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January 30, 2006

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. 050119-TP and 050125-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel) and T-Mobile USA, Inc. is an original and 15 copies of The Rebuttal Testimony of Billy H. Pruitt on behalf of Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel) and T-Mobile USA, Inc. in the above referenced dockets.

Please acknowledge receipt of this document by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

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Sincerely yours,

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Floyd R. Self

FRS/amb
Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by electronic mail and U. S. Mail this 30th day of January, 2006.

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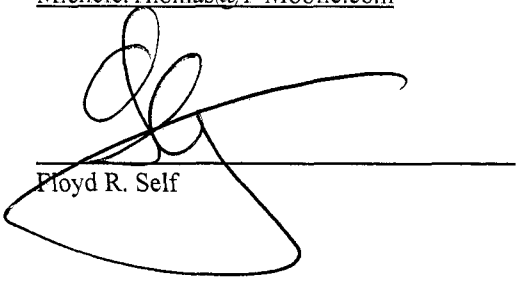

Floyd R. Self

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY

OF

BILLY H. PRUITT

DOCKET NO. 050119-TP AND DOCKET NO. 050125-TP

Q. Please state your name and address.

A. My name is Billy H. Pruitt. I am President and Principal Consultant for Pruitt Telecommunications Consulting Resources, Inc. My business address is 59 Lincord Drive, St. Louis, MO 63128-1209.

Q. On whose behalf are you submitting this Rebuttal Testimony?

A. I am submitting this Rebuttal Testimony on behalf of Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel") and T-Mobile USA, Inc. ("T-Mobile").

Q. Have you previously appeared as a witness in this Docket?

A. Yes. My Direct Testimony was filed in this Docket on December 19, 2005.

Q. What is the purpose of your Rebuttal Testimony?

A. The purpose of my Rebuttal Testimony is to respond to the "Direct Testimony of Kenneth Ray McCallen on Behalf of BellSouth Telecommunications, Inc." and the "Pre-Filed Direct Testimony of Steven E. Watkins on Behalf of the Small LEC Joint Petitioners." I referred to the "Small LEC Joint Petitioners" in my

Direct Testimony as the "Small LECs" and will continue to refer to them in this way throughout my Rebuttal Testimony.

SECTION I – DIRECT TESTIMONY OF KENNETH RAY MCCALLEN

BELLSOUTH IS REQUIRED TO PROVIDE A TRANSIT FUNCTION

Q. Mr. McCallen states in his Direct Testimony that "BellSouth is not required to provide a transit function" (McCallen page 6, lines 7-8; page 17, line 4) and that transit is provided as a matter of "BellSouth's business decision" to do so (*id.*, page 7, line 8). What is your response?

A. I disagree. My Direct Testimony provides the authorities I rely upon in concluding that BellSouth is obligated to provide transit as an interconnection service at TELRIC rates (Pruitt page 9, line 19 through page 18, line 5). Mr. McCallen cites nothing in support of his testimony other than an apparent BellSouth "belief." Although not expressly stated in his Direct Testimony, one may easily conclude that the following is the intended inference to be drawn from his referenced testimony:

> As a service provided merely because BellSouth has made a "business decision" to do so, BellSouth may price its transit service at whatever level it chooses, or even eliminate its transit service altogether, regardless of any impact such "business decisions" may have upon any interconnected carriers and, the customers served by such carriers.

The consequences that flow from the foregoing (i.e., undermining carriers' ability to indirectly interconnect with one another, stifling competition and impairment of ubiquitous telecommunication networks) are the very concerns that led the authorities upon which I rely in my Direct Testimony to conclude that an

incumbent LEC has an obligation to provide transiting when it is the intermediate provider between two other carriers, rather than a service that is merely provided at the whim and grace of an incumbent LEC.

BELLSOUTH'S NEGOTIATED TRANSIT RATES HAVE NO BEARING IN THIS DOCKET

Q. Mr. McCallen states in his Direct Testimony that "BellSouth's tariffed transit rate is comparable to rates in recently negotiated agreements between BellSouth and CLECs and between BellSouth and CMRS carriers for transit services" (McCallen page 11, lines 13-16). What is your response?

A. My Direct Testimony provides the basis for my conclusion that where a state Commission is called upon to establish the price of an incumbent LEC's transit service as an interconnection service, the price for that service is required to be based upon the TELRIC methodology. (Pruitt page 9, line 18 through page 18, line 5).

Q. Is there any other reason why BellSouth's negotiated transit rates should not be considered in this proceeding?

A. Yes. McCallen Exhibits KRM-2 and KRM-3 appear to represent that:

1) BellSouth has approximately 222 interconnection agreements, of which 17 are with CMRS providers;

2) The identified interconnection agreements have effective dates ranging from 3/1/97 (oldest) to 12/21/05 (newest); and,

3) The rates in these agreements range from $0.002 with the majority of the CMRS carriers, to an undefined "Composite Rate" of $0.006 with one CLEC.

There is no claim that *any* rate in BellSouth's 222 agreements is an arbitrated rate, therefore, each rate is apparently a non-TELRIC *negotiated rate.* A negotiated rate merely represents a single term of the multitude of terms that comprise an entire negotiated interconnection agreement. Anyone experienced in negotiating interconnection agreements knows full well that between knowledgeable and experienced parties of relatively equal bargaining power the process involves "gives" and "takes" by the respective parties on various subjects to reach a final agreement in which all of the terms are interdependent. Thus, not only is it contrary to the Act for BellSouth to suggest that its "negotiated rates" carry some weight in this proceeding, it is inaccurate to imply that a $0.002 to $0.006 transit rate stripped of any other benefit a competing carrier may have obtained through negotiations would still be considered acceptable by that carrier on a stand-alone basis.

If BellSouth wants to offer its interconnection transit service through an additional avenue other than an interconnection agreement, the Act expressly grants BellSouth a right to "prepare and file with a State commission a statement of the terms and conditions that [it] generally offers within that State to comply with the requirements of section 251 … and the regulations thereunder and the standards applicable under this section [47 U.S.C. § 252(f)(1)]." Such a statement is commonly referred to as a "SGAT." Even if BellSouth followed this procedure, this Commission could only approve the offerings upon finding that the pricing for such offerings complied with the TELRIC standards contained in 47 U.S.C. §

252(d). *See* 47 U.S.C. 252(f)(2). Under the plain reading of Section 252, even this Commission's approval of a SGAT including a TELRIC priced interconnection transit service would not relieve BellSouth of its duty to negotiate the terms and conditions of an agreement under Section 251 if a carrier invoked its rights to negotiate rather than simply utilize BellSouth's SGAT offerings. *See* 47 U.S.C. § 252(f)(5).

In summary, there is no authority under the Act for BellSouth to avoid application of the Act's TELRIC requirements simply by providing a list of transit rates contained in its Florida interconnection agreements and arbitrarily selecting $0.003.

A TRANSIT TRAFFIC TARIFF IS NOT APPROPRIATE

Q. In response to being asked if BellSouth's Transit Service Tariff is an appropriate mechanism to address the transit service provided by BellSouth, Mr. McCallen states in his Direct Testimony, "[y]es, unless the tariff is superseded by a contract addressing transit traffic service. BellSouth is using its network to provide a value-added service and should be compensated accordingly" (McCallen page 13, lines 11-17). Do you agree with Mr. McCallen's response?

A. My Direct Testimony provides the basis for my assertion that, as an interconnection service, BellSouth's transit service is not subject to being tariffed (Pruitt page 9, line 18 through page 16, line 18; page 18, lines 8-23). I do agree that BellSouth is entitled to be paid for the service that it provides. Rather than a

tariff, however, the appropriate mechanism is for BellSouth to be compensated pursuant to an appropriately negotiated and, if necessary, arbitrated 251/252 interconnection agreement with the originating party that utilizes BellSouth's transit service (Pruitt, *id.*; page 19 lines 2-16; *see also* page 23 line 7 through page 24, line 5 (precedent exists that the FCC expects interconnection agreements to be utilized between the Small LECs and BellSouth)).

BellSouth and the Small LECs appear to have attempted to negotiate the terms under which BellSouth provides transit service to the Small LECs (*see* McCallen page 2, line 14 through page 3, line 6). And Mr. McCallen affirmatively asserts that "BellSouth is willing to negotiate interconnection agreements with carriers addressing transit traffic service" (McCallen page 17, lines 9-10). But apparently neither has exercised its statutory rights as a telecommunications carrier to serve a request for interconnection under Section 252(a)(1) to trigger the statutory negotiation and arbitration timeline under Section 252(b)(1) to establish a 251/252 interconnection agreement governing the post-1996 exchange of traffic between their networks. If a Small LEC uses BellSouth's transit service to deliver traffic originated on the Small LEC's network to a third-party interconnected with the BellSouth network, and BellSouth wants to get paid for the Small LEC's use of the BellSouth network, then one of them should initiate the 251/252 process with the other.

BLOCKING IS NOT AN ACCEPTABLE SMALL LEC ALTERNATIVE

Q. Mr. McCallen states in his Direct Testimony that a Small LEC has alternatives to routing traffic originated by a Small LEC end-user through BellSouth's network for delivery to a third-party end-user, including an alternative of "blocking" to prevent the Small LEC's end-users from calling NPA-NXXs of any particular third-party carrier (McCallen page 5, lines 11–13; page 13, lines 6–9). Do you agree that a Small LEC should be allowed to block traffic originated by its end-users destined for a customer of Sprint Nextel or T-Mobile?

A. No. The issue of when and how "blocking" may be appropriately used in the context of a CMRS — rural LEC interconnection scenario was addressed by the Tennessee Regulatory Authority ("TRA") in its recent Order entered in the case *In re: Petition for Arbitration of CELLCO Partnership d/b/a Verizon Wireless,* "Order of Arbitration Award," Docket No. 03-000585 (January 12, 2006) (hereinafter *"CELLCO Arbitration Order"*).

The Tennessee CMRS-RLEC arbitration is a consolidated action that was initiated by five arbitration petitions originally filed by Sprint PCS (n/k/a Sprint Nextel herein), T-Mobile, Verizon Wireless, Cingular, and AT&T Wireless (now merged with Cingular) against a coalition of 21 rural incumbent LECs ("RLECs"). The Small LECs' witness in this Florida Docket, Mr. Steven W. Watkins, testified in the Tennessee CMRS-RLEC case to advance substantially the same arguments on behalf of the Tennessee RLECs as he is testifying to on

behalf of the Small LECs in this Docket. In Tennessee, it was the RLECs that contended that they should have a right to block traffic originated by a CMRS provider and transited by BellSouth to an RLEC. In determining the limited situation and manner in which blocking might be used, the TRA found:

> The CMRS providers are carriers of a significant amount of local traffic. Cellular service may be used in emergencies and as a substitute for Coalition and local service. *Considering the manner of use of cellular service, the Arbitrators determined not to adopt any policy that would put the flow of this traffic at risk.* Therefore, the Arbitrators voted unanimously that traffic may be blocked and the Interconnection Agreement may be terminated only in the event of default of a non-disputed amount and upon a ninety-day notice. Further, before blocking traffic, a carrier shall obtain approval from the FCC, the TRA or some other governing body having the appropriate jurisdiction.

CELLCO Arbitration Order, page 64 (emphasis added). A copy of the TRA's January 12, 2006 *CELLCO Arbitration Order* is attached as Exhibit No. _____ (BHP-6).

The exact same public policy reasons cited by the TRA in refusing to sanction the blocking of traffic originated by a wireless end-user are equally applicable in this case to prohibit the blocking of a Small LEC end-user's calls to a wireless end-user. As a matter of safety, as well as day-to-day communications, Small LEC end-users need to be able be reach a wireless end-user in an emergency, as well as to communicate with another end-user that has opted to rely solely upon wireless service as a wireline service replacement. Clearly, blocking of any type is not an "alternative" that a responsible Small LEC should even contemplate using without prior approval of an appropriate regulatory

authority, much less as a matter of course to gain a commercial advantage in lieu of exercising its 251/252 rights to seek and obtain an appropriate interconnection agreement with another carrier.

SECTION II – DIRECT TESTIMONY OF STEVEN W. WATKINS

RESPONSE TO SUMMARY STATEMENTS

Q. Mr. Watkins' Direct Testimony includes a four point summary of his Direct Testimony (Watkins page 4, line 3 through page 5 line 7). Can you generally identify the points that you agree or disagree with regarding the positions Mr. Watkins lists in the summary of his testimony?

A. Yes. With respect to Mr. Watkins' numbered, summarized positions:

1) Based upon my prior testimony, we both clearly agree that a tariff is not the proper mechanism to establish terms, conditions, and rates for BellSouth's provision of transit service. There are aspects of Mr. Watkins' underlying rationale that I disagree with as further explained in detail below.

2) I disagree with Mr. Watkins' position that the underlying operative tariff terms imposed improper obligations upon a Small LEC if it chose to use BellSouth's transit service. On that point, I agree with BellSouth, as well as the TRA in the *CELLCO Arbitration Order* at page 24 and the authorities previously cited in my Direct Testimony (Pruitt page 19, line 18 through page 21, line 4), that it is the obligation of an originating carrier, including a Small LEC, to pay BellSouth when the originating carrier uses BellSouth's network.

3) I disagree with Mr. Watkins' positions that Small LECs' interconnection obligations are limited to direct connection at a point of interconnection on the Small LEC network, and that a Small LEC has no obligation to pay for transit of Small LEC traffic beyond an interconnection point on its network. The *CELLCO Arbitration Order* clearly explains that

> . . . [by utilizing] the BellSouth tandem as opposed to their own tandem to handle the exchange of traffic between an ICO and a CMRS provider, the ICO members *have in fact extended their networks past the existing POI to the tandem switch.* Thus, the Coalition's assertion that the Authority cannot require an ICO to take financial responsibility for transport of CMRS traffic to the tandem switch must be rejected. As the networks exist, utilizing BellSouth's tandem, the ICO members have an obligation for the cost associated with utilizing the trunking facilities.

(*Id.*, page 29) (emphasis added).

4) And, I disagree with Mr. Watkins' position that an originating carrier may be compelled by operation of a "threshold mechanism" to establish direct interconnection with a Small LEC.

MR. WATKINS' RATIONALE REGARDING INAPPROPRIATENESS OF TRANSIT TRAFFIC TARIFF

Q. Do you agree with any of Mr. Watkins' underlying rationale for his conclusion that a tariff is not an appropriate mechanism to be used in this case?

A. Yes. I agree with Mr. Watkins' rationale that "[a]s a *fundamental* matter [the Act] contemplates that the terms and conditions of non-access interconnection arrangements between carriers should be the subject of a request, negotiation, and the establishment of terms and conditions in a contract that governs that

relationship." I also agree that the FCC's *T-Mobile Order* cited in my Direct Testimony makes it clear that the FCC does not sanction the filing of tariffs to implement a carrier's interconnection obligations. (*See* Watkins page 16, line 16 through page 17, line 16 (emphasis added) and *cf.* Pruitt Direct Testimony page 25, line 18 through 27, line 10; page 18, lines 8-23; Pruitt Rebuttal Testimony page 5 line 4 through page 6 line 5).

Q. Do you disagree with any of Mr. Watkins' rationale for his conclusion that a tariff is not an appropriate mechanism to be used in this case?

A. Yes. Absent further clarification regarding what Mr. Watkins may have otherwise intended, I disagree with several statements he has made as part of his supporting rationale to conclude a tariff is not appropriate in this case.

Q. What is the first statement that you wish to address regarding Mr. Watkins' rationale for concluding a tariff is not appropriate in this case?

A. At page 17, lines 21 – 22 of his Direct Testimony, Mr. Watkins states that "proper arrangements should be put in place which address the rights and responsibilities of *all the parties*" (emphasis added), and ultimately goes on to further respond to a question that asks "[w]hat are some of the terms and conditions that must be addressed in a *multi-party arrangement*?" (emphasis added) (Watkins page 18, line 14 through page 21, line 13).

I agree with Mr. Watkins that "proper arrangements should be put in place which address the rights and responsibilities" *between BellSouth and a Small LEC* that uses BellSouth's transit service. And, as I have previously testified, it is

incumbent upon the Small LECs or BellSouth to initiate 251/252 negotiations to establish such rights and responsibilities between the Small LECs and BellSouth regarding the Small LECs' use of the BellSouth transit service to deliver traffic originated on the Small LEC network to a third-party. But, it is unclear to me from Mr. Watkins' testimony if his use of the phrase "*all the parties*" or "*multi-party arrangements*" is intended to suggest that whenever BellSouth's transit service is used the "proper arrangements" must be between all of the parties via the establishment of a 3-way interconnection contract between the Small LEC, BellSouth, and the third-party CLEC/CMRS carrier. If this is Mr. Watkins' intent (as it was in the Tennessee CMRS-RLEC case), then I disagree with Mr. Watkins. The TRA expressly rejected the RLEC concept of a mandatory 3-party interconnection agreement in the *CELLCO Arbitration Order*, ISSUE 4, pages 25-27. The TRA found that nothing in the Act, FCC Rules or any FCC Order requires 3-party interconnection agreements, and the FCC actually discourages 3-party interconnection agreements. Thus, an originating carrier is required to negotiate an interconnection agreement with the transit provider, while the originating and terminating carriers negotiate a separate interconnection agreement that establishes the terms for traffic exchanged between their networks, including traffic transited indirectly.

Q. Is there another statement that you wish to address regarding Mr. Watkins' rationale for concluding a tariff is not appropriate in this case?

