

NEAL & HARWELL, PLC

LAW OFFICES  
150 FOURTH AVENUE, NORTH  
SUITE 2000  
NASHVILLE, TENNESSEE 37219-2498

TELEPHONE  
(615) 244-1713

FACSIMILE  
(615) 726-0573

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

KENDRA E. SAMSON  
DAVID G. THOMPSON  
CYNTHIA S. PARSON  
KELTIE L. HAYS  
CHRISTOPHER D. BOOTH  
RUSSELL G. ADKINS  
ELIZABETH S. TIPPING  
LAWREN MORRIS  
CHANDRA N.T. FLINT

OF COUNSEL  
LISA B. TAPLINGER

STAFF ATTORNEY  
KRISTEN V. DYER

August 4, 2006

T.R.A. DOCKET ROOM

**VIA HAND DELIVERY**

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

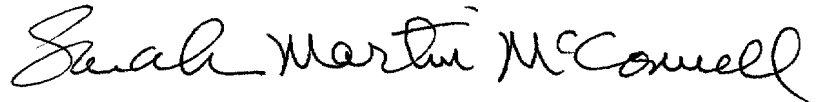
Re: Coalition of Small Lec's  
Docket Nos. 03-00585

Dear Ms. Dillon:

Enclosed is the original Brief of the Rural Coalition of Small LECs and Cooperatives for filing today in the above-captioned matter, along with four copies and a pdf-formatted disc containing an electronic version of the original.

Thank you for your assistance.

Yours truly,



Sarah Martin McConnell  
Paralegal

SMM:bms  
Enclosures

cc: All Counsel of Record

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

IN RE:

Petition of Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration under the Telecommunications Act	) ) ) )	Consolidated Docket No. 03-00585
Petition of T-Mobile USA, Inc. for Arbitration under the Telecommunications Act	) ) )	
Petition of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, for Arbitration under the Telecommunications Act	) ) ) ) )	
Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration under the Telecommunications Act	) ) )	
Petition of AT&T Wireless PCS, LLC d/b/a AT&T Wireless for Arbitration under the Telecommunications Act	) )	

**BRIEF OF  
THE RURAL COALITION OF SMALL LECs AND COOPERATIVES  
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

**August 3, 2006**

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to as the “Coalition” or the “Independents” or the “rural carriers”) respectfully submits this Brief in response to the “Hearing Officer’s Order Requesting Briefs” (the “Order”) issued in this proceeding on July 25, 2006 (and the July 26, 2006 Scheduling Order). The Hearing Officer directed that both the Coalition and the Commercial Mobile Radio Service providers that are parties to this proceeding (the “CMRS providers”)<sup>1</sup> submit briefs addressing two issues:

1. Whether this docket should proceed with the consideration of the cost methodologies previously submitted by the Rural Coalition or submission of cost studies; and

2. Whether the request of the Rural Coalition to suspend the TELRIC requirements should be granted and proceed to determine an interim rate (to replace the previously established TELRIC interim rate) based on readily available information, to be used until a final decision is made by the FCC in Docket No. CC 01-92.

In response to the Order, the Rural Coalition submits as follows:

**I. Further Expenditure Of Resources Dedicated To Consideration of Cost Methodologies and The Submission of Cost Studies Will Neither Lead To An Efficient Resolution Of This Proceeding Nor Serve The Public Interest.**

**A. The further consideration of cost methodologies and the submission of cost studies will undoubtedly result in prolonged regulatory processes and additional litigation.**

The Coalition seeks to resolve this proceeding in the most efficient and lawful manner possible, and without prejudice to the rights or positions asserted by any party. As the Authority is aware, the Coalition has made good faith attempts to resolve the matters before the Authority in this proceeding without resort to further litigation and imposition on the resources of the Authority, the CMRS providers or the members of the Coalition.<sup>2</sup> Without waiving the rights of the Coalition members to oppose the

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<sup>1</sup> Petitions for Arbitration were filed by: (1) Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint PCS”); (2) T-Mobile USA, Inc. (“T-Mobile”); (3) BellSouth Mobility LLC, BellSouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; d/b/a Cingular Wireless (“Cingular”); (4) Cellco Partnership, d/b/a Verizon Wireless (“Verizon Wireless”); and (5) AT&T Wireless PCS, LLC d/b/a AT&T Wireless (“AWS”).

<sup>2</sup> See, e.g., “Letter To Directors From Bill Ramsey On Behalf Of The Rural Coalition,” May 23, 2006.

imposition of the use of TELRIC,<sup>3</sup> the Coalition members agreed to provide descriptions of how they would develop TELRIC-based pricing pursuant to a joint procedural schedule developed at the July 21, 2005, Status Conference in this proceeding.

