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

OCT 09 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms 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)	Case No. 2006-00215
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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)	Case No. 2006-00217
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Petition of Logan Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms 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)	Case No. 2006-00218
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Petition of West Kentucky Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms 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)	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 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 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. 2006-00298

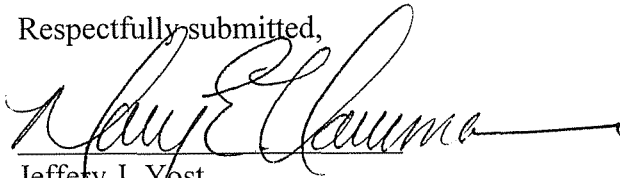
Petition of Thacker-Grigsby Telephone Company, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996)

Case No. 2006-00300

**REBUTTAL TESTIMONY OF WILLIAM H. BROWN
ON BEHALF OF CINGULAR WIRELESS AND THE WIRELESS CARRIERS**

October ⁹/~~6~~, 2006

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1 **REBUTTAL TESTIMONY OF WILLIAM H. BROWN**
2 **ON BEHALF OF CINGULAR WIRELESS AND THE WIRELESS CARRIERS**

3
4 **Q. State your name, please.**

5 A. My name is William H. Brown.

6 **Q. Are you the same William H. Brown who filed direct testimony in these**
7 **consolidated proceedings on behalf of Cingular Wireless and the other Wireless**
8 **Carriers?**

9 A. Yes.

10 **Q. What is the purpose of your rebuttal testimony?**

11 A. In my rebuttal testimony, I will respond to testimony filed by RLEC witnesses Steven
12 E. Watkins and William W. Magruder on Issues 2, 5, 6, 13 and 15.

13 **Q. Is your rebuttal testimony being given on behalf of all the Wireless Carriers?**

14 A. Yes. I will, however, discuss some Cingular specific facts with regard to Issues 13
15 and 15.

16 **Issue 2: Should the Interconnection Agreement apply to traffic exchanged directly,**
17 **as well as to traffic exchanged indirectly through BellSouth or any other**
18 **intermediary carrier?**

19
20 **Q. What is the RLECs' position on Issue 2, as indicated by the testimony of Mr.**
21 **Watkins?**

22 A. The RLECs' position, as stated in the testimony of Mr. Watkins, is that all
23 interconnection with a specific Wireless Carrier must employ trunk groups dedicated
24 solely to that specific carrier's traffic. In other words, if Cingular wishes to exchange
25 traffic with Ballard, or any other RLEC, Cingular must establish a trunk group on
26 Ballard's network, or on the network of any other RLEC, that carries only Cingular
27 traffic. If T-Mobile wishes to exchange traffic with Ballard, T-Mobile must likewise

1 establish a separate trunk group. The other Wireless Carriers must also establish their
2 own separate trunks groups with Ballard. Mr. Watkins argues that the RLECs cannot be
3 required to accept wireless-originated traffic sent to the RLECs through a BellSouth
4 tandem if the traffic is transported by BellSouth on a trunk group that mixes traffic of
5 various carriers.

6 **Q. Why do you claim this is the RLECs' position?**

7 A. Mr. Watkins makes this claim directly in his testimony:

8 Trunk groups for any allowable indirect interconnection arrangements that
9 may involve an intermediary carrier (including BellSouth) must be
10 constructed in a manner that requires dedicated trunks for indirect CMRS
11 Provider traffic (albeit through an intermediary) when the volume of
12 traffic is more than an insignificant amount. In this way, each RTC can
13 identify and measure traffic (provided that traffic is more than an
14 insignificant level) without being forced to rely on BellSouth. Watkins
15 Direct, p. 8, l. 37 – p. 9, l. 2.
16

17 **Q. Is Mr. Watkins' testimony consistent with the contractual language proposed by
18 the RLECs?**

19 A. Not completely. Section 4.1.2 of the RLEC's proposed contract would state:

20 Indirect Interconnection. CMRS Provider shall be permitted to use a third
21 party carrier's facilities for purposes of establishing interconnection
22 indirectly with LEC at the IPs. In such case, on behalf of CMRS Provider,
23 the third party carrier will connect dedicated facilities with LEC at the
24 IP(s). CMRS Provider shall be responsible for the payment to any third
25 party carrier for any charges associated with the facilities.
26

27 The RLECs' proposed contractual language would not make any exceptions for what Mr.
28 Watkins terms "insignificant amounts" of wireless traffic. Below, I will indicate other
29 areas in which Mr. Watkins's testimony is similarly inconsistent with the contractual
30 language proposed by his clients.

31 **Q. How do you interpret Mr. Watkins suggestion that dedicated trunks are not**

1 **required for the exchange of “insignificant amounts” of wireless traffic?**

2 A. I think this demonstrates that Mr. Watkins’ and the RLECs’ desire to force all the
3 Wireless Carriers to establish direct interconnection trunks has nothing to do with
4 technical issues. Mr. Watkins’ testimony, in short, verifies that indirect interconnection
5 is technically feasible.

6 **Q. How does Cingular exchange most traffic with the RLECs today?**

7 A. Cingular and the other Wireless Carriers currently exchange the large majority of
8 traffic with the RLECs through “indirect interconnection,” that is, through the tandem of
9 a third-party provider such as BellSouth, and then through common trunk groups between
10 BellSouth and the RLECs.

11 **Q. When Cingular sends traffic to BellSouth for delivery to an RLEC, does
12 BellSouth send that traffic to the RLEC on a trunk dedicated to Cingular traffic?**

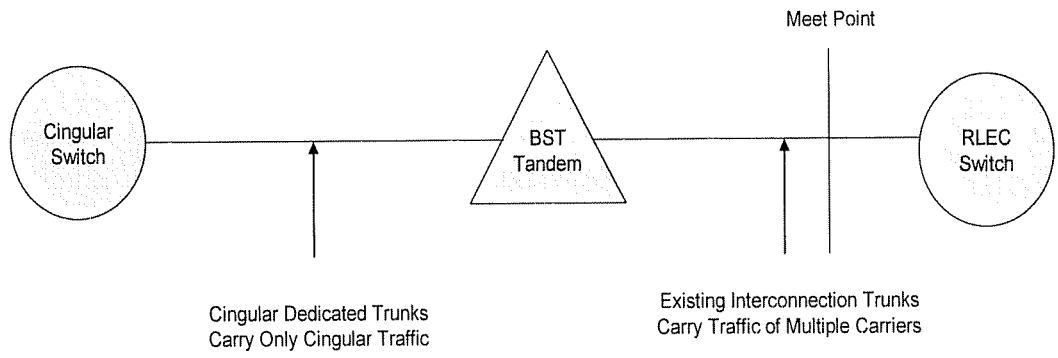
13 A. No. My understanding is that BellSouth sends Cingular traffic (and the traffic of the
14 other Wireless Carriers) to the RLECs through a common trunk group that contains the
15 traffic of many carriers. The RLECs’ amended response to the Wireless Carriers’
16 Interrogatory 1.15 confirms this:

17 Without waiving any objections, to the best of the RLECs’ knowledge,
18 BellSouth Currently combines its own intraLATA toll traffic with that of
19 the CMRS carriers and delivers that traffic to the RLECs over BellSouth
20 access toll trunks.

21
22 **Q. If the RLECs’ proposed language were adopted, what would be the effect?**

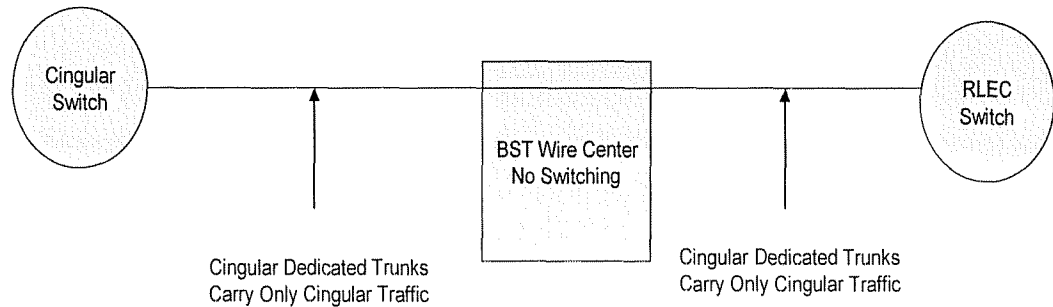
23 The following two diagrams will help explain the answer. Figure 1 shows Cingular’s current
24 indirect interconnection arrangement with an RLEC. Figure 2 shows the arrangement that would
25 be required if the RLECs’ language were adopted.

Figure 1



1
2

Figure 2



1
2 In both figures, Cingular sends and receives traffic from the RLEC through the BellSouth
3 network. However, in the first example, for wireless-originated traffic, Cingular sends
4 the call over dedicated trunks to the BellSouth network, where it is switched at a
5 BellSouth tandem and routed over common trunk groups to the RLEC. Cingular pays a
6 transit charge for the tandem switching and for transport over the BellSouth common
7 trunks to the meet point with the RLEC. When the call flow is reversed, the RLEC uses
8 the pre-existing interconnection trunks with BellSouth (over which BellSouth and

1 Wireless Carrier traffic are combined) and would owe a transit fee to BellSouth for
2 transport and for tandem switching.

3 In the second figure, for a wireless-originated call, the trunks on both sides of the
4 BellSouth wire center are dedicated to Cingular traffic only. Thus, Cingular's traffic is
5 not switched. Instead, it flows through dedicated circuits all the way to the RLEC's
6 switch. Thus, there is no tandem switching or transit charge.

7 If the call is landline-originated, there again is no switching. The call is carried
8 exclusively on Cingular-dedicated trunks, and the RLEC would owe no transiting charge.

