COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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
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
Petition of Logan Telephone Cooperative 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
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 Corporation f/k/a ACC Kentucky License LLC, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	)	Case No. 2006-00252
Petition of South Central Rural Telephone Cooperative Corporation, Inc., For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	)	Case No. 2006-00255
Petition of 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 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 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

CMRS PROVIDERS' JOINT POST-HEARING BRIEF

November 9, 2006

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EXECUTIVE SUMMARY

The CMRS Providers present the following summary of the arguments contained below:

A. **Issues 1 and 9 – Scope of Reciprocal Compensation**: The Act and FCC Rules require the RLECs to reciprocally compensate the CMRS Providers for all intraMTA traffic whether or not the calls are delivered via an intermediary carrier. Thus, the RLECs must pay reciprocal compensation for all RLEC-originated, intraMTA traffic sent to the CMRS Providers.

B. **Issue 2 – Should the Interconnection Agreement Apply to Indirect Traffic**: The Act and FCC Rules require the RLECs to allow both direct (non-switched) and indirect (switched through a third-party tandem) interconnection. Thus, the RLECs may not force the CMRS Providers to exchange traffic through dedicated, non-switched facilities.

C. **Issue 3 – Does the Interconnection Agreement apply only to traffic within Kentucky**: The RLECs attempted to modify this issue to require each interconnection agreement with the CMRS Providers to list every county (both in Kentucky and other states) from which the CMRS Providers might originate traffic. Such a requirement is unnecessary and pointlessly burdensome, and the Commission should reject it.

D. **Issue 4 – Should the Interconnection Agreement exclude "Fixed Wireless Services"**: Adding an undefined and vague limitation (prohibiting "fixed wireless services") to the interconnection agreements is unnecessary.

E. **Issues 5 and 6 – Terms of Indirect Interconnection**: (1) Federal law requires the originating party to pay the transiting charge for traffic exchanged indirectly. (2) For traffic exchanged indirectly, the RLECs may use industry standard 11-01-01 tandem records to bill the CMRS Providers. The RLECs may also use records from their own switches, provided those records are verified as being able to properly identify the originating carrier for ported and pooled numbers.

F. **Issues 7 and 8 – Terms of Direct Interconnection**: Direct interconnection involves a dedicated, non-switched facility between a CMRS Provider and an ILEC. Under federal law, the CMRS Provider may choose whether the facility is one-way or two-way. Either party (RLEC or CMRS Provider) may provide the direct facility, and the costs of the facility must be apportioned based on usage.

G. **<u>Issues 10 and 11 – The Appropriate Reciprocal Compensation Rate for Each RLEC</u>**: The RLECs have failed to provide TELRIC studies in support of their proposed rates. Under 47 U.S.C. § 252(b)(4)(B), the Commission may therefore set rates "on the basis of the best information available to it" of forward-looking costs. The only TELRIC-based rates proposed in the record are those of Mr. Wood, who used Mr. Meredith's DEM weighting approach applied to BellSouth's forward-looking costs previously established by the Commission. If a proxy rate approach is preferred, the Commission should adopt the rates proposed by Mr. Farrar, which are the only proposed proxy rates in the record that do not exceed the FCC's ceilings.

H. **<u>Issue 13 – IntraMTA Traffic Factors</u>**: The use of intraMTA traffic factors for CMRS billing is standard throughout the industry. The RLECs have not challenged the CMRS Providers' traffic studies. Nor is the RLECs' proposal – that CMRS Provider bills be based on actual measurements – workable because of technical limitations. The Commission should therefore adopt the traffic factors proposed by each CMRS Provider.

I. **<u>Issue 15 – Compensation for InterMTA Traffic</u>**: Little interMTA traffic is exchanged between the RLECs and CMRS Providers. Basing the interMTA factor on the assumed percentage of interstate wireless traffic would allow the RLECs to bill access charges twice for the same calls. The appropriate rate for interMTA traffic should be a mixture of each RLEC's intrastate and interstate access charges. The Commission should adopt the CMRS Providers' proposed interMTA factor of 3 percent, to be split between the interstate and intrastate jurisdictions.

J. **<u>Issue 16 – Dialing Parity</u>**: The Act, FCC Rules and federal court decisions all require the RLECs to provide dialing parity, which means that the RLECs must allow their customers to dial locally rated numbers (assigned to CMRS customers) in the same manner that RLEC customers can dial locally rated numbers assigned to other landline customers; *i.e.*, with the same number of digits and without any toll charge.

K. **<u>Issue 17 – SS7 Signaling Parameters</u>**: The RLECs' proposed contract language is a "mishmash" of terms and requirements that does not reflect industry standards or accommodate indirect interconnection. The Commission should thus accept the CMRS Providers' proposed contract language on Issue 17.

L. **<u>Issue 18 – Incorporation of Tariffs</u>**: Cross-reference in interconnection agreements, not incorporation into those agreements, is the right way to allow facilities or services to be purchased out of tariffs.

M. **<u>Issue 20 – Post Termination Arrangements</u>**: If either party seeks post-termination arrangements, the Interconnection Agreement should remain in place, subject to true-up following the conclusion of negotiations.

N. **Issue 21 – Definitions**: The Commission should adopt the following definitions:

1. "Interconnection": The Commission should adopt the CMRS Providers' definition of "Interconnection" that explicitly contemplates the direct and indirect linking of the CMRS and RLEC networks and which is based on FCC definitions.

2. "InterMTA Traffic": The CMRS Providers seek only to clarify the RLEC definition to track the FCC Rules by expressly recognizing that categorization of a call as an interMTA call is based on the end points of the call at the time the call is originated.

3. "Rate Center": The Commission should remove the sentence "The Rate Center point must be located within the Rate Center area" from this definition and provide for additional modifications proposed by the CMRS Providers to ensure that the definition is consistent with the CMRS Providers' dialing parity and interconnection rights.

4. "Telecommunications Traffic": The CMRS Providers' proposed definition must be adopted to allow the parties to continue exchanging traffic through indirect interconnection.

5. "Interexchange Carrier": The RLECs would use this definition to avoid paying reciprocal compensation to CMRS Providers for intraMTA traffic originated on an RLEC network and routed to an interexchange carrier for delivery to the CMRS Provider network. The RLECs' proposed definition should therefore be stricken.

O. **Issue 28 – Management Agreements**: The proposed provision would not permit a CMRS Provider to extend an interconnection agreement to other wireless carriers, but instead would allow the CMRS Provider to expand and operate its own network through construction and operation contracts with third parties. Thus, the Commission should allow inclusion of the provision.

CMRS PROVIDERS' JOINT POST-HEARING BRIEF

Alltel Communications, Inc. ("Alltel"); New Cingular Wireless PCS, LLC, successor to BellSouth Mobility LLC, BellSouth Personal Communications LLC and Cincinnati SMSA Limited Partnership d/b/a Cingular Wireless ("Cingular"); Sprint Spectrum L.P., on behalf of itself and SprintCom, Inc., d/b/a Sprint PCS ("Sprint PCS"); T-Mobile USA, Inc., Powertel/Memphis, Inc., and T-Mobile Central LLC ("T-Mobile"); and Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated, and Kentucky RSA No. 1 Partnership ("Verizon Wireless") (collectively referred to as the "CMRS Providers"), hereby file their Joint Post Hearing Brief in the above dockets. For the reasons set forth herein, the Commission should resolve the open issues as recommended by the CMRS Providers instead of as requested by the RLECs.[1]

BACKGROUND AND PROCEDURAL HISTORY

These dockets are arbitration proceedings governed by 47 U.S.C. § 252(b). Each Petition was filed between the 135th and 160th day following a bona fide request for interconnection negotiations made under 47 U.S.C. § 252 by a CMRS Provider. In accordance with Section 252(c), the Commission must:

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[1] The RLECs consist of Ballard Rural Telephone Cooperate, Corp. ("Ballard"), Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), West Kentucky Rural Telephone Cooperative Corporation, Inc. ("West Kentucky") Logan Telephone Cooperative, Inc. ("Logan"), North Central Telephone Cooperative Corporation ("North Central"), South Central Rural Telephone Cooperative Corporation, Inc. ("South Central"), Foothills Rural Telephone Cooperative Corporation, Inc. ("Foothills"), Brandenburg Telephone Company ("Brandenburg"), Gearheart Communications Inc. d/b/a Coalfields Telephone Company ("Gearheart"), Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain Rural"), Peoples Rural Telephone Cooperative Corporation, Inc. ("Peoples Rural"), and Thacker-Grigsby Telephone Company, Inc. ("Thacker-Grigsby").

> (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;
> (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

The reciprocal compensation rate set by the Commission must also meet specific standards set by Congress:

> For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless –
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

47 U.S.C. § 252(d)(2). To the extent the issues before the Commission require an application of federal law, the Commission's resolution must implement – not undermine – that law as interpreted by the FCC and the federal courts. *See Michigan Bell Tel. Co. v. MCI Metro,* 323 F.3d 348, 352 (6th Cir. 2003) ("Under cooperative federalism, federal and state agencies should endeavor to harmonize their efforts with one another . . . . In this regulatory regime state commissions are directed by provisions in the Act and FCC regulations in making decisions, which are subject to federal court review."). Where there are issues of fact, the Commission has before it an evidentiary record that includes prefiled testimony and exhibits, and hearing exhibits and live testimony elicited at the hearing on October 16-17.

UNRESOLVED ISSUES

The CMRS Providers address each of the unresolved issues below in order, except that Issues 1 and 9 and Issues 7 and 8 are addressed together, as they were in prefiled testimony. As

reflected on the Parties' Post Hearing Issues Matrix (filed on October 27th), Issues 12, 19, 22, 23, 24, 25, 26, and 27 have been resolved.

A. Issues 1 and 9 – Scope of Reciprocal Compensation

Issue 1 is how the Interconnection Agreement should identify traffic that is subject to reciprocal compensation pursuant to 47 U.S.C. § 251(b)(5). Issue 9 is whether the Parties are required to pay reciprocal compensation to one another for all intraMTA traffic originated by subscribers on their network, regardless of how such traffic is routed, for termination to the other party. Together, the dispute on Issues 1 and 9 relates to the RLECs' obligation to pay reciprocal compensation for traffic originating on their networks and terminating within the Major Trading Area ("MTA"). The RLECs propose contract language relieving them of the obligation to pay reciprocal compensation for any intraMTA call if the call is delivered to the CMRS Providers by an interexchange carrier ("IXC"). As Mr. Watkins made clear, the RLECs' proposed language would in many cases result in the RLECs paying *no* reciprocal compensation to a CMRS Provider. Hearing Tr. 1 at 190. Such a result contravenes the FCC's Rules and the interpretation of the FCC's rules by a number of federal courts.