A. Yes. Mr. Watkins makes a further statement to the effect that the Small LECs need meaningful options "other than being forced into involuntary arrangements at the demands of CLECs, CMRS providers, and BellSouth" (Watkins page 17 line 23 through page 18 line 2). I am not aware how either Sprint Nextel or T-Mobile has the ability to force a Small LEC into undefined "involuntary arrangements" or "demands" regarding the same. It is my understanding that Sprint Nextel and T-Mobile have met their obligations to negotiate a 251/252 interconnection agreement with BellSouth as the transit provider. I further understand that in accordance with their respective practices, as well as per the FCC's *T-Mobile Order* and 47 C.F.R. §20.11, they will likewise negotiate a 251/252 agreement with any Small LEC that requests such negotiations, and they have.

Q. Is there any other statement that you wish to address regarding Mr. Watkins' rationale for concluding a tariff is not appropriate in this case?

A. Yes. Mr. Watkins' rationale also included a statement to the effect that that the transit services provided by BellSouth to the CLEC/CMRS providers impose "additional and extraordinary costs on the Small LECs who were never part of any negotiation" (*id.* page 18, lines 5-6).

Regarding the imposition of any "additional" costs to a Small LEC when traffic is exchanged in today's environment, Mr. Watkins' simply ignores the changes that are being implemented as a result of the Act. All LECs, including Small LECS, are now prohibited from "assess[ing] charges on any other

telecommunications carrier for telecommunications traffic that originates on the LEC's network" (47 C.F.R. 51.703(b)). It is based on this rule that the Small LECs are responsible for the cost associated with the delivery of their traffic to a terminating network.

Q. Do you agree with Mr. Watkins' characterization that the imposition of transit costs upon Small LECS would somehow constitute "extraordinary costs"?

A. No. To the contrary and for several reasons, a transit cost should be regarded as an "ordinary" cost of doing business that applies objectively to all carriers in a competitive environment. First, to the extent a Small LEC uses BellSouth's tandem switches to deliver its traffic to other telecommunications carriers also connected to the BellSouth tandem switches, it is a matter of competitive fairness that the Small LEC is expected to incur the same cost that any other carrier incurs to use the same functions. Second, BellSouth certainly does not have to provide the service for free and, it would be discriminatory on its face for BellSouth to permit the Small LECs to utilize BellSouth's network without charge while charging CLEC or CMRS carriers not only for their own use of the BellSouth network *but also the Small LECs' use of the BellSouth network.* Third, a transit cost arises from, and is equally applicable to, the Small LECs as part of the very rights that the Act grants CLECs and CMRS providers with respect to the exchange of traffic with Small LECs, i.e.:

1) Under 47 U.S.C. § 251(a) the Small LECs are required to provide the type of interconnection, i.e. direct or indirect, for the exchange of traffic as requested by the CLEC/CMRS provider;

2) the Small LECs and CLECs or CMRS providers such as Sprint Nextel and T-Mobile are respectively compensated for the termination of traffic on their networks on a reciprocal, symmetrical basis as provided under 47 U.S.C. § 251(b)(5);

3) the originating party pays all costs associated with delivering its traffic to the terminating network as provided by 47 C.F.R. § 51.703(b) and the decisions implementing that rule; and

4) the Small LECs are required to treat calls from their customers to the customers of Sprint Nextel and T-Mobile according to the LEC's dialing parity obligations under 47 U.S.C. § 251(b)(3) and 47 C.F.R. § 51.207.

Q. Do you agree with Mr. Watkins' inference that the Small LECs should have been involved in any prior interconnection agreement negotiations between BellSouth and either Sprint Nextel or T-Mobile with respect to BellSouth's transit service?

A. No. With respect to the past negotiations between Sprint Spectrum and BellSouth, I negotiated the interconnection agreement in question. No Small LEC was involved in such negotiations because, as also recognized by the TRA (*CELLCO Arbitration Order* pages 25-26), both the Act and the FCC contemplate a bi-lateral rather than a 3-party interconnection agreement. Further, to the extent

BellSouth agreed to deliver indirect traffic to Sprint Nextel, T-Mobile, or any other carrier for that matter, the very existence of such traffic was dependent upon the originator of the traffic (e.g. a Small LEC) choosing to route its traffic in such a manner that it transits BellSouth's network. As a two-party bi-lateral agreement with Bellsouth, both the Sprint Nextel and T-Mobile interconnection agreements simply cannot, and do not, impose any obligations upon any carrier other than the parties to the interconnection agreement.

Q. Are there any additional statements that you wish to address regarding Mr. Watkins' rationale for concluding a tariff is not appropriate in this case?

Mr. Watkins also supports his rationale with a statement that the very *BellSouth* tariff that *CLECs and CMRS carriers, including Sprint Nextel and T-Mobile, oppose* "would allow BellSouth, CLECs and CMRS providers to impose involuntary terms and effectively 'trap' the Small LECs into the tariffed service arrangement" (Watkins page 18, lines 12-13). The foregoing implies an intent on the part of CLECs and CMRS providers that, at least as to Sprint Nextel and T-Mobile, simply does not exist and it is not an accurate conclusion. To the contrary, Sprint Nextel and T-Mobile believe that interconnection carried out within the confines of the Act and supporting FCC rules eliminate these very concerns.

BENEFITS OF TRANSITING TO SMALL LECS

Q. Regarding the existing BellSouth arrangements for transiting traffic between the Small LECs and the CLECs and CMRS providers, Mr. Watkins states in

his Direct Testimony that "[t]he CLECs and CMRS providers have been the direct beneficiaries of these arrangements" (Watkins page 6, lines 5-6). What is your response?

A. I agree that the CLECs and the CMRS providers have benefited from the transiting arrangements with BellSouth but only to the same extent that the Small LECs have benefited. The transiting arrangements have proven to be an effective means of exchanging traffic with other telecommunications carriers when the level of traffic does not economically justify a direct connection. However, BellSouth's delivery of CLEC and CMRS traffic to a terminating Small LEC network is only half the equation. When used by the Small LEC, the very same arrangements provide the exact same benefits to the Small LECs to enable traffic to mutually flow in both directions between the parties respective subscribers.

ECONOMIC IMPACT UPON SMALL LECS OF IMPLEMENTING CPNP REQUIREMENTS UNDER FCC RULES

Q. In his Direct Testimony Mr. Watkins characterizes BellSouth's efforts to charge the Small LECs transit as a "new treatment [that] will impose a new cost to be imposed on the Small LECs that the Small LECs and the Commission never contemplated when the CLECs and CMRS providers established their arrangements with BellSouth" (Watkins page 8, lines 10-13). What is your response?

A. The 1996 Act and the subsequent FCC rules to implement the Act unquestionably changed the dynamics of intercarrier relationships. The resulting changes to the

then-existing relationships were not, however, immediately implemented due to system and network limitations.

Historically, when CMRS providers used BellSouth as a transit provider for termination of wireless-originated traffic to the Small LECs, due to the limitations of BellSouth's billing system, the Small LECs were actually paid terminating access by BellSouth for wireless intraMTA telecommunications traffic despite the inapplicability of the access regime to intraMTA wireless traffic. BellSouth, in turn, charged the CMRS providers an amount intended to recoup the access charges that BellSouth paid the Small LECs. Because the Act clearly provides that such traffic is non-access traffic subject to Section 251(b)(5) reciprocal compensation instead of access charges, the wireless carriers pursued negotiations with BellSouth that gave rise to the current "meet-point" billing arrangements that resulted in BellSouth's ability to provide a terminating carrier industry standard 110101 records to identify originating CMRS provider traffic. Once this was accomplished, there was no basis for BellSouth to bill CMRS providers for anything other than a transit charge for the transit functions provided by BellSouth to indirectly deliver CMRS originated traffic to a terminating carrier, including the Small LECs. Likewise, there was no basis under the Act for the Small LECs to bill, or BellSouth to pay the Small LECs, for the termination of intraMTA wireless traffic at all, much less at access rates.

It is unknown as to why BellSouth has taken so long to pursue the Small LECs to collect transit charges associated with Small LEC-originated transit

traffic. What is clear from Mr. Watkins Direct Testimony, however, is that the Small LECs were apparently perfectly content as long as they could reap inappropriate terminating access charges with respect to indirectly delivered intraMTA wireless traffic and utilize BellSouth's transit service for free. (*See* Watkins page 8, lines 14-22 claiming that "[i]t was not until recently, with BellSouth's filing of pending tariff terms, that the issue of potential charges to the Small LECs has arisen.") Nevertheless, any delay by BellSouth does not alter what is required under the Act and its implementing rules. Neither the Act nor the rules regarding who pays transit are "new", as demonstrated by the authorities I rely upon in my Direct Testimony and this Rebuttal Testimony. Various Commissions considering the same issue of "who pays transit" are coming to the same conclusion, i.e., it is the originating carrier that pays the transit.

Q. To the extent that the Small LECs incur costs by complying with federal law that requires them to pay any transit charges associated with the Small LECs' originated traffic, how should the Small LECs recover their costs?

A. I agree with the Small LECs' witness, Mr. Watkins, when he states on page 50 of his Direct Testimony that this might entitle the Small LECs to increase local rates.

SMALL LECS' REFUSAL TO ACKNOWLEDGE THE APPLICABILITY OF THE ACT'S RECIPROCAL COMPENSATION PROVISIONS TO INDIRECT INTERCONNECTION

Q. Mr. Watkins states throughout his Direct Testimony that a Small LEC is not obligated to either pay for transit service, or honor a CLEC or CMRS provider's request for interconnection that contemplates a point of

interconnection beyond the Small LECs' network because the Act and its implementing rules do not require such action by a Small LEC. *See e.g.* Watkins page 4, lines 9-14 (no obligation to pay for transit service to deliver traffic beyond technically feasible interconnection point on Small LEC network to accommodate CLEC/CMRS request for such interconnection). What is your response?

A. Read in the context of all of Mr. Watkins' testimony, it is clear that the Small LECs' position is that they are only required to enter into interconnection agreements that include the payment of reciprocal compensation when the CLECs and CMRS providers request direct interconnection (i.e., the establishment of dedicated interconnection facilities between the parties' respective networks). Mr. Watkins' testimony suggests that the Small LECs do not agree that they have any obligation to enter into reciprocal compensation arrangements for traffic that is delivered on an indirect basis. I disagree with Mr. Watkins on his basic premises, that 1) the Small LECs have no obligation to pay for their costs for delivery of their originated traffic outside their network, and 2) that a CMRS provider must interconnect at a technically feasible point on the Small LEC network.

Q. Do the Small LECs have a duty to establish reciprocal compensation arrangements with wireless carriers?

A. Yes. Within the Section 251(b) second tier of interconnection obligations that I referred to in my Direct Testimony (Pruitt page 6, lines 15-18), subsection

251(b)(5) provides a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

Q. Has Congress defined the term, "reciprocal compensation"?

A. Yes. Reciprocal compensation is defined in Section 252(d)(2)(A)(i) of the Act as an arrangement "provid[ing] for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."

Q. Has the FCC adopted rules that define and implement the scope of a LEC's reciprocal compensation obligation with respect to traffic exchanged with a CMRS provider?

A. Yes. FCC Rule 51.701(b)(2) defines the geographic scope of the Petitioners' reciprocal compensation obligation to Sprint Nextel and T-Mobile to include "[t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in Sec. 24.202(a) of this chapter." Rule 51.701(b) (2) is commonly referred as the "intraMTA rule."

POINT OF INTERCONNECTION BEYOND THE SMALL LEC NETWORK FOR THE DELIVERY OF SMALL LEC ORIGINATED TRAFFIC

Q. Do you agree with Mr. Watkins that a CMRS provider is required to interconnect at a technically feasible point in the incumbent LEC network before the Small LEC has any reciprocal compensation obligations?

A. No. The FCC's First Report and Order and FCC rules clearly provide the framework for indirect interconnection, i.e. the exchange of traffic without the use of dedicated facilities installed between the originating and terminating parties' networks. The fact that a CMRS provider is not directly connected to a Small LEC does not mean that a 251(b) (5) obligation does not exist between the two parties. Thus, the issue is not whether the parties are directly interconnected, but whether or not the Small LECs have a duty to interconnect on an indirect basis for the mutual exchange of intraMTA telecommunications traffic as defined in 47 C.F.R. 51.701(b)(2). The plain language of section 251(b)(5) simply states the LEC has a duty "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." There is no dispute that intraMTA traffic exchanged between a CMRS provider and the Small LECs is telecommunications traffic, and there simply is no restriction in the Act that limits the duty to establish reciprocal compensation arrangements based upon whether the parties' telecommunications traffic is delivered via a direct or indirect interconnection. *See CELLCO Arbitration Order* pages 13-18 (a rural LEC has an obligation to interconnect directly or indirectly, and the reciprocal compensation obligations of 251(b) (5) apply to traffic exchanged indirectly by a CMRS provider and a rural LEC).

Q. Mr. Watkins appears to contend in his Direct Testimony that since Section 51.701(c) of the Subpart H Rules defines "transport" in the context of a transmission "from the interconnection point between the two carriers" then

a Small LEC is only responsible for costs associated with the exchange of traffic when such an interconnection point is established within the Small LECs' network (*See* Watkins page 24 line 18 through page 29 line 11). What is your response?

A. Mr. Watkins is attempting to interpret the rules so that a LEC is never responsible for any cost to deliver its traffic in the context of an indirect interconnection. In the *CELLCO Arbitration Order* the TRA fully considered and flatly rejected Mr. Watkins assertion that the definition of transport does not contemplate an indirect network architecture that is subject to reciprocal compensation, and disagreed with the Small LEC's specific interpretation of 47 C.F.R. § 51.701(c) by finding "'from the interconnection point between the two carriers' ... just as easily applies to the present situation where the parties interconnect through BellSouth and the interconnection point between the two carriers is BellSouth." *CELLCO Arbitration Order* page 17.

47 C.F.R. §51.701(c) and (d) provide the basic framework for the components to be considered in the development of reciprocal compensation rates. The essential components required to complete a normal voice call in most LEC networks today are tandem switches, transport to terminating interconnected carriers, and terminating end office or equivalent facility switches. Reciprocal compensation rates are designed to recover the forward looking incremental costs associated with the terminating LEC's components which are to be billed on a reciprocal and symmetrical basis between the originating and terminating carriers.

Q. Are the same network components identified in 47 C.F.R. § 51.701(c) Transport and (d) Termination used in a call exchanged between the Small LECs and the CMRS providers when the parties are indirectly interconnected via the BellSouth network?

A. Yes. For an intraMTA call exchanged utilizing the BellSouth network, the involved components are 1) the BellSouth tandem switch, 2) the transmission facilities between the BellSouth tandem and the Small LEC switch, and 3) the Small LEC end office switch. Clearly, the components of the network defined by the rules are part of the network components discussed in this proceeding. The fact that an interconnection is "indirect" does not mean there is no transport and termination.

SMALL LECS ARE RESPONSIBLE FOR DELIVERING TRAFFIC BEYOND THEIR EXCHANGE BOUNDARY NETWORK

Q. Mr. Watkins states in his Direct Testimony that "an incumbent LEC has no responsibility to deliver local traffic to an interconnection point that is neither on its network or to a point where the incumbent LEC is not an incumbent" (e.g. Watkins page 30, lines 18-20). What is your response?

A. I disagree. This is yet another rural argument that was carefully considered and flatly rejected by the TRA in the *CELLCO Arbitration Order:*

> The ICO members currently have established points of interconnection ("POI") with BellSouth at the furthest points within the ICO members' serving areas. As part of this arrangement, the ICO members have opted, at this time, not to utilize their own tandem switching, but instead to use a BellSouth tandem switch that is located outside their serving areas. Because the ICOs have opted to utilize the BellSouth tandem as opposed to

> their own tandem to handle the exchange of traffic between an ICO and a CMRS provider, the ICO members *have in fact extended their networks past the existing POI to the tandem switch.* Thus, the Coalition's assertion that the Authority cannot require an ICO to take financial responsibility for transport of CMRS traffic to the tandem switch must be rejected. As the networks exist, utilizing BellSouth's tandem, the ICO members have an obligation for the cost associated with utilizing the trunking facilities.

CELLCO Arbitration Order, page 29. (emphasis added).

Q. Mr. Watkins suggests that the Florida Commission has previously "embraced the concept that the interconnection point for the exchange of traffic 'would be at any technically feasible point within the ILEC's network" and "cit[ed] Sprint's comments about technically feasible point on the incumbent LEC's network" (Watkins page 27, lines 16-22). What is your response?

A. Review of the decision cited by Mr. Watkins reveals that it identifies CLECs and LECs as the participants. Additionally, the portion of the decision referred to by Mr. Watkins pertains to a CLEC's right, within the context of a direct interconnection, to select a single technically feasible point on a LEC's network to interconnect for an entire LATA. Accordingly, the decision has no bearing in this Docket which speaks to the central issue being addressed throughout BellSouth territory, i.e. in the context of an indirect interconnection, is a Small LEC obligated under the Act and implementing rules to pay for its use of another carrier's network to deliver the Small LEC's originated traffic to a terminating network? In two states that have addressed this issue, Georgia and Tennessee, the answer is clearly "yes," and federal law compels the same result in Florida.

SMALL LEC PROPOSAL FOR TRAFFIC THRESHOLD TO DICTATE A DIRECT CONNECTION

Q. Mr. Watkins states in his Direct Testimony that "a reasonable level of traffic for a threshold would be the amount of traffic that constitutes one T-1 amount of traffic usage" (Watkins page 41, lines 5-9), and that an agreement with BellSouth should "set forth terms under which tandem transit arrangements would not be available to carriers (e.g., above some potential threshold of traffic)" (*id.*, page 20, lines 21-22). What is your response?