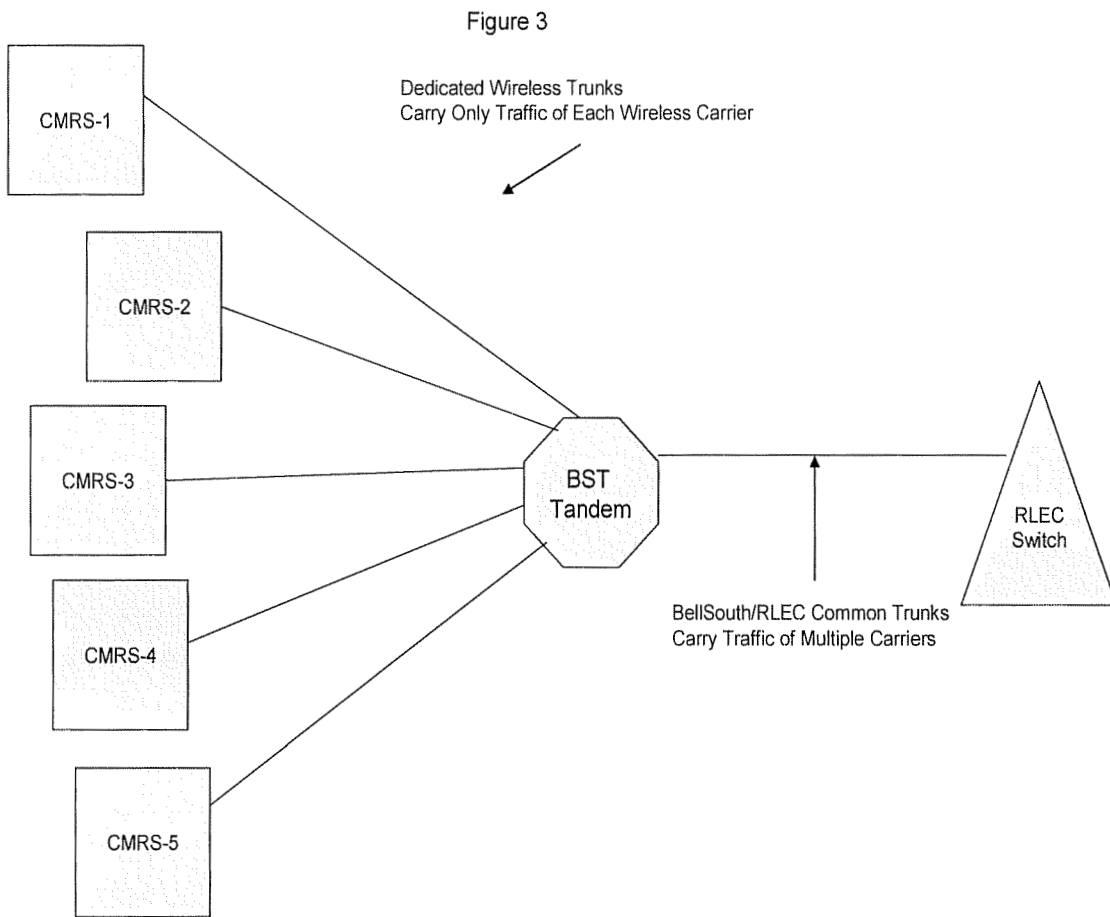
9 This is the essence of the RLECs' proposed language. If the Wireless Carriers
10 would send traffic to the RLECs, the RLECs would make each Wireless Carrier establish
11 direct dedicated trunks from BellSouth to each RLEC and pay the costs of all such
12 dedicated trunks, eliminating the need for tandem switching and common transport,
13 thereby relieving the RLECs of any obligation to pay a transiting charge to BellSouth or
14 any other third-party tandem provider, and also relieving the RLECs of any obligation to
15 pay their proportionate share of the transport/facilities' costs (see Issue 8).

16 **Q. Would this be an efficient use of network resources?**

17 A. No. The RLECs' proposed language would require the Wireless Carriers to duplicate
18 existing interconnection trunks between BellSouth and the RLECs. This would not be a
19 single duplication. Dedicated trunks would be required for each individual Wireless
20 Carrier. If ten Wireless Carriers were operating in Kentucky and exchanging traffic with
21 the RLECs, the existing interconnection trunks between BellSouth and the RLECs (over
22 which BellSouth and Wireless Carrier traffic are currently combined) would be

1 duplicated ten times, and if there were ten RLECs involved, 100 trunk groups would be
2 required. Obviously, this would be wasteful and terribly expensive.

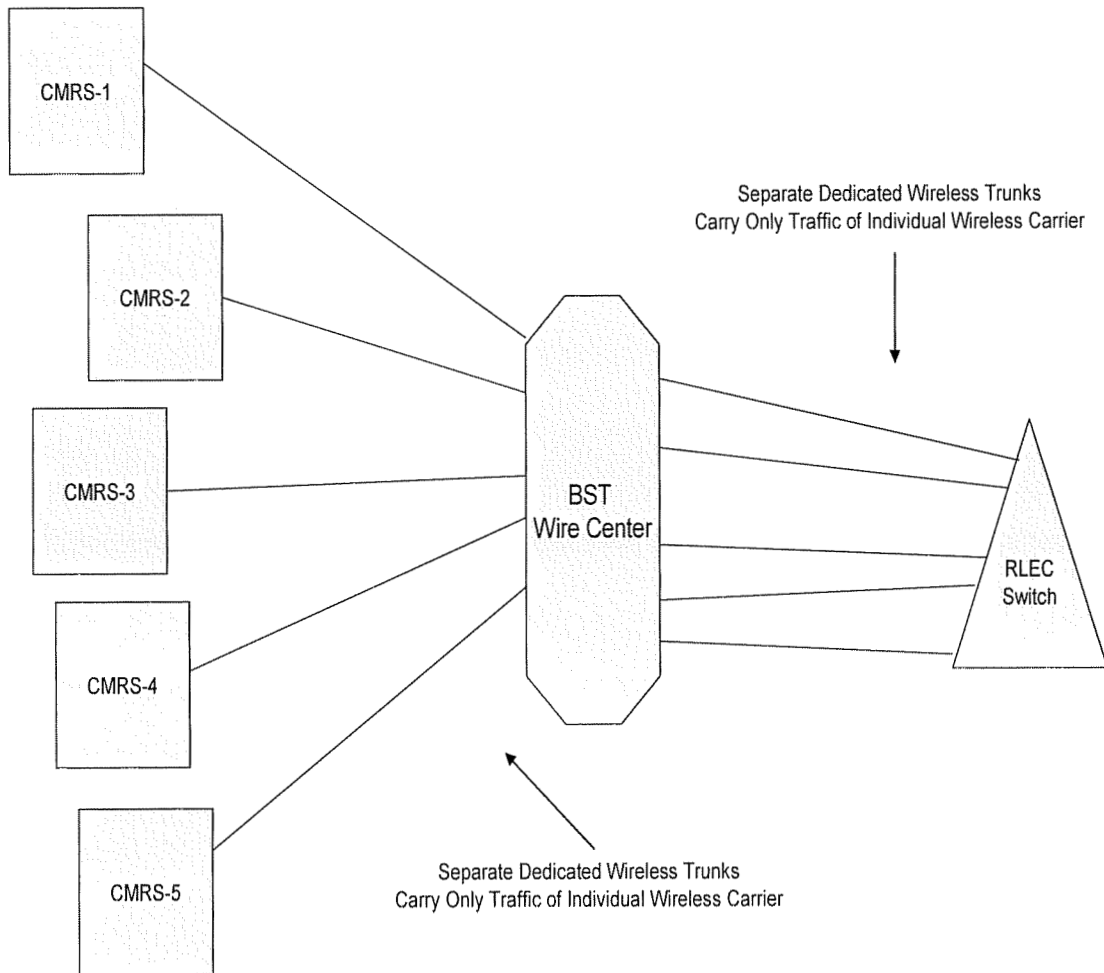
3 Figure 3 below shows the efficiencies produced by indirect interconnection
4 between an RLEC and five wireless carriers. Although there are five dedicated facilities
5 to the BellSouth tandem, there is only one common facility from the tandem to the
6 RLEC.



7
8

1 Figure 4 shows the network configuration that would be required by the RLECs'
2 proposal.
3

Figure 4



4
5

6 Figures 3 and 4 visually demonstrate that the RLECs' proposal would create substantial
7 network inefficiencies.

1 **Q. Mr. Watkins claims that Figure 2 above constitutes “indirect interconnection” as**
2 **that phrase is used in the Telecommunications Act and FCC regulations. Is Figure**
3 **2 an example of “indirect interconnection”?**

4 A. No. The distinction between “direct” and “indirect” interconnection does not depend
5 on the presence or absence of a third-party tandem switch or wire center. Direct
6 interconnection involves the use of trunks dedicated to a specific carrier. For example,
7 Cingular can establish direct interconnection trunks with an RLEC that run from a
8 Cingular switch to an RLEC switch, entirely bypassing the BellSouth network. Or
9 Cingular can establish direct interconnection trunks with an RLEC from a BellSouth wire
10 center to an RLEC wire center. The key is whether the trunks in question are dedicated
11 such that tandem switching is not required. If the trunks are dedicated and switching is
12 not required, then the interconnection is “direct.” On the other hand, if the trunks
13 carrying traffic between a BellSouth tandem and an RLEC include Cingular traffic mixed
14 with other carriers’ traffic, such that tandem switching is required, then the
15 interconnection is “indirect.” Thus, Figure 1 is an example of indirect interconnection.
16 Figure 2 is an example of direct interconnection.