The FCC's Rules require the Commission to resolve Issues 1 and 9 in the CMRS Providers' favor. A LEC is obligated to establish a reciprocal compensation arrangement for the transport and termination of "telecommunications traffic" with any requesting telecommunications carrier. 47 C.F.R. § 51.703. Rule 51.701(b)(2) defines telecommunications traffic as "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area...." 47 C.F.R. § 51.701(b)(2). This Rule contains no exception for land-to-mobile calls that are routed via an IXC. As noted by Mr. Conn, while there is such an exception for traffic between LECs, the FCC

did not include such an exception for calls to or from a CMRS network. Conn Direct, p. 12. Thus, the FCC's Rules do not contain the limitation proposed by the RLECs.

The RLECs' proposed interpretation and application of Sections 51.701 and 51.703 have been rejected by numerous federal courts. David Conn's testimony identified five federal courts – including the 8th Circuit and the 10th Circuit Courts of Appeal – that have determined that LECs must pay reciprocal compensation for all traffic originating and terminating within an MTA, including traffic routed via an IXC. Conn Direct, pp. 12-14. The RLECs have acknowledged and admitted that they are asking this Commission to interpret Section 51.701(b)(2) differently than the nine federal judges that have done so previously. Hearing Tr. 1 at 192-93.

Contrary to Mr. Watkins' claims, there is no legitimate dispute regarding the RLECs' obligation to pay reciprocal compensation for intraMTA traffic originating on their network facilities. The Commission should resolve Issue 1 by ordering that the Parties' Interconnection Agreement define and use the term "Telecommunications Traffic" as proposed by the CMRS Providers in sections 1.22, 3.1, 5.1, 5.4, 5.4.1, 5.4.3, Appendix A and Appendix B. The Commission should resolve Issue 9 consistent with the FCC's Rules and precedent, and require the RLECs to reciprocally compensate the CMRS Providers for intraMTA traffic regardless of whether the calls are delivered via any intermediary carrier. To accomplish this, the Commission should accept the CMRS Providers' proposed modifications to Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.4.2 and Appendices A and B.

B. Issue 2 – Should the Interconnection Agreement Apply to Indirect Traffic

Issue 2 involves whether the Interconnection Agreement should apply to traffic exchanged indirectly, *i.e.*, traffic switched through a third-party tandem and exchanged with the RLECs over common trunk groups carrying traffic of multiple carriers. Almost all traffic today

between the CMRS Providers and the RLECs is exchanged via indirect interconnection. Brown Rebuttal, p. 3. RLEC witness Watkins confirmed this at the hearing. Hearing Tr. 1 at 135.

When parties exchange small or moderate amounts of traffic, indirect interconnection is often more efficient. Direct interconnection (*i.e.*, the exchange of traffic on dedicated trunks carrying the traffic of only one CMRS Provider), on the other hand, can make economic sense[2] when the CMRS Providers' share of direct interconnection trunks costs less than the transiting charges that the CMRS Provider pays to the third-party carrier to transport traffic indirectly through its tandem. This cost shift typically occurs when the CMRS Provider is exchanging a relatively large amount of traffic with an RLEC. Brown Direct, p. 7.

Because indirect interconnection is often more efficient than direct interconnection, the FCC has recognized the importance of allowing parties to exchange traffic indirectly:

> The availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act (*See* 47 U.S.C. § 251(a)(1)). It is evident that competitive LECs, CMRS carriers and rural LECs often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.[3]

Nonetheless, twenty-three different sections of the RLECs' proposed interconnection agreement would prohibit the continued exchange of CMRS traffic through third-party tandems. Brown Direct, p. 3. The RLECs' proposed language in all those sections must be rejected to allow the

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[2] The decision to direcly or indirectly interconnect is, however, a business decision based on the interconnecting carrier's overall circumstances and, therefore, does not involve merely a simple stand-alone economic analysis.

[3] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking, ¶¶ 125-126 (rel. March 3, 2005). *See also* Hearing Tr. 1 at 96 (testimony of Don Wood) ("[T]he reason 251 is in the Act is everybody has got to be interconnected so customers can make calls, but you don't want every carrier going out really inefficiently building direct facilities to every other carrier.").

current exchange of CMRS/RLEC traffic to continue through indirect channels. Section 4.1.1 of the RLECs' proposed contract states the RLECs' position directly:

> The Parties agree to interconnect their respective networks within the incumbent LEC service area of LEC at one or more interconnection Points ("IPs") as established by LEC. Interconnection will be provided through an appropriate LEC tandem switching office.

Such language, if adopted by the Commission, would require each CMRS Provider to establish a point of interconnection on each RLEC's network and thus prohibit the sending and receiving of traffic through a third-party tandem. RLEC witness Watkins confirmed this on cross-examination. Hearing Tr. 1 at 136. Moreover, if the RLEC language is adopted, the RLECs intend to block all CMRS traffic that transits a third-party tandem. Brown Direct, p. 5.

1. <u>The RLECs' Position is Inconsistent With the Law</u>

All applicable law on this issue supports the CMRS Providers, starting with the Telecommunications Act:

> (a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS. – Each telecommunications carrier has the duty –
>
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers;

47 U.S.C. § 251(a)(1). To implement the Congressional intent demonstrated in this federal statute, the FCC promulgated a regulation that tracks the statute word-for-word. 47 C.F.R. § 51.100(a)(1).

Federal appellate courts interpreting the above have uniformly held that RLECs are required by law to allow other carriers to utilize indirect interconnection and exchange traffic switched through third-party tandems. For example, the Tenth Circuit Court of Appeals has specifically ruled that RLECs cannot require CMRS providers to interconnect at a point on an RLEC's network, thus rejecting the very language proposed by the RLECs in section 4.1.1, quoted above:

> The RTCs first contend that 47 U.S.C. § 251(c)(2) mandates that the exchange of local traffic occur at specific, technically feasible points within an RTC's network, and that this duty is separate and distinct, though no less binding on interconnecting carriers, from the reciprocal compensation arrangements mandated by § 251(b)(5). We simply find no support for this argument in the text of the statute or the FCC's treatment of the statutory provisions.[4]

Similarly, the Eighth Circuit Court of Appeals has stated:

> . . . the statutory provision that imposes the duty to interconnect networks expressly permits direct or indirect connections.[5]

The conclusions of the 10th and 8th Circuits are consistent with the intent of the FCC as expressed in its *First Report & Order*:

> Regarding the issue of interconnecting "directly or indirectly" with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices.[6]

This Commission has recognized the above principles in *Petition of Level 3 Communications for Arbitration with BellSouth*, PSC Case No. 2000-00404, Order at 8 (March 14, 2001), which states that "each carrier shall establish at least one POI per LATA and the originating carrier shall pay to transport its own customers' calls to that POI." In the case of indirect interconnection, the CMRS Provider establishes its POI with the tandem provider (such as BellSouth), and the RLEC is required to pay the cost to transport the call to that POI. (Which carrier pays the transit cost is Issue 5 below.)

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4 *Atlas Tel. Co. v. Okla. Corp. Comm'n,* 400 F.3d 1256, 1265 (10th Cir. 2005) ("*Atlas Telephone*").

5 *WWC License, L.L.C. v. Boyle*, 459 F.3d 880, 892 (8th Cir. 2006) ("*WWC License*").

6 *In the Matter of Implementation of the Local Competition Provisions of the Telecomms. Act of 1996*, CC Docket No. 96-98, 11 FCCR 15499, FCC 96-325, First Report and Order, ¶ 997 (1996) ("*First Report & Order*").

Likewise, the state commissions in Oklahoma[7] and Tennessee,[8] when confronted with this same issue, have recently ruled that CMRS Providers have the right to exchange traffic indirectly with RLECs. Moreover, a CMRS Provider's right to establish indirect interconnection with an RLEC is established by an FCC regulation pre-dating the Telecommunications Act: "A local exchange carrier *must provide* the type of interconnection reasonably requested by a mobile service licensee or carrier."[9] As Mr. Wood testified, "Because local calls may be completed via direct or indirect interconnection, an interconnection agreement between carriers *must* address both contingencies." Wood Direct, p. 6.

The CMRS Providers are unaware of any authority allowing RLECs to prohibit the CMRS Providers from exchanging traffic via indirect interconnection.

2. <u>The RLECs Incorrectly Define Indirect Interconnection</u>

Recognizing that the law clearly allows the CMRS Providers to exchange traffic indirectly, the RLECs attempt to prohibit such exchange by defining "indirect interconnection" in a manner that would prohibit the CMRS Providers from sending or receiving traffic over existing common trunks between the RLECs and the third-party tandem provider (BellSouth or Windstream). In other words, the RLECs have attempted to define indirect interconnection out

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[7] *In the Matter of Application of AT&T Wireless Services, Inc. for Arbitration under the Telecommunications Act of 1996,* Cause No PUD 2002-150, Final Order, p. 1 of attached Issues Matrix (Oct. 2002) (" . . . the FCC requires that the parties must pay each other reciprocal compensation for all intraMTA traffic whether the parties are directly or indirectly connected.").

[8] *In re Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless,* Consolidated Docket No. 03-00585, Tennessee Regulatory Authority, Order of Arbitration Award, p. 18 (Jan. 2006) (" . . . the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation and arbitration process in § 252(a) and (b) apply to traffic exchanged indirectly between a CMRS provider and an ICO member.").

[9] 47 C.F.R. § 20.11(a) (emphasis added).

of existence. Specifically, section 4.1.2 of the RLECs' proposed interconnection agreement would state:

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

This proposed definition, if adopted by the Commission, would allow the RLECs to claim that "indirect interconnection" is permitted. However, the definition would prohibit the CMRS Providers from using the tandem switching and common transport of a third-party provider. At the hearing, Mr. Watkins confirmed that if the above language were included in the interconnection agreement, the CMRS Providers would not be allowed to send traffic over the common trunk groups between the RLECs and BellSouth (or Windstream, in some cases). Hearing Tr. 1 at 137.

