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RECEIVED

JUL 27 2006

PUBLIC SERVICE
COMMISSION

July 27, 2006

VIA HAND DELIVERY

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: *Petition of Duo County 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 c/b/a Verizon Wireless; Case No. 2006-00217*

Dear Ms. O'Donnell:

I have enclosed for filing in the above-styled case the original and eleven (11) copies of the five (5) motions of Duo County Telephone Cooperative Corporation, Inc. ("Duo County") to approve the Interconnection Agreements filed in the context of Duo County's arbitration petitions against (1) Cingular, (2) Verizon Wireless, (3) T-Mobile, (4) AllTel and (5) Sprint. Please file stamp the enclosed copies of each motion and return them our deliveryperson.

Thank you, and if you have any questions, please contact me at (502) 540-2300.

Very truly yours,

DINSMORE & SHOHL LLP

John E. Selent

JES/lb
Enclosures

Ms. Beth O'Donnell

July 27, 2006

Page 2 of 2

cc: Bill Magruder (w/encl.)
Steven E. Watkins (w/encl.)
Edward T. Depp, Esq. (w/encl.)
Holly C. Wallace, Esq. (w/o encl.)

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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

JUL 27 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

Petition of Duo County 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) Case No. 2006-00217
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)

**MOTION OF DUO COUNTY TELEPHONE COOPERATIVE CORPORATION, INC.
TO APPROVE INTERCONNECTION AGREEMENT**

Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS Chapter 278.040, and 807 KAR 5:001, moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to approve the interconnection agreement Duo County submitted to the Commission in this arbitration proceeding against Sprint Spectrum, L.P., and SprintCom, Inc. d/b/a Sprint PSC (collectively "Sprint"). In support of its motion, Duo County states as follows.

INTRODUCTION

This arbitration proceeding arises from the impending termination of an agreement ("the CMRS Agreement") between CMRS providers, rural independent local exchange carriers ("Rural ILECs"), and BellSouth Telecommunications, Inc. ("BellSouth"), effective May 1, 2004, and terminating on December 31, 2006. The CMRS Agreement required the signatory CMRS providers to commence interconnection negotiations with the Rural ILECs if they wished for their Rural-ILEC-destined traffic to continue to be delivered to the Rural ILECs after that date. Sprint is a CMRS provider, and Duo County a Rural ILEC, under the Agreement.

Pursuant to Section 3.01 of the CMRS Agreement, interconnection negotiations between Duo County and Sprint were deemed to commence on January 1, 2006, regardless of whether an actual request for negotiation was received by that date.¹ Throughout the “negotiation” process, Sprint has failed to negotiate in good faith with Duo County. Despite Duo County's repeated attempts to correspond, negotiate, and exchange draft interconnection agreements, Sprint has failed to respond in any meaningful way. Because of Sprint’s failure to respond meaningfully to Duo County's attempts to negotiate, Duo County filed an arbitration petition against Sprint on June 7, 2006. Duo County attached its proposed interconnection agreement to that petition.

Because Sprint failed to negotiate in good faith as required by 47 U.S.C. 251(c) and regulations promulgated thereunder, the Commission should approve the proposed interconnection agreement Duo County has submitted to the Commission in this proceeding.

STATEMENT OF THE FACTS

Duo County's attempts to negotiate with Sprint began on January 27, 2006, when Duo County sent a letter to Sprint advising it of Duo County's desire to negotiate an interconnection agreement pursuant to Section 3.01 of the CMRS Agreement of May 2004. Duo County enclosed with that letter a copy of the template interconnection agreement from which negotiations would proceed.²

Sprint made no effort to propose changes to the template agreement it had received from Duo County. Therefore, on March 7, 2006, Duo County sent another letter advising Sprint of Duo County's desire to negotiate and enclosing another template interconnection agreement, this time

¹ Thus, the statutory window for arbitration in this matter opened on May 16, 2006 and closed on June 10, 2006.

² See January 27, 2006 letter from John E. Selent to Shelley Jones, attached as Exhibit 2 to Duo County's Petition for Arbitration (the "Petition").

with the proposed traffic exchange splits, proposed reciprocal compensation rates, and proposed point of interconnection.³ On March 24, 2006, Sprint finally responded by requesting an electronic copy of the proposed interconnection agreement so that Sprint could redline its proposed revisions.⁴ Duo County provided the requested electronic copy by electronic-mail on March 27, 2006.⁵

Having received no redlines from Sprint, Duo County sent yet another letter on May 15, 2006 inquiring regarding the status of Sprint's review of the proposed interconnection agreement that was electronically-mailed to Sprint on March 27, 2006.⁶ On May 24, 2006, nearly five months after the negotiation window had begun, four months after Duo County sent Sprint a template interconnection agreement, and more than one week into the arbitration window, Sprint proposed very significant changes to Duo County's template agreement.⁷

Due to the very significant last minute changes proposed by Sprint, coupled with the impending close of the arbitration window, Sprint's actions intentionally foreclosed the possibility of productive, good faith negotiations. Accordingly, Duo County filed its arbitration petition against Sprint on June 7, 2006.

ARGUMENT

The Commission should approve the interconnection agreement Duo County submitted with its arbitration petition against Sprint because Sprint failed to comply with its statutory duty to negotiate in good faith. Sprint's failure to negotiate in good faith means that any agreement proposed by Sprint, by definition, would not comply with Section 251 of the Act. As such, the

³ See March 7, 2006 letter from John E. Selent to Shelley Jones, attached as Exhibit 3 to the Petition.

⁴ See March 24, 2006 e-mail from Shelley Jones to John E. Selent, attached as Exhibit 4 to the Petition.

⁵ See March 27, 2006 e-mail from Holly Wallace to Shelley Jones, attached as Exhibit 5 to the Petition.

⁶ See May 15, 2006 letter from John E. Selent to Shelley Jones, attached as Exhibit 6 to the Petition.

⁷ See May 24, 2006 email from Shelley Jones to John E. Selent, attached as Exhibit 7 to the Petition; *see also* Sprint redlined agreement, attached as Exhibit 8 to the Petition.

Commission should reject any agreement proposed by Sprint and should approve Duo County's agreement in full.

I. Statutory and regulatory law requires Sprint to negotiate in good faith.

A requesting telecommunications carrier such as Sprint has a duty to negotiate with Duo County in good faith. 47 U.S.C. 251(c)(1) ("The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.") Section 252 (b)(5) of the Act defines certain conduct that constitutes a failure to negotiate in good faith:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Regulations promulgated by the Federal Communications Commission ("FCC") define certain additional conduct that violates the duty to negotiate in good faith:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. . . .

47 CFR 51.301. These controlling provisions set forth at least four situations in which a carrier violates its duty to negotiate in good faith: (1) the complete refusal to negotiate, (2) the intentional

delay of negotiations, (3) causing delay by refusing to designate a representative to negotiate, and (4) refusing to provide necessary information.