17 **Q. Discuss the RLECs’ arguments in favor of requiring dedicated trunks from each**
18 **Wireless Carrier?**

19 A. The RLECs make four basic arguments in support of their claim that they cannot be
20 required to exchange traffic with the Wireless Carriers through the common trunk groups
21 of an intermediary tandem provider (*i.e.*, indirect interconnection):

22 1. Section 251(a) does not require the RLECs to exchange Wireless
23 Carrier traffic through a common trunk group.
24

- 1 2. The RLECs should not be forced to rely on a competitor for billing
2 purposes.
3
4 3. The interconnection sought by the Wireless Carriers is inappropriate
5 because it imposes upon the RLECs obligations outside the RLECs'
6 service territories.
7
8 4. Requiring the RLECs to exchange Wireless Carrier traffic through the
9 common trunk group of a third-party tandem provider would require the
10 RLECs to provide superior quality interconnection, and the FCC's rules
11 requiring such have been invalidated.
12

13 I will discuss and respond to each of these arguments separately.
14

15 **Q. Does Section 251(a) require the RLECs to exchange Wireless Carrier traffic**
16 **through a common trunk group?**

17 A. Yes, although Mr. Watkins claims it does not. According to Mr. Watkins:

18 Section 251(a) and the associated implementation rules (i) do not impose
19 any specific standards; (ii) do not impose requirements to provide some
20 specific local exchange service to end users; and (iii) do not dictate
21 hierarchical network arrangements (*i.e.*, no requirement that the RTC's
22 end offices subtend a BellSouth tandem for terminating CMRS Provider
23 traffic and no requirements that the RTC abandon its own traffic
24 identification and measurement capabilities and be forced to rely on
25 BellSouth for those functions). Watkins Direct, p. 11, ll. 11-17.
26

27 Section 251(a)(1) of the Telecommunications Act, however, is very simple: "Each
28 telecommunications carrier has the duty to interconnect directly or indirectly with the
29 facilities and equipment of other telecommunications carriers." In interpreting this
30 section, the FCC has stated:

31 Given the lack of market power by telecommunication carriers required to
32 provide interconnection via section 251(a), and the clear language of the
33 statute, we find that indirect connection (e.g., two non-incumbent LECs
34 interconnecting with an incumbent LEC's network) satisfies a
35 telecommunications carrier's duty to interconnect pursuant to section
36 251(a).¹
37

¹ *Local Competition Order*, 11 FCC Rcd 15499, ¶ 997 (1996).

1 In sum, the FCC has ruled that the Section 251(a) obligation to interconnect can be
2 satisfied when two carriers interconnect with a third party but not with each other. It is
3 that simple.

4 **Q. If the RLECs interconnect indirectly with Cingular and the other Wireless**
5 **Carriers, will the RLECs be forced to rely on a “competitor” for billing purposes?**

6 A. Not to my knowledge. Mr. Watkins claims:

7 In a competitive world, no carrier can be required involuntarily to rely on
8 its competitor or potential competitor. Many of the RTCs have made
9 significant capital expenditures and investments in order to put in place
10 the ability to identify, measure and record traffic that they terminate from
11 other carriers. These carriers’ efforts should not be rendered useless, and
12 these carriers should not be forced to rely on a competitor (i.e., BellSouth),
13 just because the CMRS Providers and BellSouth demand such a result.
14 Watkins Direct, p. 14, ll. 19-24.

15
16 As I discussed above, in indirect interconnection, an RLEC will exchange traffic with a
17 Wireless Carrier through common trunk groups with a third party tandem provider. It is
18 my understanding that, in such a case, many RLECs lack the capability of determining
19 the originating carrier of the traffic, and must instead rely on billing records generated by
20 the third-party tandem provider. Mr. Watkins’ argument, if I understand him correctly, is
21 that the RLECs should not be forced to interconnect indirectly with Wireless Carriers,
22 because such would force the RLECs to rely on billing records of the third-party tandem
23 provider, a competitor.

24 I am not aware that BellSouth offers service in any of the RLECs’ exchanges or
25 otherwise competes with the RLECs. Even if BellSouth did, however, it is not unusual
26 for RLECs to rely on BellSouth for billing and other purposes. It is my understanding,
27 for example, that when an RBOC and an RLEC jointly provide originating or terminating
28 access to an IXC, the RLEC will often rely on records from the RBOC access tandem to

1 bill the IXC. Similarly, RLECs often rely on an RBOC's data bases for number
2 portability, toll free calling and calling card services.

3 RLEC witness Mr. Magruder makes a claim similar to Mr. Watkins'. According
4 to Mr. Magruder, traffic on BellSouth's common trunks cannot be properly identified and
5 billed:

6 It is critical that our small rural company not be forced to accept traffic
7 that our systems cannot identify, bill and control. . . . If our companies
8 were required to allow traffic to enter our network without those stringent
9 controls, it is clear that arbitrage could occur, and we could not ensure the
10 integrity of traffic entering our network. Consequently, the whole
11 structure of access or any other compensation mechanisms would be in
12 jeopardy. Magruder Direct, p. 3, l. 19 – p. 4, l. 2.

13
14 The RLECs' concern appears to be with their ability, or lack thereof, to bill Wireless
15 Carriers accurately for Wireless Carrier traffic exchanged through the common trunk
16 groups of a third-party tandem provider. That issue turns on whether third-party tandem
17 records are accurate and reliable, which is Issue 6, not Issue 1.

18 It is important for the Commission to understand that third-party tandem records
19 are used routinely throughout the country for reciprocal compensation billing. I will
20 discuss the reliability of such records in Issue 6, where the question is raised directly.

21 The answer to Issue 2, however, is that Section 251(a)(1) of the Telecommunications Act
22 absolutely requires the RLECs to exchange traffic with the Wireless Carriers through
23 indirect interconnection; *i.e.*, through the common trunks groups of a third-party tandem
24 provider.

25 **Q. Do the RLECs interconnection obligations end at their service exchange**
26 **boundary?**

27 A. No, although Mr. Watkins claims this to be the case:

1 The RTCs have no interconnection obligations (i) in service areas in
2 which they are not an incumbent (or not even a LEC) or (ii) with respect
3 to networks in some other LEC's service area. Watkins Direct, p. 18, ll.
4 24-26.

5
6 Mr. Magruder makes this claim more directly:

7
8 "We should never be required to transport local calling traffic, or traffic of
9 any nature, beyond the physical confines of our network." Magruder
10 Direct, p. 4, ll. 4-6.

11
12 The obligations associated with interconnection (direct or indirect) are not dependent on
13 local service areas of the RLEC. Mr. Watkins seems to be confusing the concepts of
14 providing service outside of a local service area (which the RLECs are not required to do
15 under the Act) and being financially responsible for the costs of delivering and
16 terminating land-originated traffic to wireless carriers within the MTA (which the
17 RLECs are required to do under the Act).

18 Even at its most basic level, the RLECs' position is internally inconsistent.
19 For example, even the RLECs seem to agree that they are responsible for paying
20 termination compensation for what they consider to be "local" land-originated
21 traffic that is terminated by the wireless carrier, yet the wireless "switching" and
22 much of the transport to the wireless end user almost invariably occurs outside the
23 RLECs' local service areas. In addition, there is nothing particularly unusual, or
24 inappropriate, about RLECs' incurring "obligations in service areas in which they
25 are not an incumbent." As I mentioned above, many RLECs use an RBOC data
26 base for toll free calling and other purposes and incur charges for such use. The
27 RBOC data base is not located in an RLEC service territory, but there is nothing
28 illegal or inappropriate about this practice. The same would be true of the

1 RLECs' obligation to pay for any transiting costs associated with land-originated
2 Telecommunications Traffic.

3 The FCC is clear that parties are responsible for delivering their traffic to the
4 other party's network within the MTA. The local service exchange boundary is
5 irrelevant to that consideration.

6 **Q. Does requiring the RLECs to interconnect indirectly with the Wireless**
7 **Carriers require the RLECs to provide superior quality interconnection?**

8 A. Mr. Watkins claims that for RLEC-originated traffic, the RLECs are not responsible
9 for traffic beyond their local service territories and thus cannot be required to use the
10 transit services of a third-party tandem provider. Such a requirement, according to Mr.
11 Watkins, would be for "superior quality" interconnection, and the FCC's rules requiring
12 such have been invalidated.

13 The Courts have found that any attempt by the FCC to establish rules that
14 would require an incumbent to provision a superior interconnection
15 arrangement with a requesting carrier would be unlawful. Watkins Direct,
16 p. 19, ll. 38-40.

17 Indirect interconnection, however, is not superior to direct interconnection. It is just a
18 different type of interconnection. That's all. That is why, as I mentioned in my Direct
19 Testimony, the Eighth Circuit Court of Appeals has recently ruled that RLECs must
20 provide indirect interconnection to Wireless Carriers, holding that ". . . the statutory
21 provision that imposes the duty to interconnect networks expressly permits direct or
22 indirect connections. 47 U.S.C. § 251(a)(1)."²

² See *WWC License, L.L.C. v. Boyle*, 459 F.3d 880 (8th Cir. 2006).

1 **Q. Is the RLECs' position on Issue 2 inconsistent with the agreement previously**
2 **entered into among BellSouth, the RLECs and the Wireless Carriers and filed with**
3 **this Commission?**

4 A. In my opinion, yes. Attached as Exhibit 1 to each arbitration petition filed in these
5 consolidated cases is a copy of the agreement that BellSouth, the RLECs and the
6 Wireless Carriers executed to resolve the disagreement among the parties while
7 negotiations took place. That agreement, which was filed with this Commission,
8 contemplated two sets of negotiations: (1) negotiations between the RLECs and the
9 Wireless Carriers for interconnection agreements, and (2) negotiations between BellSouth
10 and the RLECs for transiting agreements. I refer the Commission to paragraph 3.01 of
11 the filed Agreement, which states in pertinent part:

12 BellSouth and the Rural LECs shall commence no later than January 1,
13 2006, the negotiation of interconnection agreements as may be necessary
14 to govern BellSouth's provision of transit service defining the relative
15 rights and responsibilities between BellSouth and the Rural LECs with
16 respect to any continuing CMRS provider traffic terminated to the Rural
17 LECs.

18
19 It was my understanding that the above language obligated the RLECs to negotiate
20 transiting agreements with BellSouth

21 **Q. Did the RLECs attempt to negotiate such agreements?**

22 A. Not to my knowledge. The Wireless Carriers specifically asked the RLECs (in
23 Interrogatory 1.17) to:

24 . . . describe the negotiations that you have engaged in with BellSouth
25 pursuant to Section 3.01 of the settlement agreement attached as Exhibit 1
26 to your petition. Provide all documents exchanged between you and
27 BellSouth in conjunction with such negotiations, and identify the terms
28 you have proposed "to govern BellSouth's provision of transit . . . with
29 respect to any continuing CMRS provider traffic" after January 1, 2007.
30

1 Each RLEC responded: “Without waiving its objections, the Company states that it has
2 received letters from BellSouth in the general form of the attached documents.”