The RLECs' "definition" of indirect interconnection is directly at odds with the FCC's discussion of this issue:

> As noted above, that section [252(a)(1)] requires that each telecommunications carrier "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." As we have stated in the past, CMRS providers are obligated to comply with this section, but that indirect interconnection (*e.g.*, two carriers other than incumbent LECs connecting with an incumbent LEC's network) satisfies this obligation.[10]
>
> As the Commission recognized in the *Intercarrier Compensation NPRM,* CMRS providers typically interconnect indirectly with smaller LECs via a Bell Operating

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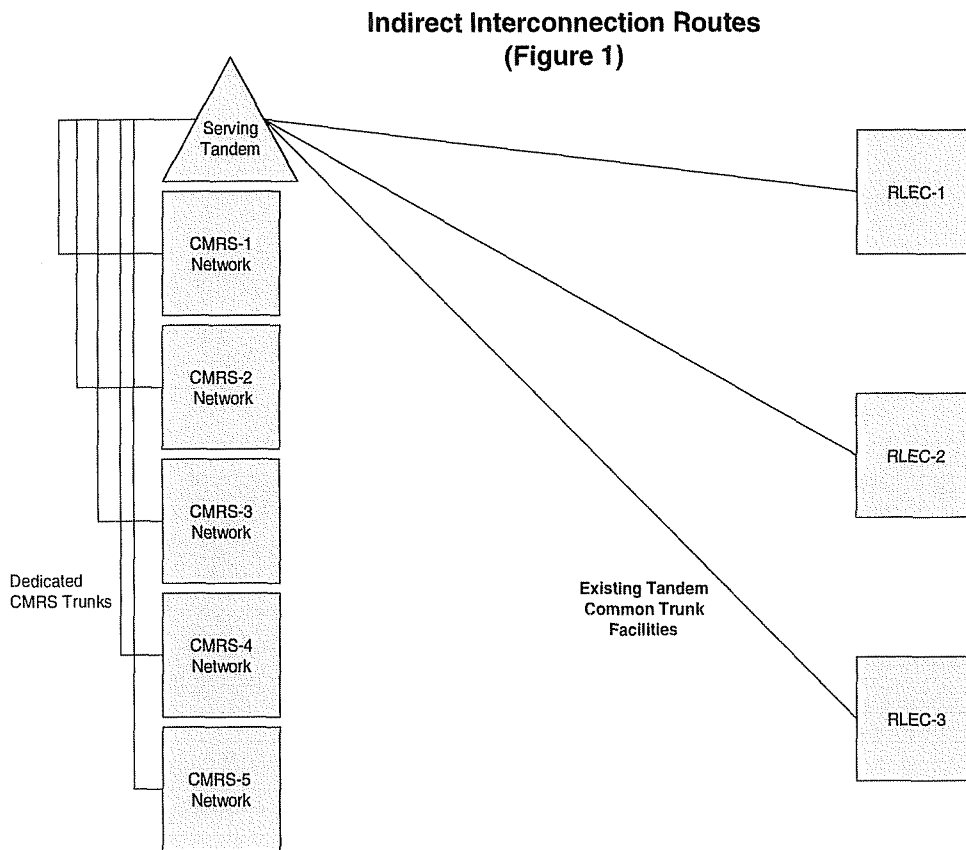
[10] *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Service*, CC 94-54, FCC 00-253, Fourth Report and Order, ¶ 13 (rel. July 24, 2000) (citations omitted).

Company (BOC) tandem. In this scenario, a CMRS provider delivers the call to a BOC tandem, which in turn delivers the call to the terminating LEC.[11]

See also Wood Rebuttal, p. 16 (Mr. Watkins' definition of indirect interconnection is "nonsensical"). The key to indirect interconnection is that the CMRS Provider's traffic is switched at the third-party tandem and combined with the traffic of other carriers on the common trunk groups connecting that tandem to the RLEC. This arrangement allows for significant network efficiency, as Figure 1 below indicates:

Indirect Interconnection Routes
(Figure 1)



[11] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, 20 F.C.C.R. 4855, FCC 05-46, Declaratory Ruling and Report and Order, ¶ 5 (2005).

In Figure 1, five CMRS Providers are interconnected indirectly with three RLECs. Each CMRS Provider is connected by a direct trunk to the tandem provider, where the CMRS traffic is switched and sent over common trunk groups to each RLEC. This is the essence of indirect interconnection, because it allows the CMRS Providers to exchange traffic with the RLECs without the establishment of dedicated trunks from each CMRS Provider to each RLEC. This is, in fact, the way traffic is exchanged today.

The RLECs, however, would prohibit indirect interconnection and instead require each CMRS Provider to establish a separate dedicated trunk group, passing through the tandem but unswitched, to each RLEC. In this consolidated arbitration proceeding, there are 12 RLECs and five wireless carriers. Thus, the RLECs would require the establishment of 60 separate dedicated trunk groups in addition to the 12 common trunk groups currently used for CMRS/RLEC traffic. Figure 2 below shows the type of network configuration that the RLECs would require with five CMRS Providers and three RLECs. In addition to the three common trunks groups from the third-party tandem to each RLEC, there would also be three dedicated trunks from each CMRS Provider to each RLEC going through the third-party tandem, or 15 additional trunk groups. The traffic on the 15 additional trunk groups would not be switched.

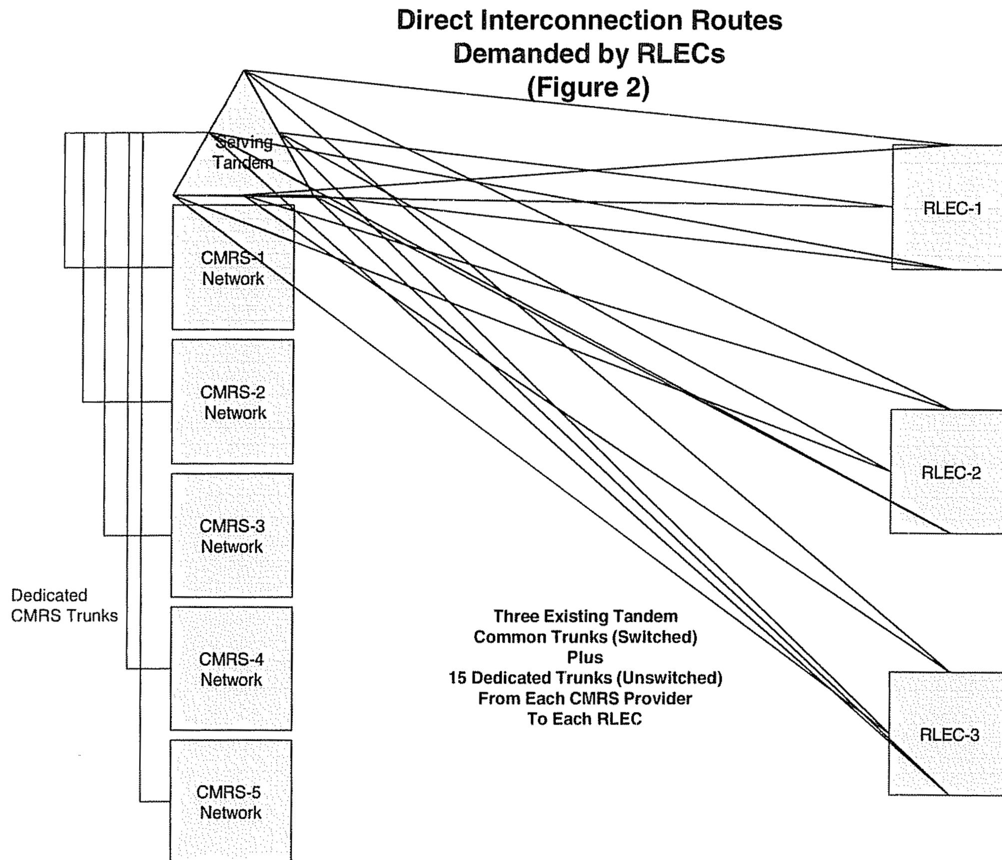


Figure 2 demonstrates the substantial network inefficiencies that would be created by the RLECs' proposed prohibition against indirect interconnection. There can be no doubt that the Telecommunications Act and FCC Rules allow indirect interconnection, in part, to avoid the creation of separate dedicated trunks from every wireless carrier to the network of every independent telephone company. Nationwide, there are over 1,000 independent telephone companies. The cost of establishing direct trunks to each would make it more expensive (and thus more difficult) to provide wireless service in rural areas.

3. The RLECs Have Agreed to Allow Indirect Interconnection

As the Commission is aware, the RLECs previously entered into an agreement with the CMRS Providers and BellSouth which required two sets of negotiations: (1) negotiations

between the RLECs and the CMRS Providers for interconnection agreements, and (2) negotiations between BellSouth and the RLECs for transiting agreements. *See* Exhibit 1 to each Arbitration Petition filed herein. (The Settlement Agreement was also filed of record with the Commission.) Paragraph 3.01 of that Settlement Agreement stated:

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

The transiting agreements contemplated by paragraph 3.01 were designed to allow the very sort of indirect interconnection that the RLECs now seek to prohibit. In short, the RLECs are bound contractually, by a document filed with this Commission, to negotiate an agreement with Bellsouth that would allow indirect interconnection. RLEC witness Watkins confirmed at the hearing that the Settlement Agreement would allow traffic between the CMRS Providers and the RLECs to continue to be exchanged over the common trunk groups between the RLECs and the tandem providers (BellSouth and Windstream). Hearing Tr. 1 at 141. Mr. Watkins also confirmed that all 12 RLECs that are parties to these consolidated arbitrations signed the Settlement Agreement. Hearing Tr. 1 at 142.

4. <u>The RLECs' Reciprocal Compensation Rates Will Be Set Based on Indirect Interconnection</u>

The testimony and proposals in this case regarding the appropriate reciprocal compensation rate (Issues 10 and 11) all assume that the parties will continue to exchange traffic indirectly. Mr. Wood and Mr. Farrar have proposed transport rates that assume the RLECs provide common transport from the meet point with BellSouth all the way into their wire centers. *See infra.* If the parties were directly connected, that common transport would be replaced with a dedicated facility. Mr. Meredith did not argue that those miles would be excluded, and instead

conducted his own proxy analysis that assumed common transport all the way to the meet point. Meredith Rebuttal, Ex. DDM-3. As a result, Mr. Meredith's cost testimony is utterly inconsistent with his clients' position that indirect interconnection via existing common trunk groups should be prohibited in the future.

For the above reasons, the CMRS Providers' position should be adopted on Issue 2. The Commission should rule that the CMRS Providers are allowed to continue to exchange traffic indirectly with the RLECs, and the RLECs' proposed 23 contract sections that would prohibit indirect interconnection should be rejected.

C. Issue 3 – Does the Interconnection Agreement Apply only to Traffic Within Kentucky

The CMRS Providers identified this issue because section 3.4 and Appendix C of the RLECs' proposed interconnection agreement would have limited the agreement to calls within Kentucky. Clampitt Direct, p. 4. In response to discovery requests, the RLECs argued such a limitation was appropriate because the "agreement was designed (as are all interconnection agreements) to address the terms and conditions for the exchange of local traffic within the company's local exchange area." *See* RLECs' Response to CMRS Providers' Interrogatory 1.18. In testimony, then, the RLECs admitted that no such limitation is appropriate, but tried to add a new issue – whether the CMRS Providers should be required to identify all counties from which they might originate traffic. Watkins Direct, p. 23, lines 7-9. The Commission should decline to consider an issue not raised in the Petition or Response. In addition, if the Commission does reach the merits, it should reject the RLECs' proposal.

