BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 30, 2008

IN RE:	)	
	)	**DOCKET NO.**
PETITION OF THE TENNESSEE RURAL	)	**06-00228**
INDEPENDENT COALITION FOR	)	
SUSPENSION AND MODIFICATION	)	
PURSUANT TO 47 U.S.C. SECTION	)	
251(f)(2)	)	

DISSENTING OPINION OF DIRECTOR RON JONES

This docket came before a panel of the Tennessee Regulatory Authority ("Authority") at an Authority Conference held on July 9, 2007, for consideration of the *Petition* filed by the Tennessee Rural Coalition ("Coalition")[1] on June 23, 2006, and the *Supplemental Statement* filed by the Coalition on October 2, 2006. During the Authority Conference, the majority voted to grant the *Petition* without exception. Because I cannot and do not agree with the analysis of the majority and because it is my opinion that this record and past Authority action support and arguably require denial of the *Petition*, I respectfully dissent from the majority and provide this opinion in support of my vote.

[1] The Coalition is comprised of the following companies: Ardmore Telephone Company; Ben Lomand Rural Telephone Cooperative, Inc.; Beldsoe Telephone Cooperative; CenturyTel of Adamsville, Inc.; CenturyTel of Claiborne, Inc.; CenturyTel of Ooltewah-Collegedale; Concord Telephone Exchange, Inc.; Crockett Telephone Company, Inc.; Dekalb Telephone Cooperative; Highland Telephone Cooperative; Humphreys County Telephone Company; Loretto Telephone Company, Inc.; Millington Telephone Company; North Central Telephone Cooperative; Peoples Telephone Company, Inc.; Tennessee Telephone Company; Twin Lakes Telephone Cooperative; United Telephone Company; West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative.

I. RELEVANT PROCEDURAL HISTORY

Many years have passed since the issue of the proper compensation for completing wireless calls in and out of rural areas first arose. Additionally, the history of this issue developed from no fewer than three dockets, Docket No. 00-00523, "the USF Docket"; Docket No. 03-00585, "the Arbitration Docket"; and the present docket, Docket No. 06-00228, "the Suspension Docket." In order to provide a true representation of the importance of the most recent decision in the Suspension Docket, it is necessary to provide the relevant background from each of these three dockets.

On June 28, 2002, in the USF Docket, the Hearing Officer issued the *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* ("*June 2002 Order*"). In this order, the Hearing Officer concluded that the withdrawal of Toll Settlement Agreements should be considered in the USF Docket and that the state universal service statute applies to rate of return regulated rural companies.[2] On July 15, 2002, BellSouth Telecommunications, Inc. ("BellSouth") filed a motion for reconsideration of the *June 2002 Order*.[3] On July 23, 2002, the panel voted to accept the motion for reconsideration as a petition for appeal and appointed me to serve as the Hearing Officer.[4]

On August 23, 2002, BellSouth filed a letter requesting that the Authority hold BellSouth's motion in abeyance for sixty (60) days. The Hearing Officer entered an order on September 4, 2002, granting BellSouth's request thereby holding the motion for reconsideration

---

[2] *In re: Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000*, p. 8 (Jun. 28, 2002).

[3] BellSouth filed a substitute version of its motion on July 25, 2002.

[4] *See In re: Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, *Order Accepting Petition for Appeal and Appointing a Hearing Officer*, p. 3 (Sept. 17, 2002). As a result of a new appointment made by the Governor effective July 2002, the previously presiding Hearing Officer was no longer serving as a Director.

in abeyance until November 4, 2002. In response to later joint requests for extensions, the Hearing Officer extended the abeyance period until May 5, 2003.[5]

On April 2, 2003, BellSouth filed a letter stating that it would discontinue making payments to the Coalition after April 2003 for CMRS-originated traffic transiting BellSouth's network.[6] In its letter, BellSouth explained that the use of meet-point billing agreements by BellSouth and CMRS providers has enabled BellSouth to provide the call records necessary for direct billing for the termination of calls.[7] The Coalition responded on April 3, 2003, by filing the *Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* ("*Petition for Emergency Relief*"). BellSouth filed a response and counterclaim on April 15, 2003.

On April 25, 2003, the Coalition and BellSouth filed the *Joint Agreed Motion for 60-Day Conditional Stay*. In the motion, BellSouth and the Coalition agreed to engage in good faith negotiations to establish contractual terms governing payments for the termination of CMRS traffic.[8] The conditions of the stay provided that BellSouth would continue to compensate the Coalition for the termination of CMRS-originated traffic for sixty (60) days after which BellSouth will pay the Coalition 3.0 cents per minute for the traffic for the next thirty (30) days. At the end of the ninety (90) day period, the parties agreed that BellSouth could terminate payments, but that the Coalition retains the right to oppose such action.[9] On May 2, 2003,

---

[5] *See id. Order Granting Request to Hold Reconsideration in Abeyance* (Sept. 4, 2002) (holding consideration of the motion in abeyance for sixty days); *Order Continuing Abeyance* (Dec. 6, 2003) (extending the abeyance period until Jan. 3, 2003); *Order Continuing Abeyance* (Jan. 8, 2003) (extending the abeyance period until Mar. 4, 2003); *Order Continuing Abeyance* (Mar. 5, 2003) (extending the abeyance period until May 5, 2003).

[6] *See id.* Letter to Director Ron Jones from Guy Hicks, General Counsel BellSouth, dated April 2, 2003, p. 1 (Apr. 2, 2003).

[7] *See id.*

[8] *See id. Joint Agreed Motion for 60-Day Conditional Stay*, p. 1 (Apr. 25, 2003).

