

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---------------------------------------|---|------------|
| PETITION OF BALLARD RURAL |) | |
| TELEPHONE COOPERATIVE CORPORATION, |) | CASE NO. |
| INC. FOR ARBITRATION OF CERTAIN TERMS |) | 2006-00215 |
| AND CONDITIONS OF PROPOSED |) | |
| INTERCONNECTION AGREEMENT WITH |) | |
| AMERICAN CELLULAR F/K/A ACC KENTUCKY |) | |
| LICENSE LLC, PURSUANT TO THE |) | |
| COMMUNICATIONS ACT OF 1934, AS |) | |
| AMENDED BY THE TELECOMMUNICATIONS |) | |
| ACT OF 1996 |) | |
| |) | |
| PETITION OF DUO COUNTY TELEPHONE |) | |
| COOPERATIVE CORPORATION, INC. FOR |) | CASE NO. |
| ARBITRATION OF CERTAIN TERMS AND |) | 2006-00217 |
| CONDITIONS OF PROPOSED |) | |
| INTERCONNECTION AGREEMENT WITH |) | |
| CELLCO PARTNERSHIP D/B/A VERIZON |) | |
| WIRELESS, GTE WIRELESS OF THE |) | |
| MIDWEST INCORPORATED D/B/A VERIZON |) | |
| WIRELESS, AND KENTUCKY RSA NO. 1 |) | |
| PARTNERSHIP D/B/A VERIZON WIRELESS, |) | |
| PURSUANT TO THE COMMUNICATIONS ACT |) | |
| OF 1934, AS AMENDED BY THE |) | |
| TELECOMMUNICATIONS ACT OF 1996 |) | |
| |) | |
| PETITION OF LOGAN TELEPHONE |) | |
| COOPERATIVE, INC. FOR ARBITRATION OF |) | CASE NO. |
| CERTAIN TERMS AND CONDITIONS OF |) | 2006-00218 |
| PROPOSED INTERCONNECTION |) | |
| AGREEMENT WITH AMERICAN CELLULAR |) | |
| CORPORATION F/K/A ACC KENTUCKY |) | |
| LICENSE LLC, PURSUANT TO THE |) | |
| COMMUNICATIONS ACT OF 1934, AS |) | |
| AMENDED BY THE TELECOMMUNICATIONS |) | |
| ACT OF 1996 |) | |

PETITION OF WEST KENTUCKY RURAL)
TELEPHONE COOPERATIVE CORPORATION,)
INC. FOR ARBITRATION OF CERTAIN TERMS)
AND CONDITIONS OF PROPOSED)
INTERCONNECTION AGREEMENT WITH)
AMERICAN CELLULAR CORPORATION F/K/A)
ACC KENTUCKY LICENSE LLC, PURSUANT)
TO THE COMMUNICATIONS ACT OF 1934, AS)
AMENDED BY THE TELECOMMUNICATIONS)
ACT OF 1996)

CASE NO.
2006-00220

PETITION OF NORTH CENTRAL TELEPHONE)
COOPERATIVE CORPORATION, FOR)
ARBITRATION OF CERTAIN TERMS AND)
CONDITIONS OF PROPOSED)
INTERCONNECTION AGREEMENT WITH)
AMERICAN CELLULAR CORPORATION)
F/K/A ACC KENTUCKY LICENSE LLC,)
PURSUANT TO THE COMMUNICATIONS ACT)
OF 1934, AS AMENDED BY THE)
TELECOMMUNICATIONS ACT OF 1996)

CASE NO.
2006-00252

PETITION OF SOUTH CENTRAL RURAL)
TELEPHONE COOPERATIVE CORPORATION,)
INC. FOR ARBITRATION OF CERTAIN TERMS)
AND CONDITIONS OF PROPOSED)
INTERCONNECTION AGREEMENT WITH)
CELLCO PARTNERSHIP D/B/A VERIZON)
WIRELESS, GTE WIRELESS OF THE)
MIDWEST INCORPORATED D/B/A VERIZON)
WIRELESS, AND KENTUCKY RSA NO. 1)
PARTNERSHIP D/B/A VERIZON WIRELESS,)
PURSUANT TO THE COMMUNICATIONS ACT)
OF 1934, AS AMENDED BY THE)
TELECOMMUNICATIONS ACT OF 1996)