As an initial matter, the Commission should decline to consider the RLECs' proposal to identify every county in the country from which a CMRS provider might originate traffic. Section 252(b)(4) provides that the Commission must limit its consideration to issues raised in

the Petition, and the Response. As it is currently formulated, the RLECs' position on Issue 3 was neither raised by the RLECs in their Petitions, nor by the CMRS Providers in their Joint Response. Instead, it is a new issue that should not be considered at this juncture.

Even if the Commission were inclined to address this suggestion, it should be rejected. There is simply no sound rationale for the Commission to require the Appendix to an interconnection agreement to identify every county (inside and outside of the MTA) where traffic might be originated by or terminated to a CMRS provider. As Mr. Clampitt explained in his summary:

> The restrictions in the contract would prohibit the carrier's ability to expand their network without the rural telephone's approval and consent. It would create an almost certain inadvertent breach of contract by the wireless carriers as they build out their network. At a minimum, it would create a barrage of amendments and unnecessary paperwork and delays with no added value. In short, it's just plain unworkable. The wireless carriers also want to provide excellent service, as the rural telephone companies do, to their existing subscribers and potential new subscribers in the Commonwealth of Kentucky, and this provision hinders that goal.

Hearing Tr. 2 at 155-56.

For these reasons the Commission should accept the CMRS Providers' position on Issue 3.

D. Issue 4 – Should the Interconnection Agreement Exclude "Fixed Wireless Services"

Issue 4 is whether the Interconnection Agreement should exclude "fixed wireless services." The RLECs propose a clause in section 3.5 of the Interconnection Agreement indicating that it does not apply to "fixed wireless services." The CMRS Providers propose to delete this limitation. The Interconnection Agreement is already specifically limited to CMRS traffic exchanged between the CMRS network of a CMRS provider and the LEC network of the RLEC. In addition, as Mr. Wood explained, "fixed wireless" is not a defined term or a term that

has any regulatory significance. Wood Direct, p. 19. This is made clear by the RLECs' Response to CMRS Interrogatory 1.19, in which they were unable (or unwilling) to provide a definition of "fixed wireless service." The Commission should decline to add a vague and unnecessary limitation to the Interconnection Agreement, and should accept the CMRS Providers' position on Issue 4.

E. Issues 5 and 6 – Terms of Indirect Interconnection

Issues 5 and 6 involve two specific aspects of indirect interconnection. Issue 5 concerns whether the CMRS Providers or the RLECs should pay the transiting charge for RLEC-originated traffic exchanged through a third-party tandem. (There is no disagreement that the CMRS Providers should pay the transiting charge for CMRS-originated traffic.) Issue 6 concerns whether the RLECs can use records from the tandem provider to bill the CMRS Providers for reciprocal compensation, when CMRS traffic is sent to the RLECs through a third-party tandem.

1. Issue 5: The Originating Carrier is Required to Pay the Transit Charge

When parties exchange traffic indirectly (through a third party tandem) the tandem provider is entitled to compensation for the use of its facilities. Typically, the transiting carrier assesses a small, usage-based charge against the originating party. Yet when the CMRS Providers proposed the following language to be included in section 4.1.2.1 of the interconnection agreement, the RLECs objected:

> Each Party shall be responsible for (a) all transit charges, if any, generated by calls originated on its network, and (b) all costs of the facilities linking its own switch(es) to the third party transiting tandem.

The CMRS Providers acknowledge that they should pay the transiting charge for all wireless-originated traffic. The RLECs, however, are unwilling to pay the transiting charge for RLEC-originated traffic. In other words, in the RLECs' view, the CMRS Providers must pay the

transiting charge for both CMRS-originated and RLEC-originated traffic. The CMRS Providers always pay, and the RLECs never pay.

a. Under Federal Law, the Originating Carrier Pays the Transit Charge

The FCC has made it clear that the originating party is responsible for the cost of delivering a call to the terminating party's network. The FCC's allocation of charges to the originating carrier makes sense, because the originating carrier is best situated to mitigate transport costs. The terminating carrier, on the other hand, has no ability to mitigate its transport expenses for traffic that originates on another carrier's network. In the case of indirect interconnection, that includes payment of the transiting charge. The key FCC Rule is 47 C.F.R. § 51.703(b), which provides that "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." This has led the FCC's General Counsel to state in filed pleadings:

> Under current intercarrier compensation rules, then, when a wireless customer calls a rural LEC customer, the wireless carrier is responsible for transporting the call and paying the cost of this transport. And, conversely, when a rural LEC customer calls a wireless customer, the rural LEC is responsible for transporting the call and paying the cost of this transport.[12]

FCC decisions have reached the same conclusion:

> Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated . . . [13]

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[12] *United States Telcom Ass'n et al. v. Federal Communications Commission and United States of America*, Nos. 03-1414. 1443, 2004 WL 3190579, at 35 (D.C. Cir. 2004) (D.C. Cir., filed July 9, 2004).

[13] *TSR Wireless* v. *U S West*, 15 FCC Rcd. 11166, 11184 ¶ 31 (2000), *aff'd Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001)("*TSR Wireless*").

Three state commissions in BellSouth territory have all recently ruled against the RLEC position that CMRS Providers should pay the transiting charges for RLEC-originated traffic.

> If a call originates in a switch on one party's network, then that party is responsible for the transiting costs.[14]
>
> The Record evidence is persuasive that the originating carrier utilizing BellSouth's transit service is responsible to compensate BellSouth for that service.[15]
>
> GTA [Georgia Telephone Association] has not cited to any authority that would alter the principle that calling party pays. . . . Since the Commission initially voted on this matter, the Tenth Circuit has addressed this issue. In *Atlas*, the Tenth Circuit concluded that commercial mobile radio service providers should not have to bear the costs of transporting calls that originated on the networks of rural telephone companies. . . . The Commission finds the reasoning of *Atlas* compelling. It is consistent with and confirms the principle that the originating party must bear the costs of transiting the call.[16]

During cross-examination, RLEC witness Watkins admitted that Tennessee, Florida and Georgia have ruled against the position adopted by the Kentucky RLECs. Hearing Tr. 1 at 138-140. Mr. Wood expressed surprise that this issue was even being litigated in light of the clear legal requirements and overwhelming precedent. Hearing Tr. 2 at 31-32.

As discussed above, this Commission has adopted the same principle in *Petition of Level 3 Communications for Arbitration with BellSouth*, PSC Case No. 2000-00404, Order at 3-4 (March 14, 2001), which states that "the public interest, as well as incumbent and competitive carriers, will benefit from continuing the long-established policy that the originating carrier pays

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[14] Order of Arbitration Award, Tennessee Regulatory Authority, Docket No. 03-00585, January 12, 2006, p. 30.

[15] Florida Public Service Commission Order No. PSC-06-0776-FOF-TP in Docket Nos. 05-0119-TP and 05-0125-TP, issued September 18, 2006, p. 21.

[16] Order on Clarification and Reconsideration, Georgia Public Service Commission Docket No. 16772-U, released May 2, 2005, pp. 3-4.

for its own costs of origination." In that case, the Commission specifically relied on the FCC's *TSR Wireless* case, cited above in footnote 13, when allocating the costs of direct interconnection facilities. For indirect interconnection, the principle is the same. The CMRS Providers establish a point of interconnection with the third-party tandem provider, and the RLEC is required to pay the costs of transporting its calls, including any transiting charge, to that point. When the call is reversed, the CMRS Provider is obligated to pay the transiting charge to transport the call to the RLEC's point of interconnection with the tandem provider.

Every federal appellate court that has addressed this issue has rejected the RLECs' position. For example, as is mentioned by the Georgia Commission in the quotation immediately above, in an appeal of an Oklahoma Corporation Commission arbitration decision, the rural LECs argued that they should be "only responsible for transport to a point of interconnection on their own network."[17] The Tenth Circuit Court of Appeals summarily rejected this argument:

> The [rural LECs'] argument that CMRS providers must bear the expense of transporting [rural LEC]-originated traffic on the [intermediary] network must fail.[18]

The District of Columbia, Fourth and Fifth Circuits have applied the same principle with regard to the interconnection between two LECs, each ruling that an originating carrier must pay to transport its traffic to the terminating carrier's network.[19]

In addition, the National Telecommunications Cooperative Association, which represents more than 560 small and rural LECs, including, the CMRS Providers believe, the RLECs in

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[17] *Atlas Telephone* at 1265 n.9

[18] *Id.* at 1266.

[19] *See Mountain Communications v. FCC*, 355 F.3d 644 (D.C. Cir. 2004); *MCImetro* v. *BellSouth*, 352 F.3d 872 (4th Cir. 2003); *Southwestern Bell* v. *Texas Public Utilities Comm'n*, 348 F.3d 482 (5th Cir. 2003).

these consolidated cases, has recently told the FCC: "Typically, the carrier that originates the call will pay for the transiting function."[20]

The Commission's order should reflect this settled law and industry practice.

b. Proper Allocation of Transit Costs Will Not Cause the RLECs Undue Burden

Throughout these consolidated proceedings, the RLECs have implied, and sometimes directly claimed, that compliance with federal law will cause them economic harm. For example, there has been some insinuation that requiring the RLECs to pay transiting charges for RLEC-originated traffic would be unfair to the RLECs. The Direct Testimony of RLEC witness Magruder specifically asks "that this Commission do no harm to our small rural cooperative or the rural telephone companies, in general." Magruder Direct, p. 5.

Mr. Wood explained that the actual cost to an RLEC to implement this federal requirement is quite small. Hearing Tr. 2 at 101-103. An RLEC simply needs to carry the call a small number of miles to its meet point with BellSouth, and then pay BellSouth $0.0025 per minute to have the call delivered to a CMRS Provider. *Id.* In addition, this charge would not apply at all on interMTA calls that are lawfully delivered via an interexchange carrier. *Id.* at 101. Contrary to the statements made by Mr. Watkins at the hearing, under no circumstances would the RLECs be obliged to carry transport traffic "hundreds of miles away." Hearing Tr. 1 at 187.

Furthermore, there is no evidence that requiring the RLECs to pay their lawful share of transit charges would be in any way harmful. For example, the 2005 financial statement of Duo County (Respondents' Exhibit 1) demonstrates that Duo County reported net income of $6.1

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[20] NTCA Ex Parte, CC Docket No. 01-92 (March 10, 2004), *attaching* NTCA, *Bill and Keep: Is It Right for Rural America,* at 40 (March 2004).

million in 2005, which resulted in an increase in equity valuation from $40 million to approximately $46 million ($600 per member). Hearing Tr. 1 at 56. As Mr. Magruder admitted, liquidity measurements are of the utmost importance in determining whether a corporation is healthy, and in 2005 Duo County had an 8:1 liquidity ratio. Indeed, Duo County used its financial strength to distribute approximately $576,000 to its approximately 10,000 members ($57.60 per member). Essentially, Duo County provided its members with approximately three months of free service because of its financial strength. Given such figures, and the fact that no other Petitioner offered even anecdotal evidence of an inability to pay for transit, the Commission should give no weight to the RLECs' claims that they will be harmed if they are required to comply with the law on this point.