3 The RLECs produced three letters from BellSouth. The first, dated December 7,
4 2005, asked the RLECs to contact BellSouth to “schedule an initial meeting regarding the
5 negotiations.”

6 The second letter, dated July 14, 2006, stated:

7 Several of the letters I received from you expressed the expectation that
8 BellSouth would inform the CMRS providers that BellSouth would no
9 longer provide intermediary services unless contracts were in place
10 between the CMRS providers and independent companies after December
11 31, 2006. To ensure that traffic will flow between carriers as intended for
12 the benefit of all end user customers, BellSouth will not block traffic
13 unless ordered by a state Public Service Commission to do so.
14

15 This letter also proposed “a meeting with the independent companies in Kentucky to
16 discuss and negotiate CMRS transit traffic and related transit traffic issues.”

17 On August 18, 2006, BellSouth sent a third letter to the RLECs, which stated in
18 pertinent part:

19 “. . . there are no provisions for BellSouth to pay for the termination of
20 traffic between CMRS providers and independent companies after
21 December 31, 2006, the termination date for the existing agreement.
22 While we remain hopeful that negotiations and/or arbitration with the
23 CMRS providers will result in a satisfactory compensation arrangement,
24 the existing agreement also calls for BellSouth and the independent
25 companies to negotiate a transit arrangement. Therefore, as I have
26 previously requested, we need to discuss and negotiate the transit traffic
27 issues we have before the end of the year.
28

29 In a good faith effort to get these negotiations started, I am enclosing a
30 draft Third Party Traffic Agreement relating to transit traffic issues for
31 your review and consideration. Please, send me any comments you have
32 on the agreements. Additionally, in a further attempt to get our
33 negotiations started, I am offering to host a meeting in Louisville,
34 Kentucky at 10:00 AM EST on October 11, 2006 with the independent
35 companies in Kentucky to discuss the enclosed agreement. If this time is

1 not convenient for you, please provide me with an alternative date and
2 time. . . .

3
4 Please confirm by September 15 that you or your representative will be
5 available on October 11 for these discussions or provide me with further
6 information on how you would like to proceed.

7
8 The RLECs have produced a copy of the transit agreement proposed by BellSouth and
9 mentioned in the above letter. I attach a copy of that proposed agreement as Exhibit 1 to
10 my rebuttal testimony. That proposed contract contains the following language in section

11 1(a):

12 BellSouth shall provide Transit Traffic Service to ITC for ITC originated
13 Transit Traffic utilizing the existing interconnection facilities between ITC
14 and BellSouth for the routing of such Transit Traffic.

15
16 Paragraph 1(c) of the proposed transit agreement quotes a billing rate of \$0.0025/MOU as
17 the transiting charge for all RLEC-originated traffic. It is worth pointing out that the
18 transit rate proposed by BellSouth to the RLECs is lower than the transit rate that
19 Cingular currently pays to BellSouth (\$0.003/MOU).

20 Section 2(a) of the proposed contract states:

21 BellSouth shall provide Transit Traffic service to ITC for Transit Traffic
22 originated by other Telecommunications Service Providers utilizing the
23 existing interconnection facilities between ITC and BellSouth for the
24 routing of such Transit Traffic.

25
26 Section 2(b) of the proposed contract provides that when BellSouth delivers transit traffic
27 to an RLEC from a Wireless Carrier, BellSouth “shall not bill ITC any transit charges
28 pursuant to this Agreement.”

29 Thus, BellSouth’s proposed transiting agreement is consistent with the indirect
30 interconnection currently in place between the Wireless Carriers and the RLECs. This
31 transiting arrangement is exactly what the RLECs said they would negotiate with

1 BellSouth. Yet, in their responses to the Wireless Carriers' interrogatories, the RLECs
2 did not indicate that any negotiations have taken place with BellSouth. The above
3 correspondence, as produced by the RLECs, bears that out.

4 It appears to me that the RLECs, despite paragraph 3.01 of the agreement quoted
5 above and filed with this Commission, never intended to negotiate transit agreements
6 with BellSouth. Instead, it appears to me, that the RLECs have intended from the
7 beginning to claim, as does Mr. Watkins, that they cannot be forced by the Wireless
8 Carriers, BellSouth, this Commission or anyone else to exchange traffic with the Wireless
9 Carriers through a third-party transiting arrangement. Having chosen to ignore their
10 obligation to negotiate transit agreements, the RLECs now claim that the lack of such
11 agreements means that they can force direct interconnection requirements on the CMRS
12 Providers. This is wrong, and the Commission should not condone such conduct.

13 **Issue 5: Is each Party obligated to pay for the transit costs associated with the**
14 **delivery of traffic originated on its network to the terminating Party's network?**

15
16 **Q. What does Mr. Watkins claim regarding this issue?**

17 A. In keeping with his claim that the RLECs cannot be required to provide
18 indirect interconnection, despite the plain dictates of the Telecommunications Act
19 and paragraph 3.1 of the previous Agreement filed with this Commission, Mr.
20 Watkins asserts that if the RLECs decide, of their own volition, to provide
21 indirect interconnection, the Wireless Carriers must pay the transiting charges for
22 both wireless-originated and RLEC-originated traffic. In other words, the
23 Wireless Carriers must pay all transiting charges, and the RLECs must pay *none*.

24 Specifically, Mr. Watkins states:

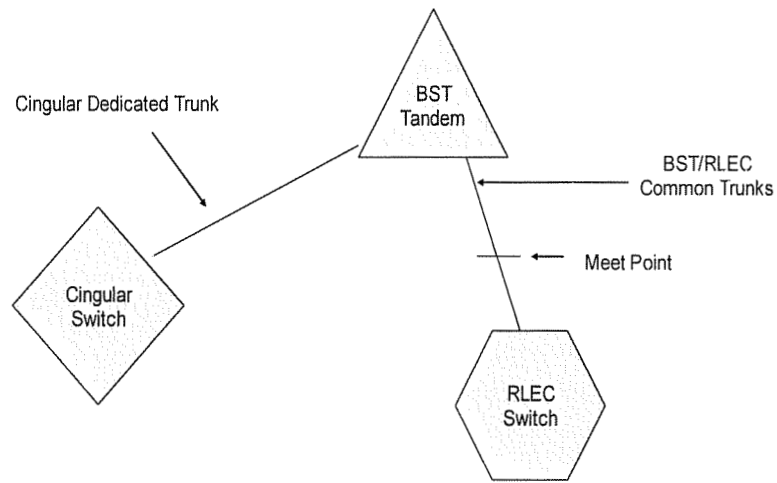
1 It is the CMRS Providers' request and choice to interconnect at a tandem
2 located beyond the RTCs' incumbent network, and to the extent that the
3 RTC were willing to provision some extraordinary and superior form of
4 local exchange service for the transport of its local traffic to a distant
5 point, the RTC would do so only under the condition that the CMRS
6 Provider is responsible for the extraordinary costs incurred by the RTC in
7 doing so. Watkins' Direct, p. 27, ll. 25-30.

8

9 The following diagram demonstrates the practical effect of Mr. Watkins' claim.

10

Figure 5



11

12

13

14 In the above diagram, Cingular interconnects with a BellSouth tandem, and the RLEC

15 interconnects with the same tandem. There are no direct, dedicated trunks between

1 Cingular and the RLEC. When Cingular sends a call to the RLEC, Cingular pays the
2 transiting cost to switch and transport the call from the BellSouth tandem to the meet
3 point on the BST/RLEC common trunks. When the RLEC sends a call to Cingular, the
4 RLEC should pay the same transiting cost. Mr. Watkins, however, claims that when the
5 RLEC sends a call to Cingular through indirect interconnection, *Cingular* should pay the
6 transiting charge, not the RLEC. Under Mr. Watkins' view of the world, Cingular would
7 pay all transiting charges for all calls in both directions.

8 The Wireless Carriers' position is that the RLEC should pay the transiting charge
9 for RLEC-originated traffic, while the Wireless Carriers will pay the transiting charge for
10 wireless-originated traffic. This is consistent with the BellSouth contract.

11 In addition, as I discussed in my Direct Testimony, all the authority in this area
12 supports the Wireless Carriers' position. Mr. Watkins does not cite a single regulatory or
13 judicial decision in support of his position. Also, Mr. Watkins completely ignores 47
14 C.F.R. § 51.703(b), which specifically states that “[a] LEC may not assess charges on any
15 other telecommunications carrier for telecommunications traffic that originates on the
16 LEC's network.” In my opinion, and the opinion of the authorities cited in my direct
17 testimony, that regulation expressly prohibits what Mr. Watkins' is proposing; *i.e.*,
18 requiring the CMRS Providers to pay the transiting charges for RLEC-originated traffic.³

19 **Issue 6: Can the RLECs use industry standard records (e.g., EMI 11-01-01 records**
20 **provided by transiting carriers) to measure and bill CMRS Providers for**
21 **terminating mobile-originated Telecommunications Traffic?**

22

23 **Q. What is the RLECs' primary claim regarding this issue?**

24

³ In a decision released October 6, 2006, the FCC has once again confirmed the position that an originating carrier cannot require a terminating carrier to pay the costs of transporting intraMTA traffic to the terminating carrier's network. *In re Mountain Communications, Inc. v. Qwest Comm. International, Inc.*, EB-00-MD-017, Memorandum Opinion and Order on Remand (rel. Oct. 6, 2006).

