

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**March 19, 2007**

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

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**ORDER ESTABLISHING PROCEDURAL SCHEDULE  
AND OTHER PRELIMINARY MATTERS**

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This matter is before the Hearing Officer upon the unanimous decision of the arbitration panel of the Tennessee Regulatory Authority (the “Authority” or “TRA”)<sup>1</sup> on August 29, 2006 in Docket No. 03-00585, to open this docket for the purpose of addressing the *Petition for Suspension and Modification Pursuant to 47 U.S.C. § 251(f)(2)* (“*Petition*”) and appoint Director Pat Miller as the Hearing Officer to establish a procedural schedule and resolve certain preliminary matters in preparation for a hearing on the merits.

**TRAVEL OF CASE**

On January 12, 2006, the arbitration panel in Docket No. 03-00585 issued an *Order of Arbitration Award* (“*Arbitration Order*”).<sup>2</sup> In that docket, the panel arbitrated several issues concerning the interconnection agreement between rural local exchange carriers (the “Coalition” or “Rural Coalition” or “RLECs”) and several Commercial Mobile Radio Service providers

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<sup>1</sup> The arbitration panel is comprised of Chairman Sara Kyle, Director Pat Miller and Director Ron Jones.

<sup>2</sup> 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 (“*Arbitration Docket*”), *Order of Arbitration Award* (June 12, 2006)(“*Arbitration Order*”).

(collectively “CMRS Providers”), including the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect or direct traffic.

In the *Arbitration Order*, the Arbitrators determined that the compensation rate should be based on forward looking economic costs and should be set using the Total Element Long Range Incremental Cost (“TELRIC”) pricing methodology as provided for by 47 C.F.R. § 51.705. The Arbitrators further determined that establishing interim rates pending implementation of TELRIC-based rates is legally sound, and established as the interim reciprocal compensation rate, the rate set for BellSouth Telecommunications, Inc. (“BellSouth”) in TRA Docket No. 97-01262,<sup>3</sup> subject to true-up. The Arbitrators determined that by adopting the rate set for BellSouth and subjecting it to true-up, any risk of either the Coalition or the CMRS Providers being unduly enriched or left inadequately compensated once the final rate is established would be mitigated.<sup>4</sup>

On June 23, 2006, subsequent to the issuance of the *Arbitration Order*, the Rural Coalition<sup>5</sup> filed its *Petition* for suspension and modification pursuant to 47 U.S.C. § 251(f)(2)<sup>6</sup> in Docket No. 03-00585. The Coalition specifically requested modification of “certain aspects of

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<sup>3</sup> See *In re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish “Permanent Prices” for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 (June 23, 1997).

<sup>4</sup> *Id.* at pp. 40-41.

<sup>5</sup> The Tennessee Rural Coalition includes the following rural local exchange carrier members: Ardmore Telephone Company, Ben Lomand Rural Telephone Cooperative, Inc., Bledsoe Telephone Cooperative, Century Telephone Enterprises, Inc. Companies consisting of CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc. and CenturyTel of Ooltewa-Collegedale, Dekalb Telephone Cooperative, Highland Telephone Cooperative, Loretto Telephone Company, Inc., Millington Telephone Company, North Central Telephone Cooperative, TDS Telecom Companies consisting of Concord Telephone Exchange, Inc., Humphreys County Telephone Company, and Tennessee Telephone Company, Inc., Twin Lakes Telephone Cooperative, United Telephone Company, and Yorkville Telephone Cooperative.