[9] *See id.*

BellSouth and the Coalition filed a letter asking the Hearing Officer to continue to hold the motion for reconsideration in abeyance for an additional sixty (60) days.

On May 5, 2003, the Hearing Officer issued the *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions*. In the order, the Hearing Officer held the *Petition for Emergency Relief* and motion for reconsideration in abeyance until July 4, 2003. The order further stated:

> It is the opinion of the Pre-Hearing Officer that the Joint Motion should be granted, but that further obligations should be placed upon the parties in an effort to encourage settlement. If the parties cannot reach a settlement, the Pre-Hearing Officer will have no choice but to establish and expedite a procedural schedule in order to prepare for a hearing on the factual and legal issues surrounding the terms of the toll settlement agreements entered into by BellSouth and the Coalition. Alternatively, if the Coalition is unable to reach an agreement with the CMRS providers, then the Authority may be called upon to arbitrate disputed issues pursuant to the Section 252 of the Telecommunications Act of 1996. Given these alternatives, settlement of this disputed issue is clearly in the best interest of all parties involved in this docket.
>
> During the status conference, the subject matter of BellSouth's April 2nd letter and the ensuing dispute was clarified. Specifically, the Pre-Hearing Officer understands that the traffic that is the subject of the dispute includes only CMRS-originated traffic transiting BellSouth's network and terminating on a Coalition member's network where BellSouth has entered into a meet point billing agreement with the CMRS carrier that originated the traffic. In order to monitor the negotiations of this issue, BellSouth and the Coalition shall file a report and periodic updates explaining in detail the progress of the negotiations. The report and updates shall contain at a minimum a summary of negotiations that have occurred, a list of entities involved in the negotiations, a statement of scheduled negotiations, and the resolution of any issues.
>
> It is doubtful that this issue can be fully settled without the participation of CMRS providers that have entered into or intend on entering into meet point billing agreements with BellSouth. Therefore, BellSouth shall provide the Coalition with a list of those CMRS providers that have effective meet point billing agreements with BellSouth or with which BellSouth is engaged in negotiations for meet point billing. BellSouth and the Coalition shall then send correspondence to each of the CMRS providers on BellSouth's list notifying the provider of the opportunity to participate in collective negotiations with the Coalition and a proposed date for such negotiations.[10]

---

[10] *See id. Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions*, pp. 5-6 (May 5, 2003) (footnotes omitted).

In a footnote, to the above quoted text, the Hearing Officer noted that the receipt date of an acceptance from a CMRS provider or the CMRS providers collectively shall establish the date of receipt of a bona fide request for interconnection under Section 251(f)(1)(B) for opening of the 135 to 160 day filing window for petitions for arbitration.[11]

On November 6, 2003, the Authority opened the Arbitration Docket as a result of the filing of a petition for arbitration by Cellco Partnership d/b/a Verizon Wireless. Also on November 6, 2006, BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; AT&T Wireless PCS, LLC d/b/a AT&T Wireless; T-Mobile USA, Inc.; and Sprint Spectrum L.P. d/b/a Sprint PCS filed similar petitions for arbitration, which the Authority assigned consecutively numbered docket numbers. During the December 8, 2003, Authority Conference, the Chairman consolidated the petitions into the single docket referred to herein as the Arbitration Docket. Of particular relevance to the USF Docket was Issue 8, which the Petitioners generally worded as: "What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic?"[12]

Activity in the USF Docket resumed on February 2, 2004, when, as a result of not receiving a timely status update, the Hearing Officer issued a *Notice of Telephonic Status Conference*. During the telephonic status conference, the Hearing Officer heard comments from all represented parties and determined that the most efficient manner in which to proceed is to have the parties file briefs addressing the outstanding pleadings and issues. With the parties'

---

[11] *See id.* at 6 n.15.

[12] *See, e.g., In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, *Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless*, p. 17 (Nov. 6, 2003).

agreement, the Hearing Officer directed the parties to file initial briefs on February 27, 2004, and reply briefs on March 8, 2004.[13]

On May 6, 2004, in the USF Docket, the Hearing Officer issued the *Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition.* In the order, the Hearing Officer determined that BellSouth had an obligation to compensate the Coalition "for all CMRS-originated traffic terminated to the Coalition's end users in the same manner that BellSouth provided the compensation prior to the issuance of the *December 2000 Order* until that obligation is otherwise modified or terminated by the Authority."[14] The Hearing Officer next found that circumstances have changed such that the time has come to modify BellSouth's obligation with respect to "CMRS traffic originated by a CMRS provider with a meet-point billing agreement with BellSouth and terminated to a Coalition end user."[15] Based in part on this finding, the Hearing Officer concluded that BellSouth shall pay to the Coalition compensation in the amount of 3.0 cents per minute for all CMRS traffic terminated after May 31, 2003, to an end user served by a member of the Coalition when that CMRS traffic is originated by a CMRS provider that has entered into a meet-point billing arrangement with BellSouth. This obligation, according to the Hearing Officer was to continue until the earliest of the following dates: (1) a date established by the CMRS Carriers and the Coalition members; (2) thirty (30) days following the panel's deliberations in the Arbitration Docket; or (3) December 31, 2004. As to the remaining CMRS traffic, the Hearing

[13] *See In re: Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, *Order on February 17, 2004 Telephonic Status Conference*, p. 3 (Feb. 24, 2004).
[14] *Id. Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition*, p. 12 (May 6, 2004).
[15] *Id.* at 14.