A. I disagree, and the Commission should not establish such a mandatory threshold. Originating carriers should be permitted to determine when direct end office trunks ("DEOTs") are justified based on the economics of route-specific distance and usage characteristics. As I stated in my Direct Testimony, "[t]he determination of what is the best business decision for the originating carrier should be solely left to the originating carrier." From a practical perspective, because the distance between the tandem and end office varies and transport costs are mileage sensitive, a fixed usage threshold, as proposed by Mr. Watkins, would require telecommunications carriers routing traffic on an indirect basis to establish DEOTs without regard to the specific cost variations associated with distance-sensitive transport costs. Carriers should be permitted to make efficient, economic trunk decisions on a route-by-route basis.

Q. Has this issue been addressed by the FCC?

A. Yes. In *Petition of WorldCom, Inc. Pursuant to Section 252(e) (5) of the Communications Act for preemption of the Jurisdiction of the Virginia State*

Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration, CC Docket Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039, paragraph 88 (2002), the FCC rejected the establishment of a DEOT threshold in an interconnection arbitration order. The FCC stated:

> [w]e reject Verizon's proposed language to AT&T and Cox requiring the establishment of direct end office trunks when traffic to a particular Verizon end office exceeds a DS-1 level. It appears that competitive LECS already have an incentive to move traffic off of tandem interconnection trunks onto direct end office trunks, as their traffic to a particular end office increases. Indeed, it would appear that, just like Verizon does, competitive LECs have the incentive to move their traffic onto direct end office trunks when it will be more cost-effective than routing traffic through the Verizon tandems. The record indicates that competitive LECS already move their traffic onto direct end office trunks as their traffic volumes increase.

Not only would a threshold be contrary to FCC precedent, there is simply no reason to require one. If, for example, a Small LEC is originating a sufficient volume of traffic that it believes warrants a direct interconnection, notwithstanding a differing view of Sprint Nextel or T-Mobile, under the *T-Mobile Order* the Small LEC can always request negotiation of a 1-way direct facility to be paid by the originating Small LEC for the delivery of the Small LEC's traffic. Imposing a mandatory threshold where Sprint Nextel or T-Mobile does not choose to install one, however, is akin to dictating when a Small LEC must subtend BellSouth. As Mr. Watkins states in his Direct Testimony, "BellSouth has no more right to dictate to the Small LECs end office/tandem subtending arrangements than the Small LECS have such right to dictate such

network decisions to BellSouth" (Watkins p. 11, lines 20-23). The same is equally applicable with respect to dictating network arrangements between a Small LEC and Sprint Nextel or T-Mobile.

BELLSOUTH CAN COMMINGLE TRAFFIC ON A COMMON TRUNK

Q. Mr. Watkins asserts in his Direct Testimony that "BellSouth has no automatic right to commingle third party traffic with BellSouth's access or local traffic" (Watkins page 40, lines 13-14). What is your response?

A. I am not aware of anything under the Act that prohibits BellSouth from commingling the transit traffic originated by multiple third-parties over the same trunk group for delivery to a Small LEC network. There is no technological reason to prevent commingling, it is a common industry practice, and promotes economic efficiency. Indeed, being able to commingle traffic is one, if not the, essential function that a historical Feature Group C trunk (over which transit traffic is typically delivered) was designed to perform. Further, requiring the establishment of separate and distinct trunks to run "through" the BellSouth network is the functional equivalent to mandating direct interconnection between a third party and a terminating Small LEC network, which is contrary to an interconnecting carrier's right under the Act to choose whether or not to directly interconnect with a Small LEC network. A common pipe also works efficiently in the opposite direction, allowing the Small LEC to bundle its outbound traffic on a single facility, gaining economies of scale. As long as Bellsouth can properly time the calls, and supplies a terminating carrier, upon request, industry standard

110101 records that enable the terminating carrier to rate and bill such calls, BellSouth should be permitted to continue this practice. (*See CELLCO Arbitration Order* page 32-34.)

SMALL LEC PROPOSAL TO INCLUDE ENFORCEMENT ACTIONS AGREEMENTS BETWEEN BELLSOUTH AND A SMALL LEC

Q. Mr. Watkins suggests that an agreement between a Small LEC and BellSouth should have terms that "requires the tandem operator to take enforcement actions against other carriers with which the tandem provider has a transit traffic arrangement in the event of default or non-payment by such carrier (again, for components of traffic that are subject to reciprocal compensation" (Watkins page 21, lines 1-4). What is you response?

A. I previously testified in this Rebuttal Testimony that, as a two party bi-lateral agreement with BellSouth the respective Sprint Nextel and T-Mobile agreements simply cannot, and do not, impose any obligation upon any carrier other than the parties to the interconnection agreement. For the same reasons, there is no basis for an interconnection agreement between BellSouth and a Small LEC to include any terms dealing with the "enforcement" of the relationship between Sprint Nextel or T-Mobile and a Small LEC. Any issues associated with default or non-payment must be covered by terms within the respective interconnection agreement between a Small LEC and Sprint Nextel or T-Mobile that has been negotiated or arbitrated pursuant to the Act and the FCC rules.

COMMISSION ACTION

Q. What action do you believe the Commission should take in this Docket?

A. The Commission should enter an Order that holds:

1) BellSouth's Transit Traffic Service Tariff is invalid under federal law, and withdraws approval of such tariff;

2) To the extent any carrier, including a Small LEC, utilizes BellSouth's Transit Traffic Service and BellSouth wants to be paid, then BellSouth needs to issue a request for negotiation to such LECs to negotiate and, if necessary arbitrate, a 251/252 interconnection agreement between the two parties;

3) Under the FCC's Calling Party Network Pays ("CPNP") rule, the party that originates transit traffic is responsible for compensating the transiting party for providing the transit service;

4) An incumbent LEC's transit service is an interconnection service subject to the negotiation and arbitration provisions of 251/252, including the TELRIC pricing standards, and the Commission should make a determination of what BellSouth can charge as its Florida TELRIC transit rate;

5) BellSouth may combine traffic over the same trunk provided a) the calls can be properly timed, and b) BellSouth supplies to a terminating carrier upon request industry standard 110101 records that enable the terminating carrier to rate and bill such calls;

6) It is a matter of a carrier's network management business judgment, as well as its right under the Act, to decide when to directly interconnect with a Small LEC and therefore, it is inappropriate to mandate direct interconnection based upon a specific threshold of any kind;

7) Whether intraMTA traffic is directly or indirectly exchanged between CMRS providers and Small LECs, such traffic is non-access telecommunications traffic subject to mutual, reciprocal compensation under 47 U.S.C. § 251 (b) (5); and,

8) A Small LEC is required to provide dialing parity to directly and indirectly interconnected carriers. This means the Small LEC will program its switches to enable its end-users to dial a CMRS NPA-NXX associated in the Local Exchange Routing Guide ("LERG") with the exchange of the Small LEC, or with another incumbent LEC with whom local dialing exists (e.g. non-toll, 7 or 10 digit dialing), in the same manner the Small LEC end-user would dial another wireline end-user of the Small LEC or other incumbent LEC with whom local dialing exists.

Q. Does this conclude your Rebuttal Testimony?

A. Yes, it does.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 12, 2006

IN RE:	)	
	)	
PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS	)	**DOCKET NO. 03-00585**
	)	
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	)	

ORDER OF ARBITRATION AWARD

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This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), serving as the arbitration panel in this docket, on January 12, 2005 for final deliberations addressing issues raised in the arbitration of interconnection agreements between certain commercial mobile radio service ("CMRS") providers[1] and the Rural Coalition of Small Local Exchange Carriers and Cooperatives (the "Coalition" or "ICO members").[2]

FACTUAL AND PROCEDURAL HISTORY

On November 6, 2003, Verizon Wireless, Cingular Wireless, AT&T Wireless, T-Mobile and Sprint, each a CMRS provider, individually filed a Petition for Arbitration.[3] Each petition requested that the Authority assist in matters relating to the negotiation of an Interconnection and Reciprocal Compensation Agreement between the aforementioned CMRS providers and members of the Coalition. Each petition further explained that although the Coalition is made up of twenty-one independent companies, the negotiations have been conducted jointly. As such, the CMRS providers asserted that it would be an unnecessary burden for the TRA to consider individual petitions from each of the twenty-one ICO members.

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[1] CELLCO Partnership d/b/a Verizon Wireless ("Verizon Wireless"), BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership (collectively "Cingular Wireless"), AT&T Wireless PCS, LLC d/b/a AT&T Wireless ("AT&T Wireless"), T-Mobile USA, Inc ("T-Mobile"), and Sprint Spectrum L P d/b/a Sprint PCS ("Sprint")

[2] The Coalition is comprised of the following companies 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, Tennessee Telephone Company; Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc , and Yorkville Telephone Cooperative

[3] *In re Petition for Arbitration of CELLCO Partnership d/b/a Verizon Wireless*, Docket No 03-00585 (November 6, 2003); *In re Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership, Collectively d/b/a Cingular Wireless*, Docket No 03-00586 (November 6, 2003), *In re Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless*, Docket No 03-00587 (November 6, 2003), *In re Petition for Arbitration of T-Mobile USA, Inc*, Docket No 03-00588 (November 6, 2003), and *In re Petition for Arbitration of Sprint Spectrum L P d/b/a Sprint PCS*, Docket No 03-00589 (November 6, 2003)

On November 18, 2003, Verizon Wireless, on behalf of the CMRS providers and the ICO members jointly, filed a motion in Docket No. 03-00585 requesting that the TRA consolidate all five petitions for arbitration (Docket Nos. 03-00585, 03-00586, 03-00587, 03-00588, and 03-00589) into one Arbitration Proceeding.[4]

On December 1, 2003, the Coalition filed its response to the petitions.[5] In the response the ICO members explained that these arbitrations are before the Authority as a result of the Generic Universal Service Docket (Docket No. 00-00523) and urged the Authority to consider the totality of the circumstances that have resulted in the arbitration petitions. The issue, according to the ICO members, is the "indirect" interconnection of traffic between CMRS providers and the ICO members' networks. The ICO members stated that while they have no objection to reasonable terms of interconnection, BellSouth Telecommunications, Inc. ("BellSouth") and the CMRS providers have attempted to impose terms and conditions on the ICO members that have not been adopted through appropriate interconnection proceedings.[6]

On December 8, 2003, during a regularly scheduled Authority Conference, Chairman Deborah Taylor Tate consolidated all of the Petitions for Arbitration into the first docket opened, Docket No. 03-00585. During the December 8, 2003 Conference, the panel assigned to Docket No. 03-00585 voted unanimously to accept the Petitions for Arbitration. The panel also designated themselves as Arbitrators and appointed General Counsel or his designee as the Pre-Arbitration Officer to hear preliminary matters prior to the Arbitration.

The Pre-Arbitration Officer convened a Status Conference on February 23, 2004 during which the parties discussed a waiver of the statutory nine-month deadline, the filing of a motion

[4] *Joint Motion to Consolidate Petitions for Arbitration*, p 1 (November 18, 2003)
[5] *Response of the Rural Coalition of Small LECs and Cooperatives* (December 1, 2003)
[6] *Id* at 3-5

addressing the participation of BellSouth in this docket and a proposed procedural schedule which provided for two rounds of discovery and the submission of pre-filed testimony.

On March 4, 2004, the Coalition filed its *Preliminary Motion to Dismiss or, in the Alternative, to Add an Indispensable Party* ("*Motion to Dismiss*"). In the *Motion to Dismiss*, the ICO members asserted that because this matter involves the existing indirect interconnection trunk provided by BellSouth and merely seeks new terms to that existing arrangement, BellSouth should be made a party to this proceeding, thus creating a three-party interconnection agreement. According to the Coalition, BellSouth's absence from this proceeding would force the Authority to impose interconnection terms and conditions that are inconsistent with interconnection requirements established by federal statutes and regulations of the Federal Communications Commission ("FCC").[7] Thus, the Coalition asserts that such an imposition would be beyond the scope of the authority of the TRA in arbitrating interconnection agreements. The ICO members asserted that for this reason the arbitrations should be dismissed.

On March 12, 2004, BellSouth responded in opposition to the Coalition's *Motion to Dismiss*.[8] BellSouth asserted that at no point have the ICO members indicated that they took issue with the request of CMRS providers for arbitration To the contrary,, after a series of negotiations it appeared as if all parties involved had agreed that, if left unresolved, this matter would be arbitrated. BellSouth argued that the Authority has previously recognized arbitrations as two-party matters; the instant proceeding is not a three-party arrangement nor does any law exist in support of such; the ICO members have previously entered into interconnection

[7] *Preliminary Motion to Dismiss or, in the Alternative, Add an Indispensable Party*, p 2 (March 4, 2004)
[8] *BellSouth Telecommunications, Inc 's Response in Opposition to the Preliminary Motion of the Rural Coalition of Small LECs and Cooperatives to Dismiss or, in the Alternative, Add an Indispensable Party* (March 12, 2004)

agreements with CMRS providers without the involvement of BellSouth; and, finally, this Arbitration is proper and should not be dismissed.[9]

On March 12, 2004, the CMRS providers responded in opposition to the Coalition's *Motion to Dismiss*.[10] The CMRS providers argue the appropriateness of the arbitration, pursuant to 47 U.S.C. § 252 of the Telecommunications Act of 1996 (the "Act"), has already been determined by the Authority and agreed to by the parties. The CMRS providers point to the May 5, 2003 Hearing Officer Order in Docket No. 00-00523 which includes language that if the parties failed to reach agreement, arbitration could be contemplated.[11] The CMRS providers further assert that the TRA has a statutory requirement to arbitrate all "open issues" and that no legal authority exists to support the request to make BellSouth a party. Finally, the CMRS providers assert that BellSouth is not an indispensable party and that the *Motion to Dismiss* should be denied as untimely.

On April 12, 2004, the Pre-Arbitration Officer in this docket issued an order denying the Coalition's *Motion to Dismiss*. In the *Order Denying Motion*, the Pre-Arbitration Officer concluded that, pursuant to 47 U.S.C. § 251(a)(1), the members of the Coalition and the CMRS providers are required to interconnect, either directly or indirectly, with all other telecommunications carriers and, to accomplish interconnection, the Coalition members, as local exchange carriers, have a duty to negotiate in good faith in accordance with the requirements of the Act.[12] There is no provision in federal law for including additional parties in the negotiation process.[13]

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[9] *Id* at 2-4
[10] *CMRS Providers' Response to the Rural Coalition of Small LECs and Cooperatives' Preliminary Motion to Dismiss or, in the Alternative, Add an Indispensable Party ("CMRS Response")* (March 12, 2004)
[11] *CMRS Response*, p 3, quoting *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions, In re Generic Docket Addressing Rural Universal Service*, TRA Docket No 00-00523, p 5 (May 5, 2003)
[12] *Order Denying Motion*, p 6 (April 12, 2004)
[13] *Id*

The Pre-Arbitration Officer ruled that the Coalition failed to adequately support its request to join BellSouth as a party to this arbitration because it failed to prove that BellSouth is necessary to a resolution of the matter at hand. Based upon the bona fide requests to negotiate interconnection and reciprocal compensation agreements, members of the Coalition are obligated to interconnect, either directly or indirectly, with the CMRS providers. The Pre-Arbitration Officer found,

> Whether the exchange of traffic between two such carriers is direct or indirect via the BellSouth network, explicit in federal law is the duty of each Coalition member to each CMRS provider, as the requesting carrier, to arrange for reciprocal compensation.[14]

Specifically, the Pre-Arbitration Officer concluded,

> To this end, federal law imposes no compensation obligations on any third party, including BellSouth over whose network the traffic is being exchanged. Notwithstanding any agreement between BellSouth and the other carriers for the use of the BellSouth network, each Coalition member must still provide for the exchange of traffic with each CMRS provider. For this specific purpose, BellSouth is an unnecessary third party and need not be joined in this particular arbitration.[15]

The Pre-Arbitration Officer also concluded that TRA Rule 1220-1-2-.03(2)(f) allows the dismissal of a complaint or petition for "failure to join an indispensable party." Nevertheless, because BellSouth is not an indispensable party to the arbitration, the Coalition's *Motion to Dismiss* was denied.[16]

Thereafter, the Pre-Arbitration Officer entered an Order establishing a modified procedural schedule for discovery and pre-filed testimony and setting the arbitration hearing for August 9-12, 2004.[17] The parties engaged in discovery in advance of submitting pre-filed testimony. On June 3, 2004, the CMRS providers submitted pre-filed direct testimony from six

[14] *Id* at 7
[15] *Id* at 7-8
[16] *Id* at 8
[17] *Order Modifying Procedural Schedule* (April 15, 2004)

witnesses: Marc B. Sterling for Verizon Wireless, Greg Tedesco for T-Mobile, Suzanne K. Nieman for AT&T Wireless, William Brown for Cingular Wireless, Billy H. Pruitt for Sprint and W. Craig Conwell for Verizon Wireless, Cingular Wireless, AT&T Wireless and T-Mobile. The ICO members submitted pre-filed direct testimony on June 4, 2004 from one witness, Steven E. Watkins. On June 24, 2004, the parties submitted pre-filed rebuttal testimony.[18] On July 26, 2004, the Final Joint Issues Matrix was submitted by the parties wherein the parties explained that they had deleted ICO Issues 1 and 3.

Arbitration Hearing

The Hearing in this proceeding commenced on August 9, 2004 before the panel of Arbitrators: Chairman Miller, Director Tate and Director Jones. In attendance at the Hearing were the following parties as represented by counsel:

> AT&T – **Henry Walker, Esq.**, Boult, Cummings, Conners & Berry, P.O. Box 198062, Nashville, TN 37219-8062.
>
> Verizon Wireless – **Melvin J. Malone, Esq.** and **J. Barclay Phillips. Esq.**, Miller & Martin PLLC, 1200 One Nashville Place, 150 4th Avenue, North, Nashville, TN 37219-2433; and **Elaine D. Critides**, Verizon Wireless, 1300 I. Street, N.W., Suite 400 West, Washington, D.C. 20005.
>
> Sprint PCS – **Edward Phillips, Esq.**, Sprint, 14111 Capital Boulevard, Wake Forest, NC 27587-5900; and **Charles McKee**, Sprint PCS, 6450 Sprint Parkway, 2nd Floor, Overland Park, KS 66251.
>
> Coalition – **William, T. Ramsey, Esq.**, Neal & Harwell, 150 Fourth Avenue, Suite 2000, Nashville, TN 37219-2498; and **Stephen G. Kraskin, Esq.**, Kraskin, Lesse & Cosson, LLP, 2120 L. Street. NW, Suite 520, Washington, DC 20037.
>
> Cingular Wireless – **Paul Walters, Jr., Esq.**, 15 E. First Street, Edmond, OK 73034.