<sup>6</sup> 47 U.S.C. § 251(f)(2) reads in part:

(2) SUSPENSION AND MODIFICATIONS FOR RURAL CARRIERS. - a local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition....

the requirements of 47 U.S.C. § 251 (b)(5)<sup>7</sup> of the Telecommunications Act of 1996 (“the Act”),” and suspension “to the extent that those requirements may be interpreted as requiring them to establish charges for transport and termination of any traffic on the basis of a [TELRIC] methodology.”<sup>8</sup> In its *Petition*, the Coalition contends that each of its members is a rural company pursuant to the definition set forth in 47 U.S.C. § 153(37), stating that each of its member companies provides service to fewer than two percent (2%) of the nation’s access lines and that each member is qualified to seek suspension and modification of the interconnection requirements set forth in Section 251(b) and (c) of the Act.<sup>9</sup>

On August 29, 2006, the panel in Docket No. 03-00585 determined that the Coalition’s *Petition* should be considered in a separate docket, which was assigned as Docket No. 06-00228.<sup>10</sup> On September 11, 2006, at a regularly scheduled Authority Conference, the panel determined that pending consideration of the merits of the *Petition*, a interim suspension should be granted and that Docket No. 03-00585 should be held in abeyance.<sup>11</sup> A schedule was established for the Coalition to submit an amendment to its *Petition* and for the CMRS Providers to respond.<sup>12</sup>

On October 2, 2006, the Rural Coalition filed a *Supplemental Statement* reiterating that each of its member companies is a Petitioner, individually requesting suspension of the requirements of Section 251(b) of the Act “to the extent that those requirements may be interpreted as requiring them to establish charges for transport and termination of any traffic on

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<sup>7</sup> This subsection establishes the duty for reciprocal compensation as follows:

RECIPROCAL COMPENSATION. – The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

<sup>8</sup> *Arbitration Docket, Petition*, p. 1 (June 23, 2006).

<sup>9</sup> *Id.* at pp. 1-2.

<sup>10</sup> *Arbitration Docket*, Transcript of Proceedings (August 29, 2006).

<sup>11</sup> See Transcript of Authority Conference, pp. 15-16 (September 11, 2006).

<sup>12</sup> *Id.*

the basis of a [TELRIC] methodology,”<sup>13</sup> and expounding upon its arguments in support of that request. On November 2, 2006, the CMRS Providers filed *CMRS Providers’ Response to Tennessee Rural Coalition’s Supplemental Statement Regarding Petition for Section 251(f)(2) Suspension and Modification of Section 251(b)(5) TELRIC Pricing Methodology* (“Response”) and requested that the Coalition’s *Petition* as amended by its *Supplemental Statement* be denied, or in the alternative that this matter be set for hearing subsequent to adequate discovery.

A Notice of Status Conference was issued on February 14, 2007. The Notice set forth a number of preliminary issues to be discussed during the Status Conference, including the nature and basis for the specific relief sought in the *Petition* and *Supplemental Statement*, the allocation of the burden of proof, the nature, duration, and appropriateness of any interim relief sought, the manner in which reciprocal compensation as previously ordered in Docket No. 03-00585 is being recorded by the parties, and the establishment of a procedural schedule.

#### **STATUS CONFERENCE**

The Status Conference was convened on February 26, 2007 following the conclusion of the Authority Conference held on that date. At the Status Conference, the following parties were represented by counsel, who were either present personally or by telephone:

Cellco Partnership d/b/a Verizon Wireless – **Melvin J. Malone, Esq.**, Miller & Martin, PLLC, 1200 One Nashville Place, 150 4<sup>th</sup> Avenue North, Nashville, TN 37219-2433, and appearing via telephone, **Elaine Critides, Esq.**, Verizon Wireless, 1300 I Street, NW, Suite 400W, Washington D.C. 20005;

New Cingular Wireless PCS, LLC d/b/a Cingular Wireless<sup>14</sup> – **Paul Walters, Jr., Esq.**, 15 E. First Street, Edmond, OK 73034, **Guy M. Hicks, Esq.**, and **Joelle J. Phillips, Esq.**, 333 Commerce Street, Suite 2102, Nashville, TN 37201, and appearing via telephone, **Mark Ashby, Esq.**, and **William H. Brown**, Cingular Wireless, 5565 Glenridge Connector, Suite 1700, Atlanta, GA 30342;

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<sup>13</sup> *Supplemental Statement*, p.1 (October 2, 2006)

<sup>14</sup> Following the December 29, 2006 merger of AT&T, Inc. and BellSouth Corporation, Cingular Wireless became a wholly-owned indirect subsidiary of AT&T, Inc.