2. Issue 6: The Records of the Tandem Provider are Appropriate for Intercarrier Billing

If the RLECs and CMRS Providers continue to exchange traffic indirectly, then they must bill each other for the traffic terminated – unless they exchange traffic on a bill and keep basis, which the RLECs are unwilling to do. Issue 6 evaluates whether the RLECs can use industry standard 11-01-01 tandem records (provided by the third-party tandem carrier) to bill for CMRS-originated traffic terminated on the RLECs' networks.

CMRS witnesses Mr. Brown and Mr. Wood explained in detail why the 11-01-01 records are accurate for billing purposes. Mr. Brown pointed out that such records are in use "across the country" by RLECs to bill wireless carriers for traffic exchanged indirectly. Brown Direct, p. 15. Mr. Wood testified that many types of carriers rely on such records, which are often necessary and are consistent with industry standards. Wood Direct, pp. 20-21. The format and content of 11-01-01 records are defined by the Alliance for Telecommunications Industry Solutions, an industry body that promulgates standards in areas such as interconnection, number

portability, toll-free access and ordering and billing. Brown Direct, p. 15. Mr. Brown attached a sample of a BellSouth tandem record to his direct testimony and pointed out that the Tennessee Regulatory Authority has specifically held that 11-01-01 records are reliable and can be used by RLECs for intercarrier billing. *Id.* at 16. The RLECs did not refute any of this testimony or cross examine Mr. Brown on this issue.

The CMRS Providers have proposed language in section 5.5 of the Interconnection Agreement that would give RLECs an option when billing for traffic exchanged indirectly. First, an RLEC may bill based upon actual usage measured at the RLEC switch. In the alternative, an RLEC may base it bills on 11-01-01 records. *Id.* at 14. The choice is the RLEC's. All the CMRS Providers ask is that if the RLECs bill from their own records, their switches be verified in advance as capable of recognizing pooled and ported numbers. Many RLECs today cannot verify numbers that have been pooled or ported from a CMRS Provider to a third party. Without the capability to verify pooled and ported numbers at the switch, an RLEC billing from its own switch records will improperly attribute pooled and ported numbers to a CMRS Provider (to whom the numbers had previously been assigned) rather than the third-party carrier to whom the numbers are currently assigned. This problem is mitigated when RLECs bill from 11-01-01 records, because those records are based on individual wireless carrier trunk groups and allow ported and pooled numbers to be properly billed. *Id.* at 16. Thus, the CMRS Providers' proposed language in contract section 5.5 would require that, before an RLEC can bill from its

own switch records for traffic exchanged indirectly, the switch must be shown to be capable of accurately recognizing pooled and ported numbers.[21]

The RLECs oppose the proposed language, while offering nothing in the alternative, because the RLECs oppose the exchange of traffic through a third party tandem. But if indirect interconnection is allowed as a matter of federal law, then the interconnection agreement should specify how RLEC billing for this type of interconnection would occur. The CMRS Providers' proposed language would give the RLECs the only two options available. The RLECs have not suggested otherwise.

Based on the record evidence, the Commission should find that 11-01-01 records are reliable. Brown Direct, p. 14-15. In fact, Mr. Watkins' only claim is that "small LECs should not be forced to rely on a large Bell company for such records when the small company has the capability to identify, measure and record traffic for itself." Hearing Tr. 1 at 144. But the CMRS Providers' proposed language would give the RLECs the option of billing from their own switch records, provided the records are accurate, rendering Mr. Watkins' concerns off point. This demonstrates that the RLECs are trying to use this billing issue as another way to prohibit the CMRS providers from utilizing indirect interconnection. When Mr. Watkins claims that each RLEC has the capability "to identify, measure and record traffic for itself," he is talking about bills for traffic exchanged through *direct interconnection.* That the RLECs might have the same capability for traffic exchanged indirectly is beside the point, from the RLECs' view.

In short, the RLECs' opposition to the CMRS Providers' proposed language in Issue 6 is based solely upon the RLECs' opposition to indirect interconnection. If the RLECs lose that

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[21] In addition to being able to distinguish the originating carrier in a porting or pooling situation, the RLEC measurement capability must also be able to distinguish roaming traffic from reciprocal compensation traffic originated by a particular CMRS provider.

issue, as they must, then they lose Issue 6 as well, because they have made no claim – and have introduced no evidence – that 11-01-01 records are unreliable.

Indeed, the Settlement Agreement entered into by the RLECs, the CMRS Providers and BellSouth (filed with Commission and attached as an exhibit to each RLEC's arbitration petition) specifically allows the use of 11-01-01 records by the RLECs for intercarrier billing. In fact, paragraph 2.10 of that document specifically refers to 11-01-01 records as "industry standard call detail records." Witness Watkins confirmed this on cross-examination. Hearing Tr. 1 at 145-46.

BellSouth is currently providing 11-01-01 records to the RLECs for billing purposes. Brown Rebuttal, p. 21. Thus, by contract, the RLECs have already agreed that 11-01-01 tandem records are appropriate for billing, and the RLECs are using those records today. The CMRS Providers' proposed language in section 5.5 should therefore be adopted.

F. Issues 7 and 8 – Terms of Direct Interconnection

Issues 7 and 8 concern the terms of and payment for direct interconnection between the parties. While the CMRS Providers expect most traffic to be exchanged indirectly, the Interconnection Agreement must contain technical and compensation terms for those instances where direct connections are established. As discussed below, the CMRS Providers' proposed contract language properly defines direct interconnection, establishes appropriate technical terms, and allocates costs in accordance with FCC Rules.

1. Direct Interconnection is the Dedicated Physical Connection Between Networks

As a threshold matter, the Commission must first properly define "direct interconnection." As both Mr. Farrar and Mr. Wood discuss in their testimony, direct interconnection is the scenario in which a CMRS Provider's mobile switching center ("MSC") is

connected to another telecommunications carrier's switch for the exchange of traffic without using the switching function and common transport of a third-party telecommunications carrier. Farrar Direct, pp. 15-16; Wood Direct, p. 11. Direct interconnection between rural ILECs and CMRS carriers is typically between the CMRS MSC and the RLEC's end office switch, or between the CMRS MSC and the RLEC's tandem switch (if the RLEC has a tandem). Direct interconnection involves a dedicated transport facility between the two parties' respective networks. Farrar Direct, pp. 15-16. Mr. Farrar further observed that the essential distinguishing characteristic of direct interconnection is whether the facility in question is dedicated solely to carrying traffic exchanged between the two networks, and not, as RLEC witness Mr. Watkins suggests, whether the facilities pass through a third-party's wire center. *See* Farrar Rebuttal, p. 2. In contrast, *indirect* interconnection is characterized by the absence of a dedicated connection between a CMRS Provider and an RLEC. Farrar Rebuttal, p. 3; Wood Direct, pp. 11-12.

2. According to the FCC, CMRS Providers May Choose Whether to Use a One-Way or Two-Way Facility

In order to promote efficiency when direct interconnection is employed, CMRS Providers should be able to choose whether to use a one-way or two-way facility. Farrar Direct, pp. 17-18. The FCC has recognized that a two-way facility is generally more efficient than two, individual, one-way facilities and is mutually beneficial to both parties. Further, because of the incentive[22] for RLECs to create barriers to entry by saddling requesting carriers with inefficient trunking designs, it is the competitive providers, and not incumbent LECs, that must have the ability to determine the most efficient and economical method of interconnection:

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[22] *First Report & Order*, ¶ 218 ("Given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself.").

> We conclude here, however, that where a carrier requesting interconnection pursuant to section 251(c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus we conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

First Report & Order, ¶ 219. Accordingly, the CMRS Providers request that the Commission adopt their proposed contract language in sections 4.1.1 (and subsections), which would permit the CMRS Provider to choose either one-way or two-way facilities. Farrar Direct, pp. 16-18.

3. <u>The Relevant Contract Language Should Preserve the Ability of Either Party to Provide the Direct Interconnection Facility</u>

The CMRS Providers' proposed contract language allows either party to provide the direct interconnection facility, whether through the providing party's core network or through a third-party provider. Further, the party that provides the facility is entitled to charge the other party for its proportionate use of the facility (see below). The RLECs' position, expressed in their proposed sections 5.2 and 5.3, is that the CMRS Provider must obtain connecting facilities only from the RLEC. That stance is untenable, however, because the RLECs are unlikely ever to be able to provide all of a direct interconnection facility, and would generally only be able to provide that portion of the direct facility within the RLEC's geographic service territory. Farrar Direct, pp. 18-19. Accordingly, the CMRS Providers' proposed language in section 4.1.1 (and subsections) should be adopted, and the RLECs' proposed language in section 5.1 and 5.2 should be rejected.

4. <u>The Cost of Facilities Must be Shared Based on the Principle that each Party is Responsible for the Costs of Delivering its Originating Traffic to the Other Party</u>

The FCC's Rules and Orders require for the cost of dedicated two-way facilities to be shared between two carriers based on each carrier's proportionate use of that facility. Farrar

Direct, p. 19 (quoting 47 C.F.R. § 51.709(b)). FCC Rule 51.509(c) provides that the proportionate charges for these dedicated transport facilities are to be flat-rated, based on the forward-looking cost standard stated in 47 C.F.R §§ 51.505 and 51.511, and apportioned according to the parties' proportional use of the dedicated facility.[23] If a party uses a one-way facility to deliver its originating traffic to a terminating party, then the proportional use rule requires the originating party to pay the entire facility cost. If the parties implement a two-way direct interconnection facility, then the proportional use rule requires the parties to split the cost based on their percentage of originated traffic.

The FCC's proportional use rule is discussed in the FCC's *TSR Wireless* decision. Where the CMRS Provider can cost-effectively obtain the remaining portion of the dedicated facility from a third-party provider, the RLEC must pay for its use of the intraMTA portion of dedicated interconnection facilities that are provided by the CMRS Provider:

> Defendants argue that section 51.703(b) governs only the charges for "traffic" between carriers and does not prevent LECs from charging for the "facilities" used to transport that traffic. We find that argument unpersuasive given the clear mandate of the *Local Competition Order*. The Metzger Letter correctly stated that the Commission's rules prohibit LECs from charging for facilities used to deliver LEC-originated traffic, in addition to prohibiting charges for the traffic itself. Since the traffic must be delivered over facilities, charging carriers for facilities used to deliver traffic results in those carriers paying for LEC-originated traffic and would be inconsistent with the rules.
>
> . . . . Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.[24]

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[23] It is important to note here that although the relevant FCC Rules provide for TELRIC-based interconnection facility pricing, the CMRS Providers have agreed to pay their proportionate use of an RLEC-provided facility based on the RLEC's effective intrastate access tariff for connecting facilities. *See* Farrar Direct, p. 20.