Critically, this Commission has authority to conclude that Sprint failed to negotiate in good faith with Duo County. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶ 143 (“First Report and Order”) (“state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith.”) In fact, it is precisely this power of review by state commissions that ensures the effectiveness of the good faith requirement of the Act.

[P]arties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information -- given that section 252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.

Id. at ¶ 149 (emphasis added). As the FCC has explained, the power of review by state commissions gives the good faith requirement its teeth. Thus, this Commission has the power to decide that Sprint failed to negotiate in good faith with Duo County. Exercising that power will further the purposes of the Act.

II. Sprint failed to negotiate in good faith by failing to propose revisions to Duo County's template interconnection agreement.

Sprint failed to negotiate in good faith with Duo County. Duo County contacted Sprint at the beginning of the negotiation window and, over the course of months, sent Sprint multiple letters and

copies of a proposed interconnection agreement. Sprint, however, never responded meaningfully to these negotiation overtures. In fact, at no time from the beginning of the negotiation window through the beginning of the arbitration window did Sprint make any effort to provide a complete redlined agreement setting forth its proposed changes to Duo County's template agreement. Instead, Sprint waited until well after the arbitration window had opened to propose its numerous and significant changes. (*See supra*, pages 2-3.)

Sprint's delay deprived Duo County of many valuable months in which the parties could have been negotiating any unresolved issues as envisioned and required by 47 U.S.C. 251-52. Instead, well into the arbitration window and faced with an overwhelming amount of proposed changes, Duo County had no choice but to initiate arbitration. The failure by Sprint to respond meaningfully until well into the arbitration window constitutes a "refusal of any other party to the negotiation to participate further in the negotiations," an automatic violation of the duty of good faith. 47 U.S.C. 252(b)(5). Further, the extremely delayed and burdensome manner of the response can only be interpreted as an intentional delay and a failure to provide necessary information, each of which constitutes a violation of the duty of good faith as defined by the FCC in 47 CFR 51.301.

III. The Commission should approve the interconnection agreement submitted by Duo County.

Because of the failure of Sprint to negotiate in good faith, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. In arbitrating interconnection agreements under Section 252(b) of the Act, a state commission must primarily ensure that its resolution of the arbitration comports with the requirements of Section 251 and regulations promulgated thereunder, including, of course, the duty to negotiate in good faith. 47 U.S.C. 252(c)(1). A state commission may reject an agreement that does not meet those statutory and regulatory requirements, including the duty to negotiate in good faith. 47 U.S.C. 252(e)(2)(B).

In making its determination, the state commission has broad discretion to reject an agreement that does not comport with the duties imposed in Section 251. *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218, 224 (D. Del. 2000) (“The Act provides a disincentive to state commission mediation by allowing the commission to reject agreements that do not “meet the requirements of section 251” of the Act. This grants a state commission broader discretion to reject agreements (in whole or in part) that do not comport with the duties imposed in 251.”)

Here, Sprint violated its statutory duty to negotiate in good faith. (*See supra*, pages 2-3.) For that reason, any agreement proposed by Sprint would not, by definition, comport with the duties imposed by Section 251. 47 U.S.C. 251(c)(1) (“The requesting telecommunications carrier also has the duty to negotiate in good faith . . .”) Therefore, in order to ensure that any interconnection agreement between Duo County and Sprint complies with Section 251 (*see* 47 U.S.C. 252(c)(1)), and pursuant to its power to reject an agreement that does not comply with Section 251 (*see* 47 U.S.C. 252(e)(2)(B)), the Commission should reject any agreement proposed by Sprint.

Given any last-minute revisions proposed by Sprint cannot, by definition, comply with the Act, the Commission should approve Duo County’s proposed agreement in full. The Commission has previously demonstrated that it will approve one party's proposed interconnection agreement in full where the other party to arbitration has engaged in stalling and delay. *See In the Matter of: Petition of Brandenburg Telecom, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2001-224 (hereafter, "*Brandenburg Telecom*").

In *Brandenburg Telecom*, Brandenburg Telecom LLC ("Brandenburg") requested interconnection with Verizon. After the Commission ordered the parties to submit an executed agreement complying with the Commission's post-hearing order, Verizon refused to execute the

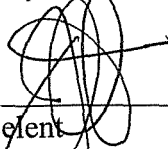
compliant agreement. Brandenburg moved the Commission for an order approving Brandenburg's proposed interconnection agreement in full, arguing that Verizon's delay justified such a remedy. Verizon responded and the issue was fully briefed. Thereafter, the Commission ordered that unless the parties submitted an executed agreement within one week, Brandenburg's proposed agreement "shall become immediately effective and enforceable with or without the signature of Verizon." See January 8, 2002 Order, *Brandenburg Telecom*. Thus, the Commission demonstrated its power to approve one party's interconnection agreement in full with or without agreement of the other party.

The Commission should exercise that power here because of Sprint's failure to negotiate in good faith as required by Section 251 of the Act.

CONCLUSION

For the foregoing reasons, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. As demonstrated above, Sprint has thoroughly failed to negotiate in good faith. Accordingly, the Commission should reject any last-minute revisions proposed by Sprint and approve in full the agreement tendered by Duo County.

Respectfully submitted,



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**COUNSEL TO DUO COUNTY
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Federal Express and electronic mail on this 27th day of July, 2006, to the following individual(s):

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CORPORATION, INC.**

**COMMONWEALTH OF KENTUCKY
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Case No. 2006-00217

**MOTION OF DUO COUNTY TELEPHONE COOPERATIVE CORPORATION, INC.
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Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS Chapter 278.040, and 807 KAR 5:001, moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to approve the interconnection agreement Duo County submitted to the Commission in this arbitration proceeding against 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 (collectively, "Verizon"). In support of its motion, Duo County states as follows.

INTRODUCTION

This arbitration proceeding arises from the impending termination of an agreement ("the CMRS Agreement") between CMRS providers, rural independent local exchange carriers ("Rural ILECs"), and BellSouth Telecommunications, Inc. ("BellSouth"), effective May 1, 2004, and terminating on December 31, 2006. The CMRS Agreement required the signatory CMRS providers to commence interconnection negotiations with the Rural ILECs if they wished for their Rural-

ILEC-destined traffic to continue to be delivered to the Rural ILECs after that date. Verizon is a CMRS provider, and Duo County a Rural ILEC, under the Agreement.

Pursuant to Section 3.01 of the CMRS Agreement, interconnection negotiations between Duo County and Verizon were deemed to commence on January 1, 2006, regardless of whether an actual request for negotiation was received by that date.¹ Throughout the “negotiation” process, Verizon has failed to negotiate in good faith with Duo County. Despite Duo County's repeated attempts to correspond, negotiate, and exchange draft interconnection agreements, Verizon has failed to respond in any meaningful way. Because of Verizon’s failure to respond meaningfully to Duo County's attempts to negotiate, Duo County filed an arbitration petition against Verizon on May 30, 2006. Duo County attached its proposed interconnection agreement to that petition.