CASE NO.
2006-00255

PETITION OF BRANDENBURG TELEPHONE)
COMPANY FOR ARBITRATION OF CERTAIN)
TERMS AND CONDITIONS OF PROPOSED)
INTERCONNECTION AGREEMENT WITH)
CELLCO PARTNERSHIP D/B/A VERIZON)
WIRELESS, GTE WIRELESS OF THE MIDWEST)
INCORPORATED D/B/A VERIZON WIRELESS,)
AND KENTUCKY RSA NO. 1 PARTNERSHIP)
D/B/A VERIZON WIRELESS, PURSUANT TO)
THE COMMUNICATIONS ACT OF 1934, AS)
AMENDED BY THE TELECOMMUNICATIONS)
ACT OF 1996)

CASE NO.
2006-00288

PETITION OF FOOTHILLS RURAL)
TELEPHONE COOPERATIVE CORPORATION,)
INC., FOR ARBITRATION OF CERTAIN TERMS)
AND CONDITIONS OF PROPOSED)
INTERCONNECTION AGREEMENT WITH)
CELLCO PARTNERSHIP D/B/A VERIZON)
WIRELESS, GTE WIRELESS OF THE)
MIDWEST INCORPORATED D/B/A VERIZON)
WIRELESS, AND KENTUCKY RSA NO. 1)
PARTNERSHIP D/B/A VERIZON WIRELESS,)
PURSUANT TO THE COMMUNICATIONS ACT)
OF 1934, AS AMENDED BY THE)
TELECOMMUNICATIONS ACT OF 1996)

CASE NO.
2006-00292

PETITION OF GEARHEART)
COMMUNICATIONS INC. D/B/A COALFIELDS)
TELEPHONE COMPANY, FOR ARBITRATION)
OF CERTAIN TERMS AND CONDITIONS OF)
PROPOSED INTERCONNECTION AGREEMENT)
WITH CELLCO PARTNERSHIP D/B/A VERIZON)
WIRELESS, GTE WIRELESS OF THE MIDWEST)
INCORPORATED D/B/A VERIZON WIRELESS,)
AND KENTUCKY RSA NO. 1 PARTNERSHIP)
D/B/A VERIZON WIRELESS, PURSUANT TO)
THE COMMUNICATIONS ACT OF 1934, AS)
AMENDED BY THE TELECOMMUNICATIONS)
ACT OF 1996)

CASE NO.
2006-00294

PETITION OF MOUNTAIN RURAL)
TELEPHONE COOPERATIVE CORPORATION,)
INC., FOR ARBITRATION OF CERTAIN TERMS)
AND CONDITIONS OF PROPOSED)
INTERCONNECTION AGREEMENT WITH)
CELLCO PARTNERSHIP D/B/A VERIZON)
WIRELESS, GTE WIRELESS OF THE MIDWEST)
INCORPORATED D/B/A VERIZON WIRELESS,)
AND KENTUCKY RSA NO 1 PARTNERSHIP)
D/B/A VERIZON WIRELESS, PURSUANT TO)
THE COMMUNICATIONS ACT OF 1934, AS)
AMENDED BY THE TELECOMMUNICATIONS)
ACT OF 1996)

CASE NO.
2006-00296

PETITION OF PEOPLES RURAL TELEPHONE)
 COOPERATIVE CORPORATION, INC., FOR) CASE NO.
 ARBITRATION OF CERTAIN TERMS AND) 2006-00298
 CONDITIONS OF PROPOSED)
 INTERCONNECTION AGREEMENT WITH)
 CELLCO PARTNERSHIP D/B/A VERIZON)
 WIRELESS, GTE WIRELESS OF THE)
 MIDWEST INCORPORATED D/B/A VERIZON)
 WIRELESS, AND KENTUCKY RSA NO. 1)
 PARTNERSHIP D/B/A VERIZON WIRELESS,)
 PURSUANT TO THE COMMUNICATIONS ACT)
 OF 1934, AS AMENDED BY THE)
 TELECOMMUNICATIONS ACT OF 1996)