[24] *TSR Wireless* at 11181 and 11183.

The RLECs' witness, Mr. Watkins, rejects any possible sharing of costs associated with dedicated facilities outside the RLECs' network boundaries, and states that "[t]he RTCs are only required to transport Subpart H rules Subject Traffic to an interconnection point within their incumbent network in the LATA with which they are associated." Watkins Direct, p. 33.[25] Mr. Watkins' statement is incorrect in two respects.

Within the context of the Subpart H rules, "LATAs" are irrelevant with respect to wireless-to-wireline exchanged traffic. Farrar Rebuttal, pp. 3-4. For exchange of traffic between a LEC and a CMRS provider, the correct scope of the Subpart H rules is the Major Trading Area (MTA), as opposed to a landline "local service area," or "LATA." Farrar Rebuttal, pp. 4-5; 47 C.F.R. §§ 51.701(a), 51.701(b)(2). Second, "interconnection point" is an undefined term within the Subpart H Rules, and the only use of "interconnection point" in Subpart H, found in the FCC's definition of "Transport" at 47 C.F.R. § 51.701(c), merely serves to distinguish the terminating LEC's network from the "linking" interconnection facilities for the purpose of providing the beginning point to determine the "Transport" element of reciprocal compensation.

During cross-examination, Mr. Watkins acknowledged that "interconnection point" is not defined in the FCC's Rules, but merely a term referred to in the definition of "Transport." Hearing Tr. 1 at 177-178. Mr. Watkins also acknowledged that the word "LATA" does not appear in the sharing rule, 47 C.F.R. § 51.709. Hearing Tr. 1 at 186. Thus, the obligation to share the cost of two-way dedicated facilities does not cease at the originating carrier's network

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[25] *See also* Hearing Tr. 1 at 180 (Watkins): "Q. So ... is it fair to say that, where the rural LECs and the wireless providers disagree regarding the sharing of costs of dedicated trunking facilities is with regards to the facilities that are outside the incumbent's service area of the rural LEC? A. That's correct."

boundary – it ceases rather at the point where the two-way facility connects to the other carrier's network within the MTA, and is not subject to any unwritten LATA requirement.

The Commission should resolve Issues 7 and 8 by accepting the CMRS Providers' proposed contract language in section 4.1.1 (and subsections), and rejecting the RLECs' contrary proposals in sections 5.1 and 5.2.

G. Issues 10 and 11 – The Appropriate Reciprocal Compensation Rate for Each RLEC

Issues 10 and 11 are the appropriate reciprocal compensation rate to be established by the Commission for each RLEC consistent with the standards in the Act and the FCC's Rules. Reciprocal compensation is what an originating carrier pays a terminating carrier for traffic that is within the scope of 47 U.S.C. § 251(b)(5). Reciprocal compensation payments are made to compensate the terminating carrier for the additional costs of transport (defined as transmission and any necessary tandem switching) and termination (defined as end office switching) of telecommunications traffic. 47 C.F.R. § 51.701(c)-(d). FCC Rule 51.505(e) requires an incumbent LEC to prove that its rates do not exceed its forward looking costs using a cost study that meets Total Element Long Run Incremental Cost ("TELRIC") principles. 47 C.F.R. § 51.505(e).

The RLECs in this case failed to meet their burden of proof under 47 C.F.R. § 51.505, failed to produce TELRIC studies (or any cost studies at all), and failed to propose any rate that is based on forward-looking costs. In deference to the Commission's desire to determine rates based on the "best information available" of forward-looking costs, the CMRS Providers recommend that the Commission adopt the rates proposed by Mr. Wood as final rates to apply during the term of these Interconnection Agreements.

1. The RLECs Failed to Meet Their Burden to Demonstrate TELRIC Rates

Section 252(d)(2) of the Act requires the Commission to set arbitrated reciprocal compensation rates based on the "additional costs" of terminating those calls. FCC Rule 51.705 requires that the Commission set reciprocal rates based on:

(1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;
(2) Default proxies, as provided in § 51.707; or
(3) A bill-and-keep arrangement, as provided in § 51.713.

47 C.F.R. § 51.705(a).

As the Commission has made clear in its earlier orders in this case, incumbent local exchange carriers – in this case the RLECs – have the obligation to prepare and file cost studies, compliant with the FCC's TELRIC methodology, demonstrating their forward-looking costs:

* [T]he RLECs must prove that the rates for each element do not exceed the forward looking economic cost per unit of providing each element. Aug. 18 Order, p. 6.

* [T]he Commission finds that the RLECs' petitions for suspension of or modification to any requirement to conduct TELRIC studies should be denied . . . . Oct. 11 Order, pp. 6-7.

Based on the record, the Commission should find that the RLECs failed to demonstrate that their proposed rates are based on forward-looking costs. Mr. Watkins' recommended rate of $0.015 was, by his own admission, not based on TELRIC studies, and instead was accompanied by his opinion that TELRIC studies were not required and should not be performed. Watkins Initial Direct Testimony, p. 7. ("The 1.5 cent proposal is reasonable *in lieu of* conducting complex and expensive TELRIC studies . . . .") (emphasis added).

The RLECs' other cost witness was Mr. Meredith. Mr. Meredith's recommended rate of $0.015 (identical to the rate proposed by Mr. Watkins) was similarly not based on TELRIC studies. Instead, Mr. Meredith claims that his proposed rate is "likely to be representative of

forward looking-costs. I can't say it *a priori* if that's going to be the case or not." Hearing Tr. 1 at 95. The reason Mr. Meredith can't say, *a priori*, that his proposed rate is based on TELRIC is because *none of the RLECs conducted a TELRIC study.* Indeed, Mr. Meredith's direct testimony specifically admits that the RLECs have not produced TELRIC studies.[26] The RLECs, in short, have placed nothing in the record to support a claim that a rate of $0.015 for each company is based on forward-looking costs.

The RLECs have failed to meet their obligation to demonstrate rates supported by TELRIC studies. As a result, the RLECs have failed "unreasonably to respond on a timely basis" to a request for information by the Commission, and the Commission must now proceed using the "best information available to it" to determine reciprocal compensation rates. 47 U.S.C. § 252(b)(4)(B). As it does, however, the Commission must proceed in a manner that fully complies with the standards in 47 U.S.C. § 252(d)(2), FCC Rule 51.705(a), and other FCC pricing rules.

2. Best Available Evidence of Forward-Looking Costs

In its October 11 Order, the Commission indicated that in the absence of TELRIC cost studies it would proceed to determine rates using the best information "based on forward-looking costs." October 11 Order, p. 7. This is appropriate; the evidence relied on by the Commission to establish reciprocal compensation rates for each RLEC must be evidence of *forward-looking* costs. Consideration of embedded costs is strictly prohibited by FCC Rule 51.505(d)(1). On the record before the Commission, Mr. Wood's proposed rates reflect the best available evidence of the RLECs' forward-looking costs. Indeed, Mr. Wood's testimony is the only evidence in the

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[26] *See* Meredith Direct, p. 9 (asking "*Without a filed TELRIC study for the RLECs*, what information can you provide to assist the Commission to establish a fair charge for transport and termination?") (emphasis added).

record of such forward-looking costs – neither Mr. Watkins nor Mr. Meredith proposed rates based on forward-looking costs – and as such should be adopted by the Commission.

Mr. Wood testified that based on the best available evidence of forward-looking costs, the RLECs' reciprocal compensation rates should be set as follows:

RLEC	PER-MINUTE RATE
Ballard Rural Telephone Coop.	$0.00623680
Brandenburg Telephone Company	$0.00419120
Duo County Telephone Coop.	$0.01071400
Foothills Rural Telephone Coop.	$0.00531400
Gearheart Communications Company	$0.01053680
Logan Telephone Coop.	$0.00571400
Mountain Rural Telephone Coop.	$0.00901400
North Central Telephone Coop.	$0.00609120
Peoples Rural Telephone Coop.	$0.00953680
Thacker-Grigsby Telephone Company	$0.01193680
West Kentucky Rural Telephone Coop.	$0.00621400
South Central Rural Telephone Coop.	$0.00309120

Respondents' Exhibit 8.

As discussed above, each RLEC's reciprocal compensation rate must be based on a "reasonable approximation" of its forward-looking costs of (1) end office switching, (2) interoffice transport and (3) tandem switching (if any). To develop his proposed rates, Mr. Wood began with the forward-looking TELRIC end office switching and tandem switching costs established by the Commission for BellSouth. Wood Rebuttal, p. 42. By starting with a TELRIC cost, Mr. Wood (unlike Mr. Watkins and Mr. Meredith) has ensured that the underlying data contain forward-looking assumptions, which is critical for any rate set in an arbitration under Section 252. Because Mr. Wood recognized that BellSouth's costs will be lower than the costs incurred by a smaller rural telephone company, he applied a methodology endorsed by Mr. Meredith in his proxy rate discussion – DEM weighting – to adjust BellSouth rates upward to reflect those differences. Wood Rebuttal, pp. 42-43. DEM weighting uses a standard FCC

factor to capture cost variances between small and large LECs.[27] Mr. Wood's application of the DEM weighting methodology to the Commission's BellSouth local switching and tandem switching costs is reflected on Respondents' Exhibit 8.[28]

Because transport costs depend on the length of cable distance in each RLEC's interoffice network, Mr. Wood accepted the mileages and transport costs proposed by Mr. Meredith. Hearing Tr. 2 at 19-20. While Mr. Wood testified that the transport costs are likely overstated (due to problems in Mr. Meredith's transport analysis), he also testified that the RLEC costs could be considered at the "high end of a reasonable range of best available information" and could be accepted by the Commission. Hearing Tr. 2 at 97.[29]

The CMRS Providers recommend that the Commission adopt the company-specific rates proposed by Mr. Wood as final rates to apply during the term of these agreements. This is lawful and appropriate for the following reasons:

- These rates are based on the best available evidence of forward-looking costs – an approach made necessary by the RLECs' failure the develop and file TELRIC cost studies.

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27 For the reasons discussed below, Mr. Meredith's proposed application of DEM weighting to proxy rates is unreasonable and unsupported by law.