During the four-day hearing from August 9 through August 12, 2004, the Arbitrators heard testimony related to CMRS providers' Issue Nos. 1 through 18 and Issue Nos. 2 and 4 through

[18] The CMRS providers filed the rebuttal testimony of Marc B Sterling, William Brown, Billy H Pruitt and W Craig Conwell, while the Coalition submitted rebuttal testimony from Steven E Watkins

10 of the Coalition. The parties filed post-hearing briefs and supplemental testimony. The Arbitration panel deliberated on these issues as well as a preliminary issue at a public meeting on January 12, 2005.

Preliminary Issue: Whether the issues in this docket regarding indirect interconnection and reciprocal compensation are subject to compulsory arbitration under § 252 of the Federal Telecommunications Act.

Position of Parties

The ICO members argue that the Authority does not have the jurisdiction to decide this matter because the issues in contention involve an existing indirect interconnection and the FCC has only established rules for direct interconnection.[19] The ICO members state that 47 U.S.C. §252(c) is the basis of authority for what the TRA can and cannot decide within the scope of an arbitration and provides that the Authority can only ensure that the resolution of an arbitration meets the requirements set forth in Section 251 of the Act and in regulations prescribed by the FCC. The Coalition maintains that because the FCC has not established rules specific to indirect interconnection within its rules for interconnection the Authority is beyond its jurisdiction in imposing rules.[20]

According to the ICO members, proof that no FCC rule exists with regard to indirect interconnection is provided by BellSouth's petition to the FCC dated June 4, 2004, in which BellSouth asks for clarification with regard to third-party transit situations. Specifically, BellSouth asks that it not be obligated to provide this function; that originating and terminating carriers be held liable for compensation; and that a transiting carrier, such as BellSouth, be entitled to a fee for the use of its network.[21]

[19] Transcript of Proceedings, v 1, pp 15-16 (August 9, 2004)
[20] *Id* at 17-18, referencing 47 C F R. § 51 701 *et seq*
[21] *Id* at 19

The ICO members continuously assert that BellSouth is a necessary party to these proceedings and insist that complete relief cannot be afforded if no rules exist on the obligations of a transit provider such as BellSouth. As an example, the ICO members question how a Coalition member would cut-off the defaulting party's traffic in the event of non-payment of fees due a Coalition member.[22]

The ICO members further argue that only those terms and conditions consistent with interconnection standards established by statute or the FCC can be imposed as a result of arbitration unless both parties voluntarily submit the issues to be arbitrated. They assert that simply because the CMRS providers raised issues for arbitration and voluntarily submitted those issues does not render those issues subject to arbitration. The Coalition cites an 11th Circuit Court of Appeals decision in which the Court reversed a lower court holding that if a state commission arbitrates any open issue there is no limit on what subjects the incumbent must negotiate.[23] Furthermore, the Court stated that such a holding is contrary to the Act, which lists only a limited number of issues on which incumbents are required to negotiate. The Coalition insists that its members have not voluntarily submitted any issues to arbitration beyond the scope of established interconnection standards.[24]

The CMRS providers assert that Section 251(a) of the Act obligates telecommunications carriers to interconnect either directly or indirectly and the traffic that is exchanged indirectly is done so through a third party. The Act further requires that when wireline carriers exchange local traffic they in turn pay each other reciprocal compensation and when long distance traffic is carried they pay and collect access charges. In the case of wireless carriers, local calls are

[22] *Id* at 20.
[23] *Post-Hearing Reply Brief of the Rural Coalition of Small LECs and Cooperatives*, pp 4-5 (October 5, 2004), referencing *MCI Telecommunications Corporation v BellSouth Telecommunications, Inc.*, 298 F 3d 1269, 1274 (11th Cir. 2002)
[24] *Id*

defined in terms of metropolitan trading areas ("MTAs") instead of service areas. The FCC requires that all traffic originated and terminated within the same MTA be considered local and, thus, subject to reciprocal compensation.[25]

The CMRS providers maintain that all intraMTA traffic is subject to reciprocal compensation based on forward-looking costs and that, with regard to reciprocal compensation, the FCC has held that the calling party network pays the reciprocal compensation. Therefore, the CMRS providers argue that the carrier whose customer initiates the call must pay the cost to deliver the traffic to the network of the terminating carrier and pay the appropriate reciprocal compensation.[26]

Findings of Fact and Conclusions of Law

The preliminary issue in this arbitration is whether reciprocal compensation is applicable to an indirect interconnection arrangement utilizing the common trunk group of a third party to indirectly connect the originating and terminating parties.

The TRA has rejected the ICO members' claim that this matter is inappropriate as a Section 252 arbitration proceeding. This matter came to the Authority as a direct result of Docket No. 00-00523. In Docket No. 00-00523, the Hearing Officer ordered the parties to continue negotiations and stressed that a settlement of the matter was in the best interest of all parties. The Order was clear that if the ICO members could not reach a settlement with the CMRS providers then the Authority may be called upon to arbitrate disputed issues.[27] The CMRS providers then petitioned the Authority to arbitrate the matter, and the Authority accepted the arbitrations and all the issues raised therein.[28]

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[25] Transcript of Proceedings, v I, pp 8-10 (August 9, 2004). *see* 47 C.F.R §§ 51.701(b)(2) and 51.703 (2004)
[26] Transcript of Proceedings, v I, p 11 (August 9, 2004
[27] *See In re Generic Docket Addressing Rural Universal Service*, Docket No 00-00523, *Order Granting Conditional Stay, Continuing Abeyance, and Granting Intervention*, p 5 (May 5, 2003)
[28] Petition of Verizon, Petition of T-Mobile, Petition of Cingular, Petition of AT&T (November 6, 2003) Petition of Sprint (November 7, 2003) *Order Accepting Petitions for Arbitration* (April 12, 2004)

This position is supported by federal statutes and FCC decisions. The ICO members and the CMRS providers are telecommunications carriers.[29] The compulsory arbitration provisions in Section 252 of the Act apply to all telecommunications carriers.[30] As telecommunications carriers, the parties have the duty to interconnect, directly or indirectly, with one another.[31] As local exchange carriers ("LECs"), the ICO members have the obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[32]

In its *Local Competition Order*, the FCC stated:

> Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications." Under section 3(43), "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." All CMRS providers offer telecommunications. Accordingly, LECs are obligated, pursuant [footnote omitted] to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation set forth in Section XI.B., below.[33]

Section 252 of the Act states that upon receiving a request for interconnection, services, or network elements pursuant to Section 251, a LEC may negotiate and enter into a binding agreement.[34] Between the 135th and 160th day (inclusive) after the date when the LEC receives a request for negotiation pursuant to Section 252, the carrier or any party to the negotiation may petition the state commission for arbitration of any open issues.[35]

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[29] 47 U S C § 3(a)(49) (2004) defines a telecommunications carrier
[30] 47 U S C § 252 (2004)
[31] *Id*
[32] *Id*
[33] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, ¶ 1008 (1996)
[34] 47 U S C § 252(a)(1) (2004)
[35] 47 U S C § 252(b)(1) (2004)

Section 252(b)(1) provides in part that any party to the negotiation of an agreement under section 251 "may petition a State commission to arbitrate any open issues."[36] The term "any open issues" has, however, been limited by the courts such that it does not include anything on any subject. In *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, the court stated, "If the [state commission] must arbitrate *any* issue raised by a moving party, then there is effectively no limit on what subjects the incumbent must negotiate. This is contrary to the scheme and the text of that statute, which lists only a limited number of issues on which incumbents are mandated to negotiate."[37] Further, the court upheld a state commission's authority to arbitrate MCI's request that an enforcement mechanism be included in its interconnection agreement with BellSouth because the requested provision fell within the realm of "conditions . . . required to implement" the agreement under Sections 252(b)(4)(C) and 252(c).[38]

The United States District Court for Minnesota in *US West Communications, Inc. v Minnesota Public Utilities Commission*[39] addressed the issue of whether a state commission has the authority to include the issue of the billing of transit traffic in an arbitration under Sections 251 and 252 of the Act. The *US West* Court stated that "the language of 252(c)(1) . . . does not confine the resolution of the issues to the requirements of 251"[40] and stated that "[t]he parties can bring any unresolved *interconnection* issue before the state commission for arbitration."[41]

The ICO members, as rural telephone companies, have no duty to negotiate pursuant to Section 251(c) except under very narrow conditions.[42] Nevertheless, they each have a duty to

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[36] *Id*
[37] *MCI Telecommunications Corp v BellSouth Telecommunications, Inc*, 298 F 3d 1269, 1274 (11th Cir. 2002) (emphasis in original).
[38] *Id*
[39] *US West Communications, Inc v Minnesota Public Utilities Commission*, 55 F Supp 2d 968 (D Minn 1999)
[40] *Id* at 986
[41] *Id* at 985 (emphasis added)
[42] 47 U S C § 251(f)(1)(A) (2004).

interconnect as a telecommunications carrier and, as a local exchange carrier, an obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications. To the extent this duty and obligation have not been resolved through negotiation, they remain unresolved, open issues. The Arbitrators found that the Authority may arbitrate unresolved issues between two parties where one party seeks, through arbitration, to cause another party to meet its duty to interconnect and obligation to establish reciprocal compensation and identifies these issues in its petition for arbitration.[43]

The Arbitrators further found that this proceeding is properly a Section 252 arbitration proceeding.[44] The CMRS providers have requested terms of indirect interconnection and reciprocal compensation from the ICO members. These two issues are squarely Section 251 matters. Therefore, because the issues have not been resolved through negotiations, they are properly before the Authority pursuant to Section 252(b).

[43] 47 U S C § 252(b)(2)(A)(i) (2004), *see also* 47 U S C. § 252(b)(4)(C) (2004)
[44] Transcript of Proceedings. pp 2-7 (January 12. 2005)

ISSUE 1: Does an ICO have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers?

Positions of Parties

The CMRS providers maintain that the FCC's rules, as well as Section 251(a) of the Act, expressly require the ICO members to interconnect either directly or indirectly with other telecommunications carriers including the CMRS providers.[45] The CMRS providers aver that: (1) the industry term "indirect interconnection" refers to traffic one carrier sends to another through the tandem of a third party; (2) CMRS providers employ this type of interconnection when exchanging traffic with small independent telephone companies on a routine basis; and (3) arrangements of this type are standard in the industry and recognized by the Act and the FCC.[46]

The ICO members maintain that they are in full compliance with the requirements of the Act that establish the duty to interconnect either directly or indirectly with the CMRS providers.[47] The ICO members argue that

> Section 251(a) of the Act simply identifies the general duty of carriers to interconnect directly and indirectly with other carriers via the public switched network and to use standard equipment and technical approaches that are compatible with other network participants. This subsection of the Act and the associated implementation rules do not impose any specific standards of interconnection, hierarchical network arrangements (*e.g.*, no requirement to subtend a BellSouth tandem), business arrangements (*e.g.*, billing and payment relationships), compensation arrangements, or service obligations.[48]

The ICO members argue that there is no issue here because they are already in compliance with Section 251(a) which mandates the simple requirement to interconnect and which is separate and apart from Section 251(b) and (c) requirements that provide specific interconnection obligations distinct from Section 251(a).[49]

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[45] *Petition for Arbitration of Cellco Partnership, d/b/a Verizon Wireless*, p 9 (November 6, 2003)
[46] *Id*
[47] *Response of the Rural Coalition of Small LECs and Cooperatives*, p 18 (December 1, 2003)
[48] *Id* at 19 (footnotes omitted)
[49] *Id* at 19-20

Deliberations and Conclusions

All parties agree that they are telecommunications carriers[50] and concede that they are required to interconnect either directly or indirectly.[51] Section 251(a) of the Act defines the general duty of telecommunications carriers as follows:

> Each telecommunications carrier has the duty -
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
> (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

Additionally, 47 C.F.R. § 51.100(a) sets forth the same requirement of interconnection. The FCC Rules define a telecommunications carrier as any provider of telecommunications services, except aggregators of telecommunications services.[52] This definition includes ICO members and CMRS providers.[53]

For these reasons, the Arbitrators voted unanimously that an ICO member has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, including the CMRS providers. The additional arguments raised in this Issue were addressed in the resolution of Issue No. 2.

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[50] *Joint Post-Arbitration Brief Submitted on Behalf of the CMRS Providers*, p 18 (September 10, 2004) *Post-Hearing Brief of the Rural Coalition of Small LECs and Cooperatives*, p 19 (September 10, 2004)
[51] Transcript of Proceedings, v 1, p 31 (August 9, 2004) & v VII, p 21 (August 11, 2004)
[52] *See* 47 C F R. § 51 5 (2004)
[53] *Id*

ISSUE 2: Do the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation and arbitration process in § 252(b) apply to traffic exchanged indirectly by a CMRS provider and an ICO?

Positions of Parties

The CMRS providers maintain that the FCC Rules provide for the payment of reciprocal compensation for all intraMTA traffic regardless of how it is delivered (directly or indirectly) and while rural carriers are exempt from the interconnection provisions of Section 251(c)(2) until a state commission terminates the exemption of Section 251(f)(1), rural carriers are not exempt from the obligations of Sections 251(a) and 251(b).[54] The CMRS providers also aver that unless a state commission determines such an exemption is warranted, rural LECs must comply with the negotiation and arbitration process specified by the Act.[55] The CMRS providers also argue that reciprocal compensation arrangements apply to all telecommunications traffic as defined by 47 C.F.R. § 51.701(b)(2) which includes intraMTA traffic.[56]

The ICO members argue that the FCC's Subpart H Rules define transport and termination arrangements for which reciprocal compensation applies and the existing three party transit service arrangement is not within the scope of those rules because the CMRS traffic is commingled with BellSouth's interexchange carrier access traffic.[57] Subpart H Rules apply only to arrangements where an interconnection point is established between two carriers.[58] The ICO members also maintain that the CMRS providers must establish termination of their traffic to LECs through direct interconnection and reciprocal compensation arrangements with respect to traffic that originates and terminates within an MTA.[59] Additionally, the ICO members state that the three party "transit" traffic arrangement is not an interconnection requirement to which

[54] *Petition for Arbitration of Cellco Partnership, d/b/a Verizon Wireless*, p 10 (November 6, 2003)
[55] *Id* at 10-11
[56] *Id* at 11
[57] *Response of the Rural Coalition of Small LECs and Cooperatives*, p 21 (December 1, 2003)
[58] *Id* at 27
[59] *Post Hearing Brief of the Rural Coalition of Small LECs and Cooperatives*, p 19-20 (September 10, 2004)

arbitration applies because "transit" arrangements are not part of the interconnection requirements or rules.[60] The ICO members aver that no LEC is obligated to accept traffic from any physically interconnected interexchange carrier under terms and conditions that alleviate that interexchange carrier from payment for the termination of the traffic, regardless of whether the traffic originates on another carrier's network.[61]

The ICO members maintain that the transit arrangement, under which they now operate to exchange traffic with the CMRS providers, is not an arrangement described as an interconnection requirement either under the Act or by the FCC.[62] Further, the ICO members state that there is nothing in any of the FCC's orders regarding reciprocal compensation that addresses three parties and that "the definitions all discuss an arrangement between two carriers where there's an interconnection point established on the network of the incumbent between the two carriers that are exchanging traffic."[63]

Deliberations and Conclusions

Applicability of Section 251(b)(5)

Section 251(b)(5) of the Act imposes on the ICOs the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. Subpart H of the FCC Rules, 47 C.F.R. 51.701 through 51.717, defines telecommunications traffic and includes, as telecommunications traffic, any "traffic exchanged between a LEC and a CMRS provider that at the beginning of the call, originates and terminates within the same Major Trading Area"[64] and establishes that each LEC must establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic with any requesting

[60] *Response of the Rural Coalition of Small LECs and Cooperatives*, pp 22-23 (December 1, 2003)
[61] *Id* at 21, 23
[62] Transcript of Proceedings, v VII, p 23 (August 11, 2004)
[63] *Id* at 23-24
[64] 47 C F.R. § 51 701(b)(2) (2004)

carrier. The FCC Rules in 47 C.F.R. 51.701 through 51.717 do not distinguish between direct and indirect traffic. The plain language of these rules implies that the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply equally to traffic exchanged either directly or indirectly.

The ICO members assert that the definition of transport does not contemplate an indirect network architecture that is subject to reciprocal compensation. The success of the ICO members' argument with regard to the FCC's definition of transport depends on the interpretation of the phrase "from the interconnection point between the two carriers."[65] The ICO members use this phrase to rule out the participation of a third carrier who might be fulfilling the role of intermediary carrier providing indirect interconnection.[66]

Nevertheless, this wording just as easily applies to the present situation where the parties interconnect through BellSouth and the interconnection point between the two carriers is BellSouth. Using this interpretation, a three party process results whereby the LEC and the CMRS provider interconnect through an intermediary carrier who serves as the "interconnection point between the two carriers" and who provides the necessary billing details to the two carriers. This interpretation is wholly consistent with the definition of "interconnection" because here BellSouth serves as the means for the "linking"[67] of two networks and makes possible an indirect interconnection. This is the situation under which the parties are now operating and exchanging traffic. The missing component is the proper exchange of compensation for the traffic being exchanged.