1 A. According to Mr. Watkins:

2 “ . . . calls terminated to the RTCs over the BellSouth provisioned trunks
3 do not contain the necessary call details that would allow the RTCs to
4 record calls on a real-time basis for themselves.” Watkins’ Direct, p. 28,
5 ll. 20-22.
6

7 **Q. Is Mr. Watkins statement accurate?**

8
9 A. Yes. 11-01-01 records are not supplied on a real-time basis. That does not mean,
10 however, that they are inaccurate. Mr. Watkins statement is true but irrelevant.

11 **Q. What other issue have the RLECs raised regarding this issue?**

12
13 A. As discussed above, the RLECs seem to be concerned that if they exchange traffic
14 with the Wireless Carriers over BellSouth common trunks, the records received from
15 BellSouth will not allow for accurate billing. Consequently, Mr. Magruder alleges:

16 If our companies were required to allow traffic to enter our network
17 without those stringent controls [*i.e.*, without requiring all Wireless
18 Carriers to establish direct, dedicated trunks], it is clear that arbitrage
19 could occur, and we could not ensure the integrity of traffic entering our
20 network. Consequently, the whole structure of access or any other
21 compensation mechanisms would be in jeopardy.” Magruder Direct, p. 3,
22 l. 22 – p. 4, l. 2.
23

24 **Q. Do the RLECs currently receive 11-01-01 records from BellSouth?**

25 A. Yes. In response to specific Wireless Carrier interrogatories, each RLEC has stated:
26 “Without waiving any objections, the RLECs state that BellSouth typically provides them
27 with EMR (“110101”) records for CMRS traffic.”

28 In addition, the Agreement I discussed above between the RLECs, BellSouth and
29 the Wireless Carriers, which created a temporary compensation mechanism while
30 interconnection and transiting agreements were to be negotiated, specifically stated in
31 paragraph 2.10:

1 For Covered CMRS Provider Traffic, BellSouth is responsible for
2 providing to the appropriate terminating Rural LEC accurate industry
3 standard call detail records identifying the originating CMRS Provider and
4 the minutes of CMRS Provider Traffic for each such provider (currently
5 known as “110101 format message and billings records”). BellSouth will
6 provide such records to the terminating Rural LEC not later than 60 days
7 after such usage occurs. The Signatory CMRS Providers are responsible
8 for providing to BellSouth complete and accurate information regarding
9 the billing address and billing contacts for the Signatory CMRS Providers.
10 BellSouth will provide its bill address and contact information to the Rural
11 LECs.

12
13 Thus, the Agreement executed by the RLECs specifically recites that 11-01-01 records
14 are “industry standard.” In addition, the Agreement specifically recognizes that such
15 records are not provided on a “real time” basis, thus completely negating Mr. Watkins’
16 testimony, quoted above, that inability to measure wireless traffic on a “real time” basis is
17 somehow a problem to the RLECs. In the Agreement, the RLECs represented to this
18 Commission that use of 11-01-01 records is, in fact, an appropriate “industry standard”
19 billing method.

20 **Q. Are BellSouth’s tandem records accurate, and can they be used by the RLECs to**
21 **bill the Wireless Carriers?**

22 A. Yes, I believe so, and apparently most carriers believe that to be the case. As I
23 pointed out in my Direct Testimony, RLECs across the country use tandem records (11-
24 01-01 records or their equivalent) to bill Cingular and other Wireless Carriers in the case
25 of indirect interconnection. Use of such records is standard industry practice. I attached
26 to my Direct Testimony a copy of 11-01-01 records filed by BellSouth in a Tennessee
27 arbitration between certain Wireless Carriers (including Cingular) and certain RLECs.
28 An examination of those records demonstrates that each call passing through the
29 BellSouth tandem is identified by “Originating Company,” “Billable Minutes,” “Billable

1 Seconds” and “Billable Tenths of Seconds.” Calling and called party numbers are also
2 identified. The trunk group number for each call is also identified. All the information
3 needed to bill the Wireless Carriers is contained in the 11-01-01 records that BellSouth
4 sends to the RLECs. When we asked the RLECs in discovery whether they could
5 continue to use these records to bill terminating wireless traffic, their response was only
6 that “the billing records supplied by BellSouth pursuant to the parties’ CMRS settlement
7 agreement have not, historically, been accurate.” They have, however, provided no
8 evidence of this and no examples of their concerns.

9 **Q. Mr. Magruder claims that if the RLECs use 11-01-01 records to bill the Wireless**
10 **Carriers, “arbitrage could occur, and we could not ensure the integrity of traffic**
11 **entering our network.” Do you agree?**

12 A. No. As discussed in my direct testimony, Cingular does not have the ability to
13 measure traffic received from the RLECs for intercarrier billing purposes. Thus, as
14 discussed in my Direct Testimony, Cingular must base its bills to the RLECs upon bills
15 received by Cingular from the RLECs. This means that, if the RLECs’ bills are based
16 upon 11-01-01 records, then so will be Cingular’s. I fail to see how this constitutes
17 “arbitrage.”

18 Mr. Magruder also claims that if the RLECs use 11-01-01 records to bill Cingular
19 and other Wireless Carriers, the RLECs “could not ensure the integrity of traffic entering
20 our network.” He does not elaborate on his concern, but he may be suggesting that
21 Cingular would “strip” the calling-party number from the SS7 protocol on Cingular-
22 originated calls sent to the RLECs, making it impossible for the BellSouth tandem
23 records to identify the originating carrier.

1 First of all, Cingular does not remove the calling party number from SS7 protocol.
2 Nor does any other Wireless Carrier. In fact, as discussed by witness John Clampitt, the
3 Wireless Carriers have proposed a contract term *requiring* the Wireless Carriers to
4 populate all industry-standard SS7 fields (Issue 17 in this case). Second, and more
5 importantly, the BellSouth 11-01-01 records are not based upon SS7 protocol. This is
6 demonstrated in Exhibit 1 to my Direct Testimony in which BellSouth states to a specific
7 inquiry from the Tennessee Regulatory Authority:

8 The SS7 signaling data is part of the real-time call set-up process. As
9 discussed in the response to Item No. 1, SS7 data is not typically used for
10 the purpose of generating billing. While SS7 data could be useful for
11 verifying the accuracy of the EMI 11-01-01 records, SS7 data may not
12 supply all of the information needed for accurate billing.

13
14 In other words, concerns about the integrity of SS7 data are misplaced here, because the
15 11-01-01 records of BellSouth are not based upon SS7 data.

16 **Q. On page 3, line 20, Mr. Magruder states: “It is critical that our small rural
17 company not be forced to accept traffic that our system cannot identify, bill and
18 control.” What does he mean by use of the word “control”?**

19 A. Only Mr. Magruder knows for certain. However, it sounds to me as though he is
20 complaining that his company cannot block Cingular traffic, or the traffic of any other
21 Wireless Carrier, exchanged over common trunk groups with BellSouth or another
22 tandem provider. If traffic were required to be exchanged over trunks dedicated to only a
23 single Wireless Carrier, then blocking could occur.

24 This surmise is not inconsistent with the RLECs supplemental answer to Wireless
25 Carrier interrogatory 1.48, in which the RLECs “respond in the negative” to the
26 following question: “If a CMRS Provider does not establish direct interconnection trunks

1 with you, do you intend to block inbound or outbound CMRS Provider traffic?" I think
2 that Mr. Magruder may be complaining that blocking *cannot* occur in the case of indirect
3 interconnection without the cooperation of the third-party tandem provider, and as the
4 letters quoted in my discussion of Issue 2 indicate, BellSouth has already stated that it
5 will not block CMRS traffic exchanged indirectly – absent a specific order from the
6 Commission.

7 Thus, when Mr. Magruder argues that his company should be allowed to
8 “control” wireless traffic, he may be arguing that the Commission should not allow a
9 form of interconnection that will deprive him of the ability to block such traffic.

10 **Q. Have carriers previously attempted to block Cingular traffic?**

11 A. Yes. Many RLECs in several states have attempted to block Cingular traffic. As
12 discussed, the BellSouth letter quoted above in my testimony indicates that certain
13 Kentucky RLECs were expecting BellSouth to block Cingular’s indirect traffic, but that
14 BellSouth refused.

15 **Issue 13: If a CMRS Provider does not measure intercarrier traffic for reciprocal**
16 **compensation billing purposes, what intraMTA traffic factors should apply?**

17
18 **Q. What is the RLECs’ position on this issue?**

19 A. In keeping with their general theme that the RLECs cannot be required to exchange
20 traffic indirectly with the Wireless Carriers, the RLECs claim that there is no need for
21 intraMTA traffic factors in interconnection agreements, because the RLECs can bill
22 directly based on measurements of traffic on the direct interconnection trunks that the
23 Wireless Carriers must establish.

24 The RTCs do not need or want to rely on BellSouth; the RTCs are
25 prepared to establish the necessary trunking arrangements and are

1 prepared to measure traffic for themselves. Watkins' Direct, p. 42, ll. 23-
2 25.

3

4 **Q. Would the establishment of direct trunks between Cingular and every RLEC**
5 **remove the need for traffic factors in interconnection agreements?**

6 A. No. Even in the case of direct interconnection, certain Wireless Carriers, including
7 Cingular, lack the ability to generate intercarrier bills based upon actual measurement of
8 traffic. Thus, in the case of direct interconnection, Cingular must still use traffic factors
9 to bill RLECs.

10 Mr. Watkins is wrong to claim that direct interconnection is required or that the
11 establishment of direct interconnection trunks obviates Cingular's and other Wireless
12 Carriers' need for traffic factors. Moreover, the RLECs have not produced any traffic
13 studies of their own to challenge the traffic factors proposed for Cingular in my Direct
14 Testimony. Accordingly, those traffic factors should be adopted and included in
15 subsequent interconnection agreements between Cingular and the Wireless Carriers that
16 have filed petitions for arbitration against Cingular.

17 **Issue 15: What is the appropriate compensation for interMTA traffic?**

18

19 **Q. What is the RLECs' position on this issue?**

20 A. The RLECs state two basic positions in their direct testimony: First, the Wireless
21 Carriers should be liable to the RLECs for both originating and terminating access if the
22 Wireless Carriers "carry a call" from one MTA to another. Second, the RLECs should
23 never have any liability to the Wireless Carriers for interMTA traffic.