Because Verizon failed to negotiate in good faith as required by 47 U.S.C. 251(c) and regulations promulgated thereunder, the Commission should approve the proposed interconnection agreement Duo County has submitted to the Commission in this proceeding.

STATEMENT OF THE FACTS

Duo County's attempts to negotiate with Verizon began on January 27, 2006, when Duo County sent a letter to Verizon advising it of Duo County's desire to negotiate an interconnection agreement pursuant to Section 3.01 of the CMRS Agreement of May 2004. Duo County enclosed with that letter a copy of the template interconnection agreement from which negotiations would proceed.²

¹ Thus, the statutory window for arbitration in this matter opened on May 16, 2006 and closed on June 10, 2006.

² See January 27, 2006 letter from John E. Selent to Marc Sterling, attached as Exhibit 2 to Duo County's Petition for Arbitration (the "Petition").

Verizon made no effort to propose changes to the template agreement it had received from Duo County. Therefore, on March 7, 2006, Duo County sent another letter advising Verizon of Duo County's desire to negotiate and enclosing another template interconnection agreement, this time with the proposed traffic exchange splits, proposed reciprocal compensation rates, and proposed point of interconnection.³ On April 18, 2006, by electronic mail, Verizon notified Duo County that Verizon was willing to negotiate an interconnection agreement and stated a general disapproval that direct interconnection (as proposed in the template agreement) was appropriate.⁴

Having received no further response and no specific proposals for revision, however, Duo County sent yet another letter to Verizon on May 15, 2006 inquiring regarding the status of Verizon's review of the proposed interconnection agreement.⁵

Having still received no proposed changes to its interconnection agreement, Duo County filed its arbitration petition against Verizon on May 30, 2006.

ARGUMENT

The Commission should approve the interconnection agreement Duo County submitted with its arbitration petition against Verizon because Verizon failed to comply with its statutory duty to negotiate in good faith. Verizon's failure to negotiate in good faith means that any agreement proposed by Verizon, by definition, would not comply with Section 251 of the Act. As such, the Commission should reject any agreement proposed by Verizon and should approve Duo County's agreement in full.

³ See March 7, 2006 letter from John E. Selent to Marc Sterling, attached as Exhibit 3 to the Petition.

⁴ See April 18, 2006 email from Marc Sterling to John E. Selent, attached as Exhibit 4 to the Petition.

⁵ See May 15, 2006 letter from John E. Selent to Marc Sterling, attached as Exhibit 5 to the Petition.

I. Statutory and regulatory law requires Verizon to negotiate in good faith.

A requesting telecommunications carrier such as Verizon has a duty to negotiate with Duo County in good faith. 47 U.S.C. 251(c)(1) ("The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.") Section 252 (b)(5) of the Act defines certain conduct that constitutes a failure to negotiate in good faith:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Regulations promulgated by the Federal Communications Commission ("FCC") define certain additional conduct that violates the duty to negotiate in good faith:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. . . .

47 CFR 51.301. These controlling provisions set forth at least four situations in which a carrier violates its duty to negotiate in good faith: (1) the complete refusal to negotiate, (2) the intentional delay of negotiations, (3) causing delay by refusing to designate a representative to negotiate, and (4) refusing to provide necessary information.

Critically, this Commission has authority to conclude that Verizon failed to negotiate in good faith with Duo County. See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶ 143 (“First Report and Order”) (“state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith.”) In fact, it is precisely this power of review by state commissions that ensures the effectiveness of the good faith requirement of the Act.

[P]arties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information -- given that section 252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.

Id. at ¶ 149 (emphasis added). As the FCC has explained, the power of review by state commissions gives the good faith requirement its teeth. Thus, this Commission has the power to decide that Verizon failed to negotiate in good faith with Duo County. Exercising that power will further the purposes of the Act.

II. Verizon failed to negotiate in good faith by failing to propose revisions to Duo County's template interconnection agreement.

Verizon failed to negotiate in good faith with Duo County. Duo County contacted Verizon at the beginning of the negotiation window and, over the course of months, sent Verizon multiple letters and copies of a proposed interconnection agreement. Verizon, however, never responded meaningfully to these negotiation overtures. In fact, at no time from the beginning of the negotiation

window through the beginning of the arbitration window did Verizon make any effort to propose definitive changes to Duo County's template agreement.

Verizon's delay deprived Duo County of many valuable months in which the parties could have been negotiating any unresolved issues as envisioned and required by 47 U.S.C. 251-52. Thus, in light of the absence of a meaningful response to Duo County's multiple communications (and rather than let the interconnection request lapse), Duo County was forced to initiate this arbitration proceeding. Verizon's (in)actions constitute a "refusal of any other party to the negotiation to participate further in the negotiations," an automatic violation of the duty of good faith. 47 U.S.C. 252(b)(5). Further, the failure to provide a meaningful response can only be interpreted as an intentional delay and a failure to provide necessary information, each of which constitutes a violation of the duty of good faith as defined by the FCC in 47 CFR 51.301.

III. The Commission should approve the interconnection agreement submitted by Duo County.

Because of the failure of Verizon to negotiate in good faith, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. In arbitrating interconnection agreements under Section 252(b) of the Act, a state commission must primarily ensure that its resolution of the arbitration comports with the requirements of Section 251 and regulations promulgated thereunder, including, of course, the duty to negotiate in good faith. *See* 47 U.S.C. 252(c)(1). A state commission may reject an agreement that does not meet those statutory and regulatory requirements, including the duty to negotiate in good faith. 47 U.S.C. 252(e)(2)(B). In making its determination, the state commission has broad discretion to reject an agreement that does not comport with the duties imposed in Section 251. *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218, 224 (D. Del. 2000) ("The Act provides a disincentive to state commission mediation by allowing the commission to reject agreements that do not "meet the requirements of

section 251” of the Act. This grants a state commission broader discretion to reject agreements (in whole or in part) that do not comport with the duties imposed in 251.”)

Here, Verizon violated its statutory duty to negotiate in good faith. (*See supra*, pages 2-3.) For that reason, any agreement proposed by Verizon would not, by definition, comport with the duties imposed by Section 251. 47 U.S.C. 251(c)(1) (“The requesting telecommunications carrier also has the duty to negotiate in good faith . . .”) Therefore, in order to ensure that any interconnection agreement between Duo County and Verizon complies with Section 251 (*see* 47 U.S.C. 252(c)(1)), and pursuant to its power to reject an agreement that does not comply with Section 251 (*see* 47 U.S.C. 252(e)(2)(B)), the Commission should reject any agreement proposed by Verizon.