PETITION OF THACKER-GRIGSBY)
 TELEPHONE COMPANY, INC., FOR) CASE NO.
 ARBITRATION OF CERTAIN TERMS AND) 2006-00300
 CONDITIONS OF PROPOSED)
 INTERCONNECTION AGREEMENT WITH)
 CELLCO PARTNERSHIP D/B/A VERIZON)
 WIRELESS, GTE WIRELESS OF THE)
 MIDWEST INCORPORATED D/B/A VERIZON)
 WIRELESS, AND KENTUCKY RSA NO. 1)
 PARTNERSHIP D/B/A VERIZON WIRELESS,)
 PURSUANT TO THE COMMUNICATIONS)
 ACT OF 1934, AS AMENDED BY THE)
 TELECOMMUNICATIONS ACT OF 1996)

O R D E R

The genesis of these cases occurred between May 30, 2006 and June 9, 2006, when 12 rural exchange carriers (collectively “RLECS”)¹ filed a total of 49 arbitration

¹ Ballard Rural Telephone Cooperative Corporation, Inc. (“Ballard Rural”); Duo County Telephone Cooperative Corporation, Inc. (“Duo County”); Logan Telephone Cooperative, Inc.; West Kentucky Rural Telephone Cooperative Corporation, Inc.; North Central Telephone Cooperative Corporation; South Central Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Foothills Rural Telephone Cooperative Corporation, Inc.; Gearheart Communications, Inc. d/b/a Coalfields Telephone Company; Mountain Rural Telephone Cooperative Corporation, Inc.; Peoples Rural Telephone Cooperative Corporation, Inc.; and Thacker-Grigsby Telephone Company, Inc.

petitions against 8 commercial radio service providers (collectively “CMRS Providers”),² pursuant to 47 U.S.C. § 252(b). The RLECs requested that the Commission address several issues relating to the pricing and rates of their interconnection and exchange of traffic with the CMRS Providers.

From the filing of the original petitions until the date of this Order, the Commission issued 3 Orders dated December 22, 2006, March 19, 2007, and November 9, 2007, addressing approximately 19 issues upon which neither the RLECs nor the CMRS Providers could agree. The Commission issued its last Order addressing the merits of the petitions on November 9, 2007, clarifying, inter alia, its decision regarding CMRS billing and the use of traffic factors for billing for intraMTA traffic.

One of the issues that the Commission clarified in the November 9, 2007 Order was the proposed Section 5.5 of the interconnection agreement that addressed CMRS billing and use of traffic factors. The Commission adopted the CMRS Providers’ proposed language for Section 5.5. The Commission found that:

[T]he CMRS Providers’ proposal is more consistent with the Commission’s previous mandates. The RLECs’ proposal would preclude the use of traffic factors, even under circumstances where the Commission found their use permissible. However, the RLECs do correctly note that the

² Alltel Communications, Inc. (“Alltel”); New Cingular Wireless PCS, LLC, successor to BellSouth Mobility LLC, BellSouth Personal Communications LLC and Cincinnati SMSA Limited Partnership d/b/a Cingular Wireless (collectively AT&T Mobility”); Sprint Spectrum L.P., on behalf of itself and SprintCom, Inc., d/b/a Sprint PCS; T-Mobile USA, Inc., Powertel/Memphis, Inc., and T-Mobile Central LLC, (collectively “T-Mobile”); and Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated (collectively, “Verizon Wireless”) and Kentucky RSA No. 1 Partnership.

CMRS Providers dispute that traffic factors may be adjusted during the course of an agreement to reflect actual traffic patterns.³

During the proceeding, the RLECs also noted that the Commission did not adopt actual traffic factors. In response to that assertion, the Commission found that:

[T]he traffic patterns proposed by the CMRS Providers should be utilized at this time. However, if either party has evidence that the traffic factors do not approximate actual traffic patterns, the evidence should be presented to the parties and brought to the Commission's attention.⁴

The Commission then ordered, *inter alia*, that the "CMRS Providers' proposed language for Section 5.5 shall be used in the parties' interconnection agreements,"⁵ and directed the parties to file, within 20 days of the date of the Order, the interconnection agreements that incorporated "decisions contained in the December 22, 2006 Order, the February 5, 2007 Order, the March 19, 2007 Order and the determinations contained herein."⁶

On December 14, 2007, after all parties received an extension of time in which to file the conforming interconnection agreements, some of the CMRS Providers filed motions for the Commission to approve their conformed interconnection agreements. The CMRS Providers also informed the Commission that their conformed agreements differed from the ones to be filed by the RLECs. Apparently, the RLECs had established a new traffic factor, one different than the traffic factors adopted by the

³ November 9, 2007 Order at 11 (footnote omitted).