24 With regard to the first point, Mr. Watkins states:

25 As the FCC has explicitly concluded, where an end user of the RTC
26 originates a call that is delivered to a CMRS provider which, in turn,
27 carries that call to its mobile user for termination in another MTA, the

1 CMRS Provider is acting as an interexchange carrier and owes originating
2 access charges to the RTC. In the opposite direction, where the CMRS
3 Provider originates a call for its mobile user located in a different MTA
4 than the MTA in which the RTC is located, and the CMRS Provider
5 carries that call across MTA boundaries for termination with the RTC, the
6 CMRS Provider is obtaining terminating access service from the RTC and
7 owes terminating access charges to the RTC. Watkins' Direct, p. 46, ll.
8 13-21.

9
10 As regards the second point, Mr. Watkins states:

11
12 There is no such concept as reciprocal access charges. The RTC's access
13 tariffs apply with respect to both the origination and termination of
14 interexchange traffic on their networks. It is the mobile nature of the
15 CMRS Providers' wireless service that affects this framework. In both
16 directions, when it is the CMRS Provider that is carrying traffic to or from
17 another MTA, it is the CMRS Provider that is using the local exchange
18 access facilities of the RTC pursuant to the FCC's Part 69 rules. Watkins'
19 Direct, p. 48, ll. 28-33.

20
21 **Q. According to Mr. Watkins, what is the factor that creates Wireless Carrier**
22 **liability for interMTA compensation?**

23 A. As the above quotes indicate, for Mr. Watkins, and thus for the RLECs, the important
24 factor is whether the Wireless Carrier "is carrying traffic to or from another MTA." For
25 example, Mr. Watkins states:

26 "InterMTA traffic is subject to the LEC's intrastate and interstate access
27 charges for origination and termination because the FCC has found that
28 when the CMRS provider carries traffic to another MTA, or delivers
29 traffic to the RTC that has originated in another MTA, the CMRS Provider
30 is acting as an interexchange carrier." Watkins' Direct, p. 43, ll. 3-7.

31
32 **Q. Where does Mr. Watkins claim to find support for the concept that a Wireless**
33 **Carrier's "carrying" traffic from one MTA to another creates responsibility on the**
34 **Wireless Carrier's part to pay originating or terminating access to an RLEC?**

35 A. Mr. Watkins bases his entire argument on a piece of a single sentence in the *Local*
36 *Competition Order*, and a single footnote that follows the end of that sentence. Because

1 Mr. Watkins places so much emphasis on this language, I quote it below exactly as it is
2 found on page 47 of Mr. Watkins’s direct testimony. The emphasis was supplied by Mr.
3 Watkins.

4 We reiterate that traffic between an incumbent LEC and a CMRS network
5 that originates and terminates within the same MTA (defined based on the
6 parties' locations at the beginning of the call) is subject to transport and
7 termination rates under section 251(b)(5), rather than interstate or
8 intrastate access charges. Under our existing practice, most traffic
9 between LECs and CMRS providers is not subject to interstate access
10 charges unless it is carried by an IXC, with the exception of certain
11 interstate interexchange service provided by CMRS carriers such as some
12 "roaming" traffic that transits incumbent LECs' switching facilities, which
13 is subject to interstate access charges. [fn 2485]

14 [fn 2485] "[S]ome cellular carriers provide their customers with a service
15 whereby a call to a subscriber's local cellular number will be routed to them
16 over interstate facilities when the customer is "roaming" in a cellular system
17 in another state. In this case, the cellular carrier is providing not local
18 exchange service but interstate, interexchange service. In this and other
19 situations where a cellular company is offering interstate, interexchange
20 service, the local telephone company providing interconnection is providing
21 exchange access to an interexchange carrier and may expect to be paid the
22 appropriate access charge Therefore, to the extent that a cellular
23 operator does provide interexchange service through switching facilities
24 provided by a telephone company, its obligation to pay carrier's carrier [i.e.,
25 access] charges is defined by § 69.5(b) of our rules." *The Need to Promote*
26 *Competition and Efficient Use of Spectrum for Radio Common Carrier*
27 *Services*, 59 RR 2d 1275, 1284-85 n.3 (1986). *See also Implementation of*
28 *Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of*
29 *Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC
30 Rcd 1411, 1497-98 (1994) (concluding that there should be no distinction
31 between incumbent LECs' interconnection arrangements with cellular
32 carriers and those with other CMRS providers).

33 *First Report and Order* at para. 1043 and footnote 2485 (emphasis
34 added).

35 From this language, Mr. Watkins has derived his conclusion that if a Wireless Carrier
36 “carries traffic from one MTA to another,” then the Wireless Carrier owes terminating
37 or originating access charges, as the case may be, to an RLEC.

1 **Q. Is Mr. Watkins' testimony supported by FCC regulations.**

2 A. No. The language that Mr. Watkins has quoted has not made its way into FCC
3 regulations. No FCC regulation governs the exchange of interMTA traffic between an
4 RLEC and a Wireless Carrier. No FCC regulation states that if a Wireless Carrier
5 "carries traffic from one MTA to another," then it owes compensation to an RLEC. No
6 FCC regulation states that compensation for interMTA traffic shall be based on access
7 rates. Mr. Watkins' interpretation finds no support in FCC regulations.

8 **Q. Does Mr. Watkins leave out an important part of the FCC's discussion of this**
9 **issue?**

10 A. Yes. At the end of paragraph 1043 the FCC concludes by stating that "new
11 transport and termination rules should be applied to LECs and CMRS providers so that
12 CMRS providers continue not to pay interstate access charges for traffic that currently
13 is not subject to such charges, and are assessed such charges for traffic that is currently
14 subject to interstate access charges." Prior to 1996, a CMRS provider was not subject
15 to access tariffs simply because it carried a call across an MTA boundary, nor have the
16 RLECs tried to argue otherwise. In context, paragraph 1043 says only that access
17 charges assessed on CMRS provider prior to 1996 would continue to be due after 1996.

18 **Q. Don't you indicate in your direct testimony that it is typical in RLEC/CMRS**
19 **interconnection agreements for the parties to agree that compensation for**
20 **interMTA traffic will be based on RLEC access charges?**

21 A. Yes, but such an agreement is not based on FCC regulations, or anything in the
22 Telecommunications Act. Rather, such an agreement has been based upon a business
23 accommodation made by all parties in an attempt to avoid lengthy and protracted

1 litigation. The FCC has failed to tell us how, or even if, compensation should be paid
2 for interMTA traffic, so Wireless Carriers and RLECs have fashioned a methodology
3 based on business considerations, not regulations.

4 **Q. Do you agree with Mr. Watkins that interMTA compensation liability, to the**
5 **extent it exists, should apply to both the origination and termination of calls?**

6 A. No. As I've pointed out, nothing in FCC regulations requires such a result.
7 Moreover, the entire thrust of the Telecommunications Act and FCC regulations is that
8 the calling (originating) party's service provider should pay the called (terminating)
9 party's provider for termination of traffic. The Act and FCC regulations are not premised
10 upon the terminating party's provider paying anything. Yet Mr. Watkins would have the
11 CMRS Providers pay access charges to the RLECs when the CMRS Providers terminate
12 RLEC-originated, interMTA traffic. This is wrong.

13 **Q. Do you agree with Mr. Watkins that the RLECs can never owe intercarrier**
14 **compensation for interMTA traffic?**

15 A. No. Mr. Watkins testimony is inconsistent with the contract proposed by the RLECs.
16 Section 5.4 of the RLECs proposed contract (a copy of which is attached to each
17 arbitration petition filed herein) states:

18 Even though there may be some land-to-mobile InterMTA Traffic, the
19 Parties will presume, for purposes of this Agreement, that there will be no
20 land-to-mobile Inter-MTA Traffic exchanged between the Parties over the
21 connecting facilities established pursuant to this Agreement.

22
23 Thus, the contract proposed by the RLECs recognizes that compensation responsibility
24 for interMTA traffic can apply to both Wireless Carriers and RLECs, and attempts to
25 exonerate the RLECs from such responsibility by presuming that no land-to-mobile
26 interMTA traffic will be exchanged between the parties.

1 Even though the RLECs' proposed contract recognizes that compensation liability
2 for interMTA traffic can apply to both RLEC and Wireless Carrier, I must again
3 emphasize that no FCC regulation requires such a result -- especially not liability for
4 originating access. Potential liability for terminating access, if it exists, would have
5 nothing to do with "carrying" traffic between MTAs. If liability exists, it would be
6 because the traffic would be delivered pursuant to the terms of an interconnection
7 agreement which provides that the Parties shall compensate each other for terminating
8 such interMTA traffic at the RLEC's access rates. The liability, in other words, would be
9 contractual, and not required by regulation or statute.

10 This is what the Wireless Carriers have proposed in the present case in Section
11 5.4 of the interconnection agreement -- that interMTA compensation be based upon a
12 contractual provision requiring that compensation be paid when one Party delivers
13 interMTA traffic to the other "pursuant to the terms of this Agreement."

14 **Q. Does much compensable interMTA traffic exist?**

15 A. As I stated in my direct testimony, I believe the answer is no.

16 **Q. Mr. Watkins suggests that the interMTA percentage in the contract should be**
17 **very high and based on "the same interstate percentage that the CMRS Providers**
18 **use for interstate USF contribution." Watkins' Direct, p. 44, ll. 18-19. Do you**
19 **agree?**

20 A. No. I would first point out that this suggestion is well out of line with the five
21 percent interMTA factor proposed in the RLECs' contract. The proposed five percent
22 factor is contained in Appendix A to the proposed contract attached to each arbitration

1 petition filed herein. Thus, Mr. Watkins' testimony is once again inconsistent with the
2 position of his clients.

3 Moreover, as I mentioned in my direct testimony, most of Kentucky is covered
4 by a single MTA, and nothing in the record indicates that much, if any, wireless traffic
5 is originated or terminated outside that MTA.