Given any agreement that Verizon might propose cannot, by definition, comply with the Act, the Commission should approve Duo County's proposed agreement in full. The Commission has previously demonstrated that it will approve one party's proposed interconnection agreement in full where the other party to arbitration has engaged in stalling and delay. *See In the Matter of: Petition of Brandenburg Telecom, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2001-224 (hereafter, "*Brandenburg Telecom*").

In *Brandenburg Telecom*, Brandenburg Telecom LLC ("Brandenburg") requested interconnection with Verizon (hereafter referred to as “Verizon ILEC” so as to avoid confusion with Verizon in this proceeding). After the Commission ordered the parties to submit an executed agreement complying with the Commission's post-hearing order, Verizon ILEC refused to execute the compliant agreement. Brandenburg moved the Commission for an order approving Brandenburg’s proposed interconnection agreement in full, arguing that Verizon ILEC's delay

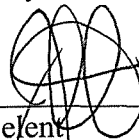
justified such a remedy. Verizon ILEC responded and the issue was fully briefed. Thereafter, the Commission ordered that unless the parties submitted an executed agreement within one week, Brandenburg's proposed agreement "shall become immediately effective and enforceable with or without the signature of Verizon." See January 8, 2002 Order, *Brandenburg Telecom*. Thus, the Commission demonstrated its power to approve one party's interconnection agreement in full with or without agreement of the other party.

The Commission should exercise that power here because of Verizon's failure to negotiate in good faith as required by Section 251 of the Act.

CONCLUSION

For the foregoing reasons, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. As demonstrated above, Verizon has thoroughly failed to negotiate in good faith. Accordingly, the Commission should reject any last-minute revisions proposed by Verizon and approve in full the agreement tendered by Duo County.

Respectfully submitted,



John E. Selent
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(502) 540-2300 (telephone)
(502) 585-2207 (fax)

**COUNSEL TO DUO COUNTY
TELEPHONE COOPERATIVE
CORPORATION, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Federal Express and electronic mail on this 27th day of July, 2006, to the following individual(s):

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**COUNSEL TO DUO COUNTY
TELEPHONE COOPERATIVE
CORPORATION, INC.**

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of 1996)
)

Case No. 2006-00217

**MOTION OF DUO COUNTY TELEPHONE COOPERATIVE CORPORATION, INC.
TO APPROVE INTERCONNECTION AGREEMENT**

Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS Chapter 278.040, and 807 KAR 5:001, moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to approve the interconnection agreement Duo County submitted to the Commission in this arbitration proceeding against AllTel Communications, Inc. ("AllTel"). In support of its motion, Duo County states as follows.

INTRODUCTION

This arbitration proceeding arises from the impending termination of an agreement ("the CMRS Agreement") between CMRS providers, rural independent local exchange carriers ("Rural ILECs"), and BellSouth Telecommunications, Inc. ("BellSouth"), effective May 1, 2004, and terminating on December 31, 2006. The CMRS Agreement required the signatory CMRS providers to commence interconnection negotiations with the Rural ILECs if they wished for their Rural-ILEC-destined traffic to continue to be delivered to the Rural ILECs after that date. AllTel is a CMRS provider, and Duo County a Rural ILEC, under the Agreement.

Pursuant to Section 3.01 of the CMRS Agreement, interconnection negotiations between Duo County and AllTel were deemed to commence on January 1, 2006, regardless of whether an actual request for negotiation was received by that date.¹ Throughout the “negotiation” process, AllTel has failed to negotiate in good faith with Duo County. Despite Duo County's repeated attempts to correspond, negotiate, and exchange draft interconnection agreements, AllTel has failed to respond in any meaningful way. Because of AllTel’s failure to respond meaningfully to Duo County's attempts to negotiate, Duo County filed an arbitration petition against AllTel on June 1, 2006. Duo County attached its proposed interconnection agreement to that petition.

Because AllTel failed to negotiate in good faith as required by 47 U.S.C. 251(c) and regulations promulgated thereunder, the Commission should approve the proposed interconnection agreement Duo County has submitted to the Commission in this proceeding.

STATEMENT OF THE FACTS

Duo County's attempts to negotiate with AllTel began on February 2, 2006, when Duo County sent a letter to AllTel advising it of Duo County's desire to negotiate an interconnection agreement pursuant to Section 3.01 of the CMRS Agreement of May 2004. Duo County enclosed with that letter a copy of the template interconnection agreement from which negotiations would proceed.²

AllTel made no effort to propose changes to the template agreement it had received from Duo County. Therefore, on March 14, 2006, Duo County sent another letter advising AllTel of Duo County's desire to negotiate and enclosing another template interconnection agreement, this time

¹ Thus, the statutory window for arbitration in this matter opened on May 16, 2006 and closed on June 10, 2006.

² See February 2, 2006 letter from John E. Selent to Lynn Hughes, attached as Exhibit 2 to Duo County's Petition for Arbitration (the "Petition").

with the proposed traffic exchange splits, proposed reciprocal compensation rates, and proposed point of interconnection.³

Because Alltel proposed no specific changes to the template interconnection agreement, Duo County sent yet another letter to AllTel on May 15, 2006 regarding the status of AllTel's review of the proposed interconnection agreement.⁴

As of this date, AllTel still has not provided Duo County with any proposed changes to the interconnection agreement. Accordingly, Duo County filed its arbitration petition against AllTel on June 1, 2006.

ARGUMENT

The Commission should approve the interconnection agreement Duo County submitted with its arbitration petition against AllTel because AllTel failed to comply with its statutory duty to negotiate in good faith. AllTel's failure to negotiate in good faith means that any agreement proposed by AllTel, by definition, would not comply with Section 251 of the Act. As such, the Commission should reject any agreement proposed by AllTel and should approve Duo County's agreement in full.

I. Statutory and regulatory law requires AllTel to negotiate in good faith.

A requesting telecommunications carrier such as AllTel has a duty to negotiate with Duo County in good faith. 47 U.S.C. 251(c)(1) ("The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.") Section 252 (b)(5) of the Act defines certain conduct that constitutes a failure to negotiate in good faith:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in

³ See March 14, 2006 letter from John E. Selent to Cynthia Austin, attached as Exhibit 3 to the Petition.

⁴ See May 15, 2006 letter from John E. Selent to Cynthia Austin, attached as Exhibit 4 to the Petition.

carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Regulations promulgated by the Federal Communications Commission ("FCC") define certain additional conduct that violates the duty to negotiate in good faith:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. . . .

47 CFR 51.301. These controlling provisions set forth at least four situations in which a carrier violates its duty to negotiate in good faith: (1) the complete refusal to negotiate, (2) the intentional delay of negotiations, (3) causing delay by refusing to designate a representative to negotiate, and (4) refusing to provide necessary information.