While preserving their legal rights to seek review of the *Order of Arbitration Award*, the Coalition members agreed in good faith to provide “a description of its proposed TELRIC cost study methodology.”<sup>4</sup> Consistent with the fact that TELRIC methodology has not been imposed upon the Coalition members by the Federal Communications Commission (“FCC”), the rural Independents have little experience with the complexities of TELRIC studies. In fact, many of the Coalition members have no experience with any cost studies, nor any requirement to engage in the cost study process.

Prior to undertaking to conduct TELRIC studies, the Coalition concluded that it would be reasonable and prudent to ensure that the methodology that its members would utilize would be acceptable. The CMRS providers have scoffed at the caution displayed by the Coalition:

At the July 21, 2005, Status Conference, **contrary to the generally accepted practice utilized in cost proceedings throughout the country** that a party simply prepare and file its proposed cost study, the ICOs affirmatively sought an opportunity to obtain some type of pre-cost study preparation approval from the TRA of their proposed “methodologies.” (Footnote omitted, **emphasis added.**)<sup>5</sup>

Irrespective of this bold assertion of fact made by the CMRS providers, there is no “generally accepted practice utilized in cost proceedings throughout the country” with respect to rural carriers and

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<sup>3</sup> The issue of whether a requirement to utilize a “TELRIC” cost study is even applicable to the members of the Coalition is a critical aspect of this entire proceeding. The members of the Rural Coalition have not waived their rights to pursue vigorously the correction of this and other aspects of the Authority’s January 12, 2006 *Order of Arbitration Award* through the lawful processes established by the Communications Act. The Coalition has maintained that as a matter of law and policy, the Coalition members are exempt from any requirement to utilize TELRIC or to perform a TELRIC cost study. The arbitration record provides citations in support of the Coalition position that the FCC has not imposed TELRIC methodology on rural carriers. The Coalition respectfully notes that the January 12, 2006 *Order of Arbitration Award* does not address the legal or policy support submitted by the Coalition with respect to this issue.

<sup>4</sup> *Order Establishing Procedural Schedule for Rate Phase of Proceeding*, Docket No. 03-00585.

<sup>5</sup> “Response of CMRS Providers To Cost Study Methodologies And Model Descriptions Proposed By Rural Coalition,” October 18, 2005, page 4 (citing without specific reference the July 21, 2005 *Status Conference Transcript of Proceedings*).

TELRIC studies. Contrary, to the skepticism of the CMRS providers, however, the concerns of Coalition members quickly proved valid. After the Coalition members incurred the initial internal and external costs of reviewing and submitting cost methodologies on August 11, 2005, the CMRS providers filed their response objecting to the adequacy of the Coalition submission on August 31, 2005. Subsequently, an oral argument regarding the sufficiency of the Coalition submissions was held on September 7, 2005, and the Arbitration Panel directed the Coalition members to make an addition filing submitting mathematical models for performing TELRIC studies and additional description of each model.

The Coalition members incurred additional expense to comply with this request, and submitted the requested information on September 28, 2005. Each of the Coalition members submitted descriptions of pricing models consistent with TELRIC pricing methodology that has either been recognized by the FCC or used in establishing rates pursuant to mutual agreement with providers of CMRS service. In some instances, the methodologies proposed by Coalition members were those that have been accepted by the Authority. Nonetheless, the CMRS providers responded on October 18, 2005, rejecting each of the models submitted by the Coalition members, stating that “none of the six (6) cost models submitted on September 28<sup>th</sup>, as filed, can be considered TELRIC-compliant.”<sup>6</sup>

On October 25, 2005, the Hearing Officer issued the “Order Suspending Procedural Schedule” which was subsequently lifted by the July 25, 2006 Order requesting that the parties brief the issue: “Whether this docket should proceed with the consideration of the cost methodologies previously submitted by the Rural Coalition or submission of cost studies.” The Coalition respectfully submits that the facts before the Authority demonstrate that this proceeding may be resolved more efficiently and effectively without further consideration of the costs methodologies and cost studies.

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<sup>6</sup> *Id.*, p. 2.

**B. The FCC has recognized the waste of resources that results from controversial, complex cost proceedings utilizing TELRIC; the FCC intends to address these and other issues associated with this arbitration long before the likely completion of a TELRIC cost proceeding.**

The history of this Docket has demonstrated that going forward with consideration of cost methodologies and cost studies will undoubtedly lead to further regulatory proceedings and prolonged litigation. The CMRS providers in their October 18, 2005 submission to the Arbitration Panel essentially summarily dismissed the effort of the Coalition members and their utilization of specific methodologies that the Authority has previously utilized.