6 More importantly, however, the percentage of interstate traffic exchanged
7 between the RLECs and Wireless Carriers bears no relationship at all to the percentage
8 of compensable interMTA traffic exchanged. Virtually all interstate traffic exchanged
9 between Cingular and the RLECs (whatever the total amount of such traffic) will not be
10 exchanged pursuant to an interconnection agreement. Instead, the traffic will be handed
11 off to an interexchange carrier, from which the RLECs will collect either originating or
12 terminating access. To base compensation liability upon the amount of interstate traffic
13 exchanged between Cingular and the RLECs, as Mr. Watkins suggests, would thus
14 allow the RLECs to collect access charges twice for virtually all interstate traffic
15 exchanged with Cingular. The Commission should not condone such a proposal.

16 **Q. Have any of the RLECs in these consolidated cases agreed in other proceedings**
17 **to the Wireless Carriers' proposal for addressing interMTA compensation?**

18 A. Yes. In my direct testimony, I mentioned that this same issue in a recent Tennessee
19 arbitration was settled by the parties' agreeing to a three percent interMTA factor to be
20 paid by the Wireless Carriers and to be based upon wireless-originated traffic. This is the
21 exact proposal that the Wireless Carriers have made in these consolidated cases. What I
22 did not mention in my direct testimony is that one of the RLECs in the Tennessee
23 arbitration was North Central Telephone Cooperative, which is also an RLEC in these

1 consolidated proceedings. North Central, I understand, provides local service on the
2 Tennessee/Kentucky border and has exchanges in both states. An MTA boundary (on the
3 state line) divides the North Central local service territory.

4 North Central was thus willing to recognize, in Tennessee, that the total
5 compensation liability for interMTA traffic is relatively limited.

6 I believe the Commission should adopt the same result in these consolidated
7 proceedings.

EXHIBIT I

DRAFT – For discussion purposes only between BellSouth and KY Independent Companies

THIRD PARTY TRAFFIC AGREEMENT

This Third Party Traffic Agreement (Agreement) is made and entered into by and between BellSouth Telecommunications, Inc., having its principal place of business in Atlanta, Georgia, (BellSouth), and _____, an Independent Telephone Company (ITC) having its principal place of business in _____, Kentucky, and sets forth terms and conditions regarding BellSouth's provision of Third Party Traffic services. BellSouth and ITC may be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, BellSouth has offered to provide Third Party Traffic services to ITC pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, ITC may, from time to time, purchase or otherwise utilize BellSouth's Third Party Traffic services pursuant to the rates, terms and conditions set forth herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

A. Terms and Definitions.

1. Facility Based Telecommunications Service Provider – A Telecommunications Service Provider, including ITC, that utilizes its own switches or switches leased from another Telecommunications Service Provider to offer local exchange and exchange access services to its end users.
2. ISP-bound Traffic – Calls to an information service provider or internet service provider (ISP) that are dialed by a caller using a local dialing pattern (7 or 10 digit) for delivery to an ISP server or modem.
3. Local Traffic
 - a. For landline-to-landline traffic, Local Traffic is any intraLATA circuit switched call transiting BellSouth's network that originates from and terminates to other Telecommunications Service Providers, and for which BellSouth does not collect toll charges or access charges, either directly or indirectly, as the intraLATA toll provider for the end user.
 - b. For wireless-to-wireless traffic, landline-to-wireless traffic, and wireless-to-landline traffic, Local Traffic is any circuit switched call transiting BellSouth's network that originates from and terminates to other Telecommunications Service Providers within the same Major Trading Area (MTA), subject to BellSouth's LATA restrictions.
4. Telecommunications Service Provider - A provider of local exchange and/or exchange access telecommunications service that is legally certified to provide service within the Commonwealth of Kentucky or is licensed by the Federal Communications Commission (FCC) to provide Commercial Mobile Radio Service (CMRS). For purposes of this Agreement, the term Telecommunications Service Provider does not include BellSouth, but does include ITC.

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5. Platform Provider -- A Telecommunications Service Provider that utilizes BellSouth's switching, with or without other network components, to offer local exchange and exchange access services to its end users.
6. Platform Traffic -- Local Traffic or ISP-bound Traffic (1) originating on ITC's network and terminating to a Platform Provider or (2) originating from a Platform Provider and terminating to ITC.
7. Platform Traffic Service -- BellSouth's provision of services necessary to allow for the exchange of Platform Traffic between two Telecommunications Service Providers.
8. Third Party Traffic Service -- Transit Traffic Service or Platform Traffic Service.
9. Transit Traffic -- Local Traffic or ISP-bound Traffic (1) originating on ITC's network that is switched and transported by BellSouth and delivered to another Facility Based Telecommunications Service Provider's network for termination, or (2) originating on the network of a Facility Based Telecommunications Service Provider other than ITC that is switched and transported by BellSouth and delivered to ITC for termination.
10. Transit Traffic Service -- BellSouth's provision of the functions necessary to allow ITC and another Facility Based Telecommunications Service Provider to exchange Transit Traffic.

B. Transit Traffic Service

1. Transit Traffic Originated by ITC

- (a) BellSouth shall provide Transit Traffic Service to ITC for ITC originated Transit Traffic utilizing the existing interconnection facilities between ITC and BellSouth for the routing of such Transit Traffic. Provided that Transit Traffic is properly routed by ITC pursuant to the Local Exchange Routing Guide (LERG), BellSouth shall deliver Transit Traffic to the terminating Facility Based Telecommunications Service Provider to the extent such terminating Telecommunications Service Provider is interconnected with BellSouth's network.
- (b) Where BellSouth provides Transit Traffic Service to ITC, BellSouth is not liable or responsible for payment to the terminating Telecommunications Service Provider. Such payment is the sole responsibility of ITC. ITC will establish traffic exchange agreements or other appropriate agreements to address compensation with terminating Telecommunications Service Providers for the Transit Traffic delivered pursuant to this Agreement. In the event that the terminating Telecommunications Service Provider imposes on BellSouth any charges or costs for the delivery of ITC originated Transit Traffic, BellSouth shall dispute such charges with the terminating carrier. BellSouth also shall notify ITC in writing of the disputed charges. If, after BellSouth's formal challenge to the charges for the delivery of ITC originated Transit Traffic, a court of competent jurisdiction issues a final order requiring BellSouth to pay any such terminating charges to a terminating Telecommunications Service Provider for the delivery of ITC Transit Traffic, ITC shall pay the third party terminating

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carrier directly for such Transit Traffic or shall reimburse BellSouth for the amounts paid by BellSouth for ITC originated Transit Traffic.

- (c) BellSouth shall bill ITC for ITC originated Transit Traffic at the rate of \$.0025/MOU beginning with the Effective Date of this Agreement. Beyond the initial three-year term of this Agreement, BellSouth shall continue billing ITC at the \$.0025/MOU rate unless and until the Parties negotiate a successor agreement (including rates). The Parties shall incorporate the billing for Transit Traffic Service for ITC originated Transit Traffic into the existing settlements processes between the Parties. Upon request, BellSouth shall provide to ITC supporting documentation and usage/summary reports associated with ITC originated Transit Traffic for purposes of verifying Transit Traffic billing.
- (d) ITC may elect one of two options for measuring ITC originated Transit Traffic minutes of use for which charges are due.
- (i) ITC may utilize its originating switch recordings to compensate BellSouth based upon actual ITC Transit Traffic minutes of use (“Actual Measurements”). If ITC elects to utilize Actual Measurements, ITC shall provide a monthly report to BellSouth reflecting actual ITC Transit Traffic minutes of use, along with payment on a per minute of use basis at the applicable rate within sixty (60) days of the date of usage.
- (ii) In lieu of Actual Measurements, ITC may provide to BellSouth a percent local usage factor (PLU) estimating the percentage of total minutes of use delivered to BellSouth that constitutes ITC Transit Traffic (“Estimated Measurements”). The PLU must be provided to BellSouth in writing within 30 days of the Effective Date hereof, or within 30 days of delivering ITC Transit Traffic to BellSouth. In the event ITC fails to provide a PLU to BellSouth during this timeframe, BellSouth shall calculate a PLU to be used until a PLU is provided. To the extent a PLU is provided after the default PLU has taken effect, the PLU provided by ITC shall be applied on a prospective basis only. The PLU may be updated annually or sooner in the event of a change in Local Traffic or ISP-bound Traffic volume. The Party calculating the PLU shall provide the other Party with the data, including any available call detail records that support the PLU calculation.

BellSouth reserves the right to contest the accuracy of both the Actual Measurements and Estimated Measurements provided by ITC and may conduct audits or internal studies for verification. In the event a dispute arises regarding Actual Measurements or Estimated Measurements, BellSouth will continue to bill based upon information provided by ITC or utilizing the assigned PLU until the dispute is resolved. If BellSouth and ITC are unable to successfully negotiate a resolution of the dispute within 30 days of written notice of the existence of a dispute, the aggrieved Party shall seek dispute resolution with a court of competent jurisdiction. Once the dispute is resolved, the Parties shall utilize the resulting Actual Measurements or Estimated Measurements on a going forward basis. The Parties shall make any corrections retroactive to the point in time when the dispute was initiated.

2. Transit Traffic Originated by a Third Party Telecommunications Service Provider

- (a) BellSouth shall provide Transit Traffic service to ITC for Transit Traffic originated by other Telecommunications Service Providers utilizing the existing interconnection facilities

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between ITC and BellSouth for the routing of such Transit Traffic. Provided that Transit Traffic is properly routed by the originating Telecommunications Service Provider pursuant to the Local Exchange Routing Guide (LERG), BellSouth shall deliver such Transit Traffic to ITC for termination.

