar rural telephone company request for suspension from the TELRIC requirement based on “evidence and the totality of the circumstances” which are very similar to the evidence and totality of circumstances in this proceeding.²⁰

(b) Summary – This Docket No. 06-00228 proceeding exclusively addresses the Rural LECs’ request for suspension of the TELRIC requirement. Nonetheless, the CMRS providers rehash an old and failed argument by claiming that the Rural LECs seek to force them to treat reciprocal compensation traffic as interexchange access traffic. The CMRS argument is not only irrelevant to this suspension proceeding, but it is incorrect as a matter of fact and law. Factually, the Rural LECs do not maintain that access charges apply to reciprocal compensation. Legally, neither the Communications Act nor the FCC rules prohibit a determination that the costs of transporting and terminating reciprocal compensation traffic could be equal to the charges for access service.

CMRS Providers’ Argument: “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.”²¹

FACTS

1. The Coalition members do not seek in this proceeding to “charge access rates.” The Rural LECs seek only to avoid the burdensome TELRIC requirement in setting reciprocal compensation rates. The record before the Authority provides compelling evidence that there are alternative mechanisms to establish transport and termination rates that are “a reasonable

²⁰ “Order Granting Modification Under Section 251(f)(2),” North Carolina Suspension Proceeding, p.13.

²¹ CMRS Brief, p. 2

approximation of the additional costs of terminating” the traffic exchanged between the Rural LECs and the CMRS providers.²²

2. Nothing in the Communications Act or the FCC’s Rules states that the additional costs to transport and terminate reciprocal compensation traffic cannot be equal to the rate charged for other similar services including interexchange access. Nothing in the Act even discusses access charge rates in the context of rates charged for reciprocal compensation traffic. While the FCC will not permit a local exchange carrier to impose access charges on reciprocal compensation traffic, nothing precludes a determination that the rate established for the transport and termination of reciprocal compensation traffic may be at a level equivalent to the charge for access service.²³

2. CMRS Brief Section II. A - “Significant Adverse Economic Impact On Users Of Telecommunications Services Generally”

Summary: The CMRS providers essentially claim that the TELRIC requirement can only be suspended if the Rural LECs demonstrate quantifiable resulting economic harm to telecommunications users. This argument presents a “Catch-22.” The quantified resulting harm can not be determined without performing the burdensome TELRIC studies. The FCC has not found it necessary to quantify the potential economic harm in reaching the conclusion to refrain from imposing TELRIC methodology on rural telephone companies.

CMRS Providers’ Argument: “Coalition testimony on this issue does not assert a single Tennessee-specific fact.”²⁴ The CMRS providers claim that the Coalition’s references to FCC

²² Coalition Brief, p. 5.

²³ Nothing in the FCC rules precludes this result. See 47 CFR Part 51, subpart H. The Coalition also notes that the FCC in Docket No. 01-92 has under consideration whether the rates for access and reciprocal compensation should be uniform

²⁴ CMRS Brief, p. 5.

proceedings that specifically exclude rural companies from TELRIC “are irrelevant to the establishment of transport and termination rates.”²⁵

FACTS

In order to develop the company-specific data, the Rural LECs would have to perform the TELRIC studies, the very undue burden they seek to avoid through grant of the requested suspension. The CMRS providers ignore the fact that the FCC did not need company-specific facts or data to conclude that TELRIC should not be applied to rural telephone companies. The CMRS providers cannot point to any specific case or proceeding where the FCC has asserted that TELRIC should be applied to rural telephone companies for any purpose.²⁶ The CMRS providers ignore the references to reciprocal compensation rates in the FCC’s Intercarrier Compensation proceeding, Docket No. 01-92, and the “Missoula Plan” that has been proposed in that proceeding wherein numerous parties including Cingular and BellSouth (both now known as AT&T) agree that rural telephone company reciprocal compensation rates should not be based on TELRIC methodology.²⁷

3. CMRS Brief Section II. B - “Unduly Economically Burdensome”

(a) Summary - The CMRS providers claim that the Rural LECs rely only on the potential costs of performing TELRIC studies as the basis for the suspension request. The Rural LECs have in addition to the quantification of the costs of the studies, however, addressed the totality of the circumstances that demonstrate how the TELRIC requirement imposes an undue economic burden.