Irrespective of any protestation to the contrary, it is well recognized that no single absolute correct cost methodology exists. The FCC has, in fact opened a proceeding questioning the utilization of TELRIC for the pricing of interconnection services and reciprocal compensation.<sup>7</sup> Concurrently pending is the FCC's consideration of intercarrier compensation in which the FCC stated:

**We seek comment on what measures we might adopt to reduce the costs associated with establishing compensation arrangements. *We recognize that a formal negotiation and arbitration process could impose significant burdens on the parties. (Emphasis added).***<sup>8</sup>

The Coalition respectfully submits that it is not prudent or practical to proceed with a course that continues to impose significant costs and burdens on the parties in their endeavor to establish compensation arrangements when the FCC is likely to adopt new measures before this proceeding could be concluded. In the *Inter-carrier Compensation Proceeding*, the FCC is considering comprehensive clarification and change with respect to its interconnection rules and the pricing of interconnection including reciprocal compensation.<sup>9</sup>

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<sup>7</sup> In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173, Notice of Proposed Rulemaking, adopted September 10, 2003 and released: September 15, 2003 ("*TELRIC NPRM*").

<sup>8</sup> In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, Released March 3, 2005 (the "*Inter-carrier Compensation Proceeding*" or "*Docket 01-92*") at para. 140.

Within Docket 01-92, multiple and diverse parties, including among others BellSouth, AT&T, Cingular Wireless, and many members of the Rural Coalition, filed on July 24, 2006, a comprehensive proposal for interconnection rules and pricing known as the “Missoula Plan.” This consensus and compromise effort was encouraged by the FCC and is the product of the efforts of the NARUC Intercarrier Compensation Task Force.

Former Authority Director (and former member of the Arbitration Panel) and now FCC Commissioner Tate responded to the filing of the “Missoula Plan” with particular recognition of the complex and unresolved issues under consideration in Docket 01-92, many of which are the very same issues addressed in this Arbitration proceeding. Commissioner Tate commented in response to the filing of the “Missoula Plan:”

I commend the efforts of NARUC’s Intercarrier Compensation Task Force over the past few years and especially applaud Commissioners Ray Baum and Larry Landis for their strong and dedicated leadership in shepherding this process. I also appreciate the hard work contributed by all the industry participants. I look forward to reviewing the plan while continuing a dialogue with all interested parties as we work to address these complex issues and move consumers forward into the digital age.<sup>10</sup>

On July 25, 2006, the FCC immediately issued a Public Notice establishing a comment and reply comment with respect to consideration of the “Missoula Plan.” The swift speed with which the FCC acted is an indication of the intent to give the proposal prompt consideration and to address the long pending issues in Docket 01-92. The adoption of the “Missoula Plan” and the resolution of the pending issues in Docket 01-92 will address and resolve many of the issues that were the subject of the arbitration

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<sup>9</sup> Throughout the entire arbitration proceeding, the Coalition has cited this ongoing proceeding to demonstrate to the TRA that many of the positions asserted by the CMRS Providers do not reflect interconnection standards established by the FCC.

<sup>10</sup> FCC Press Release, July 24, 2006.

between the CMRS providers and the Coalition members.<sup>11</sup> With respect to pricing of reciprocal compensation, the parties to the “Missoula Plan” arrived at a compromise agreement that would permit rural carriers like the Coalition members to utilize their interstate access rates for the transport and termination of traffic as the rate for reciprocal compensation.

In reaching this compromise proposal, the parties recognized that TELRIC was not a useful methodology for the Commission, state regulators or any parties with respect to the establishment of reciprocal compensation rates:

To remove any potential statutory obstacles to voluntary State compliance with the rate provisions applicable to Track 3 carriers, the Commission can modify its rules implementing sections 251(b)(5) and 252(d)(2) to make clear that, in setting “cost”-based rates for a Track 3 carrier’s transport and termination of traffic, a State opting into the Plan may choose to rely on the Track 3 carrier’s interstate access rate. As the Supreme Court has observed, the term “cost,” as it appears in section 252, “give[s] ratesetting commissions broad methodological leeway.” *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 500 (2002). Today’s reformed interstate access rate-setting methodologies, while obviously different from TELRIC, are nonetheless “cost”-based. *See generally* Report and Order, *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap ILECs and IXCs*, 16 FCC Rcd 11244 (2001).<sup>12</sup>

The Coalition recognizes that not all parties to this arbitration proceeding are supporters of the compromise consensus “Missoula Plan.” While at least one CMRS provider supports this proposal as part of a comprehensive resolution to Docket 01-92, there will undoubtedly be considerable debate over the next few months before the FCC reaches its decision. For purposes of this proceeding, however, the significance is the fact that the FCC clearly intends to move forward and to address the pending issues

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<sup>11</sup> The Coalition respectfully notes that in addition to the pricing issue, the arbitration issues regarding transit traffic and calling scope are addressed in the “Missoula Plan.” With respect to rural carriers, the proponents of the plan reached compromise positions consistent with those set forth by the Coalition in this proceeding.