[65] 47 C F.R § 51 701(c) (2004)
[66] *Post-Hearing Brief of the Rural Coalition of Small LECs and Cooperatives*, p 21 (September 10, 2004)
[67] Interconnection in 47 C F R § 51 5 is defined as "the linking of two networks for the mutual exchange of traffic " This term does not include the transport and termination of traffic

The Arbitrators conclude that the plain reading of these rules indicates that the FCC intended for the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) to apply to traffic exchanged between a CMRS provider and an ICO member. The Arbitrators also found nothing in the Act or FCC rules or orders to the contrary. Further, the ICO members presented no citations to applicable authority during this proceeding that would indicate otherwise.

Applicability of Section 252(b)

This question is resolved upon the finding under Issue No. 1 that an ICO has the duty to connect directly or indirectly pursuant to 47 U.S.C. § 251 because Section 252(a)(1), which provides for voluntary negotiations and the subject matter of a Section 252(b) arbitration, encompasses "interconnection, services or network elements pursuant to section 251."

Based upon the record in this proceeding and for the reasons cited above, a majority of the Arbitrators voted that the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation and arbitration process in § 252(a) and (b) apply to traffic exchanged indirectly between a CMRS provider and an ICO member.[68]

[68] Director Jones agreed with the conclusions, but provided the following alternative reasoning 47 U S.C. § 251(b)(5) requires the ICO members to establish reciprocal compensation arrangements for the transport and termination of traffic and the ICO members have not filed a petition for suspension or modification of Section 251(b)(5). *First Report and Order*, 11 FCC Rcd. 15499 at ¶ 1045 (1996) The ICO members' argument that the indirect interconnection arrangement sought by the CMRS providers is not the type of indirect interconnection arrangement for which the FCC has said that reciprocal compensation applies is erroneous because the referenced language does not provide an exhaustive list of transport alternatives and through the use of the phrase "facilities provided by alternative carriers" includes the interconnection arrangement sought by the CMRS providers *Id* at ¶ 1039 The language of Section 251(b)(5) and FCC regulations is broad and can reasonably be interpreted to include traffic exchanged indirectly between the CMRS providers and an ICO This conclusion is consistent with federal district court decisions, FCC comments, and state commission decisions *See Texcom, Inc d/b/a Answer Indiana v Bell Atlantic Corp d/b/a Verizon Communications, Memorandum Opinion and Order*, 17 FCC Rcd 6275, ¶¶ 4-6 (2001), *reconsideration denied*, 17 FCC Rcd 6275 (2002); *Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking*, 16 FCC Rcd 9610, ¶ 8 (2001), *Atlas Telephone Company v Corporation Commission of Oklahoma*, 309 F Supp 2d 1299, 1310-11 (W D Okla 2004) (on appeal to the 10th Cir), *3 Rivers Telephone Cooperative, Inc v U S. West Communications, Inc* , CV 99-80-GF-CSO, pp 48-49 (D Mont Aug. 22, 2003), *In re Application of Southwestern Bell Wireless L L C for Arbitration Under the Telecomm Act of 1996*, Cause No PUD 2002200149, Order No 468958, *Final Order*, p 4. Exhibit A p 17, & Exhibit B p 1 (Corporation Comm Okla Oct 22, 2002)

ISSUE 2b: Do the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC)?

Positions of the Parties

The CMRS providers maintain that the FCC Rules provide for the payment of reciprocal compensation for all intraMTA traffic regardless of how it is delivered or whether the traffic is completed directly or indirectly.[69] Additionally, they state that the reciprocal compensation requirement is not affected by the type of intermediary carrier, whether a transiting carrier or an IXC.[70] They maintain the position that as long as the land originated traffic involved terminates to a CMRS provider within the same MTA, the ICO member should pay the CMRS provider reciprocal compensation.[71]

The ICO members aver that a LEC's obligation to pay reciprocal compensation is applicable only with respect to the LEC's local exchange service traffic and cannot extend to a call carried by the originating customer's interexchange carrier.[72] Interexchange traffic is subject to the framework of access, as recognized by the FCC's position that most traffic between LECs and CMRS providers is not subject to interstate access charges unless carried by an IXC.[73] Therefore, the ICO members argue, ICO calls delivered to a CMRS provider by an IXC are subject to access from the IXC and not reciprocal compensation from an ICO.[74]

Deliberations and Conclusions

Access charges were developed to address a situation in which three carriers, typically the originating LEC, the IXC and the terminating LEC, collaborate to complete a long distance

[69] *Final Joint Issues Matrix* at p 2 and Billy H. Pruitt, Pre-Filed Direct Testimony, p 30 (June 3, 2004)
[70] Billy H Pruitt, Pre-Filed Direct Testimony, p 30 (June 3, 2004)
[71] *Id* at 31.
[72] *Response of the Rural Coalition of Small LECs and Cooperatives*, p 31 (December 1, 2003)
[73] *Id* at 34
[74] *Id* at 35-36

call. Reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. The FCC has stated that long distance traffic is not subject to the transport and termination provisions of Section 251 of the Act and that the reciprocal compensation provisions of Section 251(b)(5) for the transport and termination of traffic do not apply to interstate or intrastate interexchange traffic.[75]

In its *First Report and Order*, the FCC stated that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under Section 251(b)(5) rather than interstate or intrastate access charges.[76] The FCC also concluded that traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC.[77] The FCC in *TSR Wireless LLC v US West* stated,

> [A] LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier. This may result in the same call being viewed as a local call by the carriers and a toll call by the end-user.[78]

Many times LATA boundaries traverse MTAs. When this situation occurs, an intraMTA call that originates in one LATA and terminates in another LATA will necessarily involve an IXC and will be subject to the access charge regime rather than reciprocal compensation. Nevertheless, based upon the plain language of the FCC, a majority of the Arbitrators found that any wireline-wireless traffic that does not cross a LATA boundary and that originates and terminates within the same MTA is subject to reciprocal compensation whether or not it is carried by an IXC. For these reasons, a majority of the Arbitrators voted that the reciprocal

[75] *First Report and Order*, 11 FCC Rcd. 15499 at ¶ 1034
[76] *Id* at ¶ 1043
[77] *Id*
[78] *TSR Wireless v US West, Memorandum and Order*, 15 FCC Rcd 11166 at ¶ 31 (2000)

compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC) unless the call crosses a LATA boundary.[79]

[79] Director Jones did not vote with the majority. It was his position that the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an interexchange carrier. Relying on the definition of telecommunications traffic contained in Rule 51.701(b)(2), Director Jones rejected the Coalition's position that "telecommunication traffic" does not include traffic carried by an interexchange carrier. He also stated that his conclusion is consistent with the United States District Court ruling in *Atlas Telephone Company v. Corporation Commission of Oklahoma*, 309 F. Supp.2d 1299, 1310-11 (W.D. Okla. 2004), the FCC's *First Report and Order*, 11 FCC Rcd 15499 at ¶ 1043; and the FCC's decision in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order on Remand*, 16 FCC Rcd 9151 at ¶ 47 (2001).

ISSUE 3: Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO?

Positions of Parties

The CMRS providers argue that the carrier on whose network a call originates is responsible for paying the carrier on whose network the call terminates.[80] The CMRS providers assert that federal law establishes that the originating carrier has an obligation to compensate and 47 C.F.R. § 51.703 states that a LEC may not charge another telecommunications carrier for telecommunications traffic that originates on the LEC's network.[81]

The ICO members maintain that when a CMRS carrier utilizes a transit arrangement through a third party instead of establishing a physical point of interconnection ("POI") with the ICO network, the CMRS providers would pay the transiting party transport and termination and the transiting party would pay termination to the ICO members. The payment is based on the contracts and arrangements established between and among the multiple parties. The ICO members assert that the "meet-point billing" arrangement between the ICO members and BellSouth is not an arrangement addressed by the existing interconnection rules and established standards.[82] The ICO members have a similar three-party arrangement in Kentucky, where BellSouth, the party that connects to the ICO member, is responsible for the traffic it terminates to the ICO member. [83]

The ICO members assert that the FCC has confirmed that its interconnection rules have not addressed the transit service situations and that its rules have not established any obligation for a three-party transit arrangement. Per the *First Report and Order*, the only three-party

[80] *Final Joint Issues Matrix* at p 5
[81] Suzanne K Nieman, Pre-Filed Direct Testimony, p 7 (June 3, 2004).
[82] *Final Joint Issues Matrix* at p. 6.
[83] Steven E. Watkins, Pre-Filed Direct Testimony, p 18 (June 4, 2004)

arrangement recognized by the FCC is one where an IXC acts as an intermediary and that arrangement is subject to access charges.[84]

The ICO members rebut the CMRS providers' claim that traffic carried by BellSouth, acting as an IXC and commingling CMRS traffic with its IXC traffic, is an indirect interconnection arrangement applicable to FCC subpart H Rules. Part 51 Rules do not mention a three-party interconnection arrangement as contemplated here. The ICO members are, however, willing to enter into a voluntary arrangement outside the scope of an arbitrated interconnection arrangement.[85]

Deliberations and Conclusions

The Act requires telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.[86] Therefore, the ICO members have a statutory obligation to interconnect with the CMRS providers. The local exchange carriers who are members of the Coalition are responsible for establishing reciprocal compensation arrangements for both the transport and termination of telecommunications traffic.[87] The FCC Rules require that each LEC shall establish reciprocal compensation for transport and termination of telecommunications traffic with any requesting carrier and a LEC may not assess charges on any other telecommunications carrier for traffic that originates on the LEC's network.[88]

Notwithstanding the Coalition's claim that there is no interconnection point between the ICO members and the CMRS providers because the CMRS providers have opted to use the existing BellSouth common trunk group,[89] a majority of the Arbitrators found that a point of

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[84] *Id* at p 17.
[85] Steven E. Watkins, Pre-Filed Rebuttal Testimony, pp. 11-12 (June 25, 2004)
[86] 47 U S C § 251(a)(1) (2004)
[87] 47 U S C § 251(b)(5) (2004)
[88] 47 C F.R. § 51 703 (a) and (b) (2004)
[89] *Post-Hearing Reply Brief of the Rural Coalition of Small LECs and Cooperatives*, p 11 (October 5, 2004).

interconnection exists between BellSouth and the ICO members with regard to that common trunk. The architecture of the common trunk is not at issue. What is at issue in this docket is the point of indirect interconnection on the network which determines the compensation obligation of an ICO member or a CMRS provider. A majority of the Arbitrators concluded that the most efficient means to resolve this issue is by maintaining the point of interconnection that currently exists between the ICO members and BellSouth and between the CMRS providers and BellSouth and voted that, pursuant to 47 C.F.R. § 51.703(a) and (b), the company that originates the call is responsible for paying the party terminating the call.[90]

[90] Director Jones concurred with the majority's conclusion only He takes no position with regard to the point of interconnection between the ICO members and BellSouth and the CMRS providers and BellSouth His vote rests on the provision of 47 U S C. § 251 and 47 C F R §§ 20.11(c), 51 701(e) and 51 703(a) and (b)

ISSUE 4: When a third-party provider transits traffic, must the Interconnection Agreement between the originating and terminating carriers include the transiting provider?

Positions of the Parties

The CMRS providers maintain that any interconnection agreements between the CMRS providers and the ICO members should not include third-party transiting carriers. Rather, the CMRS providers assert that a call from a CMRS provider through a third-party provider should be governed by an agreement between the CMRS provider and the third-party carrier and another agreement between the third-party carrier and the terminating carrier.[91] Also, the CMRS providers argue that the ICO members have a legal obligation to enter into interconnection agreements with the CMRS providers that include reciprocal compensation arrangements.[92] Finally, the CMRS providers assert that the TRA has previously recognized that Section 252 agreements are comprised of two parties and not three.[93]

The ICO members argue that the CMRS providers already have an indirect interconnection arrangement with the ICO members, through the transport services of BellSouth, and the ICO members look solely to BellSouth as having the responsibility for that traffic. Further, the ICO members assert that this arbitration does not involve establishing new interconnection arrangements. Instead, this arbitration pertains to the establishment of new terms and conditions for the existing arrangements.[94]

The ICO members argue that the new terms and conditions the CMRS providers seek with the ICO members cannot be acceptable unless BellSouth fulfills specific obligations and maintains ultimate responsibility regarding the identification of traffic it carries as the

[91] *Petition for Arbitration of Cellco Partnership, d/b/a Verizon Wireless*, p 13 (November 6, 2003)
[92] *Joint Post-Arbitration Brief Submitted on Behalf of the CMRS Providers*, p 18 (September 10, 2004)
[93] *Id.* at 20.
[94] *Response of the Rural Coalition of Small LECs and Cooperatives*, p 40 (December 1, 2003)

intermediary between the CMRS providers and the ICO members.[95] The ICO members maintain that this issue is outside the scope of a Section 252 arbitration because it is associated with indirect interconnection and the FCC has not established standards with respect to indirect interconnection. Therefore, the issue cannot be lawfully addressed in this proceeding consistent with the arbitration standards set forth in Section 252(c) of the Act.[96]

Deliberations and Conclusions

The Arbitrators unanimously concluded that when a third-party provider transits traffic, the third party is not required to be included in the interconnection agreement between the originating and terminating carriers.[97] This circumstance will require the ICO members to also negotiate an interconnection agreement with a transit provider. This conclusion is supported by the definition of "interconnection" in 47 C.F.R. § 51.5 which states that interconnection is "the linking of two networks for the mutual exchange of traffic." This definition embraces the linking of two networks which, of necessity, will result in an interconnection agreement between the two networks (parties) being linked. The Arbitrators found nothing in the 1996 Act, FCC Rules or any FCC Order that requires three-party interconnection agreements. To the contrary the FCC has discouraged three-party interconnection agreements.[98]

The Arbitrators voted unanimously that when a third-party provider transits traffic, the interconnection agreement between the originating and terminating carriers should not include the transiting provider as a party. Nevertheless, the interconnection agreement between the

[95] *Final Joint Issues Matrix* at p 7
[96] *Post Hearing Brief of the Rural Coalition of Small LECs and Cooperatives*, p 34-35 (September 10, 2004)
[97] Transcript of Proceedings, pp. 22-23 (January 12, 2005)
[98] "We believe that the arbitration proceedings generally should be limited to the requesting carrier and the incumbent local exchange provider This will allow for a more efficient process and minimize the amount of time needed to resolve disputed issues We believe that opening the process to all third parties would be unwieldy and would delay the process We will, however, consider requests by third parties to submit written pleadings This may, in some instances, allow interested parties to identify important public policy issues not raised by parties to an arbitration" *First Report and Order*, 11 FCC Rcd 15499, ¶ 1295 (1996)

originating and terminating carrier should address all terms and conditions relating to the transit traffic including the method of transit and who pays the transiting provider.[99]

[99] Director Jones agreed with the conclusion, but provided the following alternative reasoning . "[T]here is nothing in the Act that prevents the adoption of a three-way indirect interconnection arrangement through the execution of multiple two-party agreements or that requires the use of a single multi-party agreement to create a three-way indirect interconnection agreement. And the Coalition has agreed, nevertheless, that a three-way arrangement can be memonalized in three distinct agreements" Transcript of Proceedings, p 23 (January 12, 2005)

ISSUE 5: Is each party to an indirect interconnection arrangement obligated to pay for the transit costs associated with the delivery of intraMTA traffic originated on its network to the terminating party's network?

Positions of Parties

The CMRS providers assert that the originating party is responsible for paying applicable transit costs associated with the delivery of its traffic to a terminating carrier.[100] According to the CMRS providers, "the FCC has established a 'calling party network pays' ('CPNP') regime . . . [covering] all parties that carry telecommunications traffic including both the ICOs and the CMRS providers."[101] The CMRS providers acknowledge their responsibility to pay for traffic originated on their network, delivered through a third-party transit provider, and terminated to the ICO members. Further, they state that the ICO members are, therefore, responsible for paying third-party transit costs for traffic originated on the ICO members' network. The CMRS providers rely on 47 C.F.R. § 51.703(b) as stating "that [a] LEC may not assess charges on any other telecommunications carrier for traffic that originates on the LEC's network."[102]

The ICO members assert that as incumbent providers, they have no obligation to establish interconnection with other carriers or provide interconnection services at a geographic point beyond their service areas.[103] Therefore, the ICO members state that they are not responsible for transport of telecommunications beyond their own networks.[104] According to the ICO members, to require such an arrangement would impermissibly obligate them to provide a superior network compared to the networks the ICO members use to provide service.[105] Further, the ICO members state that the FCC Rules regarding reciprocal compensation envision traffic exchange

[100] *Final Joint Issues Matrix* at p 8
[101] *Petition for Arbitration of Cellco Partnership, d/b/a Verizon Wireless*, p. 14 (November 6, 2003) citing *TSR Wireless v US West, Memorandum and Order*. 15 FCC Rcd 11166, ¶ 31 (2000)
[102] Billy H Pruitt, Pre-Filed Direct Testimony, pp. 20-23 (June 3, 2004).
[103] *Final Joint Issues Matrix* at p 8.
[104] *Id*
[105] Steven E Watkins, Pre-Filed Direct Testimony, pp 24-25 (June 4, 2004)

taking place at an interconnection point on the network of the LEC not on another carrier's network.[106]

Deliberations and Conclusions

The ICO members currently have established points of interconnection ("POI") with BellSouth at the furthest points within the ICO members' serving areas. As part of this arrangement, the ICO members have opted, at this time, not to utilize their own tandem switching, but instead to use a BellSouth tandem switch that is located outside their serving areas. Because the ICOs have opted to utilize the BellSouth tandem as opposed to their own tandem to handle the exchange of traffic between an ICO member and a CMRS provider, the ICO members have in fact extended their networks past the existing POI to the tandem switch. Thus, the Coalition's assertion that the Authority cannot require an ICO to take financial responsibility for transport of CMRS traffic to the tandem switch must be rejected. As the networks exist, utilizing BellSouth's tandem, the ICO members have an obligation for the cost associated with utilizing the trunking facilities.