T-Mobile U.S.A., Inc. – appearing via telephone, **Leon Bloomfield, Esq.**, Wilson & Bloomfield, LLP, 1901 Harrison Street., Suite 1620, Oakland, CA 94610, and also appearing via telephone, **W. Craig Conwell**, 405 Hammett Road, Greer, SC 29650;

Sprint Spectrum L.P. d/b/a Sprint PCS - appearing via telephone, **Bill Atkinson**, 3065 Cumberland Circle, SE, Mailstop GAATLD0602, Atlanta, GA 30339, and also appearing via telephone, **Joe Chiarelli**, Sprint Nextel, 6450 Sprint Parkway, Mailstop KSOPHN0212-2A671, Overland Park, KS 66251;

Coalition of Rural Local Exchange Carriers – **William T. Ramsey, Esq.**, Neal & Harwell, PLC, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, TN 37219, appearing via telephone, **Stephen G. Kraskin, Esq.**, Kraskin, Lesse & Cosson, LLC, 2120 L Street NW, Suite 520, Washington, D.C. 20037;

TDS Telecom - **Bruce H. Mottern**, 9737 Cogdill Road, Suite 230, Knoxville, TN 37932;

Century Tel - appearing via telephone, **Cathy J. Quinn**, 100 North Union, Suite 132, Montgomery, AL 36104.

#### **RELIEF SOUGHT & BURDEN OF PROOF**

The *Petition* and *Supplemental Statement* request modification of certain aspects of the requirements of Section 251(b)(5) of the Act. The Rural Coalition states that each of its member companies request suspension of the requirements of Section 251(b) of the Act to the extent that those requirements may be interpreted as requiring them to establish charges for transport and termination of any traffic on the basis of a TELRIC methodology, as provided for in the *Arbitration Order* in Docket No. 03-00585. The Coalition maintains that TELRIC cost methodology is neither applicable to nor appropriate to determine rates for the Coalition member companies. In an effort to resolve this matter, the Coalition proposed several models of an appropriate cost study methodology to be used to prepare a TELRIC compliant cost study. The Coalition argues that these models could be used to establish reciprocal compensation rates for telecommunications traffic transport and termination. The Coalition further contends that its members are not legally obligated to produce TELRIC studies or price any service on the basis

of TELRIC and that requiring Coalition members to individually conduct a TELRIC cost study in order to secure reciprocal compensation from CMRS providers will impose a requirement that is “unduly economically burdensome.”

In their *Preliminary Comments* filed on July 20, 2006, the CMRS Providers argue that although the Rural Coalition took issue with the pricing methodology required by the Act, it elected not to file a Section 251(f)(2) petition in the course of resolving the issues in Docket No. 03-00585.<sup>15</sup> The CMRS Providers further contend that “the pricing issues in Docket No. 03-00585 were ultimately decided by the Authority without additional sub issues, and the Coalition should not be allowed to re-litigate those issues now.”<sup>16</sup>

The CMRS Providers argue further that the Coalition does not show that any member will suffer any specific harm as a result of producing a TELRIC study, and that there is no offering of evidence to support the Coalition’s TELRIC cost study estimates.<sup>17</sup> In support of this position, the CMRS Providers state that as with determinations by the Authority in past cases,<sup>18</sup> the costs must be compared to the overall financial position of each Coalition member to determine whether such costs constitute an undue burden on a specific member.<sup>19</sup> The CMRS Providers aver that the Rural Coalition has not made a showing that the estimated costs of preparing TELRIC studies are unduly economically burdensome, and therefore, the Coalition’s request for relief should be denied.<sup>20</sup>

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<sup>15</sup> *Arbitration Docket, CMRS Providers Preliminary Comments Regarding the Tennessee Rural Coalition’s June 23, 2006, Petition for Suspension and Modification Pursuant to Section 251(f)(2)*, p. 5. (July 20, 2006).