28 Mr. Meredith proposed allowing the RLECs to collect a tandem switching charge on every call through an RLEC switch. Meredith Direct, p. 20. Mr. Farrar explained in detail why a tandem switching charge can only apply when calls are switched from one trunk to another trunk, and that trunk-to-trunk switching occurs only on 25% of calls terminated to RLEC networks. Farrar Rebuttal, pp. 17-20; 47 C.F.R. § 51.309(c)(3). Mr. Wood agreed with Mr. Farrar that tandem switching should apply on 25% of such calls. Hearing Tr. 2 at 20. As was made clear at the hearing, Mr. Meredith admits that he would apply a tandem switching charge on many calls where there is no trunk-to-trunk switching. Hearing Tr. 1 at 107. The Commission should accept Mr. Farrar's and Mr. Wood's application of the tandem switching rate element.

29 Neither Mr. Wood nor Mr. Meredith applied DEM weighting to these transport costs.

- These rates are not "proxy rates" and so there would no need to conduct additional cost studies to supersede rates adopted in this proceeding.
- The underlying assumptions and data are forward looking, and have been accepted by the Commission as such in a prior docket.
- The adjustment to the BellSouth rates was done based on a DEM weighting methodology recommended by Mr. Meredith.
- The rates are company-specific, not based on a weighted average.
- The rates reflect the actual number of transport miles Mr. Meredith testified were appropriate for each RLEC.
- The rates allow the RLECs to assess a tandem switching charge on calls where the switch provides trunk-to-trunk switching.

For these reasons, the Commission should adopt the rates proposed by Mr. Wood, as set forth above.

3. The Proxy Analysis

FCC Rule 51.705(a) requires that if the Commission does not set rates based on a forward-looking methodology, it must utilize a proxy analysis or order bill-and-keep. While the CMRS Providers recommend that the Commission adopt the rates proposed by Mr. Wood, the Commission could set rates based on the FCC's proxy rules in 47 C.F.R. § 51.707. If the Commission were to adopt proxy rates, it should accept the rates advocated by Mr. Farrar.

Mr. Farrar's testimony and Respondents' Exhibit 9 (Revised Attachment RGF-8), identify the appropriate, company-specific rates to be adopted if the Commission proceeds with a proxy rate analysis. Mr. Farrar proposed that that the Commission set a proxy rate for termination at $0.003 per minute of use, which is at the mid-point of the mandatory range set by the FCC in Rule 51.707(b). Farrar Direct, p. 7. Mr. Farrar proposed that the Commission apply the proxy tandem rate of $0.0015 per minute on all calls that require trunk-to-trunk switching. Farrar Direct, p. 8. For transport, Mr. Farrar recommended that the Commission utilize the

actual transport miles associated with each RLEC, the appropriate number of call terminations, and an assumption that 50% of transport trunks are DS3 trunks, and 50% of transport trunks are DS1 trunks.[30] Respondents' Ex. 9, Revised Attachment RGF-5b. Thus, if the Commission does adopt proxy rates, it should accept the rates identified in Respondents' Exhibit 9 and sponsored by Mr. Farrar.

The Commission cannot adopt the proxy rates identified by Mr. Meredith.[31] Mr. Meredith has suggested that the FCC's proxy range for local switching and tandem switching should be adjusted upward before being used for the RLECs. Meredith Direct, pp. 20-21. It is important to understand why Mr. Wood did not accept (and the Commission cannot accept) Mr. Meredith's DEM weighting approach to end office and tandem switching costs. This is an incorrect application of the DEM weighting methodology. DEM weighting is a method to interpolate from RBOC costs to the costs of smaller LECs. The FCC's proxy switching rates, on the other hand, are designed to apply (with no changes made) to both RBOCs and RLECs. As Mr. Wood has pointed out, the FCC's proxy end office switching rate of $0.002-$0.004 accommodates the costs of a wide range of ILEC sizes. Wood Rebuttal, p. 42. *See also* Farrar

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[30] Mr. Meredith calculated proxy rates using an assumption that 100% of such trunks were at a DS1 level. There are several reasons why this methodology is flawed. First, it admittedly does not look at all transport facilities, only CMRS transport facilities. Meredith Rebuttal, p. 15, lines 2-3. This kind of selective approach, which would generate different proxy rates for different kinds of local traffic, is not allowed by FCC Rule 51.503(a). Second, Mr. Meredith has excluded consideration of trunks from the meet point to the RLEC tandem switch. *See* Meredith Rebuttal, Ex. DDM-3, p. 1, fn. 1; Hearing Tr. 2 at 20. Such trunks would certainly be at a DS3 level or higher, and the mileage associated with that network segment in some cases exceeds the mileage on the other side of the tandem switch. Meredith Rebuttal, Ex. DDM-3. As a result, Mr. Farrar's analysis should be accepted.

[31] Mr. Meredith does not recommend the use of proxy rates (Meredith Direct, p. 20, lines 19-21), and Mr. Watkins argues that the use of proxy rates is prohibited. Watkins Rebuttal, p. 21.

Rebuttal, pp. 12-13. In fact, as noted by Mr. Farrar, Mr. Meredith's proposed modification of the proxy rate elements would result in a rate *higher* than USTA's proposed proxy rate that the FCC specifically found to be "an outline that . . . does not represent an appropriate cost model for termination of traffic." Farrar Rebuttal, p. 13. The FCC's default proxies, in other words, establish rate *ceilings* for end office and tandem switching:

> The default proxies we establish will, in most cases, serve as presumptive ceilings. States may set prices below those ceilings if the record before them supports a lower price. States should provide a reasoned basis for selecting a particular default price. In one case, for local switching, the default proxy is a range within which a state may set prices.

First Report & Order, ¶ 768. By applying the FCC's DEM weighting factors to the FCC's proxy rates for end office and tandem switching, Mr. Meredith has impermissibly exceeded the ceilings in FCC Rules 51.707(b)(1) and 51.513. To repeat, DEM weighting is designed to apply to RBOC costs, not to FCC proxy rates.

For these reasons, the Commission cannot accept the proxy rates identified by (but not recommended by) Mr. Meredith in his testimony.

4. Bill-and-Keep

A state commission is justified in imposing a bill-and-keep arrangement for the exchange of traffic subject to reciprocal compensation when the carrier with the burden of proof fails to demonstrate appropriate forward-looking costs that could be approved consistent with 47 U.S.C. § 252(d)(2). In Oklahoma, rural LECs presented a cost analysis to the Oklahoma Corporation Commission ("OCC") that they claimed justified a blended rate of approximately $0.10 per minute. The Commission rejected the cost model as "suspect" and ordered the parties to exchange traffic on a bill-and-keep basis until the rural LECs met their burden of proof:

> Any party may seek to establish rates in a subsequent docket, but must present an individual cost study that complies with the Act, and must show that establishing rates and rendering bills is more economically appropriate than bill and keep.

Atlas Tel. Co. v. Corporation Comm'n of Okla., 309 F.Supp.2d 1299, 1311 (W.D. Okla. 2004), *aff'd*, 400 F.3d 1256 (10th Cir. 2005). Although the CMRS Providers have not proposed that the Commission order bill-and-keep, such a result would be justified under applicable law.

5. The RLECs' Proposal Cannot Be Accepted Because it is Based on a Consideration of Embedded Costs and Relies on a Review of Rates Negotiated in a Non-competitive Market

Mr. Meredith and Mr. Watkins have proposed that the Commission set a rate of $0.015 for all RLECs. While these witnesses have various reasons why this rate should be accepted, those reasons cannot be accepted in light of the mandatory standards in the Act and the FCC's Rules. The arguments made by Mr. Watkins and Mr. Meredith will be taken in turn.

a. The Commission Cannot Set a Rate Based on How the Rate Compares to Access Rates

Both Mr. Watkins and Mr. Meredith argue that the RLECs' proposed $0.015 rate can be accepted because that number compares favorably to the RLECs' interstate access rates. Watkins Initial Direct, p. 6; Meredith Direct, pp. 18-19. This would violate the FCC's Rules. FCC Rule 51.505(d)(1) specifically prohibits the Commission from considering embedded costs in setting rates under the Act:

> The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:
>
> (1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's book of accounts.

It is undisputed that interstate access rates are set based on embedded costs. Hearing Tr. 1 at 99-100; Wood Direct, p. 42. As a result, the Commission must reject the RLECs' proposal to rely on and consider embedded costs in setting a reciprocal compensation rate.

b. The Commission Cannot Set a Rate Based on an Evaluation of Negotiated Rates

Both Mr. Watkins and Mr. Meredith argue that the RLECs' proposed $0.015 rate could be accepted because that number compares favorably to various rates negotiated between rural LECs and CMRS providers in Kentucky and elsewhere. Watkins Initial Direct, pp. 5-6; Meredith Direct, p. 10.

The Commission cannot set rates based on negotiated rates in other agreements. Section 252(a) allows carriers to enter agreements on a voluntary basis which are not compliant with all the requirements of sections 251(b) or (c). Therefore, the rates in such agreements may bear no relationship to cost requirements of Section 252(d)(2). Moreover, the Act provides separate standards for approving negotiated agreements arrived at via section 252(a) versus arbitrated agreements. Section 252(e)(2) of the Act requires negotiated agreements, and the rates contained therein, to be approved unless discriminatory or contrary to the public interest. An arbitrated rate, on the other hand, must be cost-based and meet specific pricing standards to be approved. 47 U.S.C. § 252(d)(2). These different standards mean the Commission cannot rely on negotiated agreements to set arbitrated rates.

In addition, Mr. Meredith's premise – that the "market price" for termination reflected in negotiated rates somehow reflects economic costs (Meredith Direct, p. 11) – is simply bad economics. As Mr. Meredith admitted on the witness stand, each RLEC is the only provider of termination services to its customers. Hearing Tr. 1 at 98. A carrier seeking termination services has no other option than to purchase those services from the particular RLEC. *Id.* It is a fundamental principle of economics that the market cannot drive rates to economic costs when there is only one provider of the service.

The Commission cannot accept the RLECs' recommendation to set a reciprocal compensation rate of $0.015 based on how that rate compares to negotiated rates.

For all of the above reasons, the CMRS Providers recommend that the Commission establish final reciprocal compensation rates for each RLEC as follows:

RLEC	**PER-MINUTE RATE**
Ballard Rural Telephone Coop.	$0.00623680
Brandenburg Telephone Company	$0.00419120
Duo County Telephone Coop.	$0.01071400
Foothills Rural Telephone Coop.	$0.00531400
Gearheart Communications Company	$0.01053680
Logan Telephone Coop.	$0.00571400
Mountain Rural Telephone Coop.	$0.00901400
North Central Telephone Coop.	$0.00609120
Peoples Rural Telephone Coop.	$0.00953680
Thacker-Grigsby Telephone Company	$0.01193680
West Kentucky Rural Telephone Coop.	$0.00621400
South Central Rural Telephone Coop.	$0.00309120

H. Issue 13 – IntraMTA Traffic Factors

Issue 13 is the "flip side" of Issue 6. Issue 6 discusses how the RLECs bill for traffic received from CMRS Providers. Issue 13 involves how CMRS Providers bill for traffic received from the RLECs. Specifically, Issue 13 asks whether CMRS Providers should be allowed to base their intercarrier bills to RLECs upon traffic factors applied to the RLECs' bills to CMRS Providers.