FCC Rules define transport as the transmission and any necessary tandem switching of telecommunications traffic subject to Section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office.[107] Currently, the ICO members and CMRS providers are both relying on BellSouth to provide tandem switching in order to complete calls outside their respective networks. Therefore, by rule each is required to include the existing commingled trunk group as part of its network.

[106] *Id*
[107] 47 C F R § 51 701(c) (2004)

Each carrier is responsible for transporting a call originated on its network to the interconnect point with the network of the terminating carrier.[108] Therefore, if a call originates in a switch on one party's network then that party is responsible for the transiting costs (the cost associated with the utilization of the BellSouth trunk group) in order to get that call through its network to the POI. In the instance where the CMRS provider originates a call, the CMRS provider has an obligation to pay the cost associated with the transport and termination of the call. The call is handed off at the furthest point on the ICO network where, currently, BellSouth interconnects with the ICO member.[109] Therefore, it is the responsibility of the CMRS provider to negotiate terms with BellSouth for the traffic traversing the commingled trunk group. Similarly, calls that originate on an ICO member's network which traverse the BellSouth trunk group obligates that ICO member to pay the appropriate transport and termination charges associated with getting that call to the POI of the CMRS provider, which is located at the BellSouth tandem. Likewise, the ICO member would negotiate terms to utilize the commingled trunk group or discontinue its traffic exchange via that trunk group.

For the reasons stated, a majority of the Arbitrators concluded that each party to an indirect interconnection arrangement is obligated to pay for the transit costs associated with the delivery of intraMTA traffic originated on its network to the terminating party's network.

[108] 47 C F R § 51 703(a) and (b) (2004)
[109] Transcript of Proceedings, v VIII, pp. 7-8 (August 11, 2004)

In their deliberations, a majority of the Arbitrators further concluded that the cost of transiting traffic, in this case, includes the cost of transporting the traffic over the common trunk line between the ICO members and the transit provider.[110]

[110] Director Jones agreed with the conclusion, but provided the following alternative reasoning

> I conclude that this issue should be answered in the affirmative, but instead offer the following explanation that, first, according to the FCC's orders in the Texcom docket, transit costs are initially paid to the transit provider
>
> In Texcom, a case involving transit traffic between a paging carrier, GTE North, and a third-party originating carrier, the FCC explained that the payment of transit costs should be such that the originating third-party carrier's customers pay for the cost of delivering their calls to the LEC while the terminating CMRS carrier's customers pay for the costs of transporting that traffic from the LEC's network to their network The same reasoning would apply when the CMRS provider is the originating carrier and the ICO is the terminating carrier
>
> Nevertheless, it is my opinion that the rates for such services and the terms and conditions through which such payments are billed are best left to negotiations between the ICOs and the transiting provider and the CMRS providers and the transiting provider
>
> Second, the FCC has further determined in Texcom that a CMRS provider – quote – may seek reimbursement of the transiting costs from originating carriers through reciprocal compensation Thus, transit costs may be recovered through the assessment of transport and termination costs as provided for in Part 51 of the FCC rules
>
> Third, consistent with my positions on the preceding issues, it is my opinion that reciprocal compensation applies to intraMTA traffic delivered via an indirect interconnection agreement

Transcript of Proceedings, pp 27-28 (January 12, 2005) (quoting *Texcom, Inc d/b/a Answer Indiana v Bell Atlantic Corp d/b/a Verizon Communications, Memorandum Opinion and Order,* 16 FCC Rcd 21493, ¶ 6, (2001)).

ISSUE 6: Can CMRS traffic be combined with other traffic types over the same trunk group?

Position of the Parties

CMRS providers state that there is no technological reason for requiring CMRS provider traffic to be delivered over segregated trunk groups and that it is also economically inefficient to require separate and distinct groups for CMRS traffic [111] In addition, the CMRS providers state that combining traffic over a single trunk is technologically feasible and a common industry practice.[112] The CMRS providers contend that the ICO members offer no compelling reason why the TRA should depart from the sensible, well-accepted practice and require separate trunk groups for CMRS traffic.[113]

The ICO members state they "do not have technically feasible methods to identify, measure, or switch, on a real-time basis, traffic based on whether the call has been originated by one of the CMRS providers."[114] The ICO members maintain that their switch does not permit them to identify the originating carrier on a real-time basis.[115] "This result is unique to the legacy interconnection arrangement that BellSouth has with each ICO member."[116] According to the ICO members, commingling of different types of traffic on the trunks provisioned by BellSouth to the ICO members for BellSouth's access services, "does not allow the separate treatment or identification of third-party traffic within the commingled traffic."[117] BellSouth's form of trunking for its own interexchange service traffic differs from the trunking that applies to all other IXCs.[118] The ICO members argue that BellSouth should discontinue "this disparate

[111] *Final Joint Issues Matrix* at p 8
[112] *Joint Post-Arbitration Brief Submitted on Behalf of the CMRS Providers*, p 26 (September 10, 2004)
[113] *Id*
[114] Steven E. Watkins, Pre-Filed Direct Testimony, p 29 (June 4, 2004).
[115] *Id*
[116] *Id*
[117] *Id*
[118] *Id*

arrangement."[119] The current arrangement creates a greater risk business-wise to the ICO members than that to which BellSouth is exposed.[120] The ICO members' witness testified, "depending on the number and type of trunk groups, there will be different types of traffic combined on or separated into individual trunk groups."[121] Further, "the mechanics of billing, the reconciliation of total usage, and the treatment of carriers that have failed to provide compensation" are all factors affected by the identity of the individual usage over each trunk group.[122] "In contrast," according to the ICO members' witness, "it is my understanding that BellSouth has direct trunks with each CMRS provider and is in a position to identify and treat each CMRS provider's traffic separately and distinctly."[123]

Deliberations and Conclusions

Currently, BellSouth provides the ICO members EMI 11-01-01 records, which are recorded in the BellSouth tandem. The format and content of these records are defined by the Alliance for Telecommunications Industry Solutions (ATIS), an industry standards body that manages standardization activities for wireline and wireless networks.[124] Such activities include managing interconnection standards, number portability, toll free access, telecom fraud, and order and billing issues.[125]

The ICO Members can use the EMI 11-01-01 records to identify CMRS traffic.[126] These EMI 11-01-01 records are sent to the ICO members on a weekly or daily schedule.[127] In

[119] *Id*
[120] *Id*
[121] *Id*
[122] *Id*
[123] *Id*
[124] BellSouth's Response to Staff Data Request, p 1 (September 20, 2004)
[125] *Id*
[126] *Id*
[127] *Id* at pp 1-2

addition, BellSouth provides Signaling System No.7 ("SS7") to the ICO members.[128] SS7 architecture is set up in such a way that any node can exchange signaling with any other SS7 capable node, even in an indirect interconnection arrangement. In response to the Authority's data request of August 30, 2004, BellSouth stated that while SS7 data is real-time for call set-up purposes, it is not typically used to generate billing. BellSouth states that the SS7 data may be used to assist in verifying the accuracy of the EMI 11-01-01 records.

While this method of verification may not be real-time, BellSouth can and does provide sufficient information to the ICO members to enable them to identify CMRS traffic and bill accordingly. Therefore, the Arbitrators voted unanimously that either with direct or indirect interconnection, the combining of traffic types over the same trunk should be permitted, provided the calls are properly timed, rated, and billed.

[128] *Id* at 1 SS7 is the standard communication system that is used to control public telephone networks and is a prerequisite for the implementation of an Integrated Digital Services Network ("ISDN")

ISSUE 7: (A) Where should the point of interconnection ("POI") be if a direct connection is established between a CMRS provider's switch and an ICO's switch?

(B) What percentage of the cost of the direct connection facilities should be borne by the ICO?

Position of the Parties

The CMRS providers state that a POI for a dedicated two-way facility may be established at any technically feasible point on the ICO member's network or at any other mutually agreeable point pursuant to applicable federal rules and the cost of the dedicated facility between the two networks should be fairly apportioned between the parties.[129] The CMRS providers further state that the FCC has "clearly established that with respect to dedicated facilities that interconnect two parties' networks, the parties are to share the costs of such facilities based upon their proportionate use of the facilities, regardless of how the facilities are provisioned, and without regard to the carriers' respective service areas."[130]

The ICO members state that this issue is "exclusively related to an actual direct physical interconnection point that the CMRS provider may establish pursuant to Subpart H [of the FCC Rules] for the exchange of traffic."[131] "The indirect arrangement with BellSouth that is the subject of the negotiations and arbitration is not related to this issue."[132] "With the exception of any separate requests and discussions that any individual CMRS providers may have with an individual ICO, the CMRS providers have not requested any interconnection point on the networks of the ICO [members] in the context of these group negotiations."[133]

[129] Marc B Sterling, Pre-Filed Direct Testimony, pp 10-11 (June 3, 2004).
[130] *Joint Post-Arbitration Brief Submitted on Behalf of the CMRS Providers*, p 75 (September 10, 2004)
[131] Steven E Watkins, Pre-Filed Direct Testimony, p 32 (June 4, 2004)
[132] *Id*
[133] *Id*

Deliberations and Conclusions

The Act obligates incumbent LECs to provide interconnection at any "technically feasible point within the carrier's network."[134] The FCC has concluded that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations.[135] Also, the FCC has required that an incumbent LEC must prove to the state commission that a particular interconnection or access point is not technically feasible.[136]

Interconnection obligations include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection.[137] In such cases where the incumbent must modify its facilities in order to accommodate such interconnection, the FCC has not said that the costs associated with those modifications cannot be incorporated into interconnection rates.

Any future direct interconnection agreement between the parties would be subject to the CMRS providers designating the point of interconnection. Then, if the ICO member considers that the designated point of interconnection is not technically feasible, the ICO member must demonstrate this to the Authority.

The CMRS providers state that a point of interconnection for a dedicated two-way facility may be established at any technically feasible point on the ICO's network or at any other mutually agreeable point pursuant to applicable federal rules and the cost of the dedicated facility between the two networks should be fairly apportioned between the parties. Once a CMRS provider requests direct interconnection, the parties should negotiate and the specific issue should be brought to the TRA for arbitration if the parties are unable to reach agreement. The

[134] 47 C F R § 20 3 (2004), Definition of Interconnection, 47 C.F R §§ 20 11(a) and (c) (2004), Interconnection of CMRS Providers to Facilities of Local Exchange Carriers, and 47 C F R. § 51 5 (2004), Definition of Technically Feasible
[135] 47 C F R. § 51 5 (2004), Definition of Technically Feasible
[136] *First Report and Order*, 11 FCC Rcd 15499 at ¶ 205
[137] 47 C F R § 51.5 (2004), Definition of Technically Feasible

Interconnection Agreement between an ICO member and a CMRS provider, whether negotiated or arbitrated, will determine the rates, terms and conditions for interconnection between the parties.

With regard to Issue 7(A), the Arbitrators voted unanimously that the CMRS providers have the right pursuant to the Act and FCC Rules to designate the point(s) of interconnection at any technically feasible point on the ILECs' network and the CMRS providers shall be responsible for delivering calls to the point of interconnection with the ICO members. The Arbitrators also voted unanimously that the ICO members shall be responsible for delivering calls to the point of interconnection, as they would with any other provider, whether it happens to be an ILEC, CLEC or CMRS provider. As to Issue 7(B), a majority of the Arbitrators voted that the cost for direct connection facilities should be borne by the CMRS provider to the point of interconnection and facilities on the other side of the CMRS provider's point of interconnection should be borne by the ICO member.[138]

[138] Director Jones did not vote with the majority as to Issue 7(B), stating he "found that there is insufficient evidence in the record to specify a percentage of the cost of the direct connection facilities to be borne by the ICOs." Transcript of Proceedings, p 33 (January 12, 2005) Instead, Director Jones directed the parties to the standard in 47 C F R § 51 709(b) (2004)

ISSUE 8: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect or direct traffic?

Positions of the Parties

The CMRS providers maintain that the FCC's default proxy rates have been invalidated.[139] Therefore, the availability of proxies remains unsettled and there are only two alternatives clearly available under FCC regulations for establishing transport and termination rates: (1) forward-looking rates based on appropriate cost studies, or (2) bill-and-keep.[140]

The CMRS providers assert that "because of the ICOs' failure to produce (1) forward-looking cost studies and (2) balance-of-traffic studies, FCC regulations mandate that the TRA adopt bill-and-keep as the appropriate compensation mechanism."[141] The CMRS providers propose establishing bill-and-keep arrangements as the appropriate compensation mechanism until the ICO members produce a valid, forward-looking cost study or a valid balance of traffic study.[142] The CMRS providers contend that FCC Rule 51.705 sets forth the alternative available to state commissions governing reciprocal compensation arrangements. The CMRS providers assert that of the three alternatives, only the forward-looking cost or bill-and-keep options are warranted.[143] The CMRS providers claim that reciprocal compensation rates must be symmetrical and cost-based per FCC regulations.[144] To the CMRS providers, cost-based rates preclude setting a composite rate for all ICO members. Rather, company specific factors should be utilized to determine a company specific cost.[145] The CMRS providers note that the ICO members have not presented cost studies in this docket and failed to provide support for their

[139] *Petition for Arbitration of Cellco Partnership, d/b/a Verizon Wireless*, p. 18 (November 6, 2003)
[140] *Joint Post-Arbitration Brief Submitted on Behalf of the CMRS Providers*, pp 55-56 (September 10, 2004)
[141] William H Brown, Pre-Filed Direct Testimony, p 17 (June 3, 2004)
[142] *Id*
[143] *Id* at 18
[144] *Id* at 19
[145] *Id* at 20.

cost claims.[146] For these reasons, the CMRS providers advocate bill-and-keep as a feasible option for setting a reciprocal compensation rate.[147] The CMRS providers further state that the ICO members are not precluded from filing cost and traffic studies to replace the bill-and-keep arrangements.[148]

The CMRS providers supplied benchmark rates to illustrate that the ICO members' proposed rates are too high.[149] The CMRS providers argued that because the rates are only approximate and not based on company specific data, they are not forward-looking and should not be adopted as rates for the purpose of reciprocal compensation. The CMRS providers recognize that the Coalition members are in possession of the necessary information to formulate TELRIC rates for reciprocal compensation. The CMRS providers also note that FCC Rule 51.505(e) requires incumbents to file cost studies to ensure that rates do not exceed TELRIC.[150]

The ICO members assert that the TELRIC pricing methodology does not apply to rural telephone companies.[151] The ICO members also claim that the TELRIC pricing rules apply only to direct interconnection not the existing interconnection arrangements between the parties that include BellSouth.[152] The ICO members stated that they have made voluntary rate proposals to the CMRS providers.[153] The ICO members did not provide cost studies in this proceeding.

Deliberations and Conclusions

FCC Rule 51.705 provides the following regarding rates for an incumbent LEC's transport and termination:

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[146] *Id* at 21
[147] *Id* at 22
[148] *Id* at 25
[149] W Craig Conwell, Pre-Filed Rebuttal Testimony, p 10 (June 24, 2004)
[150] FCC Rule 51.505(e) reads, "An Incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing, using a cost study that complies with the methodology set forth in this section and § 51 511 "
[151] Steven E Watkins, Pre-Filed Direct Testimony, p 35 (June 4, 2004)
[152] *Id*
[153] *Id*

> (a) An incumbent LEC's rates for transport and termination of local 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.[154]

A majority of the Arbitrators determined that the rates should be based on forward-looking economic costs.[155] Specifically, the rates should be set using the TELRIC pricing methodology. Although the ICO members voluntarily proposed rates, the majority agreed with the CMRS providers that those rates are not compliant with the required TELRIC methodology. The rates offered by the ICO members were not based on forward-looking cost studies. Instead, they were derived from interstate access rates, which include embedded costs. Embedded costs that are permissible in the calculation of access rates are not permissible in the calculation of rates based on forward-looking costs.

The majority of the Arbitrators found that the use of interim rates pending the implementation of TELRIC-based rates is legally sound.[156] Specifically, the various state commissions have jurisdiction derived from the Act to set rates when carriers fail to do so voluntarily by contract.[157] State commissions may, consistent with FCC Rules, set interim rates subject to true-up during the process of establishing TELRIC rates.[158] Given the lack of cost or

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[154] 47 C F R § 51 705 (2004)
[155] Director Tate did not vote with the majority *See* Transcript of Proceedings, p 43 (January 12, 2005)
[156] *Id*
[157] 47 U S C § 252(a)-(b) (2004), *see also Verizon Communications Inc v FCC*, 535 U.S. 467, 492, 122 S.Ct 1646, 1662 (2002)
[158] *See AT&T Corp v FCC*, 220 F 3d 607 (D C Cir 2000) (court reviewed the New York Public Service Commission's use of an interim or placeholder rate subject to true-up for line conditioning charges in a Section 271 proceeding)

traffic studies upon which to implement permanent rates, interim rates that are subject to true-up are appropriate.[159]

A majority of the Arbitrators voted 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. The majority determined that the BellSouth reciprocal compensation rate is appropriate to adopt in the interim for two reasons. First, the interim rate will be subject to true-up, thus mitigating the risk that either the ICO members or CMRS providers will be unduly enriched or left inadequately compensated once the final rate is established. Second, the rate is a reasonable interim rate because it is a rate established for an incumbent LEC. In approving the establishment of an interim rate, the majority also voted to commence additional proceedings to establish a permanent cost-based rate for reciprocal compensation and to resolve the issue of whether such rates must be symmetrical between the ICO members and the CMRS providers.[160] Given this decision, the Arbitrators then appointed Chairman Miller to prepare the additional issues for hearing by the full panel.