⁴ *Id.* at 12.

⁵ *Id.* at 13.

⁶ *Id.*

Commission, and had added an additional paragraph to Section 5.5 of the interconnection agreements. The CMRS Providers requested that the Commission approve its interconnection agreements (which contained the traffic factors approved by the Commission) and reject those proposed by the RLECs.

According to the parties' pleadings, representatives from T-Mobile and Verizon Wireless, on behalf of all participating CMRS Providers, worked with representatives from the RLECs to prepare conformed interconnection agreements to reflect the Commission's findings in the November 9, 2007 Order and previous Orders. AT&T Mobility alleges that these negotiations led to an agreement between the parties as to what would be included in the conformed agreements. On November 28, 2007, the parties made a joint filing requesting an extension of time to file the interconnection agreements in order to address the "mechanics" of having the agreements circulated and signed.⁷

On December 6, 2007, the RLECs transmitted to the CMRS Providers the proposed final conformed agreements. The agreements contained language that the parties had not previously discussed. The new provision stated:

Notwithstanding the foregoing, if a Party has evidence that the traffic factors set forth in Appendix A to this Agreement do not approximate actual traffic patterns, that Party shall present such evidence to the other Party and, as necessary, to the Commission. The Parties will adjust the traffic factors to be consistent with the factual evidence presented. To the extent that the Parties cannot reach agreement on the

⁷ Motion of AT&T Mobility for Approval of Conformed Interconnection Agreements at 1.

modification to the traffic factors to reflect factual evidence, the Parties shall resolve such disagreement before the Commission.⁸

The CMRS Providers object to the proposed language. AT&T Mobility states that it understood the Commission's ruling regarding Section 5.5 to "provide the parties with an opportunity, in the future, to produce evidence that intraMTA traffic may have changed from the original AT&T Mobility traffic study."⁹ AT&T Mobility claims that the proposed language would "commit AT&T Mobility to litigate traffic disputes before the Commission, regardless of the relevancy, or lack thereof, of RLEC evidence, and regardless of other avenues available for dispute resolution."¹⁰ AT&T Mobility asserts that Section 14.9 of the proposed interconnection agreements specifies the various forums in which any disputes may be resolved, including the Commission, the Federal Communications Commission, courts, and arbitration. AT&T Mobility argues that nothing in the Commission's November 9, 2007 Order requires the CMRS Providers to accept the RLECs' proposed traffic factors or forces them into a contested proceeding before the Commission. AT&T Mobility also objects to traffic factors that Duo County has included in its proposed interconnection agreement. The traffic ratio approved by the Commission in its November 9, 2007 Order for Duo County was 88 percent Wireless-Originated and 12 percent Wireline-Originated, whereas Duo County now proposed a traffic ratio of 100 percent Wireless Originated and 0 percent Wireline-Originated. Duo County argues that this ratio is appropriate because no AT&T Mobility

⁸ Id. at 2.

⁹ Id. at 4.

¹⁰ Id.

customer has been assigned a number that can be dialed as a local call by Duo County end-users.

Alltel also objects to the proposed language as well as to the traffic ratio that Ballard Rural has included in its proposed interconnection agreement. The Commission ordered that the traffic ratio should be 70 percent Wireless-Originated and 30 percent Wireline-Originated, but Ballard Rural proposed a traffic ratio of 100 percent Wireless-Originated and 0 percent Wireline-Originated. Alltel asserts an RLEC “cannot unilaterally and retroactively adjust the identified traffic factor without any corresponding support.”¹¹