²⁵ *Id.*, p. 6.

²⁶ Coalition Brief, pp. 23-24.

²⁷ *Id.*, pp. 25-26.

CMRS Providers' Argument: "Coalition testimony on this issue is limited to allegations that TELRIC studies cost money."²⁸

FACTS

1. The Rural LECs submitted evidence demonstrating that the undue economic burden that would be imposed on each Petitioner in the absence of the grant of the requested suspension is manifested by both: 1) the quantifiable direct costs associated with preparing and defending the studies in the inevitable lengthy company specific hearings held to consider the studies to establish a TELRIC-based rate for reciprocal compensation; and 2) the operational burden that would result by requiring each Petitioner to devote the internal managerial resources necessary to undertake the TELRIC studies and to participate in the resulting hearing and rate-setting process.²⁹

2. The evidence submitted by the Rural LECs was similar to the evidence presented by rural telephone companies in North Carolina seeking a suspension of the TELRIC requirement. The North Carolina Commission granted the request based on the "evidence and the totality of the circumstances."³⁰ The circumstances in the North Carolina proceeding included references to the Tennessee Docket No. 03-00585 proceeding and the burdensome process that had taken place with respect to the submission of TELRIC models by each Rural LEC and the subsequent rejection of each model, including the HAI model used previously at the Authority, by the CMRS providers.³¹

²⁸ CMRS Brief, p. 10.

²⁹ Coalition Brief, pp. 12-14.

³⁰ "Order Granting Modification Under Section 251(f)(2)," North Carolina Suspension Proceeding, p.13.

³¹ See, Coalition Brief, pp. 15-16

(b) Summary - There is no black and white line or established standards regarding the determination of whether a carrier requesting a suspension pursuant to Sec. 251(f)(2) of the Act has met the burden of proof. Although the determination is left to the discretion of the state regulatory authority, the CMRS providers nonetheless suggest that the Authority's decision is dictated by the CMRS providers' version of "regulatory principles and precedent." The Coalition has fully explained in prior pleadings the inaccuracies in the CMRS providers' attempt to cobble together support for their position from piece-parts of other proceedings.

CMRS Providers' Argument: "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." "³²

FACTS

The CMRS Providers utilize the quotation from the *Iowa Utilities Board* decision out of context to suggest that the Authority must not grant the requested suspension if the overall economic condition of the Rural LECs is not harmed by the TELRIC requirement. In so doing they miss the point of the *Iowa Utilities Board* decision and its application to this proceeding. As the Coalition has previously explained, the *Iowa Utilities Board* decision is clear in its intent is to ensure that the Section 251(f)(1) rural exemptions are not improperly removed and that requests for Section 251(f)(2) suspensions are not improperly withheld. The *Iowa Utilities Board* decision made clear that the rural carrier seeking suspension may rely on any aspect of the

³² CMRS Brief, p. 12.

“whole of the economic burden” imposed by the interconnection requirement from which the carrier seeks suspension.³³

The fact is that the Court in *Iowa Utilities Board* reviewed a now discredited FCC rule that improperly interpreted “the statutory phrase ‘unduly economically burdensome’ as ‘undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.’”³⁴ The Coalition will not further burden the Authority by repeating arguments that have already been fully made on the record.³⁵ The Coalition, however, will repeat from its prior argument this note of caution: “The Coalition respectfully urges the Authority and its staff to review the entire context of the quoted citation the CMRS Providers have incorrectly cited in support of their arguments.”³⁶

CMRS Providers’ Argument: “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.”³⁷

FACTS

The Texas decision referenced by the CMRS providers addressed a request to “terminate the rural exemption” of a rural carrier pursuant to Section 251(f)(1), and not a request for suspension under Section 251(f)(2). The Coalition will again not burden the Authority by

³³ “There can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in § 251(b) or § 251(c).” *Iowa Utilities Board*, 219 F. 3d at 761.

³⁴ *Iowa Utilities Board*, 219 F. 3d at 760. The Court’s statement, in fact, rebukes the very concept of the FCC relied upon by the CMRS providers. CMRS Brief, p. 4, footnote 12.