Officer determined that BellSouth shall continue to make payments in accordance with previous orders in this docket.[16]

At the August 9, 2004, Authority Conference, the panel reviewed the Hearing Officer's *Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* issued on May 4, 2004, in the USF Docket. A majority of the panel voted to amend the order to require BellSouth to pay 1.5 cents per minute rather than the 3.0 cents per minute contained in the May 4th order.[17] The majority ordered BellSouth to make the 1.5 cents per minute payments from June 2003 through September 2004 and determined that BellSouth should true-up the 1.5 cents per minute rate to the rate established in the Arbitration Docket.[18]

The hearing in the Arbitration Docket began on August 9, 2004, and continued through the 12th of August. Following the filing of post-hearing briefs and supplemental testimony, the panel deliberated the merits of the issues, including Issue 8, at the January 12, 2005, Authority Conference. In the order memorializing the deliberations, the panel recognized with regard to Issue 8 three federally sanctioned methods for establishing a rate: (1) forward-looking economic costs using a cost study pursuant to 47 C.F.R. § 51.505 and § 51.511; (2) default proxies as provided in 47 C.F.R. § 51.707; and (3) bill and keep as provided for in 47 C.F.R. § 51.713.[19]

---

[16] *Id.*

[17] *See id. Order Reconsidering Hearing Officer's Initial Order Addressing Legal Issue 2 and Amending the Hearing Officer's Order Issued May 4, 2006*, p. 12 (Sept. 1, 2004).

[18] *See id.* Note that this order was the subject of a motion for reconsideration filed by the Coalition. The panel by majority vote granted the motion. The panel deliberated the motion on October 11, 2004, and the majority affirmed the August 9, 2004, Authority Conference decision. *See* Transcript of Authority Conference, pp. 24-30 (Oct. 11, 2004).

[19] *See In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, *Order of Arbitration Award*, pp. 39-40 (Jan. 12, 2006) (quoting 47 C.F.R. § 51.705).

The majority chose the first method, specifically requiring the use of TELRIC pricing and rejecting the Coalition's proposal, which included embedded costs. Additionally, the majority adopted an interim rate equal to that established for BellSouth in Docket No. 97-01262 subject to a true-up and voted to commence additional proceeding to establish a permanent rate.[20]

Efforts aimed at establishing a permanent TELRIC rate proceeded in the Arbitration Docket, but on June 23, 2006, the Coalition filed its *Petition*, which is the subject of this docket – the Suspension Docket, seeking pursuant to 47 U.S.C. § 251(f)(2) modification of the requirements of 47 U.S.C. § 251(b)(5). The *Petition* specifically involves the panel's decision of Issue 8 in the Arbitration Docket to establish reciprocal compensation rates using the TELRIC methodology.[21]

The Authority noticed the Arbitration Docket and the Suspension Docket for consideration during the September 11, 2006, Authority Conference. During that conference, the panel voted in regard to the Suspension Docket to consider the *Petition*, to grant an interim suspension of the TELRIC requirement, and to require the Coalition to supplement their *Petition* with company-specific information.[22] As to the Arbitration Docket, the panel voted to hold the docket in abeyance pending the resolution of the Suspension Docket.[23]

As instructed the Coalition supplemented its *Petition* through a filing made on October 2, 2006. After contentious pre-hearing proceedings, the parties agreed to have the panel deliberate the merits on the written record. The Authority noticed the deliberations for the July 9, 2007, Authority Conference.

---

[20] *See id.* at 41. The Petitioners sought reconsideration of this order, but the reconsideration did not include Issue 8. Although the panel voted to reconsider its order as requested, the panel has yet to consider the merits of the reconsideration.

[21] *In re: Petition of the Tennessee Rural Independent Coalition Petition for Suspension and Modification Pursuant to 47 USC § 251(f)(2)*, Docket No. 06-00228, *Petition*, pp. 1-2 (June 23, 2006).

[22] Transcript of Authority Conference, pp. 15-16 (Sept. 11, 2006).

[23] *Id.* at 16.

During the Authority Conference, Director Miller presented the panel with a motion with which Chairman Kyle agreed. The majority memorialized its decision in an order entered on June 30, 2008. For the reasons set forth herein, I dissent from the decision of the majority.

II. DISSENT

A. Consideration of Section 251(f)(2)(A)(i): Significant Adverse Impact of Telecommunications Users Generally

The majority determined that the suspension of the requirement to use TELRIC is reasonable and necessary "to avoid significant adverse economic impact on telecommunications users generally."[24] In support of this position, the majority offered three points. First, the majority contends "[i]t does not require a leap in logic to conclude that when costs decline for one group they invariably must increase for another group."[25] Second, the majority found that the Coalition "produced evidence sufficient to demonstrate that users of telecommunications service generally would be adversely economically impacted if the TELRIC methodology was imposed on the members of the Coalition."[26] Third, the majority concludes "that the use of TELRIC is not required or necessary and, in fact, there are alternative, less costly and less burdensome means to achieving the end result of determining an appropriate rate for transporting and terminating telecommunications traffic."[27] I address each of these points separately and include therewith my analysis of Section 251(f)(2)(A)(i).