Critically, this Commission has authority to conclude that AllTel failed to negotiate in good faith with Duo County. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶ 143 ("First Report and Order") ("state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith.") In fact, it is precisely this power of review by state commissions that ensures the effectiveness of the good faith requirement of the Act.

[P]arties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information -- given that section

252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." **The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.**

Id. at ¶ 149 (emphasis added). As the FCC has explained, the power of review by state commissions gives the good faith requirement its teeth. Thus, this Commission has the power to decide that AllTel failed to negotiate in good faith with Duo County. Exercising that power will further the purposes of the Act.

II. AllTel failed to negotiate in good faith by failing to propose revisions to Duo County's template interconnection agreement.

AllTel failed to negotiate in good faith with Duo County. Duo County contacted AllTel at the beginning of the negotiation window and, over the course of months, sent AllTel multiple letters and copies of a proposed interconnection agreement. AllTel, however, never responded meaningfully to these negotiation overtures. In fact, at no time from the beginning of the negotiation window through the beginning of the arbitration window did AllTel make any effort to propose definitive changes to Duo County's template agreement.

AllTel's delay deprived Duo County of many valuable months in which the parties could have been negotiating any unresolved issues as envisioned and required by 47 U.S.C. 251-52. Thus, in light of the absence of a meaningful response to Duo County's multiple communications (and rather than let the interconnection request lapse), Duo County was forced to initiate this arbitration proceeding. AllTel's (in)actions constitute a "refusal of any other party to the negotiation to participate further in the negotiations," an automatic violation of the duty of good faith. 47 U.S.C.

252(b)(5). Further, the failure to provide a meaningful response can only be interpreted as an intentional delay and a failure to provide necessary information, each of which constitutes a violation of the duty of good faith as defined by the FCC in 47 CFR 51.301.

III. The Commission should approve the interconnection agreement submitted by Duo County.

Because of the failure of AllTel to negotiate in good faith, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. In arbitrating interconnection agreements under Section 252(b) of the Act, a state commission must primarily ensure that its resolution of the arbitration comports with the requirements of Section 251 and regulations promulgated thereunder, including, of course, the duty to negotiate in good faith. 47 U.S.C. 252(c)(1). A state commission may reject an agreement that does not meet those statutory and regulatory requirements, including the duty to negotiate in good faith. 47 U.S.C. 252(e)(2)(B). In making its determination, the state commission has broad discretion to reject an agreement that does not comport with the duties imposed in Section 251. *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218, 224 (D. Del. 2000) (“The Act provides a disincentive to state commission mediation by allowing the commission to reject agreements that do not “meet the requirements of section 251” of the Act. This grants a state commission broader discretion to reject agreements (in whole or in part) that do not comport with the duties imposed in 251.”)

Here, AllTel violated its statutory duty to negotiate in good faith. (*See supra*, pages 2-3.) For that reason, any agreement proposed by AllTel would not, by definition, comport with the duties imposed by Section 251. 47 U.S.C. 251(c)(1) (“The requesting telecommunications carrier also has the duty to negotiate in good faith . . .”) Therefore, in order to ensure that any interconnection agreement between Duo County and AllTel complies with Section 251 (*see* 47 U.S.C. 252(c)(1)),

and pursuant to its power to reject an agreement that does not comply with Section 251 (*see* 47 U.S.C. 252(e)(2)(B)), the Commission should reject any agreement proposed by AllTel.

Given any agreement that Alltel might propose cannot, by definition, comply with the Act, the Commission should approve Duo County's proposed agreement in full. The Commission has previously demonstrated that it will approve one party's proposed interconnection agreement in full where the other party to arbitration has engaged in stalling and delay. *See In the Matter of: Petition of Brandenburg Telecom, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2001-224 (hereafter, "*Brandenburg Telecom*").

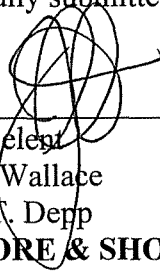
In *Brandenburg Telecom*, Brandenburg Telecom LLC ("Brandenburg") requested interconnection with Verizon. After the Commission ordered the parties to submit an executed agreement complying with the Commission's post-hearing order, Verizon refused to execute the compliant agreement. Brandenburg moved the Commission for an order approving Brandenburg's proposed interconnection agreement in full, arguing that Verizon's delay justified such a remedy. Verizon responded and the issue was fully briefed. Thereafter, the Commission ordered that unless the parties submitted an executed agreement within one week, Brandenburg's proposed agreement "shall become immediately effective and enforceable with or without the signature of Verizon." *See* January 8, 2002 Order, *Brandenburg Telecom*. Thus, the Commission demonstrated its power to approve one party's interconnection agreement in full with or without agreement of the other party.

The Commission should exercise that power here because of AllTel's failure to negotiate in good faith as required by Section 251 of the Act.

CONCLUSION

For the foregoing reasons, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. As demonstrated above, AllTel has thoroughly failed to negotiate in good faith. Accordingly, the Commission should reject any agreement proposed by AllTel and approve in full the agreement tendered by Duo County.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

In the Matter of:

JUL 27 2006

Petition of Duo County Telephone)
Cooperative Corporation, Inc. for Arbitration of)
Certain Terms and Conditions of Proposed)
Interconnection Agreement with Celco 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. 2006-00217

PUBLIC SERVICE
COMMISSION

**MOTION OF DUO COUNTY TELEPHONE COOPERATIVE CORPORATION, INC.
TO APPROVE INTERCONNECTION AGREEMENT**

Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS Chapter 278.040, and 807 KAR 5:001, moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to approve the interconnection agreement Duo County submitted to the Commission in this arbitration proceeding against New Cingular Wireless PSC, LLC and Cincinnati SMSA Limited Partnership (collectively, "Cingular"). In support of its motion, Duo County states as follows.

INTRODUCTION

This arbitration proceeding arises from the impending termination of an agreement ("the CMRS Agreement") between CMRS providers, rural independent local exchange carriers ("Rural ILECs"), and BellSouth Telecommunications, Inc. ("BellSouth"), effective May 1, 2004, and terminating on December 31, 2006. The CMRS Agreement required the signatory CMRS providers to commence interconnection negotiations with the Rural ILECs if they wished for their Rural-ILEC-destined traffic to continue to be delivered to the Rural ILECs after that date. Cingular is a CMRS provider, and Duo County a Rural ILEC, under the Agreement.

Pursuant to Section 3.01 of the CMRS Agreement, interconnection negotiations between Duo County and Cingular were deemed to commence on January 1, 2006, regardless of whether an actual request for negotiation was received by that date.¹ Throughout the “negotiation” process, Cingular has failed to negotiate in good faith with Duo County. Despite Duo County's repeated attempts to correspond, negotiate, and exchange draft interconnection agreements, Cingular has failed to respond in any meaningful way. Because of Cingular’s failure to respond meaningfully to Duo County's attempts to negotiate, Duo County filed an arbitration petition against Cingular on June 6, 2006. Duo County attached its proposed interconnection agreement to that petition.