<sup>12</sup> “Missoula Plan – Legal Justification,” fn. 4. The term “Track 3” refers to rural incumbent carriers such as the members of the Coalition.

in Docket 01-92. Accordingly, contemplating a requirement that the parties to this proceeding dedicate additional time and resources to the consideration of cost methodologies and cost studies appears clearly wasteful when lawful interim alternatives are readily apparent.

Moreover, given the contention already evident on the record in this proceeding with respect to the reaction and response of the CMRS providers to the cost methodology submissions by the Coalition, further consideration of TELRIC at this junction would appear to be a path to further prolonged contentious proceedings that ignore both the direction of the FCC and a rational alternative course that will prejudice no parties. The filings by the CMRS providers in response to the initial cost methodology submissions of the Coalition members make painfully clear that nothing submitted by the Coalition members will satisfy the CMRS providers unless it is a methodology and cost study that produces an extraordinarily low rate. With the clear likelihood that the FCC will issue a decision in Docket 01-92 that provides all parties clear direction, and the availability of an alternative course that preserves the rights of all parties, no interest is served by requiring further consideration of cost methodologies and the submission of cost studies in this proceeding. Requiring the Coalition members to continue to provide TELRIC methodologies and cost studies appears arbitrary in the context of the clear concerns expressed by the FCC with respect to the imposition of TELRIC cost proceedings.

The futility and wastefulness of further consideration of TELRIC methodology is not a surprise to the FCC:

**State pricing proceedings under the TELRIC regime have been extremely complicated and often last for two or three years at a time. State commissions typically are presented with at least two conflicting cost models, and hundreds of inputs to those models, all supported by the testimony of expert witnesses.<sup>13</sup>**

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<sup>13</sup> *TELRIC NPRM* at para. 6.

Given what we have already witnessed in this Docket, there is no reason to rationally conclude that a pricing proceeding in this proceeding would conclude any quicker than the two to three year time-frame observed by the FCC in the above-quoted statement. In fact, the time and resources will be even greater in this proceeding because of the number of multiple parties involved and limited resources available.

Even the FCC has questioned the wisdom of utilizing its current TELRIC rules not only with respect to reciprocal compensation, but with regard to all competitive interconnection:

**We also note that, for any given carrier, there may be significant differences in rates from state to state, and even from proceeding to proceeding within a state. We are concerned that such variable results may not reflect genuine cost differences but instead may be the product of the complexity of the issues, the very general nature of our rules, and uncertainty about how to apply those rules. The resulting rates might not, therefore, achieve fully the Commission's goal of sending appropriate economic signals.<sup>14</sup>**

In the context of both the FCC's own reflections on the utilization of TELRIC costing proceedings and the likelihood that further deliberations in this Docket would likely still be pending when the issues in Docket 01-92 are resolved by the FCC, further requirements for consideration of costing methodologies and cost studies in this proceeding would not be rational.<sup>15</sup> The FCC certainly understands this:

**These cases are extremely complex, as state commissions must make dozens of detailed decisions regarding the calculation of the forward-looking cost of building a local telecommunications network. The drain on resources for the state commissions and interested parties can be tremendous.<sup>16</sup>**

Given all the facts, the state of the law, and the record already established in this proceeding with respect to the contention over TELRIC methodology demonstrated in the responses of the CMRS providers to the initial cost methodology submissions of the Independents, the Coalition respectfully

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

<sup>15</sup> The Coalition again respectfully notes that the determination to impose TELRIC on the rural carriers that are members of the Coalition remains subject to review under Sec. 252(e)(6) of the Communications Act.

<sup>16</sup> *TELRIC NPRM* at para. 6..

submits that this Docket should not proceed with further consideration of cost methodologies and the submission of cost studies. The TRA has available rational alternatives, as discussed below, that will not prejudice any party.