---

[24] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, pp. 8 & 11(June 30, 2008).
[25] *Id.* at 11.
[26] *Id.*
[27] *Id.*

1. Declining Costs/Increasing Costs

The majority contends that "[i]t does not require a leap in logic to conclude that when costs decline for one group they invariably must increase for another group."[28] The majority goes on to conclude that as "a general business principle, it is nearly inevitable that when the expenses of a business increase, the price of the services or products provided by that business must also rise."[29] Assuming for the purposes of this opinion only that the general principles set forth by the majority are accurate, I am startled by the majority's obvious and perhaps intended failure to connect the principles to the standard of Section 251(f)(2)(A)(i). The standard requires the avoidance of a **significant** adverse economic impact.[30] The mere occurrence of an increase in expenses or prices do not necessarily equate to a **significant** adverse economic impact. Absent a more specific explanation from the majority of how the application of its general principles results in a finding of significant adverse economic impact, the majority's analysis must be rejected for lack of support, reason, and applicability to Tennessee statutes.

2. Sufficiency of the Evidence

The majority found that the Coalition "produced evidence sufficient to demonstrate that users of telecommunications service generally would be adversely economically impacted if the TELRIC methodology was imposed on the members of the Coalition."[31] It is my opinion that there is an absence of quantifiable data or information in the record upon which to base a determination that suspension or modification of the requirement to set transport and termination rates using a TELRIC methodology is necessary to avoid a significant adverse economic impact

---

[28] *Id.*
[29] *Id.*
[30] 47 U.S.C. § 251(f)(2)(A)(i).
[31] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 11 (June 30, 2008).

on users of telecommunications services generally. Consequently, it is not at all mysterious that the majority fails to provide any citations to the record justifying the position that there is sufficient evidence in the record.[32]

The Coalition's witnesses, Mr. Reynolds and Mr. Staurulakis, stated that such an adverse economic impact would in fact occur and relied on their interpretation of general Federal Communications Commission ("FCC") and Federal-State Joint Board comments that the application of TELRIC to rural carriers is disfavored.[33] Additionally, Coalition witness, Mr. Watkins, argued that application of TELRIC will minimize the compensation received by the Coalition from CMRS providers thereby shifting the unrecovered costs to users of other services.[34]

The Coalition's witnesses rely heavily on their contention that the FCC disfavors the imposition of TELRIC on rural carriers. Specifically, Mr. Reynolds and Mr. Staurulakis both assert that "the FCC has noted in the context of interconnection rates that its forward-looking cost methodologies should not apply to rural companies because of concerns with respect to the ramifications on rural telecommunications users."[35] The witnesses rely on the following FCC language in support of their positions:

> We also address the impact on small incumbent LECs. For example, the Western Alliance argues that it is especially important for small LECs to recover lost contributions and common costs through termination charges. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, we conclude that termination rates for all LECs should include an allocation of forward-looking common costs, but find that the inclusion of an element for the recovery of lost contribution may lead to significant distortions in local exchange markets. We also note that certain small incumbent

[32] *Id.*

[33] Pre-filed Direct Testimony of Jeffrey W. Reynolds, pp. 5-8 (Apr. 27, 2007); Pre-filed Direct Testimony of Emmanuel Staurulakis, pp. 7-9 (Apr. 27, 2007). The Coalition witnesses present these arguments as support for both prongs of the Section 251(f)(2) analysis.

[34] *See* Pre-filed Direct Testimony of Steven E. Watkins, p. 4 (Apr. 27, 2007).

[35] Pre-filed Direct Testimony of Jeffrey W. Reynolds, pp. 6-7 (Apr. 27, 2007); Pre-filed Direct Testimony of Emmanuel Staurulakis, p. 8 (Apr. 27, 2007).

> LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.[36]

I do not agree with the Coalition's customized reading and reliance on this paragraph. In my opinion, the above-quoted language cannot and does not trigger an automatic Section 251(f)(2) suspension or modification. If the FCC had intended such an outcome, it simply could have stated as much, but it did not. Instead, the FCC basically *affirmed* the application of the pricing methodology to rural incumbents, but acknowledged that they may seek a suspension pursuant to Section 251(f)(2). Accordingly, the Coalition's crafty, but strained, interpretation of FCC language fails to convince.

The Coalition also asserts that the application of TELRIC will result in higher rates for users of non-CMRS services because the CMRS rate resulting from TELRIC will not recover all of the associated costs.[37] Unfortunately, the Coalition fails to provide any quantitative data demonstrating that the additional costs will create a significant adverse economic impact, as is required by Section 251(f)(2)(A)(i). In a similar and somewhat related action in Docket No. 03-00633, this agency required a quantitative showing prior to acting on the Coalition's Section 251(f)(2) request. In that docket the majority rejected (denied) the Coalition's Section 251(f)(2)(A)(i) assertion after finding that there "was no quantifiable showing demonstrating that

[36] Pre-filed Direct Testimony of Jeffrey W. Reynolds, pp. 7-8 (Apr. 27, 2007) (quoting *In re: Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *In re: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *First Report and Order*, 11 FCC Rcd. 15499, 16026 (Aug 8, 1995)) (emphasis in original); Pre-filed Direct Testimony of Emmanuel Staurulakis, pp. 8-9 (Apr. 27, 2007) (also quoting the *First Report and Order* and supplying emphasis).

[37] *See* Pre-filed Direct Testimony of Steven E. Watkins, p. 4 (Apr. 27, 2007); *Brief of Tennessee Rural Independent Coalition*, pp. 23-24 (Jun. 8, 2007).

the LNP surcharges are not just and reasonable."[38] The standard applied then was appropriate and sound and should apply in this docket as well.[39]

Additionally, in Docket No. 03-00633 and the present docket, the Authority determined that the Section 251(f)(2) analysis must be company-specific.[40] The Coalition failed to establish on a company-specific basis that suspension or modification of the requirement to set transport and termination rates using a TELRIC methodology is necessary to avoid a significant adverse economic impact on users of telecommunications services generally.