³⁵ The Coalition respectfully refers the Authority to the “Response To The CMRS Providers’ Motion To Compel On Behalf Of The Members Of The Tennessee Rural Independent Coalition” filed on April 13, 2007 in this proceeding at pp. 8-11.

³⁶ *Id.*, p. 10.

³⁷ CMRS Brief, p. 12.

repeating arguments that have already been fully made on the record, but respectfully refer the Authority to the prior discussions.³⁸

CMRS Providers' Argument: "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."³⁹

FACTS

The suspension request in this proceeding is not comparable to the intermodal local number portability (LNP) suspension request. In the LNP proceeding, the Authority determined that the Rural LECs had not filed individual company data; in this proceeding the Rural LECs have provided individual company information. The CMRS discussion of the LNP proceeding demonstrates the confusion between the two distinct standards which may alternatively support the grant of a suspension request: 1) whether the requirement is unduly burdensome on the carrier; and 2) whether the requirement will result in significant adverse economic impact on telecommunications users.

In the LNP proceeding, the CMRS providers note that the surcharge for LNP, in accordance with FCC rules, that would be established as a result of LNP was not "unduly economically burdensome."⁴⁰ The surcharge, however, should be viewed in the context of whether the requirement will result in significant adverse economic impact on telecommunications users, not whether it is "unduly economically burdensome" on the carrier.

³⁸ See, "Response To The CMRS Providers' Motion To Compel On Behalf Of The Members Of The Tennessee Rural Independent Coalition" filed on April 13, 2007 in this proceeding at pp. 11-12.

³⁹ CMRS Brief, p. 13.

⁴⁰ See CMRS Brief, p. 15.

In this proceeding, each Rural LEC has presented company specific information which together with the totality of the circumstances has been deemed to warrant suspension of the TELRIC requirement. This evidence meets the alternative statutory standard demonstrating that the TELRIC requirement is unduly economically burdensome on the Rural LECs.

The Coalition has forthrightly acknowledged that it does not have quantification of the adverse economic harm that the TELRIC requirement will impose on telecommunications users; this, however, does not mean that the Rural LECs have not also met the alternative standard of demonstrating that the TELRIC requirement will result in significant adverse economic impact on telecommunications users. While it is not necessary for the Rural LECs to also meet this standard, they do. The standard is met by applying the same criteria that has caused the FCC to refrain from imposing TELRIC methodology on rural companies in any specific circumstance.

The CMRS providers are incorrect in their comparison of this proceeding to the LNP suspension request proceeding.

4. CMRS Brief Section II. C - "Consistent With The Public Interest, Convenience, And Necessity"

(a) Summary – The CMRS providers contend that the Rural LECs have made no showing that the requested suspension will serve the public interest by facilitating the resolution of the prolonged process of establishing reciprocal compensation rates that has taken more than four years.

CMRS Providers' Argument: "The Coalition Members' specific testimony on this issue is non-existent."⁴¹

FACTS

⁴¹ CMRS Brief, p. 16.

The CMRS providers' statement is incredibly misleading. The Rural LEC witnesses testified primarily with respect to the evidence that supports the finding that the requested suspension is necessary both to avoid imposing a requirement on the Rural LECs that is unduly economically burdensome and to avoid significant economic harm to telecommunications users. The support for the finding that the grant of the requested suspension is consistent with the public interest, convenience and necessity is a matter of law, policy and facts on the public record that require no foundation from an expert witness. As explained in the Coalition Brief, "the requested suspension will lead to resolution of the prolonged process that started over four years ago. The efficient resolution of all matters related to the terms and conditions of interconnection between the Rural LECs and the CMRS providers will serve the interests of all parties and the public interest in general. The application of TELRIC costing methodology, as the record in Docket No. 03-00585 reveals, has been the single greatest obstacle to resolution."⁴²

(b) Summary – The CMRS providers claim that the Rural LECs have not explained how TELRIC cost methodology results in a subsidy or benefit to the CMRS providers at the expense of other carriers and telecommunications users. Coalition Witness Watkins, however, directly addressed and explained this concern. The CMRS providers also continue to repeat their bald assertion that the Rural LECs seek the requested suspension in order to establish excessive rates. The CMRS claim is contradicted both by the evidence on the record and the Rural LEC "Proposal for Resolution."