## **II. The Rational, Efficient, and Lawful Alternative Process Proposed By The July 25 Order Should Be Adopted.**

The July 25 Order raises the issue of whether the Authority should grant the request of the Rural Coalition to suspend TELRIC requirements, and proceed to establish an interim rate that is not TELRIC based which would be utilized until the FCC reaches a final decision in Docket 01-92. The Coalition respectfully submits that this proposed course is rational under the existing facts and circumstances and the state of the law. The grant of the requested suspension, whether implemented on a permanent or temporary basis, is entirely a determination made by the Authority pursuant to the criteria set forth in Section 251(f)(2) of the Communications Act. The implementation of the requested suspension is absolutely delegated by the Act to the TRA, and it is a matter subject only to the discretion of the TRA. Accordingly, it is a matter to which Courts would defer to the Authority's expertise. As such, the TRA can utilize this statutory tool as a device that leads to a rational resolution of this arbitration proceeding without the need for all of the parties to engage in protracted and costly proceedings that would most likely lead to further litigation. Moreover, by implementing the requested suspension and establishing a new interim non-TELRIC based rate subject to true-up, the proposed resolution will not diminish the rights of any party.

**A. The Coalition had good cause to file the request to suspend and modify the requirement to utilize TELRIC.**

On June 23, 2006, the Coalition requested suspension of the requirement that its rural carrier members establish charges for transport and termination of traffic on the basis of TELRIC methodology.<sup>17</sup> The Coalition respectfully submits that requiring each Coalition member to conduct a TELRIC cost study in order to secure reciprocal compensation from CMRS providers will impose a requirement on the Coalition members that is unduly economically burdensome and wasteful.<sup>18</sup>

The exchange of pleadings that has already taken place in this proceeding with respect to TELRIC costing methodologies verifies that the FCC is correct in its assessment that **“These cases are extremely complex . . . The drain on resources for the state commissions and interested parties can be tremendous.”**<sup>19</sup> In the June 23 “Petition for Suspension and Modification,” the Coalition explained that its members were informed that the cost of preparing TELRIC cost studies for each member would reasonably be expected to range from \$35,500 to \$45,500 for each company.<sup>20</sup> These cost estimates are limited to simply preparing a

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<sup>17</sup> The Coalition will refrain from repeating all of the facts and legal argument set forth in the June 23 “Petition for Suspension and Modification,” and, instead, incorporate that document herein by reference.

<sup>18</sup> In its suspension filing, the Coalition noted its disagreement with the *Order of Arbitration Award* with respect to the determination that charges should be based on TELRIC, and the likelihood that the Coalition would pursue formal review of this determination pursuant to its rights under Section 252 of the Act. The Coalition recognizes submitted that the public interest will be best served by the grant of the suspension requested herein. In the absence of the requested suspension and the resulting continuation of the costly TELRIC pricing proceedings for each Coalition member, a tremendous amount of time and effort will be dedicated to a process that is likely to be rendered meaningless by either FCC action in Docket 01-92 or Appellate Court review or both.

<sup>19</sup> *TELRIC NPRM* at para. 6. The full quote is provided *supra*, at p. 9.

<sup>20</sup> “Petition for Suspension and Modification,” at p. 8.

TELRIC cost study, and do not include the costs of defending or revising the resulting cost study, preparing testimony or the retention of experts to appear before the Authority.

The concerns of the Coalition regarding the undue economic burden resulting from the imposition of TELRIC cost studies are not trivial; nor should these concerns be dismissed on the basis of “clever,” but inapplicable procedural arguments. In this regard, the Coalition notes that the CMRS providers filed “Preliminary Comments” on July 20, 2006 in response to the Coalition’s “Petition for Suspension and Modification.” In a continuation of the rhetorical pattern that has unfortunately become customary in this proceeding, the CMRS providers suggest that the Coalition “waived” its statutory rights to seek the pending suspension request.

In support of their assertion, the CMRS providers quote out of context from a statement made at the arbitration hearing.<sup>21</sup> In context, the Coalition noted that its members had not elected to seek a full suspension of Section 251(b)(5) in order to avoid this arbitration proceeding. The Coalition members made this choice for good reason; after all, the Coalition members have long been providing transport and termination services to the CMRS providers without compensation. The Coalition members want this matter resolved, and they want to be paid for the services they provide. Accordingly, the Coalition members did not seek a suspension to avoid the arbitration proceeding or the obligation to interconnect traffic pursuant to Section 251(b)(5). The Coalition, however, most certainly did not waive rights to seek suspension or modification of any obligations, terms or conditions that the Authority would otherwise determine to apply to the Coalition members.

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<sup>21</sup> “Preliminary Comments,” pp. 6-7.

With similar stylistic rhetoric, the CMRS providers have also attempted to cobble an argument to support their contention that the Coalition is somehow “estopped” under the Communications Act from filing a suspension that could be applicable to this proceeding.<sup>22</sup> No statutory provision, however, “estops” the suspension request. The CMRS providers incorrectly contend that the matter of suspension should have been an interconnection issue submitted to arbitration.