The Coalition suggests that it is unable to provide company-specific quantitative proof that the transport and termination rates that will be set using TELRIC will not fully recover costs because in order to do so they would have to actually perform the studies - the very action from which they are seeking relief.[41] It would require unyielding single-mindedness to conclude, as does the Coalition, that TELRIC studies need be fully completed before it can be shown that the studies do not include all associated costs. By contrast, the determination of equities and the rendering of regulatory judgment require open-mindedness. In actuality, in this instance, the Coalition is attacking the methodology as having an intrinsic defect resulting both from its theory

---

[38] *In re: Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as Amended*, Docket No. 03-00633, *Order Denying Amended Petition and Establishing Dates for Implementation of Local Number Portability*, pp. 17-18 (Sept. 6, 2005).

[39] For a more detailed discussion of the application of the standard established in Docket No. 03-00633, see Section II.B.1., *infra*.

[40] *See* Transcript of Authority Conference, pp. 15-16 (Sept. 11, 2006); *In re: Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as Amended*, Docket No. 03-00633, *Order Requiring the Tennessee Coalition to Amend its Petition and Appointing a Hearing Officer*, p. 3 (Mar. 18, 2004).

[41] *Brief of Tennessee Rural Independent Coalition*, pp. 23-24 (Jun. 8, 2007).

and application.[42] I must reject the Coalition's position. Even in this regard, however, the Coalition failed to provide quantitative proof.

3. Alternative Methodologies

The majority concludes in the order "that the use of TELRIC is not required or necessary and, in fact, there are alternative, less costly and less burdensome means to achieving the end result of determining an appropriate rate for transporting and terminating telecommunications traffic."[43] Similarly, during the deliberation of this docket, the majority recognized that there is "an alternative and less burdensome method of establishing a rate."[44] Also, in the order, the majority states that its decision to suspend the use of TELRIC "does not foreclose the opportunity of the parties or TRA to utilize a forward-looking model or a variation thereof in the setting of a permanent rate."[45]

The panel in the Arbitration Docket recognized the application of 47 C.F.R. §51.705 to the determination of appropriate transport and termination rates for incumbent local exchange carriers.[46] Section 51.705 contains three pricing methodology alternatives for establishing a transport and termination rate: forward-looking economic costs, default proxies, or bill-and-

---

[42] *See* Pre-filed Direct Testimony of Steven E. Watkins, pp. 4-8 (Apr. 27, 2007).
[43] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 11 (June 30, 2008).
[44] Transcript of Authority Conference, p. 19 (July 9, 2007).
[45] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 20 (June 30, 2008).
[46] *See In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, *Order of Arbitration Award*, pp. 39-40 (Jan. 12, 2006) (quoting 47 C.F.R. § 51.705).

keep.[47] The majority in the Arbitration Docket rejected the use of default proxies and bill-and-keep and voted in favor of the use of TELRIC as the forward-looking economic costs approach.[48] Here, the majority suggests that there are alternative methodologies for developing transport and termination rates that are less economically burdensome. However, the majority provides no details or examples as to the alternative methodologies, no explanation of whether these alternatives comply with 47 C.F.R. § 51.705, and no discussion as to the cost of implementing one of these alternative methodologies. Absent additional information and explanation from the majority as to these specifics, I am unable to agree with this finding that relies on what amounts to a phantom alternative methodology as a basis for relieving the Coalition of the TELRIC obligation imposed in the Arbitration Docket.

B. Consideration of Section 251(f)(2)(A)(ii): An Unduly Economically Burdensome Requirement

Section 251(f)(2)(A)(ii) requires decision makers to determine whether suspension or modification is necessary "to avoid imposing a requirement that is unduly economically burdensome."[49] The majority concludes that it is necessary to suspend the imposition of TELRIC to avoid imposing further undue economic burden on the Coalition.[50] The majority

---

[47] *See* 47 C.F.R. §51.705. This regulation provides:

> (a) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:
>
> (1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;
>
> (2) Default proxies, as provided in § 51.707; or
>
> (3) A bill-and-keep arrangement, as provided in § 51.713.

[48] Transcript of Deliberations, pp. 38-43 (Jan. 12, 2005); *see See In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, *Order of Arbitration Award*, p. 40 (Jan. 12, 2006).

[49] 47 U.S.C. § 251(f)(2)(A)(ii).

[50] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 8 (June 30, 2008).

generally reasons that quantitative proof and other non-quantitative proof, which I will refer to as theoretical arguments, should both be considered when analyzing 251(f)(2)(A)(ii),[51] and in this case, the quantitative evidence when considered alongside the theoretical arguments indicates that the imposition of TELRIC produces an undue economic burden.[52] In support of its consideration of quantitative proof and theoretical arguments, the majority finds that this docket is distinguishable from the request and the Authority's decision in Docket No. 03-00633. In short, I disagree with the majority's decision to distinguish Docket No. 06-00633 and its evaluation of the quantitative proof and theoretical arguments.

1. The Decision in Docket No. 03-00633 Should not be Distinguished from this Docket

The majority finds that the suspension request in this docket is distinguishable from the request in Docket No. 03-00633. It is as much telling as it is interesting to me that the majority found it necessary to distinguish the two dockets. Based on my reading of the majority's order, the majority construes the decision in Docket No. 03-00633 as preventing consideration to any degree of theoretical arguments. Having been a member of that panel and a signatory to the Order in that docket, I do not read the decision in Docket No. 03-00633 so strictly; accordingly, I am of the opinion that there is no need to distinguish the dockets.[53]

---

[51] *Id.* at 17-18.