Because Cingular failed to negotiate in good faith as required by 47 U.S.C. 251(c) and regulations promulgated thereunder, the Commission should approve the proposed interconnection agreement Duo County has submitted to the Commission in this proceeding.

STATEMENT OF THE FACTS

Duo County's attempts to negotiate with Cingular began on January 27, 2006, when Duo County sent a letter to Cingular advising it of Duo County's desire to negotiate an interconnection agreement pursuant to Section 3.01 of the CMRS Agreement of May 2004. Duo County enclosed with that letter a copy of the template interconnection agreement from which negotiations would proceed.²

Cingular made no effort to propose changes to the template agreement it had received from Duo County. Therefore, on March 7, 2006, Duo County sent another letter advising Cingular of Duo County's desire to negotiate and enclosing another template interconnection agreement, this

¹ Thus, the statutory window for arbitration in this matter opened on May 16, 2006 and closed on June 10, 2006.

² See January 27, 2006 letter from John E. Selent to Michael van Eckhardt, attached as Exhibit 2 to Duo County's Petition for Arbitration (the "Petition").

time with the proposed traffic exchange splits, proposed reciprocal compensation rates, and proposed point of interconnection.³

After receiving no response to its letters, Duo County sent yet another letter to Cingular on May 15, 2006, regarding the status of Cingular's review of the proposed interconnection agreement.⁴ On May 17, 2006, after the arbitration window had already opened, Cingular requested an electronic copy of Duo County's template interconnection agreement. Duo County provided the requested electronic copy by electronic-mail on May 19, 2006.⁵

On May 25, 2006, nearly five months after the negotiation window had begun, four months after Duo County sent Cingular a template interconnection agreement, and more than one week into the arbitration window, Cingular proposed very significant changes to Duo County's template agreement.⁶ Accordingly, Duo County filed its arbitration petition against Cingular on June 6, 2006.

ARGUMENT

The Commission should approve the interconnection agreement Duo County submitted with its arbitration petition against Cingular because Cingular failed to comply with its statutory duty to negotiate in good faith. Cingular's failure to negotiate in good faith means that any agreement proposed by Cingular, by definition, would not comply with Section 251 of the Act. As such, the Commission should reject any agreement proposed by Cingular and should approve Duo County's agreement in full.

³ See March 7, 2006 letter from John E. Selent to Michael van Eckhardt, attached as Exhibit 3 to the Petition.

⁴ See May 15, 2006 letter from John E. Selent to Michael van Eckhardt, attached as Exhibit 4 to the Petition.

⁵ See electronic mail correspondence of May 17, 2006, and May 19, 2006 between John E. Selent and Michael van Eckhardt, attached as Exhibit 5 to the Petition.

⁶ See May 25, 2006 email from Bill Brown to John E. Selent, attached as Exhibit 6 to the Petition; *see also* Cingular redlined agreement, attached as Exhibit 7 to the Petition.

I. Statutory and regulatory law requires Cingular to negotiate in good faith.

A requesting telecommunications carrier such as Cingular has a duty to negotiate with Duo County in good faith. 47 U.S.C. 251(c)(1) ("The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.") Section 252 (b)(5) of the Act defines certain conduct that constitutes a failure to negotiate in good faith:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Regulations promulgated by the Federal Communications Commission ("FCC") define certain additional conduct that violates the duty to negotiate in good faith:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. . . .

47 CFR 51.301. These controlling provisions set forth at least four situations in which a carrier violates its duty to negotiate in good faith: (1) the complete refusal to negotiate, (2) the intentional delay of negotiations, (3) causing delay by refusing to designate a representative to negotiate, and (4) refusing to provide necessary information.

Critically, this Commission has authority to conclude that Cingular failed to negotiate in good faith with Duo County. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶ 143 (“First Report and Order”) (“state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith.”) In fact, it is precisely this power of review by state commissions that ensures the effectiveness of the good faith requirement of the Act.

[P]arties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information -- given that section 252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.

Id. at ¶ 149 (emphasis added). As the FCC has explained, the power of review by state commissions gives the good faith requirement its teeth. Thus, this Commission has the power to decide that Cingular failed to negotiate in good faith with Duo County. Exercising that power will further the purposes of the Act.

II. Cingular failed to negotiate in good faith by failing to propose revisions to Duo County's template interconnection agreement.

Cingular failed to negotiate in good faith with Duo County. Duo County contacted Cingular at the beginning of the negotiation window and, over the course of months, sent Cingular multiple letters and copies of a proposed interconnection agreement. Cingular, however, never responded meaningfully to these negotiation overtures. In fact, at no time from the beginning of the negotiation

window through the beginning of the arbitration window did Cingular make any effort to propose definitive changes to Duo County's template agreement. Instead, Cingular waited until well after the arbitration window had opened to propose its numerous and significant changes. (*See supra*, pages 2-3.)

Cingular's delay deprived Duo County of many valuable months in which the parties could have been negotiating any unresolved issues as envisioned and required by 47 U.S.C. 251-52. Instead, well into the arbitration window and faced with an overwhelming amount of proposed changes, Duo County had no choice but to initiate arbitration. The failure by Cingular to respond meaningfully until well into the arbitration window constitutes a "refusal of any other party to the negotiation to participate further in the negotiations," an automatic violation of the duty of good faith. 47 U.S.C. 252(b)(5). Further, the extremely delayed and burdensome manner of the response can only be interpreted as an intentional delay and a failure to provide necessary information, each of which constitutes a violation of the duty of good faith as defined by the FCC in 47 CFR 51.301.

III. The Commission should approve the interconnection agreement submitted by Duo County.

Because of the failure of Cingular to negotiate in good faith, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. In arbitrating interconnection agreements under Section 252(b) of the Act, a state commission must primarily ensure that its resolution of the arbitration comports with the requirements of Section 251 and regulations promulgated thereunder, including, of course, the duty to negotiate in good faith. *See* 47 U.S.C. 252(c)(1). A state commission may reject an agreement that does not meet those statutory and regulatory requirements, including the duty to negotiate in good faith. 47 U.S.C. 252(e)(2)(B). In making its determination, the state commission has broad discretion to reject an agreement that does not comport with the duties imposed in Section 251. *Bell Atlantic-Delaware, Inc. v. McMahon*,

80 F.Supp.2d 218, 224 (D. Del. 2000) (“The Act provides a disincentive to state commission mediation by allowing the commission to reject agreements that do not “meet the requirements of section 251” of the Act. This grants a state commission broader discretion to reject agreements (in whole or in part) that do not comport with the duties imposed in 251.”)