The CMRS providers are incorrect. The matter of “pricing methodology” was an issue (“Issue 8”) in the arbitration. The requirement for the utilization of TELRIC studies and the extensive and expensive resulting additional regulatory processes was established by the *Order of Arbitration Award*. Contrary to the contention of the CMRS providers, the Coalition does not belatedly seek to add an issue to the arbitration.

The Coalition members seek suspension from an interconnection requirement now purportedly imposed upon them as a result of the arbitration. The arguments against the suspension request manufactured by the CMRS providers in their “Preliminary Comments” may be clever, but they are incorrect. As noted by the North Carolina Utilities Commission in response to the procedural arguments set forth by the CMRS providers in opposition to a similar suspension request by the North Carolina rural carriers:

***The Commission also believes that the CMRS Providers’ legal arguments against such modification, while occasionally ingenious, are not persuasive.***<sup>23</sup>

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<sup>22</sup> “Preliminary Comments,” pp. 8-10.

<sup>23</sup> **In the Matter of Petition of Rural Telephone Companies for Modification Pursuant to 47 USC 251(f)(2)**, Docket No. P-100, Sub 159, “Order Granting Modification Under Section 251(f)(2),” March 8, 2006 (North Carolina Utilities Commission).

The Coalition justifiably asserted both to the Authority and all parties from the outset of this proceeding that its members are exempt from the imposition of TELRIC methodology pursuant to Sec. 251(f)(1) of the Act. Subsequent to the contrary decision of the Authority in this matter, the Coalition members attempted to work in good faith, albeit under protest, to provide the requested TELRIC methodology. Prior to this experience, the Coalition members had no knowledge or reason to know the full extent of the economic burden that results from the requirement to utilize TELRIC.

The record in this proceeding reflects that the undue economic burden will be further exacerbated by the CMRS providers' summary dismissal of the costing methodologies and models submitted by the Coalition members. Unless this process is suspended, the result will be inevitable ongoing costs in revising, reviewing and defending multiple cost studies in continuing and lengthy adversarial processes. The FCC's prediction and observation in this regard is useful to repeat: **"State pricing proceedings under the TELRIC regime have been extremely complicated and often last for two or three years at a time. State commissions typically are presented with at least two conflicting cost models, and hundreds of inputs to those models, all supported by the testimony of expert witnesses."**<sup>24</sup>

The Coalition remained hopeful up until as recently as May 23, 2006, that exactly this type of taxing, costly result could be avoided. The Coalition proposed mediation and other alternative paths to resolve this matter.<sup>25</sup> The terse response of the CMRS providers on May 26, 2006, however made clear the intent of the CMRS providers to move forward with the complex

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<sup>24</sup> *TELRIC NPRM* at para. 6.

<sup>25</sup> "Letter To Directors From Bill Ramsey On Behalf Of The Rural Coalition," May 23, 2006, Docket No. 03-00585.

and costly TELRIC pricing phase of this proceeding.<sup>26</sup> With the rejection of the Coalition's suggestions of mediation and alternative paths of resolution, the Coalition determined it had no rational choice except to proceed to file the "Petition for Suspension and Modification."<sup>27</sup>

**B. The Authority should grant the requested suspension and modification of the requirement to utilize TELRIC and establish a new interim rate that is not based on TELRIC.**

The Coalition respectfully submits that its members are entitled to the requested suspension and modification in order to avoid the undue economic burden that will otherwise result from requiring the performance of a TELRIC cost study. The Coalition submitted information in its suspension petition that demonstrates that the per-access line costs of TELRIC studies for the rural carriers would result in an undue economic burden. The evidence of contention over the cost study methodology already evident on the record in this proceeding verifies the concerns expressed by the FCC that TELRIC pricing proceedings are likely to result in lengthy adverse processes that will tax the resources of both the parties and the TRA.

While the determination of undue economic harm in the context of a suspension request under Section 251(f)(2) of the Communications Act is one left to the TRA, there is no doubt that

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<sup>26</sup> "Filing Of Verizon Wireless Concerning The Filing Of The Rural Coalition On May 23, 2006," May 26, 2006, Docket No. 03-00585.