T-Mobile and Verizon Wireless object to the proposed language and some of the traffic ratios proposed by the RLECs. Verizon Wireless asserts that the RLECs have changed the traffic ratios from 65 percent Wireless-Originated and 35 percent Wireline-Originated to 100 percent Wireless-Originated and 0 percent Wireline-Originated in 10 of the 12 agreements that the RLECs have with Verizon Wireless. T-Mobile asserts that the RLECs have changed the traffic ratios from 70 percent Wireless-Originated and 30 percent Wireline-Originated to 100 percent Wireless-Originated and 0 percent Wireline-Originated in 9 of the 12 agreements that the RLECs have with T-Mobile. Verizon Wireless and T-Mobile assert that they believe that the Commission’s November 9, 2007 Order would “provide parties with an opportunity, in the future, to provide evidence

¹¹ Alltel Letter to Beth O’Donnell, dated December 14, 2007.

to each other and the Commission for the purpose of modifying traffic factors on a going-forward basis.”¹²

T-Mobile and Verizon Wireless also propose to amend some of the proposed agreements to incorporate language regarding interconnection points that did not exist during the course of this case before the Commission but now do. T-Mobile and Verizon Wireless also propose to add language to some of the proposed interconnection agreements that states the new agreements supersede the existing agreements between the parties.

The Commission has previously determined the proper methodology for determining traffic factors for use when billing for intraMTA traffic.¹³ The RLECs had ample opportunity during the 2 years of this proceeding to introduce evidence to the contrary or to seek rehearing of the Commission’s determination regarding the traffic factors. The RLECs declined to conduct any traffic studies or present any evidence regarding what they believed the correct factors should be. The CMRS Providers, on the other hand, noting that in many cases they could not accurately measure the intraMTA traffic exchanged between it and the RLECs, proposed the traffic factors that the Commission ultimately adopted.

¹² Filing of T-Mobile and Verizon Wireless in Support of Conformed Interconnection Agreements at 2.

¹³ “The Commission finds that the use of traffic factors is reasonable where carriers do not have equipment in place to measure their traffic. The use of traffic factors appears to be standard industry practice. The Commission therefore adopts the measurement methodology for developing traffic factors proposed by the CMRS Providers.” December 22, 2006 Order at 18.

The Commission contemplated that the parties would accept the traffic factors that the Commission ordered¹⁴ and that the parties could adjust the ratios: (1) by mutual agreement before the execution of the conformed agreements; or (2) by presenting evidence of different traffic factors after the execution of the agreements on a going-forward basis. The Commission did not intend to allow the RLECs to continue to try to arbitrate issues after the Commission, pursuant to the RLECs' petitions, entered Orders on the very issues of which the RLECs sought a determination. The very purpose of this proceeding was to resolve disputes concerning the billings between the RLECs and CMRS Providers. Further negotiations are unnecessary, as the Commission has long since resolved all the issues before it.¹⁵

Likewise, we find no reason to approve the additional language proposed by Verizon Wireless and T-Mobile in certain of their interconnection agreements. The findings in our previous Orders contain what should be included in the interconnection agreements. Absent agreement between the parties of changes that should be made in that language, the language adopted in the Commission's Order should be used.

IT IS THEREFORE ORDERED that:

1. Within 20 days of the date of this Order, the parties shall file their respective interconnection agreements, to be effective January 1, 2007, incorporating decisions contained in the December 22, 2006 Order, the February 5, 2007 Order, the

¹⁴ “[T]he traffic patterns proposed by the CMRS Providers should be utilized at this time.” November 9, 2007 Order at 12.

¹⁵ 47 U.S.C. § 252(b)(4)(C).

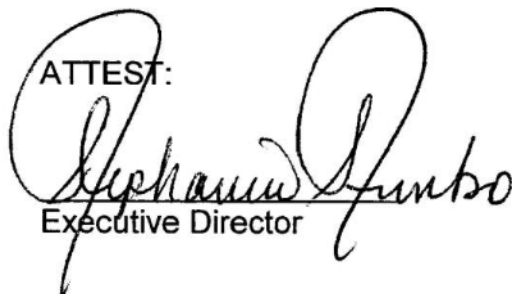
March 19, 2007 Order, the November 9, 2007 Order, and the determinations contained herein.

2. Upon receipt of the executed interconnection agreements, and Commission review of the agreements, the Commission will close these cases by subsequent Order.

Done at Frankfort, Kentucky, this 1st day of May, 2008.

By the Commission

Commissioner Clark Abstains.

ATTEST:

Executive Director