<sup>16</sup> *Id.* at p. 9, fn. 28.

<sup>17</sup> *Id.* at p. 6.

<sup>18</sup> *See 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* (September 5, 2005).

<sup>19</sup> *Arbitration Docket, CMRS Providers Preliminary Comments Regarding the Tennessee Rural Coalition’s June 23, 2006, Petition for Suspension and Modification Pursuant to Section 251(f)(2)*, p. 7 (July 20, 2006).

<sup>20</sup> *Id.* at p.9.

In its November 2, 2006 *Response*,<sup>21</sup> the CMRS Providers assert that no Coalition member has made a proper showing of specific economic circumstances that would justify a finding of an undue economic burden. To support this position, the CMRS Providers rely on the finding by the Eight Circuit Court of Appeals concerning “bona fide” requests for interconnection from other service providers,<sup>22</sup> The Court held “it is the full economic burden on the ILEC of meeting the request that must be assessed by the state commission” such that one must look to the “whole of the economic burden the request imposes, not just a discrete part.”<sup>23</sup>

During the Status Conference, the parties agreed that the issue currently before the Authority for determination is whether the members of the Rural Coalition are entitled to suspension or modification, due to economic disadvantage, of TELRIC as a cost methodology in setting the permanent rate of reciprocal compensation. Further, the Rural Coalition acknowledged that it carries the burden of proof on this issue.

#### **RECIPROCAL COMPENSATION**

In the January 12, 2006 *Arbitration Order*, the Arbitrators established an interim reciprocal compensation rate to be utilized by the parties. That interim rate and all decisions of the Arbitrators set forth in the *Arbitration Order* remain in full force and effect throughout the proceedings in this docket. To confirm the parties’ interim practices and recording of reciprocal compensation arrangements, the Hearing Officer requested that the parties provide informational responses to the following questions:

1. Are the members of the Rural Coalition recording revenue paid or due from the CMRS Providers? If so, at what rate and the annual amount recorded.

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<sup>21</sup> *In re: Tennessee Rural Independent Coalition Petition for Suspension and Modification Pursuant to 47 U.S.C. Section 251(f)(2)*, Docket No. 06-00228, *CMRS Providers’ Response to the Tennessee Rural Coalition’s Supplemental Statement Regarding Petition for Section 251(f)(2) Suspension and Modification of Section 251(B)(5) TELRIC Pricing Methodology*, Docket No. 06-00228, November 2, 2006 (hereinafter “*Response*”).

<sup>22</sup> *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000), *rev’d in part on other grounds*, 535 U.S. 467 (2002).

<sup>23</sup> *Id.* at p. 761.

2. Are the members of the Rural Coalition paying or accruing a liability for what is owed to the CMRS Providers, and, if so, at what rate?

Conversely, the same questions are posed to the CMRS Providers. Specifically,

1. Are the CMRS Providers recording revenue paid or due from the members of the Rural Coalition, and, if so, at what rate?
2. Are the CMRS Providers paying or accruing a liability for what is owed to the members of the Rural Coalition, and, if so, at what rate?

On the record, the parties committed to providing specific and detailed information. Accordingly, the Rural Coalition's interim rate accounting responses are due thirty days from the date of the Status Conference, or by March 28, 2007. The CMRS Providers interim rate accounting responses are due within fifteen days following the Rural Coalition's responses, or by April 12, 2007. These deadlines have been incorporated into the Procedural Schedule, which is discussed more fully below.