[159] Additional precedent for the Authority's use of interim rates in arbitration proceedings can be found in the following dockets *In re Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc and BellSouth Telecommunications, Inc Pursuant to 47 U S C Section 252*, Docket No. 96-01152, *First Order of Arbitration Awards*, p. 35 (November 25, 1996) (ordering interim prices pending the completion of cost studies), *In re Petition of Nextlink Tennessee, LLC for Arbitration of Interconnection with BellSouth Telecommunications, Inc*., Docket No 98-00123, *Final Order of Arbitration Award*, p 7 (June 25, 1999) (setting interim rates for riser cable and terminating wire), and *In re Petition for Arbitration of ITC^DeltaCom Communications, Inc with BellSouth Telecommunications, Inc Pursuant to the Telecommunications Act of 1996*, Docket No 99-00430, *Interim Order of Arbitration Award*, pp 47-49 (August 11, 2000) (setting interim rates for DSL UNEs subject to a true-up retroactive to the expiration date of the current agreement)

[160] Director Tate did not vote with the majority *See* Transcript of Proceedings, p 43 (January 12, 2005)

ISSUE 9: Assuming the TRA does not adopt bill-and-keep as the compensation mechanism, should the parties agree on a factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic?

Positions of the Parties

The CMRS providers note that some carriers can measure traffic sent to another carrier while others cannot. For the carriers that cannot measure traffic, a 'traffic factor' will be used to replace actual measurement.[161] The practice is an industry standard and often set at a 60/40 split between the carriers.[162]

The ICO members argue that the use of factors should not be imposed by the Authority but should be solely voluntary.[163] The ICO members assert that the use of factors is not a statutory requirement.[164] The ICO members further claim that they cannot directly measure traffic because BellSouth delivers CMRS traffic over a feature Group C trunk.[165] Given the indirect interconnection arrangement, the ICO members aver that factors are unnecessary because BellSouth can, and should be required, to provide traffic records.[166]

Deliberations and Conclusions

Having approved the establishment of an interim rate subject to true-up for reciprocal compensation, the Arbitrators voted unanimously to require the parties to file an agreed upon factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS providers do not measure traffic. The Arbitrators established January 25, 2005 as the date by which the factor shall be filed with the Authority. The Arbitrators further determined

[161] William H Brown, Pre-Filed Direct Testimony, p 29 (June 3, 2004)
[162] *Id*
[163] Steven E Watkins, Pre-Filed Direct Testimony, p 38 (June 4, 2004)
[164] *Id*
[165] *Id*
[166] *Id*

unanimously that if an agreement on a factor has not been reached by January 25, 2005, the parties shall submit this information through final best offers ("FBOs") no later than February 8, 2005.[167]

[167] The CMRS providers and the ICO members subsequently agreed to a traffic ratio factor of 70% mobile-originated/30% landline-originated that establish a de minimus factor of 5,000 MOUs per month below which no billing will occur *See* Joint Letter submitted on behalf of the CMRS providers and the members of the Rural Independent Coalition (February 9, 2005)

ISSUE 10: Assuming the TRA does not adopt bill-and-keep as the compensation mechanism for all traffic exchanged and if a CMRS provider and an ICO are exchanging only a de minimus amount of traffic, should they compensate each other on a bill-and-keep basis? If so, what level of traffic should be considered de minimus?

Positions of the Parties

The CMRS providers argue that the transaction costs associated with billing are sometimes greater than the amounts billed for reciprocal compensation.[168] The CMRS providers claim that their request is not frivolous because they terminate traffic to over 1300 small phone companies.[169] The CMRS providers request that if less that 50,000 minutes of use occur, no bills should be issued.[170]

The ICO members assert that there is no interconnection requirement to allow for de minimus billing amounts and that this issue is frivolous.[171]

Deliberations and Conclusions

As to this Issue, the Arbitrators voted unanimously that the parties should exchange de minimus amounts of traffic on a bill-and-keep basis. Further, the Arbitrators found that, in the absence of an agreement among the parties as to what level of traffic should be considered as de minimus, the parties shall file with the Authority by January 25, 2005, what level of traffic is to be considered de minimus. If agreement on a de minimus amount cannot be reached by this date, the parties shall file FBOs on this amount no later than February 8, 2005.[172]

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[168] William H Brown, Pre-Filed Direct Testimony, pp 31-32 (June 3, 2004)
[169] *Id* at 32-33
[170] *Id* at 32
[171] Steven E. Watkins, Pre-Filed Direct Testimony, p 39 (June 4, 2004).
[172] The CMRS providers and the ICO members subsequently agreed to a de minimus factor of 5,000 MOUs per month *See* Joint Letter submitted on behalf of the CMRS providers and the members of the Rural Independent Coalition (February 9, 2005)

ISSUE 11: Should the parties establish a factor to delineate what percentage of traffic is interMTA and thereby subject to access rates? If so, what should the factor be?

Positions of Parties

The CMRS providers explain that because the Act requires reciprocal compensation for telecommunications traffic that originates and terminates in the same MTA, traffic that originates outside the MTA is subject to access charges.[173] The CMRS providers argue that there is no evidence that interMTA traffic is anything other than an insignificant amount, nor is there evidence that the traffic is anything other than balanced. The CMRS providers therefore request that interMTA traffic be bill-and-keep. In the event the parties agree to replace bill-and-keep because of increasing volumes of traffic that create an imbalanced situation, then interMTA traffic would be based on actual measurements, unless a party lacks the capability to measure traffic. In the case where a carrier could not measure traffic, a traffic factor would apply.[174] InterMTA factors currently exist in arrangements with similarly situated LECs in other states.[175]

During negotiations, the ICO members were willing to negotiate a mutually agreeable factor. The ICO members want a factor that adequately represents traffic that is interMTA. Furthermore, the ICO members acknowledge that because the traffic may vary with the ICO member and proximity to a CMRS provider's service area, many factors are involved.[176] The ICO members assert that the amount of interMTA traffic is growing. This traffic is subject to intrastate and interstate access charges payable to the ICO members. The ICO members opine that the TRA should require the CMRS providers to produce data that would indicate the

[173] William H Brown, Pre-Filed Direct Testimony, pp 33-34 (June 3, 2004).
[174] *Id* at 33-35.
[175] *Final Joint Issues Matrix* at p 12
[176] *Id*

appropriate level of interMTA traffic, per ICO member. Further, the TRA should affirm that this traffic is subject to interstate and intrastate access charges.[177]

Deliberations and Conclusions

A majority of the Arbitrators found that there is insufficient evidence in the record to determine whether a factor should be used and what percentage of traffic is interMTA. Therefore, a majority of the Arbitrators voted to require the CMRS providers to provide each ICO member with six (6) months of interMTA traffic data showing the amount of traffic originated by each CMRS provider and terminated to each ICO member.[178] The majority further voted that in the event this information is insufficient to permit the parties to determine whether a factor is appropriate or to calculate the traffic percentage, the parties can petition the Authority for assistance.

The Arbitrators also determined unanimously that the six months data should be provided no later than January 25, 2005, with the parties notifying the Authority by February 8, 2005 if they are unable to reach an agreement. Chairman Miller also directed the parties to contact him, as Hearing Officer, as soon as possible if the parties should come to an impasse. In addition, the Arbitrators voted to place the matter on the Authority Conference scheduled for January 31, 2005, for the parties to report on the status and to provide an opportunity for them to discuss any issues they considered necessary to be brought to the attention of the Arbitrators or the Hearing Officer.[179]

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[177] Steven E Watkins Pre-Filed Direct Testimony, pp 39-40 (June 4, 2004)

[178] Director Tate did not vote with the majority *See* Transcript of Proceedings, p 46 (January 12, 2005)

[179] The CMRS providers and the ICO members subsequently agreed to an interMTA factor of 3%, which states that the factor is based on terminating wireless MOUs and will be paid only by the CMRS providers. *See* Joint Letter submitted on behalf of the CMRS providers and the members of the Rural Independent Coalition (February 9, 2005)

ISSUE 12(A): Must an ICO provide dialing parity?

Positions of the Parties

The CMRS providers, through Verizon Wireless witness Mark B. Sterling, assert that FCC Rules expressly require dialing parity regardless of the called party's provider. Specifically, they posit that where they have numbers associated with the local calling area of an ICO member, the ICO members should afford local treatment to their customers for calling those numbers to avoid customer confusion.[180]

Witness Sterling states that "CMRS providers have built wireless networks in their licensed areas in Tennessee in order to provide service in those areas" and have obtained telephone numbers for specific rate centers to be able to offer their end users local calling from wireline customers in those areas.[181] The CMRS providers maintain that while the association of a telephone number with a rate center may not be very important for mobile originated calls, it is critical for land-to-mobile calling. The CMRS providers obtain local numbers because a telephone number is associated with a particular geographic area and being able to retain local calling from landline numbers is important to CMRS customers. They opine that if number association was not important, the FCC would not have ordered intermodal local number portability. The CMRS providers state "Independent LEC-originated calls to local numbers should be able to be dialed by their customers using the same number of digits regardless of the calling or call parties' service providers."[182]

The ICO members argue that LECs are not required to rely on rate center information of other carriers contained in industry databases in providing intrastate local exchange service, stating that "the FCC has concluded that NPA-NXX information is generally meaningless with

[180] Mark B. Sterling, Pre-filed Direct Testimony, pp 13-14 (June 3, 2004).
[181] Mark B Sterling, Pre-filed Rebuttal Testimony, p. 4 (June 24, 2004).
[182] Transcript of Proceedings, v II, p 23 (August 9, 2004)

respect to mobile wireless services . . . [and] that not all carriers utilize this information for the definition and billing of services. . . ."[183] The ICO members summarized their position on this issue in the joint issues matrix by stating that "[t]he ICO members fully understand and abide by the Section 251(b) dialing parity obligation to the extent that the obligation is applicable."[184]

Deliberations and Conclusions

Dialing Parity is addressed as an obligation of all local exchange carriers in 47 U.S.C. § 251(b)(3) as follows:

> DIALING PARITY. – The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.[185]

FCC regulations require local exchange carriers to provide local and toll dialing parity to competing telephone exchange service or telephone toll service. Specifically, 47 C.F.R. § 51.207 provides:

> Local dialing parity. A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

While Section 251 of the Act does not specify CMRS providers, it does state that dialing parity will be provided to "competing providers of telephone exchange service."[186] In its *First Report and Order*, the FCC found that cellular, broadband PCS (personal communication service) and covered SMR (specialized mobile radio) providers fall within the definition of telephone exchange service providers because they provide "comparable service" to telephone

[183] Steven E. Watkins, Pre-filed Direct Testimony, p. 45 (June 4, 2004).
[184] *Final Joint Issues Matrix* at p 13.
[185] 47 U.S.C. § 251(b)(3)
[186] *Id*

exchange service.[187] In the *Second Report and Order*, the FCC held that "to the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity."[188]

The Arbitrators unanimously found that, because the FCC clearly includes CMRS providers in the definition of "competing providers of telephone exchange service," ICO members must provide dialing parity to the CMRS providers.

[187] *First Report and Order*, 11 FCC Rcd 15499 at ¶ 1013
[188] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, ¶ 65 (1996).

ISSUE 12(B) (excluding Cingular): Must an ICO charge its end users the same rates for calls to a CMRS NPA/NXX as calls to a land line NPA/NXX in the same rate center?

Positions of the Parties

The CMRS providers assert that the rules of fairness and nondiscrimination require ICO members to charge the same end user rates for calls to CMRS and landline NPA-NXXs in the same rate center.[189] They argue that "FCC rules expressly require dialing parity regardless of the called party's provider and other state commissions and basic principles of fairness and nondiscrimination requires [sic] ICO members to charge the same end user rates."[190]

The Coalition argues that the CMRS providers are seeking "a favorable and disparate arrangement under which the ICOs are forced to provide calling for their wireline end users to make unlimited calls to mobile wireless users that may be located anywhere in the nation. . . ."[191] The Coalition further states that ". . . the NPA-NXX of a mobile user does not determine the mobile user's geographic location. And with respect to jurisdiction, it is the actual location of the mobile user and the other party to a call that determines the jurisdiction of a call, not the telephone number."[192]

It is the position of the Coalition that LECs may treat as toll calls any call to a mobile user that must be delivered to an interconnection point beyond the normal local calling area of the ICO member regardless of the NPA-NXX and that ILECs "have no obligation to provision some superior form of local exchange service calling to CMRS networks."[193] The Coalition asserts that toll calls are not subject to local dialing parity or to toll dialing parity.[194] The

[189] *See In re Petition of Arbitration of Cellco Partnerships d/b/a Verizon Wireless*, p 22 (November 6, 2003)
[190] Billy H. Pruitt, Pre-filed Direct Testimony, p 31 (June 3, 2004)
[191] Steven E. Watkins, Pre-filed Direct Testimony, p 43 (June 4, 2004)
[192] *Id*
[193] *Id.* at 44
[194] *Id*

Coalition also states, "Local dialing parity is a concept that applies to a specific geographic area, not telephone numbers."[195] Further, a mobile user's telephone number "does not conform to a specific and defined geographic area as that which a LEC uses for local exchange service calls."[196] Instead, a wireless service area is based on a licensed MTA.

The Coalition asserts that LECs are not required to rely on rate center information of other carriers contained in industry databases in provision of intrastate local exchange service. The Coalition argues that telephone numbers assigned to users do not determine call jurisdiction and that reliance on numbers is an arbitrary practice.[197]

The Coalition summarizes its position as to this issue in the joint issues matrix by stating:

> Neither the Section 251(b) dialing parity obligation, associated FCC rules and regulations, nor any applicable statute or regulation establish requirements with respect to the rates any LEC, including ICOs, charge their end user customers for the provision of wireline to wireless calls. Any issue related to ICO end user service charges is not properly the subject of arbitration [198]

The Coalition further states, "The matter raised by this issue addresses how the rural LECs provision service to their end users, and not how the rural LECs provide transport and termination services."[199] For this reason, the Coalition argued that this issue is beyond the scope of the arbitration and the CMRS providers are seeking to impose requirements on the ICO members that have not been established as interconnection standards by the FCC.[200]

Deliberations and Conclusions

The FCC has interpreted 47 C.F.R. § 51.701(b)(2) as requiring "LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated."[201]

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[195] *Id*
[196] *Id*
[197] *Id* at 46
[198] *Final Joint Issues Matrix* at p 13.
[199] *Post-Hearing Reply Brief of the Rural Coalition of Small LECs and Cooperatives*, p 48 (October 5, 2004)
[200] *Id* at pp 48-49
[201] *Memorandum and Order*, 15 FCC Rcd 11166 at ¶ 31

An MTA may encompass multiple LATAs and could cross state boundaries. The FCC has stated that LECs may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates in the MTA because this is local traffic.[202] Moreover, such traffic "may result in the same call being viewed as a local call by the carriers and a toll call by the end-user."[203] As such, even though intraMTA CMRS to LEC calling is local for reciprocal compensation purposes, nothing prevents the LEC from charging its end users for toll calls.[204] LECs and CMRS providers may enter into wide area calling or reverse billing arrangements to make it appear to end users they have made a local call rather than a toll call.[205]

The Arbitrators voted unanimously that the ICO members are not required to charge end users the same rate for calls to a CMRS NPA/NXX as calls to landline numbers, unless the calls originate and terminate within the rate center[206] of the LEC. In addition, ICO member end users may be charged toll charges for calls that terminate outside of the ICO member's rate center.

[202] *Id*
[203] *Id*
[204] *Id*
[205] *Id.*
[206] In the context of this arbitration, the term "rate center" is equivalent to "local exchange area."

ISSUE 13: Should the scope of the Interconnection Agreement be limited to traffic for which accurate billing records (11-01-01 or other industry standard) are delivered?

Position of the Parties

The CMRS providers' testimony indicates that the ICO members propose to limit the scope of the interconnection agreement to intermediary traffic for which the intermediary provider supplies accurate and complete billing records.[207] The CMRS providers support the goal of exchanging accurate billing records. Nevertheless, billing errors should not exempt certain segments of traffic from the scope of the agreement. Instead, the interconnection agreement should cover all traffic and billing errors should be addressed pursuant to the dispute resolution provisions in the agreement.[208]

The ICO members argue that accurate billing records are an indispensable requirement for any three-way indirect interconnection arrangement, and the terms and conditions to such an arrangement must require the availability of accurate and complete records.[209] According to the Coalition, this issue, like others raised by the CMRS providers, illustrates why three-way interconnection arrangements are not subject to the rules and standards established for Section 251(b)(5) reciprocal compensation arrangements between connecting carriers.[210] It is the position of the Coalition that traffic that is within the scope of the agreement is defined as traffic for which BellSouth provides accurate and complete information and that BellSouth should be responsible for compensation for any traffic not identified by accurate and complete billing information.[211]

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[207] Suzanne K. Nieman, Pre-Filed Direct Testimony, p. 11 (June 3, 2004).
[208] *Id.*
[209] Steven E. Watkins, Pre-Filed Direct Testimony, p. 47 (June 4, 2004).
[210] *Id.*
[211] *Id.*

Deliberations and Conclusions

The Arbitrators found that the provision of billing records is the responsibility of the parties to the interconnection agreement. Nevertheless, either or both of the parties can enter into a separate agreement with a third party to furnish billing records to the other. If either party in a two-party interconnection agreement does not have the ability to identify all types of traffic, such as transit traffic, then it will be imperative that the party: (1) make the necessary modifications to its network to provide that ability; or (2) enter into an agreement with a third-party provider for the needed billing records. This might require some or all of the small ICO members to enter into such agreements with the provider that transits the traffic between the parties. Many such agreements already exist between BellSouth and various CMRS providers.