[52] *Id.* at 16 & 18.

[53] Additionally, I disagree with the grounds offered by the Authority for distinguishing the two dockets. For example, the majority distinguishes this docket from Docket No. 03-00633 on the basis that in Docket No. 03-00633 the Authority was considering suspending a requirement that provides a tangible benefit or service to consumers. In my opinion, it cannot be said that consumers will not benefit from appropriately set reciprocal compensation rates. The majority states, "[t]he underlying dispute in this case – one of payment between carriers – is not likely to obstruct end-user's access to service or choice." *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 15 (June 30, 2008). This is simply not true. When reciprocal compensation rates are not properly set in a service area, other carriers, including wireline and wireless carriers, are less likely to offer services in that area. In such instances, consumers are no doubt harmed by a lack of choice.

In my opinion, Docket No. 03-00633 is directly on-point and the standard established therein should apply to this docket, albeit with refinement. In both dockets, the petitioners sought relief from a requirement resulting from the application of the Telecommunications Act of 1996. In both dockets, the petitioners relied, in part, on Section 251(f)(2)(A)(ii) as the basis for requesting relief of the regulatory requirement. The general question posed by this section in both dockets is whether the petitioners have demonstrated the existence of an undue economic burden. As to this docket, specifically, the relevant question is whether Coalition members demonstrated on a company-specific basis that the imposition of the TELRIC methodology is unduly economically burdensome. When evaluating this question, quantifiable evidence must be considered together with the economic status of the entity in question. I believe that this approach is consistent with the Authority's decision in Docket No. 03-00633 and provides the necessary standard necessary to evaluate the requirements of Section 251(f)(2). However, theoretical arguments may also be considered and doing so is not inconsistent with the decision in Docket No. 03-00633.

In Docket No. 03-00633, a group of rural telephone companies very similar to the group present in this docket, also referred to therein as the coalition, filed a petition pursuant to Section 251(f)(2). In their petition as later amended, the rural carriers sought suspension of the obligation contained in Section 251(b)(2) to provide wireline to wireless number portability.[54] Docket No. 03-00633 presented the Authority with its first opportunity to evaluate a petition for suspension or modification filed pursuant to Section 251(f)(2), including our first opportunity to evaluate a claim that the imposition of an obligation would be unduly economically burdensome.

[54] *In re: Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to Section 251(f)(2) of the Communications Act of 1934, as Amended*, Docket No. 03-00633, *Petition for Suspension*, 1-4 & 7 (Dec. 11, 2003), *Amended Petition for Suspension*, p. 9 (Mar. 24, 2004).

When evaluating the public interest requirement of Section 251(f)(2)(B) in Docket No. 03-00633, the Authority recognized that public policy conclusions alone are insufficient. The Authority stated:

> 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 anecdotal and general policy statements contained in this record. The panel determined that, in the absence of data to support specific contentions, conclusions with respect to public interest and sound policy are, at best, speculative.[55]

Additionally, with regard to the discussion of the requirements and analysis of Section 251(f)(2)(A)(i) and (ii), the panel in Docket No. 03-00633 did not address consideration of theoretical arguments and simply chided the rural carriers for not making a quantifiable showing.[56] Thus, it is my reading of the order in Docket No. 03-00633 that with regard to Section 251(f)(2)(A)(i) and (ii), a petitioner must make a quantifiable showing, but as with Section 251(f)(2)(B), a decision maker may consider theoretical arguments along with the quantitative data. Given my understanding of the facts and decision in Docket No. 03-00633 and my reading of the majority's order as relying on quantitative proof and theoretical arguments, I conclude that there is no compelling reason to distinguish Docket No. 03-00633 from the present docket.

2. Evaluation of the Qualitative Arguments

As mentioned above, it is my reading of the majority's order that the majority did not rely solely on the quantitative data, but rather considered theoretical arguments as well and determined that the totality of the arguments supports suspension. I cannot agree with this

[55] *Id. Order Denying Amended Petition and Establishing Dates for Implementation of Local Number Portability*, p. 17 (Sept. 6, 2005).
[56] *Id.* at 17-18.

analysis, because, in my opinion, the Coalition failed to substantiate the theoretical arguments and such arguments are without merit. Additionally, as discussed in section II.B.3., *infra*, in my opinion, the Coalition failed to make a sufficient quantitative demonstration.

The majority relies, in part, on the existence of "acceptable alternatives to the TELRIC methodology" to justify the undue economic burden determination.[57] As I discussed in section II.A.3., *supra*, in my opinion, it is inappropriate to rely on such undefined alternatives. With regard to an evaluation of the requirements of Section 251(f)(2)(A)(ii), this is particularly true when it is not known what the costs of such alternatives will be. It defies logic to suspend a requirement because of its associated costs in favor of an unidentified alternative the costs of which are unknown. Absent more specific, and preferably quantifiable, proof on the alternatives, reliance to any degree on this argument is misplaced and, in my opinion, somewhat contrived.

In addition to alternative methodologies and quantitative proof, the majority mentions that the imposition of the TELRIC requirement is unreasonable because it constitutes an "expenditure of the limited resources of time, money, and personnel."[58] From an economic perspective, all resources are scarce – that is not an epiphany. So, in general, it is not unreasonable to conclude that fulfilling a regulatory requirement will oftentimes require an expenditure of limited resources. Thus, there must be much more substance to the argument than simply asserting that fulfilling the requirement constitutes an expense. Here, additional arguments are that resources could be expended on other more preferable endeavors[59] or that there is a less onerous manner in which to fulfill the regulatory requirement.[60] As is the case

[57] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 16 (June 30, 2008).
[58] *Id.* at 18.
[59] *Id.* at 20.
[60] This is the alternative methodology argument discussed in the preceding paragraph. *Id.* at 16.

with the majority decision addressed above, there is, in my opinion, insufficient evidence supporting either of these additional arguments;[61] therefore, it is inappropriate to rely on the Coalition's limited resources of time, money, and personnel to justify a finding of undue economic burden.