<sup>27</sup> Contrary to the protestations of the CMRS Providers set forth in their July 20, 2006, "Preliminary Comments," the CMRS providers should not have been surprised by the decision of the Coalition members to exercise their rights. On August 11, 2005, the Coalition stated in the transmittal accompanying its members cost study methodologies: "The Coalition again stresses that it provides the information set forth herein and attached hereto without waiving any rights of any of its members with respect to this and all associated matters raised in this proceeding. . . . the Coalition respectfully urges the Authority to review and modify on its own motion any action that would impose TELRIC costing methodology on the Independents without regard to whether any perceived value or requiring such costing methodology is far outweighed by the costs and burden associated with any such requirement." "Proposed TELRIC Cost Study Methodology Filed On Behalf Of The Rural Coalition," August 11, 2005, Docket No. 03-00585. Again on September 28, 2005, the Coalition stated in the transmittal accompanying the additional cost methodology information provided by its members: "Accordingly, the Coalition reserves its right to act to the extent necessary to avoid the imposition of the administrative and economic burden associated with the performance of TELRIC cost studies." "Proposed TELRIC Cost Study Methodology Filed On Behalf Of Each Member Of The Rural Coalition," September 28, 2005, Docket No. 03-00585.

proceeding with submissions based on TELRIC will be economically burdensome to the Coalition members. The concerns of the FCC cited above with regard to the costs associated with TELRIC proceedings are applicable to all carriers (large and small) and would naturally result in even greater concern for smaller carriers like the Coalition members which have relatively limited subscriber bases and limited resources compared to the larger carriers that have been required to utilize TELRIC.

Demonstrating that the requested suspension and modification is necessary to avoid the imposition of a requirement that is unduly economically burdensome is one element necessary to support the determination that the suspension and modification request should be granted.<sup>28</sup> The requested suspension and modification must also be determined to be consistent with the public interest, convenience and necessity.<sup>29</sup> In this instance, this second requirement is clearly met.

The evidence and record before the Authority clearly demonstrate that requiring the Coalition members to expend further resources on TELRIC cost studies will not lead to efficient or effective resolution of this proceeding. Neither the Authority nor any Coalition member has reason to believe that the CMRS providers will accept any costing methodology unless its application leads to the result they seek – an extremely low rate. The provision of a study by each Coalition member will inevitably result in adversarial review and hearings complete with multiple dueling expert witnesses, just as the FCC has observed and predicted. The public interest, convenience and necessity will not be served.

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<sup>28</sup> 47 USC Sec. 251(f)(2)(A)(ii).

<sup>29</sup> 47 USC Sec. 251(f)(2)(B).

If instead of granting the suspension request the Authority alternatively elected to proceed with the requirement for TELRIC cost methodologies and cost study submissions, this process would take place concurrent with the FCC's consideration of similar issues in Docket 01-92. It is likely that the FCC's deliberation in Docket 01-92 will be finalized prior to the time frame within which multiple TELRIC proceedings with each Coalition member could be finalized. Even if the those proceedings are concluded quicker than the two to three years that the FCC expects them to take, the determinations from these pricing proceedings will still be subject to review pursuant to Section 252(e)(6) of the Communications Act. Inevitably, an incredible amount of time and resources would be dedicated to matters that will be addressed and affected by the FCC's decision in Docket 01-92. Permitting this waste of effort and resources to proceed will not serve the public interest, convenience and necessity.

The Authority would face a dilemma if no rational alternative was available other than proceeding with the TELRIC proceedings to establish rates. The July 25, 2006, Order identifies an alternative, however, that prejudices no party and serves the public interest by avoiding otherwise needless and costly proceedings.

The Authority has already determined that, consistent with FCC rules and regulations, it may establish an interim rate. The arbitration determination to require the use of TELRIC also included the determination "to establish as the interim rate the reciprocal compensation rate set for BellSouth in the TRA's Permanent Price proceeding (TRA Docket no. 97-01262) subject to true-up."<sup>30</sup> The BellSouth rate was, of course, based on TELRIC.<sup>31</sup> Consistent with the

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<sup>30</sup> *Order of Arbitration Award*, Issue 8, p. 41, Docket No. 03-00585.

<sup>31</sup> The Coalition respectfully notes that even if the Coalition members were lawfully subject to utilizing TELRIC costing methodology, the TELRIC pricing of BellSouth is undoubtedly much lower than that which would be applicable to the more rural and sparsely populated areas served by the Coalition members.

suspension of the TELRIC requirement established by the *Order of Arbitration Award*, the TRA may appropriately establish a new interim rate that is not TELRIC-based.