Accordingly, the Arbitrators voted unanimously to require that the scope of the interconnection agreement set forth all terms and conditions that include traffic for which billing records are provided in a manner that enables parties to accurately bill one another. Such billing may be accomplished using EMI 11-01-01 records and SS7 data or any other acceptable method. Billing errors that may occur should not be used as an excuse to limit the type of traffic covered by the agreement. The Arbitrators unanimously determined that the billing party is responsible for determining the amount to be billed. If the billing party does not have its own records for billing purposes, then it should use records made available to it by a third party, until such time as the billing party can install its own billing system. Further, the Arbitrators voted that the parties shall utilize a standard industry record for billing purposes such as that furnished by BellSouth, the current provider of transit services. Any disputes relating to the provisions of the interconnection agreement can be brought before the Authority for resolution.

ISSUE 14: Should the scope of the Interconnection Agreement be limited to traffic transited by BellSouth?

Position of the Parties

The CMRS providers maintain that nothing in the Act or FCC regulations require that the specific transiting provider be listed in the interconnection agreement.[212] CMRS providers further argue that, under the Act, the ICO members are obligated to provide interconnection to and accept traffic from any transiting carrier that the CMRS providers may choose.[213] Suzanne Nieman, a witness for AT&T Wireless, testifies, "[m]oreover, as long as the Agreement provides that the ICO members are to be compensated for all CMRS provider originated traffic that terminates on their network, it should not matter which carrier performs the transiting function."[214] The CMRS providers assert that listing the specific transiting provider would limit the CMRS providers' flexibility to send the traffic to the provider of choice since each change in transit provider would require an amendment to the interconnection agreement to be negotiated, filed and approved.[215] The CMRS providers assert that the ICO members are attempting to limit the scope of the interconnection agreement to traffic transited by BellSouth by requiring that the specific transiting provider be listed in the interconnection agreement.

The ICO members argue that a transit service arrangement cannot be enacted unilaterally by a tandem provider such as BellSouth.[216] Steven Watkins, testifying on behalf of the ICO members, states, "[n]o carrier has the right to establish interconnection unilaterally for it with other carriers."[217] The ICO members further contend that BellSouth is the only transit provider involved in the negotiations and arbitration although BellSouth has not yet established a transit

[212] Suzanne K Nieman, Pre-Filed Direct Testimony, p 10 (June 3, 2004)
[213] *Id*
[214] *Id*
[215] *Id* at pp. 10-11.
[216] Steven E. Watkins, Pre-Filed Direct Testimony, p 48 (August 4, 2004)
[217] *Id*

interconnection agreement with the ICO members.[218] The ICO members argue that because BellSouth is the only carrier that claims to be a transit provider, "there is no basis and no need to arbitrate terms and conditions under the speculation that there may be other carriers."[219]

Deliberations and Conclusions

In deciding this issue, it is necessary to distinguish between direct and indirect interconnection. The Arbitrators found that interconnection agreements are, by design, for direct interconnection and, therefore, are intended to be two-party agreements.

It is not necessary for an interconnection agreement between two parties to name a specific transit traffic provider because the provider for transit traffic may change during the term of the agreement. Nevertheless, it remains the responsibility of the party originating the transit traffic to ensure that the transiting carrier has established a connection with the terminating carrier and that traffic is identified in a manner that allows the terminating carrier to bill for such traffic. When existing agreements between the various parties and the transit provider expire, new agreements may be negotiated with other carriers to provide transit service. Although transit traffic provisions are not a requirement in the interconnection agreement that is the subject of this docket, the originating carrier should ensure that the third-party transiting carrier will comply with the terms and conditions contained in the interconnection agreement between the originating and terminating carriers.

For these reasons, the Arbitrators unanimously determined that the scope of the interconnection agreement is a two-party agreement and is not limited to traffic transited by a third party. The Arbitrators also determined that if an ICO member is receiving transit traffic, this traffic is subject to the agreement between the terminating carrier and transiting carrier. The

[218] *Id*
[219] *Id*

Arbitrators further concluded that third-party transit traffic may be routed in the way that either party to an interconnection agreement sees fit, provided that the transited traffic reaches the terminating carrier and that such traffic is properly identified and billed. The Arbitrators voted unanimously to require that the originating carrier be responsible to ensure that the transiting carrier has established a connection with the terminating carrier and that traffic is identified in a manner that allows the terminating carrier to bill for such traffic.

ISSUE 15: Should the scope of the Interconnection Agreement be limited to indirect traffic?

Position of the Parties

The CMRS providers presented testimony to the effect that the ICO members desire the scope of the interconnection agreement to be limited to traffic exchanged indirectly through an intermediary provider and assert this position is contrary to the provisions of the Act. The CMRS providers argue that the ICO members' position on this issue is significantly undercut by the fact that the agreement the ICO members propose in this arbitration includes provisions relating to direct as well as indirect traffic.[220]

The ICO members state that the subject of discussions with the CMRS providers has been the indirect transit arrangement with BellSouth.[221] The ICO members' witness, Steven Watkins, testified that "direct connection arrangements are, by necessity, company-specific. While boiler-plate commercial terms could be addressed in a collective arena, matters related to specific point of interconnection, provision of facilities, and other voluntary discussions pursuant to Section 252 of the Act cannot be achieved in a collective discussion."[222]

Deliberations and Conclusions

The parties have included in this proceeding only issues that involve indirect traffic and indirect interconnection. Nevertheless, while the scope of the resulting agreement may be seen as only applying or limited to indirect traffic, the parties are free to continue negotiating not only the issues in this docket but also issues not before the Authority. An agreement that is the product of arbitration may incorporate the rulings of the arbitrators. In fact, the decisions of the arbitrators often serve to spur additional negotiations between the parties. The final

[220] Suzanne K Nieman, Pre-Filed Direct Testimony, p. 9 (June 3, 2004)
[221] Steven E. Watkins, Pre-Filed Direct Testimony, p 50 (June 4, 2004)
[222] *Id*

interconnection agreement may contain rates, terms and conditions inconsistent with the arbitration decisions. The FCC recognized that to the extent the parties mutually agree, the decision reached through arbitration is not binding.[223]

For these reasons, a majority of the Arbitrators found that, notwithstanding the fact that the only issues in this proceeding involve indirect traffic and indirect interconnection, the scope of the interconnection agreement is a two-party agreement and is not limited to indirect traffic. The scope of the resulting agreement will be determined by the continuing negotiations of the parties and should include the terms and conditions for all traffic exchanged between the parties. The Arbitrators further determined unanimously that if an ICO member is receiving indirect traffic, such traffic is subject to the agreement between the terminating carrier and transporting carrier. Indirect and/or third-party transit traffic should be routed in the way that parties to an interconnection agreement see fit, provided that the indirect traffic reaches the terminating carrier and that such traffic is properly identified.[224]

[223] *First Report and Order*, 11 FCC Rcd 15499 at ¶ 1293

[224] Director Jones provided the following analysis as the basis for his agreement with the conclusion

> On this issue I find that the law is silent The record, however, indicates that the terms and conditions for direct traffic [we]re, in fact, exchanged between the parties during the negotiations Although the parties may have focused on the indirect terms and conditions, this is not a reason to limit the scope of the interconnection agreements

Transcript of Proceedings, p 57 (January 12, 2005)

ISSUE 16: What standard commercial terms and conditions should be included in the Interconnection Agreement?

Positions of Parties

The CMRS providers refer to standard commercial agreements as those contractual terms that include indemnification, limitation of liability, definitions, the term of the contract, and terminations. Although the agreements proposed by the ICO members and the CMRS providers contain similar language, there are two areas where the differences are significant -- the grounds for termination of the interconnection agreement and post-termination obligations. The CMRS providers argue that the termination language proposed by the ICO members is unduly broad by requiring the termination of the agreement for any material breach of any material term. The CMRS providers propose that termination should only occur as a result of a non-payment for an undisputed amount that continues for over sixty days after written notice and the appropriate regulatory body has been notified at least twenty-five days prior to termination of service.[225]

Regarding post-termination obligations, the CMRS providers object to the ICO members' proposal which allows for the blocking of traffic in the case of default. The CMRS providers assert that blocking traffic is not in the public interest and occurs only in the most exceptional of circumstances. Therefore, the CMRS providers argue that the ICO members' proposed terms should be rejected and the Arbitrators should instead adopt the standard terms and conditions proposed by the CMRS providers.[226]

The ICO members state that the Arbitrators should adopt the standard terms and conditions contained in either Exhibit 1 or Exhibit 2 of the ICO members' Response.[227] Exhibit

[225] Suzanne K. Nieman, Pre-Filed Direct Testimony, pp. 12-13 (June 3, 2004)
[226] *Id.* at p.14
[227] *Final Joint Issues Matrix* at p. 13.

1 is entitled Multi-Party Agreement for the Exchange of CMRS Traffic Tennessee. This agreement is a three-party agreement between BellSouth, a CMRS provider, and the rural LEC. In addition to the inclusion of BellSouth, this agreement calls for a dispute resolution process that includes mediation and arbitration by a mutually agreed-upon arbitrator. There is no mention of Section 252 of the Act as a prevailing guideline for arbitration.[228]

Exhibit 2 is entitled CMRS-LEC Agreement. This agreement is a two-party agreement between a CMRS provider and a rural LEC. Many of the items in this agreement are noted as, "Subject to Change and the resolution of other terms and conditions with Intermediary Provider."[229]

Deliberations and Conclusions

Both the ICO members and CMRS providers submitted many similar standard terms and conditions for the proposed interconnection agreement. Nevertheless, the ICO members repeatedly included BellSouth in their proposed terms, and the adoption of such terms would be inconsistent with the fact that this agreement is between the ICO members and CMRS providers and the Hearing Officer's previous ruling against the joinder of BellSouth as a necessary party in this matter.[230]

A majority of the Arbitrators found that any provision that calls for the blocking of traffic, without first exhausting all measures of resolution, does not promote the public interest. For these reasons, a majority of the Arbitrators voted to adopt the standard commercial terms and conditions proposed by the CMRS providers with the addition that traffic may be blocked and

[228] *Response of the Rural Coalition of Small LECs and Cooperatives*, Exhibit 1 (December 1, 2003)
[229] *Id* at Exhibit 2
[230] *See Order Denying Motion* (April 12, 2004)

the Interconnection Agreement may be terminated only in the event of default of a non-disputed amount or upon a ninety-day notice and permission from an appropriate governing body.[231]

[231] Director Jones did not vote with the majority, and instead, moved that the Arbitrators hold Issue No 16 in abeyance "pending further negotiations by the parties, so that some of this broad language can perhaps become more specific as the terms of the agreement are hammered out" Transcript of Proceedings, pp 60-61 (January 12, 2005)

ISSUE 17: Under which circumstances should either party be permitted to block traffic or terminate the Interconnection Agreement?

Positions of Parties

The CMRS providers argue that a party may terminate the agreement when the other party defaults in the payment of an undisputed amount due under the terms of the agreement or upon the requisite notice ninety days before the end of the term. All other disputes should be resolved pursuant to the dispute resolution procedures proposed by the CMRS providers. Specifically, the CMRS providers maintain that blocking traffic should not be permitted [232]

The ICO members assert that interconnection services provided to a CMRS provider can be terminated if, after appropriate notice and opportunity to cure default, the CMRS provider remains in default. The provision of the notice and opportunity to cure default should be consistent with that provided to other interconnecting carriers pursuant to existing standards, terms and conditions.[233] The ICO members further propose that in the event the default cannot be cured, written notice will be sent to the CMRS provider and BellSouth, and BellSouth would agree to discontinue sending traffic to the ICO member. To the extent that BellSouth fails to discontinue the delivery of such traffic, BellSouth would be responsible for the appropriate payment to the ICO member.[234] The ICO members later proposed that they would include language that is incorporated into their effective interstate access tariff, but did not provide copies or examples of the suggested language.[235]

Deliberations and Conclusions

The original proposal by the ICO members is inconsistent with previous TRA Orders because the Authority has previously ruled that BellSouth did not need to be a party to this

[232] *Final Joint Issues Matrix* at p 13
[233] *Id*
[234] Steven E Watkins, Pre-Filed Direct Testimony, Exhibit B, p 10 (June 3, 2004)
[235] *Post-Hearing Brief of the Rural Coalition of Small LECs and Cooperatives*, p 67 (September 10, 2004)

proceeding.[236] As such, the proposal requiring BellSouth to comply with terms of an agreement when BellSouth is not a party to the contract is unacceptable. The later proposal by the ICO members to incorporate language currently in effect in the interstate access tariff cannot be considered because no language was supplied or specified.

This proceeding is predominantly about the treatment of local traffic exchanged between the CMRS providers' and ICO members' end users. The CMRS providers are carriers of a significant amount of local traffic. Cellular service may be used in emergencies and as a substitute for Coalition and local service. Considering the manner of use of cellular service, the Arbitrators determined not to adopt any policy that would put the flow of this traffic at risk. Therefore, the Arbitrators voted unanimously that traffic may be blocked and the Interconnection Agreement may be terminated only in the event of default of a non-disputed amount and upon a ninety-day notice. Further, before blocking traffic, a carrier shall obtain approval from the FCC, the TRA or some other governing body having the appropriate jurisdiction.

[236] *Order Denying Motion* (April 12, 2004)

ISSUE 18: If the ICO changes its network, what notification should it provide and which carrier bears the cost?

Position of Parties

The CMRS providers assert that the ICO members must comply with the FCC's Rules in 47 C.F.R. §§ 51.325 through 51.335 regarding notification of network changes and should bear the cost of those changes.[237] The ICO members argue that the rules regarding notification of network changes are not applicable to the ICO members and offer to provide the CMRS providers with greater notice of network changes than the FCC Rules require. Further, the ICO members have not requested the CMRS providers bear the costs of an ICO member network change.[238] The ICO members propose that this arrangement assures that each party to this agreement has the right to alter its network. Further, the ICO members assure that the party making the change believes the change materially affects this arrangement, and the party making the change will provide at least 120 days notice to the other party. According to the ICO members, each party will be responsible for the cost and activities associated with accommodating such changes.[239]

Deliberations and Conclusions

Sections 51.325 through 51.335 of 47 C.F.R. directly address network changes. The ICO members failed to substantiate their claim that these rules do not apply to them. While the ICO members may offer terms exceeding that which is required by the FCC, they must at a minimum offer terms that are compliant with FCC Rules.

Therefore, the Arbitrators voted unanimously that any LEC that wishes to initiate a network change must do so in accordance with the FCC Rules found at 47 C.F.R. §§

[237] Billy H. Pruitt, Pre-Filed Direct Testimony, p 25 (June 3, 2004)
[238] *Final Joint Issues Matrix* at p 14.
[239] Steven E. Watkins Pre-Filed Direct Testimony, Exhibit B p. 10 (June 4, 2004)

51.325 through 51.335 and should bear the cost of those changes. An objection by affected providers initiates the dispute resolution process, during which time the LEC proposing modifications must maintain the existing network configuration.[240]

[240] *Final Joint Issues Matrix* at p 14

ICO ISSUE 2: **BellSouth should not deliver third-party traffic to an ICO that does not subtend a BellSouth tandem;**

ICO ISSUE 4: **The CMRS providers should clarify which of their affiliate entities seeks new terms and conditions for the utilization of indirect "transit" arrangements;**

ICO ISSUE 5: **The CMRS providers should indicate the specific scope of the traffic originating on their respective networks that is the subject of these proceedings;**

ICO ISSUE 6: **Access charges apply to both the origination and termination of interMTA traffic on the networks of the ICO members;**

ICO ISSUE 7: **Many of the issues raised in these proceedings are not the subject of established FCC rules and regulations. The parties must recognize that these issues are subject to voluntary agreement, and not to involuntary arbitration;**

ICO ISSUE 8: **Any agreement must accurately define the scope of traffic authorized to be delivered over an interconnection to ensure that the interconnection arrangement is not misused;**

ICO ISSUE 9: **Issues governing the physical interconnection arrangement between BellSouth and the ICO members must be resolved before effective new terms and conditions can be established between the CMRS providers and BellSouth; and**

ICO ISSUE 10: **The CMRS providers must provide any specific objections or concerns that they have with the terms and conditions proposed by the ICO members.**

Issue Nos. 2, 4, 5, 6, 7, 8, 9 and 10 are included in the final matrix by the ICO members; however, no testimony was filed on behalf of the Coalition with regard to these issues. The Coalition states that the ICOs' additional issues have been incorporated with the discussions addressing CMRS issues and that the ICO issues were submitted as an opportunity to highlight some of the issues that were more significant with regard to new terms and conditions for an existing indirect interconnection.[241]

The Arbitrators voted unanimously that because the ICO members have incorporated these issues into other issues considered previously, there is no need for the Arbitrators to render any decision.

[241] *Post-Hearing Brief of the Rural Coalition of Small LECs and Cooperatives*, p 68 (September 10, 2004)

IT IS THEREFORE ORDERED THAT;

The foregoing Order of Arbitration Award reflects the Arbitrators' resolution of Issues Nos. 1 through 18 and ICO Issues 2 and 4 through 10. All resolutions contained herein comply with the provisions of the Telecommunications Act of 1996 and are supported by the record in this proceeding.

Pat Miller, Chairman[242]

* * *

Deborah Taylor Tate, Director[243]

Ron Jones, Director[244]

[242] Chairman Miller prevailed on all his motions

[243] Director Tate voted with the majority on all issues with the exception of Issues 8 and 11. Director Tate resigned her position as director with the Tennessee Regulatory Authority prior to the issuance of this order

[244] Director Jones concurred in the results only on Issues 2, 4, 5, and 15 and dissented on Issues 2b, 7b, and 16