Here, Cingular violated its statutory duty to negotiate in good faith. (*See supra*, pages 2-3.) For that reason, any agreement proposed by Cingular would not, by definition, comport with the duties imposed by Section 251. 47 U.S.C. 251(c)(1) (“The requesting telecommunications carrier also has the duty to negotiate in good faith . . .”) Therefore, in order to ensure that any interconnection agreement between Duo County and Cingular complies with Section 251 (*see* 47 U.S.C. 252(c)(1)), and pursuant to its power to reject an agreement that does not comply with Section 251 (*see* 47 U.S.C. 252(e)(2)(B)), the Commission should reject any agreement proposed by Cingular.

Given any last-minute revisions proposed by Cingular cannot, by definition, comply with the Act, the Commission should approve Duo County’s proposed agreement in full. The Commission has previously demonstrated that it will approve one party's proposed interconnection agreement in full where the other party to arbitration has engaged in stalling and delay. *See In the Matter of: Petition of Brandenburg Telecom, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2001-224 (hereafter, "*Brandenburg Telecom*").

In *Brandenburg Telecom*, Brandenburg Telecom LLC ("Brandenburg") requested interconnection with Verizon. After the Commission ordered the parties to submit an executed agreement complying with the Commission's post-hearing order, Verizon refused to execute the compliant agreement. Brandenburg moved the Commission for an order approving Brandenburg’s


proposed interconnection agreement in full, arguing that Verizon's delay justified such a remedy. Verizon responded and the issue was fully briefed. Thereafter, the Commission ordered that unless the parties submitted an executed agreement within one week, Brandenburg's proposed agreement "shall become immediately effective and enforceable with or without the signature of Verizon." See January 8, 2002 Order, *Brandenburg Telecom*. Thus, the Commission demonstrated its power to approve one party's interconnection agreement in full with or without agreement of the other party.

The Commission should exercise that power here because of Cingular's failure to negotiate in good faith as required by Section 251 of the Act.

CONCLUSION

For the foregoing reasons, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. As demonstrated above, Cingular has thoroughly failed to negotiate in good faith. Accordingly, the Commission should reject any last-minute revisions proposed by Cingular and approve in full the agreement tendered by Duo County.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Federal Express and electronic mail on this 27th day of July, 2006, to the following individual(s):

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CORPORATION, INC.**

111190v1

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

RECEIVED

Petition of Duo County 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)

JUL 27 2006

PUBLIC SERVICE
COMMISSION

Case No. 2006-00217

**MOTION OF DUO COUNTY TELEPHONE COOPERATIVE CORPORATION, INC.
TO APPROVE INTERCONNECTION AGREEMENT**

Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS Chapter 278.040, and 807 KAR 5:001, moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to approve the interconnection agreement Duo County submitted to the Commission in this arbitration proceeding against T-Mobile USA, Inc. ("T-Mobile"). In support of its motion, Duo County states as follows.

INTRODUCTION

This arbitration proceeding arises from the impending termination of an agreement ("the CMRS Agreement") between CMRS providers, rural independent local exchange carriers ("Rural ILECs"), and BellSouth Telecommunications, Inc. ("BellSouth"), effective May 1, 2004, and terminating on December 31, 2006. The CMRS Agreement required the signatory CMRS providers to commence interconnection negotiations with the Rural ILECs if they wished for their Rural-ILEC-destined traffic to continue to be delivered to the Rural ILECs after that date. T-Mobile is a CMRS provider, and Duo County a Rural ILEC, under the Agreement.

Pursuant to Section 3.01 of the CMRS Agreement, interconnection negotiations between Duo County and T-Mobile were deemed to commence on January 1, 2006, regardless of whether an actual request for negotiation was received by that date.¹ Throughout the “negotiation” process, T-Mobile has failed to negotiate in good faith with Duo County. Despite Duo County's repeated attempts to correspond, negotiate, and exchange draft interconnection agreements, T-Mobile has failed to respond in any meaningful way. Because of T-Mobile’s failure to respond meaningfully to Duo County's attempts to negotiate, Duo County filed an arbitration petition against T-Mobile on June 5, 2006. Duo County attached its proposed interconnection agreement to that petition.

Because T-Mobile failed to negotiate in good faith as required by 47 U.S.C. 251(c) and regulations promulgated thereunder, the Commission should approve the proposed interconnection agreement Duo County has submitted to the Commission in this proceeding.

STATEMENT OF THE FACTS

Duo County's attempts to negotiate with T-Mobile began on February 2, 2006, when Duo County sent a letter to T-Mobile advising it of Duo County's desire to negotiate an interconnection agreement pursuant to Section 3.01 of the CMRS Agreement of May 2004. Duo County enclosed with that letter a copy of the template interconnection agreement from which negotiations would proceed.²

T-Mobile made no effort to propose changes to the template agreement it had received from Duo County. Therefore, on March 7, 2006, Duo County sent another letter advising T-Mobile of Duo County's desire to negotiate and enclosing another template interconnection agreement, this

¹ Thus, the statutory window for arbitration in this matter opened on May 16, 2006 and closed on June 10, 2006.

² See February 2, 2006 letter from John E. Selent to Dan Menser, attached as Exhibit 2 to Duo County's Petition for Arbitration (the "Petition").

time with the proposed traffic exchange splits, proposed reciprocal compensation rates, and proposed point of interconnection.³

T-Mobile still did not propose changes to Duo County's template interconnection agreement. Rather, ignoring Duo County's template agreement, T-Mobile sent its own template agreement to Duo County by electronic mail dated April 20, 2006, and asked Duo County to adopt that agreement.⁴ By electronic mail dated May 8, 2006 T-Mobile inquired about Duo County's review of T-Mobile's template agreement and sought an extension of the arbitration window.⁵

On May 15, 2006, Duo County declined to attempt to extend the arbitration window, and informed T-Mobile that negotiations should proceed from Duo County's template agreement, not T-Mobile's, because it is customary to negotiate based on the ILEC's agreement.⁶

On May 22 and May 23, 2006, nearly five months after the negotiation window had begun, four months after Duo County sent T-Mobile a template interconnection agreement, and one week into the arbitration window, T-Mobile agreed to propose changes to Duo County's template agreement and essentially superimposed its previously-rejected template agreement over the Duo County template.⁷ Due to the sheer volume and scope of last minute changes proposed by T-Mobile, coupled with the impending close of the arbitration window, T-Mobile's actions intentionally foreclosed the possibility of productive, good faith negotiations. Accordingly, Duo County filed its arbitration petition against T-Mobile on June 5, 2006.

³ See March 7, 2006 letter from John E. Selent to Greg Tedesco, attached as Exhibit 3 to the Petition.

⁴ See April 20, 2006 email from Dan Williams to John E. Selent, attached as Exhibit 4 to the Petition.

⁵ See May 8, 2006 email from Dan Williams to John E. Selent, attached as Exhibit 5 to the Petition.