The TRA has within its discretion the authority to establish an interim rate pursuant to Sec. 51.715(d) of the FCC's Rules and Regulations, provided that the interim rate is subject to true-up.<sup>32</sup> As the Arbitration Panel has noted, establishing an interim rate subject to true-up mitigates the risk of harm to either a Coalition member or a CMRS provider.<sup>33</sup> When the Arbitration Panel initially established an interim TELRIC-based rate, it drew upon its experience in establishing a reciprocal compensation rate for an incumbent LEC subject to a TELRIC cost proceeding.<sup>34</sup> The TRA may now similarly and rationally draw upon readily available information regarding the level of rates negotiated between rural carriers and the CMRS providers that were not subject to TELRIC cost methodology or executed on the basis of the TELRIC requirement established in the arbitration.<sup>35</sup>

Both the public interest and the interests of all parties will be served by establishing a new non-TELRIC interim rate that remains in place until the FCC has concluded its deliberations in Docket 01-92 at which time a permanent rate may be established consistent with the outcome of that proceeding. No party will be prejudiced by this course of action. The parties will

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<sup>32</sup> 47 CFR Sec. 51.715(d).

<sup>33</sup> *Order of Arbitration Award*, Issue 8, p. 41, Docket No. 03-00585.

<sup>34</sup> *Id.*

<sup>35</sup> The record in this proceeding includes the filed agreements of rural carriers with the CMRS providers in other states. In addition, the Coalition provided an alternative proposal for a non-TELRIC based interim rate based on the last TRA determination regarding the charge for the transport and termination of CMRS traffic on the networks of the rural carriers. (See, "Letter To Directors From Bill Ramsey On Behalf Of The Rural Coalition," May 23, 2006.) The Coalition respectfully urges that the Authority determine a non-TELRIC interim rate based on readily available information in lieu of establishing further proceedings to determine a rate based "on some type of hybrid cost study" as alternatively suggested in the July 25 Order. The Coalition is concerned that the utilization of a hybrid cost study will give rise to additional costly and extensive adversarial processes.

exchange traffic subject to an interim rate consistent with rates within a range that are customarily utilized at present by rural carriers providing transport and termination services to the CMRS providers. Subject to decisions between individual CMRS providers and Coalition members to enter into voluntarily negotiated permanent agreements, the interim compensation would be subject to true-up, thereby assuring that no party is prejudiced. This proposed resolution further serves the public interest, the interests of all parties, and the interest of the TRA by bringing this long-pending matter to a rational and reasonable end that avoids the otherwise inevitable and seemingly never-ending “**drain on resources for the state commissions and interested parties.**”<sup>36</sup>

## CONCLUSION

Based on the foregoing, the Coalition respectfully requests that the TRA:

1. Determine that neither the public interest nor the interests of any party will be served by proceeding in Docket No. 03-00585 with further consideration of cost methodologies or the submission of cost studies;
2. Determine that the requirement for the Coalition members to establish reciprocal compensation rates pursuant to TELRIC imposes an undue economic burden, and that the grant of the Coalition’s request to suspend and modify the TELRIC requirement is consistent with the public interest, convenience and necessity; and
3. Establish a new non-TELRIC interim rate subject to true-up to be utilized by the Coalition members and the CMRS providers until the FCC concludes its deliberations in Docket 01-92.

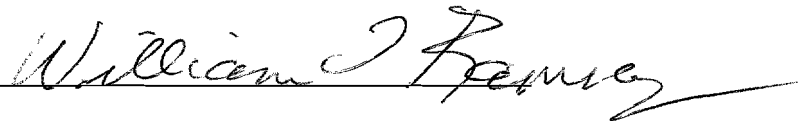
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<sup>36</sup> *TELRIC NPRM* at para. 6..

By taking these actions, the TRA can implement a rational resolution within this proceeding that minimizes additional investment of time and expense in regulatory proceedings and litigation, while concurrently ensuring that reasonable reciprocal compensation arrangements, terms and conditions are in effect and subject to true-up consistent with standards established by the FCC and in accordance with the Communications Act.

Respectfully submitted,

The Tennessee Rural Independent Coalition

By 

William T. Ramsey  
Neal & Harwell, PLC  
2000 First Union Tower  
150 Fourth Avenue North  
Nashville, Tennessee 37219-2498

Stephen G. Kraskin  
2154 Wisconsin Avenue N.W.  
Washington, D.C. 20007

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on August 4, 2006, a true and correct copy of the foregoing was served on the parties of record via electronic mail delivery:

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

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

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

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

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

Edward Phillips  
Sprint  
14111 Capital Boulevard  
Mail Stop NCWKFR0313  
Wake Forest, NC 27587-5900  
[edward.phillips@sprint.com](mailto:edward.phillips@sprint.com)

Charles McKee  
Sprint Spectrum LP d/b/a Sprint PCS  
6450 Sprint Parkway MailStop 2A553  
Overland Park, KS 66251  
[charles.w.mckee@sprint.com](mailto:charles.w.mckee@sprint.com)

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

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

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