3. Evaluation of the Coalition's Quantitative Arguments

Having explained my disagreement with the majority's decision to distinguish Docket No. 03-00633 and the majority's evaluation of the theoretical arguments, I next turn to my analysis of the Coalition's quantitative proof. It is my determination, and the record supports this determination, that the members of the Coalition have not individually demonstrated quantitatively or otherwise that a suspension or modification of the TELRIC requirement imposed in the Arbitration Docket is necessary to avoid imposing a requirement that is unduly economically burdensome.

The witnesses for the Coalition asserted certain facts, but never tied the assertions together with specific quantitative proof to establish for each Coalition member individually that a suspension or modification of the TELRIC requirement was necessary to avoid an unduly economically burdensome requirement. The Coalition witnesses provided estimates of the consultant fees, with one of the witnesses describing the fees as bare-bones.[62] One witness noted that internal costs could not be calculated at this time,[63] and another witness expressed his expectation that the imputed internal cost would be similar to the consultant fees.[64] No other testimony was provided by the Coalition as to the costs of the studies nor was there an

[61] For a discussion of the lost opportunity costs theoretical arguments, see Section II.C.1., *infra*.
[62] *See* Pre-filed Direct Testimony of Jefferey W. Reynolds, pp. 8-9 (Apr. 27, 2007); Pre-filed Direct Testimony of Emmanuel Staurulakis, pp. 10 (Apr. 27, 2007).
[63] *See* Pre-filed Direct Testimony of Jefferey W. Reynolds, pp. 8-9 (Apr. 27, 2007).
[64] Pre-filed Direct Testimony of Emmanuel Staurulakis, pp. 10 (Apr. 27, 2007).

evidentiary showing of the financial effects to the individual Coalition members incurring these costs.

The majority attempts to evaluate the financial data in the record to determine whether there is quantifiable harm to the members of the Coalition. Apparently, the majority compared the cost of TELRIC studies to Coalition members' net incomes and capital costs and evaluated the effects of preparing the studies on companies' returns on equity.[65] Based on this evaluation, the majority next concluded that the cost of the TELRIC study represented a significant impact to each of the companies."[66] I have always been a proponent of the concept that as a regulatory agency, it is the duty of the Authority to evaluate the evidence as a whole, oftentimes without regard to burdens of proof, to ensure reaching the best possible approach. While I find the majority's analysis somewhat consistent with this concept, I cannot adopt the results of the majority's analysis. The Coalition had access to the same documentation, but failed to quantify the harm in a manner even remotely similar to the majority's methodology. I am perplexed by the Coalition's inaction in this regard, and in light of such, I must question the validity of the data and the majority's results extracted from the data, and am deeply concerned that all methodologies were not subject to evidentiary scrutiny.

Similar to the Coalition's proof offered in support of Section 251(f)(2)(A)(i), in this instance, the Coalition has done nothing more than say TELRIC is unnecessary and will exhaust limited resources. Such broad and general assertions absent specific proof are insufficient, in my opinion, to justify relief pursuant to Section 251(f)(2)(A)(ii).

---

[65] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 16 (June 30, 2008).
[66] *Id.*

C. Consideration of Section 251(f)(2)(B): Consistency with the Public Interest, Convenience and Necessity

I must dissent from the general conclusion of the majority that granting relief pursuant to Section 251(f)(2) is consistent with the public interest, convenience and necessity. I note here that the test set forth in Section 251(f)(2) has two prongs. A petitioner must demonstrate first that the suspension is necessary to avoid one of three adverse consequences: (1) "significant adverse economic impact on users of telecommunications services generally," (2) imposition of a "requirement that is unduly economic burdensome," and (3) imposition of a "requirement that is technically infeasible."[67] Second, a petitioner must establish that suspension is consistent with "the public interest, convenience, and necessity."[68] In my opinion this two prong approach suggests that the public interest analysis must be based on something other than three listed adverse consequences. If this were not the case, there would be no reason to include the second requirement in the statute. In other words, it would have been sufficient for the statute to state that demonstrating only one of the three adverse consequences would entitle a carrier to the requested relief. Such is not the case. In my opinion, the Coalition not only failed to establish the first prong of the analysis, but also failed to provide a specific explanation of how granting them the requested suspension is consistent with the public interest, convenience and necessity.

1. Lost Opportunity Cost

From what I have read, the closest that the Coalition came to fulfilling this second requirement is its assertion of the lost opportunity cost – an argument adopted by the majority[69] and an argument I reject. The Coalition argued that there were better uses of the funds that the

[67] 47 U.S.C. § 251(f)(2)(A).
[68] *Id.* § 251(f)(2)(B).
[69] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 20 (June 30, 2008).