- (b) Where BellSouth delivers Transit Traffic to ITC for termination, BellSouth shall not bill ITC any transit charges pursuant to this Agreement. Further, BellSouth is not liable or responsible for payment to ITC for traffic originated by other Telecommunications Service Providers. Amounts ITC bills BellSouth (or if ITC does not bill BellSouth, amounts BellSouth calculates for compensation to ITC through the monthly settlement process) under other agreements shall not include any minutes of use for Third Party Transit Traffic.
- (c) When delivering Transit Traffic to ITC for termination, and where available, BellSouth shall generate and deliver to ITC, at no charge to ITC, industry standard call detail records known as Exchange Message Interface (EMI) 1101-01 records for ITC's use in billing originating Telecommunications Service Providers. Where industry standard call detail records are not available, BellSouth shall provide to ITC available usage, billing and summary data sufficient for billing purposes. Where call detail records are not generated consistent with industry standard guidelines and summary data is not available, ITC shall negotiate with the originating Telecommunications Service Providers, as appropriate, to develop a methodology for compensation for such Transit Traffic. Notwithstanding the foregoing, the unavailability of such call detail records or summary data does not create any obligation for BellSouth to compensate ITC for such Transit Traffic. BellSouth shall not be liable for any terminating compensation to ITC or any third party Telecommunications Service Provider. BellSouth shall work cooperatively with ITC to identify the originating Telecommunications Service Provider and the minutes of use for ITC. BellSouth will not block traffic unless ordered by the Kentucky Public Service Commission to do so.

C. Platform Traffic Service.

1. Platform Traffic Service provides for ITC's exchange of traffic with Platform Providers utilizing BellSouth switching. BellSouth and ITC shall utilize the existing interconnection facilities between ITC and BellSouth for the routing of such Platform Traffic. Where BellSouth provides Platform Traffic Service, BellSouth is not liable or responsible for payment to ITC or to the Platform Provider. Such payment is the sole responsibility of the originating Telecommunications Service Provider. By utilizing BellSouth's Platform Traffic Service, the originating Telecommunications Service Providers are committing to establishing traffic exchange agreements or other appropriate agreements to address compensation between and among originating and terminating Telecommunications Service Providers.
2. For traffic originating from a Platform Provider, BellSouth will generate and provide to ITC, at no charge, summary usage data sufficient for billing purposes reflecting the minutes of use generated by such Platform Provider. BellSouth shall not be liable to ITC or the Platform Provider for any compensation or other costs associated with Platform Traffic.

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3. For traffic originating from ITC, BellSouth will deliver such traffic to the Platform Provider at no charge to ITC.

D. General

1. **Audits.** ITC may audit BellSouth's records to the extent necessary to verify ITC originated Transit Traffic minutes of use or Transit Traffic or Platform Traffic minutes of use terminated to ITC. Audits may be performed no more than once each calendar year to evaluate the accuracy of the industry standard call detail records or summary reports provided by BellSouth pursuant to this Agreement. Audits may be performed on at least fifteen (15) days prior written notice to BellSouth, subject to mutually acceptable scheduling. Each Party will cooperate fully in any such audit, providing reasonable access to employees, books and records reasonably needed to assess the accuracy of the call detail records provided by BellSouth. In the event a dispute arises regarding the results of the audit, BellSouth will continue to bill based upon its records until the dispute is resolved. If BellSouth and ITC are unable to successfully negotiate a resolution of the dispute within 30 days after completion of the audit, the aggrieved Party shall seek dispute resolution with a court of competent jurisdiction. Once the dispute is resolved, the Parties shall utilize the minutes of use reflected in the audit, as determined through the dispute resolution process, on a going forward basis. The Parties shall make any corrections retroactive to the period covered by the audit.
2. **ITC Transit Traffic Service.** If ITC provides transit services to BellSouth, ITC will provide such services to BellSouth at the same rates, terms, and conditions that govern the provision of Transit Traffic Services by BellSouth.
3. **Term.** The term of this Agreement shall become effective with the date of the last signature executing the Agreement (Effective Date). It shall continue in effect thereafter for a period of three (3) years. The rates, terms, and conditions set forth in this Agreement shall remain in full force and effect until amended in writing by all Parties or unless and until the Parties negotiate a new successor agreement clearly stating that the agreement supercedes the rates, terms and conditions in this Agreement.
4. **Change in Law.** (i) To the extent any effective law, statute, ordinance, or state or federal regulatory ruling or order applicable to the terms of this Agreement (collectively or individually referred to herein as "Legal Requirement" but expressly excluding a Party's tariff) establishes, changes or clarifies the obligations of the Parties with respect to ITC Transit Traffic, Third Party Transit Traffic or Platform Traffic Service, and such Legal Requirement imposes obligations different from those set forth in this Agreement, then upon thirty (30) days written notice, either Party may request renegotiations of this Agreement consistent with such Legal Requirement. Any rates, terms or conditions agreed upon by the Parties shall be substituted in place of those previously in effect and shall be deemed to be effective under this Agreement as of date the Parties amend this Agreement in writing to reflect the new rate, term, or condition unless the order by the court, state commission or the Federal Communications Commission (FCC) requires a different effective date. If the

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Parties are unable to reach an agreement as to an amendment to this Agreement consistent with the Legal Requirement within 60 days following the request of renegotiations, the Parties shall petition the relevant state commission to resolve the dispute. The Parties enter into this Agreement without prejudice as to any position each may take with respect to similar future agreements between the Parties or with respect to positions each may have taken previously or may take in the future in any legislative, regulatory or other public forum addressing any matters, including matters related to the rates to be charged for ITC Transit Traffic, call records for billing purposes, or the types of arrangements prescribed by this Agreement. Nothing in this Agreement shall preclude any Party from participating in any proceeding before the state commission or FCC relating to any issue related to the subject matter of this Agreement or from petitioning the state commission or FCC to address any issue related to the subject matter of this Agreement.

5. The Parties to this Agreement are independent contractors. No Party is an agent, representative or partner of any other Party, and no Party has the right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or otherwise bind, any other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon the other Party.

6. Limitation of Liability

- (a) Liability for Acts or Omissions of Third Parties. No Party to this Agreement shall be liable to another Party for any act or omission of any third party Telecommunications Service Provider originating Transit Traffic or Platform Traffic destined for ITC or terminating Transit Traffic or Platform Traffic originated by ITC.

- (b) Limitation of Liability. A Party's liability for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees, relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the services not performed or improperly performed.

- (c) Under no circumstance shall any Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data.

- (d) Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

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7. **Dispute Resolution.** In the event any dispute arises as to the interpretation or enforcement of this Agreement, and the Parties are unable to resolve the dispute informally through negotiation, the Parties shall petition a court of competent jurisdiction for resolution of the dispute.
8. **Nonexclusivity.** Nothing in this Agreement shall affect a Party's right to seek interconnection with any carrier or preclude a Party from negotiating an interconnection agreement with another carrier consistent with Sections 251 and 252 of the Telecommunications Act of 1996, as amended. Nothing herein shall be construed as a waiver by a Party of any rights afforded or obligations imposed by applicable law.
9. **Entire Agreement.** The rates, terms, and conditions set forth in this Agreement shall comprise the complete and entire Agreement between the Parties with respect to Transit Traffic and Platform Traffic. The rates, terms and conditions of this Agreement shall govern unless and until a Party seeks changes pursuant to a Legal Requirement or the Parties negotiate a successor agreement as set forth herein. No Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of all Parties.
10. **Force Majeure.** In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, or any other circumstances beyond the reasonable control and without the fault or negligence of the Parties, an affected Party, upon giving prompt written notice, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference; provided, however, that the Parties shall use diligent efforts to avoid or remove such causes of non performance and shall proceed whenever such causes are removed or cease.
11. **Modification of Agreement.** No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
12. **Severability.** If any provision of this Agreement, or part thereof, shall be held invalid or unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to as closely reflect the original intent of the Parties as possible, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision.
13. **Waivers.** A failure or delay of a Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each

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Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

- 14. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky without regard to conflict of laws principles.
- 15. Assignments and Transfers. This Agreement shall not be assigned by any Party without the prior written consent of the other Parties, which shall not be unreasonably delayed, conditioned, or withheld.
- 16. Notices. Every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or email if an email address is listed below, addressed to:

BellSouth Telecommunications, Inc.
 BellSouth Account Manager
 600 North 19th Street, 8th floor
 Birmingham, AL 35203

and

Business Markets-Wholesale Attorney
 Suite 4300
 675 West Peachtree Street
 Atlanta, GA 30375

<ITC Name>

or at such other address as the intended recipient previously shall have designated by written notice to the other Parties. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

- 17. Rule of Construction. No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.
- 18. Headings of No Force or Effect. The headings of Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

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- 19. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.
- 20. Good Faith Performance. Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold, condition, or delay such consent or agreement.
- 21. Survival. The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.

[ITC Name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

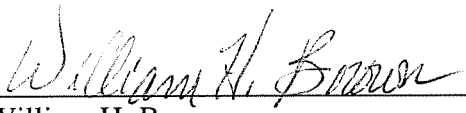
Date: _____

AFFIDAVIT

STATE OF Georgia
COUNTY OF Cobb

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared William H. Brown, who being by me first duly sworn deposed and said that:

He is appearing as a witness on behalf of Cingular Wireless and other Wireless Carriers before the Kentucky Public Service Commission in Case Nos. 2006-00215, 2006-00217, 2006-00218, 2006-00220, 2006-00252, 2006-00255, 2006-00288, 2006-00292, 2006-00294, 2006-00296, 2006-00298, and 2006-00300, and if present before the Commission and duly sworn, his Testimony would be the same as set forth in the annexed testimony.



William H. Brown

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 2nd DAY OF October, 2006.



NOTARY PUBLIC

Commission Expires 5/25/2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the parties listed below by electronic mail, or first class mail, postage prepaid, the 9th day of October, 2006.

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Foothills Rural,
Gearheart Communications, Logan
Telephone, Mountain Rural,
North Central, Peoples Rural, Thacker-
Grigsby**

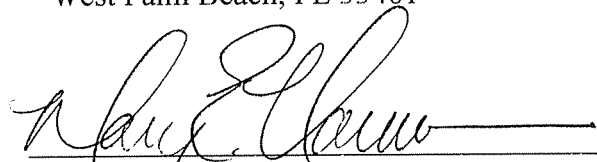
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