⁶ See May 15, 2006 letter from John E. Selent to Dan Williams, attached as Exhibit 6 to the Petition.

⁷ See May 22 and May 23, 2006 emails from Dan Williams to John E. Selent, attached as Exhibit 7 to the Petition; *see also* T-Mobile redlined agreement, attached as Exhibit 8 to the Petition.

ARGUMENT

The Commission should approve the interconnection agreement Duo County submitted with its arbitration petition against T-Mobile because T-Mobile failed to comply with its statutory duty to negotiate in good faith. T-Mobile's failure to negotiate in good faith means that any agreement proposed by T-Mobile, by definition, would not comply with Section 251 of the Act. As such, the Commission should reject any agreement proposed by T-Mobile and should approve Duo County's agreement in full.

I. Statutory and regulatory law requires T-Mobile to negotiate in good faith.

A requesting telecommunications carrier such as T-Mobile has a duty to negotiate with Duo County in good faith. 47 U.S.C. 251(c)(1) ("The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.") Section 252 (b)(5) of the Act defines certain conduct that constitutes a failure to negotiate in good faith:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Regulations promulgated by the Federal Communications Commission ("FCC") define certain additional conduct that violates the duty to negotiate in good faith:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. . . .

47 CFR 51.301. These controlling provisions set forth at least four situations in which a carrier violates its duty to negotiate in good faith: (1) the complete refusal to negotiate, (2) the intentional delay of negotiations, (3) causing delay by refusing to designate a representative to negotiate, and (4) refusing to provide necessary information.

Critically, this Commission has authority to conclude that T-Mobile failed to negotiate in good faith with Duo County. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶ 143 (“First Report and Order”) (“state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith.”) In fact, it is precisely this power of review by state commissions that ensures the effectiveness of the good faith requirement of the Act.

[P]arties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information -- given that section 252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.

Id. at ¶ 149 (emphasis added). As the FCC has explained, the power of review by state commissions gives the good faith requirement its teeth. Thus, this Commission has the power to decide that T-Mobile failed to negotiate in good faith with Duo County. Exercising that power will further the purposes of the Act.

II. T-Mobile failed to negotiate in good faith by failing to propose revisions to Duo County's template interconnection agreement.

T-Mobile failed to negotiate in good faith with Duo County. Duo County contacted T-Mobile at the beginning of the negotiation window and, over the course of months, sent T-Mobile multiple letters and copies of a proposed interconnection agreement. T-Mobile, however, never responded meaningfully to these negotiation overtures. In fact, at no time from the beginning of the negotiation window through the beginning of the arbitration window did T-Mobile make any effort to propose definitive changes to Duo County's template agreement. Instead, T-Mobile waited until well after the arbitration window had opened to propose its numerous and significant changes. (*See supra*, pages 2-3.)

T-Mobile's delay deprived Duo County of many valuable months in which the parties could have been negotiating any unresolved issues as envisioned and required by 47 U.S.C. 251-52. Instead, well into the arbitration window and faced with an overwhelming amount of proposed changes, Duo County had no choice but to initiate arbitration. The failure by T-Mobile to respond meaningfully until well into the arbitration window constitutes a "refusal of any other party to the negotiation to participate further in the negotiations," an automatic violation of the duty of good faith. 47 U.S.C. 252(b)(5). Further, the extremely delayed and burdensome manner of the response can only be interpreted as an intentional delay and a failure to provide necessary information, each of which constitutes a violation of the duty of good faith as defined by the FCC in 47 CFR 51.301.

III. The Commission should approve the interconnection agreement submitted by Duo County.

Because of the failure of T-Mobile to negotiate in good faith, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. In arbitrating interconnection agreements under Section 252(b) of the Act, a state commission must primarily

ensure that its resolution of the arbitration comports with the requirements of Section 251 and regulations promulgated thereunder, including, of course, the duty to negotiate in good faith. 47 U.S.C. 252(c)(1). A state commission may reject an agreement that does not meet those statutory and regulatory requirements, including the duty to negotiate in good faith. *See* 47 U.S.C. 252(e)(2)(B). In making its determination, the state commission has broad discretion to reject an agreement that does not comport with the duties imposed in Section 251. *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218, 224 (D. Del. 2000) (“The Act provides a disincentive to state commission mediation by allowing the commission to reject agreements that do not “meet the requirements of section 251” of the Act. This grants a state commission broader discretion to reject agreements (in whole or in part) that do not comport with the duties imposed in 251.”)

Here, T-Mobile violated its statutory duty to negotiate in good faith. (*See supra*, pages 2-3.) For that reason, any agreement proposed by T-Mobile would not, by definition, comport with the duties imposed by Section 251. 47 U.S.C. 251(c)(1) (“The requesting telecommunications carrier also has the duty to negotiate in good faith . . .”) Therefore, in order to ensure that any interconnection agreement between Duo County and T-Mobile complies with Section 251 (*see* 47 U.S.C. 252(c)(1)), and pursuant to its power to reject an agreement that does not comply with Section 251 (*see* 47 U.S.C. 252(e)(2)(B)), the Commission should reject any agreement proposed by T-Mobile.

Given any last-minute revisions proposed by T-Mobile cannot, by definition, comply with the Act, the Commission should approve Duo County’s proposed agreement in full. The Commission has previously demonstrated that it will approve one party's proposed interconnection agreement in full where the other party to arbitration has engaged in stalling and delay. *See In the Matter of: Petition of Brandenburg Telecom, LLC for Arbitration of Certain Terms and Conditions*

of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Case No. 2001-224 (hereafter, "Brandenburg Telecom").

In *Brandenburg Telecom*, Brandenburg Telecom LLC ("Brandenburg") requested interconnection with Verizon. After the Commission ordered the parties to submit an executed agreement complying with the Commission's post-hearing order, Verizon refused to execute the compliant agreement. Brandenburg moved the Commission for an order approving Brandenburg's proposed interconnection agreement in full, arguing that Verizon's delay justified such a remedy. Verizon responded and the issue was fully briefed. Thereafter, the Commission ordered that unless the parties submitted an executed agreement within one week, Brandenburg's proposed agreement "shall become immediately effective and enforceable with or without the signature of Verizon." See January 8, 2002 Order, *Brandenburg Telecom*. Thus, the Commission demonstrated its power to approve one party's interconnection agreement in full with or without agreement of the other party.

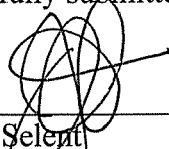
The Commission should exercise that power here because of T-Mobile's failure to negotiate in good faith as required by Section 251 of the Act.

CONCLUSION

For the foregoing reasons, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. As demonstrated above, T-Mobile has thoroughly

ailed to negotiate in good faith. Accordingly, the Commission should reject any last-minute revisions proposed by T-Mobile and approve in full the agreement tendered by Duo County.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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