CMRS Providers' Argument: "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

⁴² Coalition Brief, p. 4; *see also Id* at pp. 3-9.

a TELRIC study constitutes a "subsidy," nor the amount of the claimed "subsidy," nor the services) claimed to be "subsidized."⁴³

FACTS

Coalition Witness Watkins was explicit with respect to how the imposition of the TELRIC requirement produces benefit for the CMRS providers at the expense of other telecommunications users and carriers:

Furthermore, if the CMRS Providers do not contribute fairly to the recovery of RLEC network costs based on the CMRS providers' use of those networks relative to the equivalent use by other services and other service users, 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.

The net result of too little recovery from CMRS providers for transport and termination of their traffic will be higher prices to users for other services or higher rates to fund residual Universal Service sources of network cost recovery, or both.⁴⁴

CMRS Providers' Argument: "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."⁴⁵

FACTS

The Rural LECs are not attempting to "establish rates in excess of both what Congress and the FCC intended." The evidence offered by the Rural LECs demonstrates the large number of agreements in Tennessee and nationwide that exist between some of the rural LECs and the CMRS providers; these agreements reflect a range of rates that the parties have mutually agreed to utilize. As noted by the Coalition in its initial Brief, the discovery exhibits filed by the TDS companies and CenturyTel provide compelling evidence that the Rural LECs and the CMRS

⁴³ CMRS Brief, p. 17.

⁴⁴ Testimony of Steven E. Watkins, p. 4, lines 27-35.

⁴⁵ CMRS Brief, p. 19.

providers can establish rational rates without TELRIC cost studies. These exhibits reference numerous agreements that have been reached; and these same agreements provide compelling evidence of what those rates should be.⁴⁶

5. CMRS Brief Section III – TELRIC Studies

Summary – The CMRS providers continue to maintain that a TELRIC cost proceeding is not burdensome. The CMRS providers’ argument is contradicted by their own conduct in Docket No. 03-00585.

CMRS Providers’ Argument: “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. (Footnote omitted). 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. (Footnote omitted).”⁴⁷

FACTS

The TELRIC rate setting phase of Docket No. 03-00585 began more than two years ago. Clearly, a TELRIC proceeding “could last two or three years.” The proceeding came to a standstill when the CMRS providers rejected each of the TELRIC cost models proposed by the Rural LECs, including the HAI model previously used by the Authority. Clearly, the Authority was “presented with conflicting cost models ... all supported by conflicting expert testimony.” The FCC’s concerns regarding TELRIC are both applicable and well taken.⁴⁸

⁴⁶ See, e.g., Individual Discovery Responses of the TDS Companies and CenturyTel. See also, Coalition Brief, p.9.

⁴⁷ CMRS Brief, p. 20.

⁴⁸ See, Testimony of Steven E. Watkins, pp. 6-8.

CONCLUSION

The "Proposal for Resolution" set forth in Section I above provides an expedient path to resolve both this proceeding and Docket No. 03-00585. The Rural LECs have set forth a straight-forward path that utilizes the cost model proposed by the CMRS Providers subject only to the potential submission of fact-based rate-setting issues to the Authority for resolution based on the Authority's expertise.⁴⁹

In the alternative that the CMRS Providers reject the Rural LECs "Proposal for Resolution," the Rural LECs respectfully submit that the evidence submitted in this proceeding and the totality of the circumstances demonstrate that a suspension is warranted. The Rural LECs have demonstrated that the suspension is necessary both to avoid imposing further undue economic burden on the Rural LECs and to avoid significant adverse economic impact on telecommunications users, and that the suspension will serve the public interest.

Respectfully submitted,

On Behalf of
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June 15, 2007

⁴⁹ The Rural LEC proposal also obviates the need for an appeal of the Docket No. 03-00585 Arbitration Order by the Authority's issuance of a conditional suspension of the TELRIC methodology conditioned on the use of the cost models now proposed by the CMRS providers. In the absence of the suspension, the Rural LECs, supported by the nation-wide rural LEC industry, will be required to appeal the Arbitration Order to affirm that the FCC has never imposed TELRIC methodology on rural telephone companies.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 18th day of June, 2007, a true and correct copy of the foregoing was served on the parties of record via the method indicated:

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