#### **PROCEDURAL SCHEDULE**

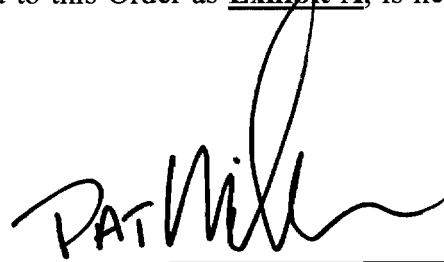
During the Status Conference, the Hearing Officer presented a proposed procedural schedule in accordance with the 180-day mandate of Section 251(f)(2). Section 251(f)(2) states, in part, "The State commission shall act upon any petition filed under this paragraph within 180 days after receiving the petition." The parties stated that, prior to the Status Conference, they had engaged in discussions regarding a procedural schedule proposed by the CMRS Providers. Following a brief recess and much discussion, it was agreed by all parties that the procedural schedule proposed by the CMRS Providers would be utilized in this docket and that July 15, 2007 constitutes the 180<sup>th</sup> day under the above-referenced statute.

Upon review and consideration of the proposed procedural schedule and the requests of the parties, the Hearing Officer hereby establishes a Procedural Schedule, attached as **Exhibit A**, for resolution of the issues in this docket within the 180-day statutory period. As with any schedule, the effectiveness of this Procedural Schedule is directly dependent upon the extent of cooperation or delay on the part of the parties in meeting the individual benchmark dates.



**IT IS THEREFORE ORDERED THAT:**

1. The rural local exchange carriers each bear the burden of proof on the issue of whether each are entitled to suspension or modification, due to economic disadvantage, of TELRIC as a cost methodology in setting the permanent rate of reciprocal compensation.
2. The Rural Coalition will respond by March 28, 2007 to the following:
  - a. Are the members of the Rural Coalition recording revenue paid or due from the CMRS Providers? If so, at what rate and the annual amount.
  - b. Are the members of the Rural Coalition paying or accruing a liability for what is owed to the CMRS Providers, and, if so, at what rate?
3. The CMRS Providers will respond by April 12, 2007 to the following:
  - a. Are the CMRS Providers recording revenue paid or due from the members of the Rural Coalition that has not been paid, and, if so, at what rate?
  - b. Are the CMRS Providers paying or accruing a liability for what is owed to the members of the Rural Coalition, and, if so, at what rate?
4. The Procedural Schedule, attached to this Order as Exhibit A, is hereby adopted and is in full force and effect.

A handwritten signature in black ink, appearing to read "PAT MILLER", with a long, sweeping horizontal line extending to the right.

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Director Pat Miller as Hearing Officer

## **TRA DOCKET NO. 06-00228**

### **PROCEDURAL SCHEDULE (February 26, 2007)**

<b>March 12, 2007</b>	<b>CMRS Discovery Requests to RLECs Due</b>
<b>March 23, 2007</b>	<b>RLEC Discovery Responses Due</b>
<b>March 28, 2007</b>	<b>RLEC Interim Rate Accounting Due</b>
<b>April 9, 2007</b>	<b>Motion to Compel Due</b>
<b>April 12, 2007</b>	<b>CMRS Interim Rate Accounting Due</b>
<b>April 13, 2007</b>	<b>RLEC Response to Motion to Compel Due</b>
<b>April 20, 2007</b>	<b>TRA Ruling on Discovery Disputes</b>
<b>April 27, 2007</b>	<b>RLEC Pre-Filed Testimony Due</b>
<b>May 11, 2007</b>	<b>CMRS Pre-Filed Testimony Due</b>
<b>Week of May 21-25, 2007</b>	<b>Hearing on the Merits (Subject to Panel approval)</b>
<b>Post-Hearing Briefs</b>	<b>Due 20 days after receipt of expedited transcript</b>
<b>Post-Hearing Reply Briefs</b>	<b>Due 14 days after Post-Hearing Briefs (15 page limit)</b>

### **EXHIBIT A**