Coalition would otherwise expend to prepare and defend TELRIC cost studies. According to the witnesses, a more compelling use of the funds is to encourage investment in Tennessee's rural infrastructure, including the promotion of broadband and advanced services.[70] Another witness asserted that if TELRIC-based transportation and termination rates do not fully compensate the Coalition members, there will be a chilling effect on future capital investment.[71] The majority determined that "the continued diversion of utility resources may reduce opportunity for investment, thereby, contributing to the delay of the deployment of advanced services, such as broadband, in the rural areas of Tennessee" and "that competition is not thwarted by this decision, but rather that the resolution of this dispute may in fact promote the expansion of end-user services and technology."[72] I cannot agree with the majority's reliance on these two assumptions to support a determination that the suspension of the imposition of TELRIC is consistent with the public interest, convenience, and necessity.

The majority's assumptions, while more than partly protectionist and wholly technologically naïve, ignore much of the communications developmental landscape and address only part of the story. Keeping transport and termination rates artificially high serves only to favor, in a mostly inefficient manner, the type of technology that is or is not deployed in rural areas of Tennessee. Specifically, if rates are high for transport and termination or, for that matter, any other element in a particular rural area, companies other than the rural incumbent carrier are likely to withhold investment dollars from that area, and thus the introduction of competitive service and technology innovation. Overall, this is an unsatisfactory result, given

[70] *See* Pre-filed Direct Testimony of Jeffrey W. Reynolds, p. 11 (Apr. 27, 2007); Pre-filed Direct Testimony of Emmanuel Staurulakis, pp. 11-12 (Apr. 27, 2007).
[71] *See* Pre-filed Direct Testimony of Steven E. Watkins, p. 12 (Apr. 27, 2007).
[72] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 20 (June 30, 2008).

that an important goal for a statewide telecommunications and advanced services network and offerings is for services to be comparable in both rural and urban areas. If we erect or allow a regulatory structure that has the effect of causing non-rural, incumbent carriers to withhold investment monies from rural areas, then we are certainly working in opposition to the goal of technological and service parity in rural Tennessee at competitive rates. In conclusion, while I recognize that the majority's public interest analysis can seem reasonable when considered from a narrow perspective, when viewed overall and broadly, I am of the opinion that the majority's conclusion may in fact have the opposite effect, that is, the retardation of advanced services deployment and the wide choice of an array of service offerings from among multiple providers.

2. Likelihood of Future Litigation

Tied to the majority's reliance on the lost opportunity costs of imposing the TELRIC methodology is the majority's concern over further litigation. The majority states:

> The potential for additional time-consuming and costly TELRIC proceedings that impair the resources of the parties is a concern that is both an appropriate and responsible consideration for this Authority. Contentious and protracted litigation diverts valuable resources and distracts management from the operations of the utility, and is not consistent with the interests of the citizens of Tennessee or the general public.[73]

Generally speaking, I agree that costly and lengthy litigation is not in the public interest. However, a decision to suspend the use of TELRIC to establish transport and termination rates does not operate, in this instance, to eliminate future litigation.

I cannot deny that the issue of Coalition/CMRS Provider transport and termination rates has a lengthy and contentious history. As Section I of this opinion demonstrates, this issue originated in the USF Docket, continued in the Arbitration Docket, and is now before us in this docket – the Suspension Docket. Ironically, the issue will not be resolved in this docket.

[73] *Id.* at 19-20.

Instead, it is my understanding of the effect of the majority decision that this issue is now subject to further litigation in the Arbitration docket. To explain, Issue 8, of the Arbitration Docket is "[w]hat is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic?"[74] The Arbitration Docket panel resolved this issue by determining that the appropriate methodology is TELRIC.[75] The suspension of that methodology now results in Issue 8 once again in need of resolution.[76] Thus, it is my opinion, that the next chapter in this on-going dispute is a return to the Arbitration Docket to determine in light of the suspension of the TELRIC methodology, what is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect traffic. The majority itself even recognizes this next step, but fails to fully account for the resulting litigation.[77]

Finally, I have a comment with regard to a finding in the oral motion that is not contained in the majority's order. In the prevailing motion, Director Miller stated: "Based on the lack of resolution between the parties despite the coalition's offer to accept the benchmark cost model put forth by the CMRS providers, it seems that long and expensive proceedings may be ahead."[78] I read in this statement an implication that the CMRS Providers have somehow acted

---

[74] *See, e.g., In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, *Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless*, p. 17 (Nov. 6, 2003).

[75] *See In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, *Order of Arbitration Award*, p. 41 (Jan. 12, 2006).

[76] The Telecommunications Act of 1996 states, in part, "[t]he state commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection(c) upon the parties to the agreement." 47 U.S.C. § 251(b)(4)(C).

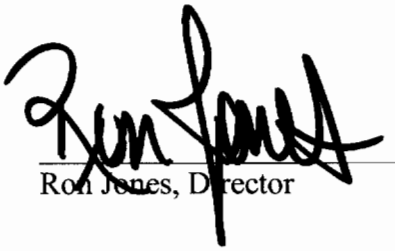
[77] *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates*, p. 20 (June 30, 2008).

[78] Transcript of Authority Conference, pp. 18-19 (July 9, 2007).

unreasonably. I cannot allow any such implication, whether intended or unintended, to go unaddressed. In my opinion, it is without question that the protracted history of the resolution of this issue is due in large part to the fact that the parties have acted contentiously. While I have oftentimes found the tit-for-tat style of litigation between the parties frustrating and unproductive, I cannot say that one party is at fault more so than another party or that either party has acted unreasonably. In my opinion, both parties share equally in the fact that this issue remains unresolved.

III. CONCLUSION

Based on the foregoing, I respectfully dissent from the *Order Granting Suspension of Requirement to Utilize TELRIC Methodology in Setting Transport and Termination Rates* issued on June 30, 2008.



Ron Jones, Director