1. Reciprocal Compensation Should be Paid Through the Use of Factors

CMRS witness Mr. Brown testified that CMRS Providers may lack the capability to produce accurate intercarrier billing records. Brown Direct, p. 17. *See also* Conn Direct, pp. 19-20. Thus, it is industry standard practice for CMRS/RLEC interconnection agreements to contain "traffic factors" which allow the CMRS Provider to base its intercarrier bills to the RLEC upon the RLEC's bills to the CMRS Provider. For example, except for bill-and-keep

agreements, all of Cingular's interconnection agreements with landline carriers contain intraMTA traffic ratios that stipulate what portion of total exchanged traffic is landline-originated, and what portion of such traffic is wireless-originated. Several Cingular contracts contain provisions stipulating that 70 percent of total traffic is wireless-originated, and 30 percent is landline-originated. Brown Direct, p. 17.

Cingular and other CMRS Providers use the stipulated traffic ratios to base their bills to landline carriers off of the landline carriers' bills to wireless carriers. For example, if a landline carrier bills Cingular for 70 minutes of Cingular-originated traffic in one month, and if the agreed traffic ratio is 70 percent wireless-originated/30 percent landline-originated, Cingular will apply the factor and bill the landline carrier for 30 minutes of landline-originated traffic. This allows Cingular, and other CMRS Providers, to bill landline carriers, even though the CMRS Providers cannot accurately measure landline-originated traffic. *Id.* at 17-18.

The RLECs oppose the CMRS-proposed language in section 5.5 allowing CMRS Providers to use traffic factors for intercarrier billing. The RLECs' position is based on Mr. Watkins' proposal that the RLECs measure land-to-mobile traffic (and apparently produce bills to themselves, though this is not made clear). Watkins Direct, p. 42. However, the RLECs will not measure traffic exchanged indirectly (Issue 2) or land-to-mobile intraMTA traffic delivered via an interexchange carrier (Issue 9), making RLEC measurements inaccurate for billing purposes.

In addition, as Mr. Brown has testified, CMRS actual measurements of landline-originated traffic are not necessarily any more accurate for billing purposes than RLEC measurements. Mr. Watkins is thus incorrect when he claims that the FCC Rules "expect carriers to deploy measurement equipment so that it [traffic] can be measured." Hearing Tr. 1 at

146. There is no FCC Rule requiring CMRS Providers to bill from actual measurements, because actual CMRS measurements of landline-originated traffic can be unreliable. Much RLEC-originated traffic to the CMRS Providers is dialed on a toll basis and handed off by RLECs to interexchange carriers. Whether a CMRS Provider such as Cingular is billing from third-party tandem records or its own switch records, the originating carrier will be shown to be the interexchange carrier, not the RLEC.

As a result, the RLECs' proposal – that RLECs be billed based on actual measurements of RLEC-originated traffic – will not provide the CMRS Providers with accurate billing records – whether the measurements are made by the RLECs or the CMRS Providers. The RLECs' proposal therefore cannot be accepted, and the Commission should allow the continued use of traffic factors, which is the industry standard.

2. The Commission Should Accept the Traffic Factors Proposed by the CMRS Providers

The CMRS Providers identified and demonstrated appropriate traffic factors that should be adopted by the Commission. Cingular, based on traffic studies that were not challenged, showed the following factors:[32]

Ballard: 56% Wireless-Originated / 44% Wireline-Originated
Duo County: 88% Wireless-Originated / 12% Wireline-Originated
West Kentucky: 58% Wireless-Originated / 42% Wireline-Originated
South Central: 73% Wireless-Originated / 27% Wireline-Originated

Brown Direct, p. 18.

Verizon Wireless utilized BellSouth and RLEC billing information for two companies with whom it exchanges traffic, and that billing information supports its proposal for a traffic

[32] Not all CMRS Providers propose factors for all RLECs, because not all RLECs filed arbitration petitions against all CMRS Providers.

ratio of 65% Wireless-Originated, and 35% Wireline-Originated. Clampitt Direct, pp. 10-11. This proposal was not challenged in the RLECs' rebuttal testimony, and Mr. Clampitt was not cross examined at the hearing on his recommendation.

Sprint and T-Mobile recommended that in the absence of company-specific information, and based on experience and industry practice, a default of 70% Wireless-Originated, and 30% Wireline-Originated would be appropriate, subject to either party's right to conduct studies to determine actual traffic levels. *See* Farrar Direct, p. 22; Conn Direct, p. 20.

The CMRS Providers' proposed ratios were all based upon traffic studies conducted by the CMRS Providers and other available information. The RLECs have presented no evidence to refute the accuracy of the CMRS Providers' proposed ratios. Indeed, the RLECs asked no questions about these proposed factors on cross-examination. As a result, the Commission should accept the CMRS Providers' proposed traffic factors.

I. **Issue 15 – Compensation for InterMTA Traffic**

Issue 15 involves traffic exchanged between an RLEC and a CMRS Provider that does not originate and terminate, at the beginning of the call, within the same MTA. Such traffic is often referred to as "interMTA traffic." Generally, negotiated interconnection agreements between CMRS Providers and RLECs designate a small percentage (*e.g.*, 0%-3%) of the total mobile-originated traffic as compensable interMTA traffic. Brown Direct, p. 19. Typically, as a business accommodation, parties agree that interMTA traffic will be billed at some combination of an RLEC's interstate and intrastate access charges, in recognition that interMTA traffic can occur in both jurisdictions. *Id.*

In these consolidated cases, the CMRS Providers propose an interMTA factor of 3%, to be split evenly between each RLEC's interstate and intrastate access rates. *Id.* at 22. The proposed interconnection agreement attached to the RLECs' complaints proposes an interMTA

factor of 5% to be billed exclusively out of each RLEC's intrastate access tariff. *Id.* The RLECs' proposed section 5.4 would also exonerate the RLECs from paying access charges to the CMRS Providers for any landline-originated interMTA traffic – by assuming that the amount of landline-originated, interMTA traffic is *de minimis*. *Id.* at 20.

RLEC witness Watkins, in contravention of his clients' proposal, suggests that the interMTA percentage be based on "the same interstate percentage that the CMRS Providers use for interstate USF contribution." Watkins Direct, p. 44. Mr. Watkins, again unlike his clients, also claims that RLECs are never responsible for paying compensation to the CMRS Providers for landline-originated, interMTA traffic – even if such traffic is more than a *de minimis* amount. *Id.* at 48.

1. <u>The Amount of Exchanged InterMTA Traffic is Relatively Small</u>

The single most important fact in Issue 15 is that the RLECs and CMRS Providers *do not exchange much interMTA traffic.* As CMRS witness Mr. Brown pointed out:

> MTAs are usually very large, often covering all or most of an entire state. Experience tells us that most calls are made within consumers' communities of interest which tend to be geographically limited and thus usually within the MTA.

Brown Direct, p. 20. *See* Clampitt Direct, pp. 11-12 (explaining why there will be minimal interMTA traffic); Conn Direct, pp. 20-21 (same). The RLECs did not dispute this testimony, nor did they cross-examine any CMRS witness on this point at the hearing. In addition, it is uncontroverted that most of Kentucky lies with a single MTA. Brown Direct, p. 21. Nothing in the record indicates that a significant amount of wireless traffic is originated and terminated in different MTAs. Brown Rebuttal, p. 32.

This fact – that the CMRS Providers and RLECs exchange little interMTA traffic – is why both the CMRS Providers and RLECs have proposed low interMTA factors: 3% and 5%, respectively.

2. Basing the InterMTA Factor on the Assumed Percentage of Interstate Wireless Traffic Would Allow the RLECs to Bill Access Charges Twice for the Same Calls

The percentage of interstate traffic exchanged between the RLECs and the CMRS Providers bears no relationship at all to the percentage of *compensable* interMTA traffic exchanged. Virtually all interstate traffic exchanged between Cingular and the RLECs, for example, will be handed off to an interexchange carrier and delivered by the interexchange carrier subject to access tariffs. Brown Rebuttal, p. 32; Clampitt Direct, p. 11; Conn Direct, p. 21. The RLECs do not dispute this fact. Thus, for most interstate traffic exchanged, the RLECs will collect either originating or terminating access from interexchange carriers. To base interMTA compensation liability upon the amount of interstate traffic exchanged, as Mr. Watkins suggests, would thus allow the RLECs to collect access charges twice for virtually all interstate traffic. This is clearly inappropriate.

3. FCC Rules Do Not Expressly Require Compensation for InterMTA Traffic

RLEC witness Watkins claims that "when the CMRS Provider carries traffic to another MTA, or delivers traffic to the RTC that has originated in another MTA, the CMRS Provider is acting as an interexchange carrier" and thus is liable to pay access charges to the RLEC. Watkins Direct, p. 43. Mr. Watkins bases his argument on a piece of a single sentence in paragraph 1043 of the *First Report & Order,* and footnote 2485 that follows that sentence. Mr. Watkins' interpretation of these passages is, at best, strained. For example, another portion of that same paragraph 1043 (which was not quoted by Mr. Watkins) makes clear that CMRS Providers have no liability to pay access charges upon traffic that they were not paying access charges upon prior to 1996 (the date of passage of the Telecommunications Act). Prior to 1996, CMRS Providers were not subject to access tariffs simply because they carried a call across an

MTA boundary. Brown Rebuttal, p. 29. The RLECs do not suggest otherwise. Accordingly, the language relied upon by Mr. Watkins has not made its way into FCC Rules. No FCC Rule states that if a CMRS Provider "carries traffic from one MTA to another," it owes access compensation to an RLEC.

The CMRS Providers do not object to paying access charges on a small percentage of total wireless-originated traffic, but such obligation *is not based upon FCC Rules.* Rather, the CMRS Providers are willing to make a business accommodation – as is standard practice in the industry. Although most interMTA traffic will be carried by interexchange carriers, and thus the RLECs will charge access to the interexchange carriers for such calls, the CMRS Providers are willing to agree that some small percentage of interMTA traffic may not be carried by interexchange carriers, and thus could be subject to compensation under the terms of the RLEC/CMRS interconnection agreements. Moreover, again as an accommodation, the CMRS Providers are willing to agree that only the CMRS Providers should pay compensation for the termination of InterMTA traffic, though again, nothing in FCC Rules or in any regulatory or judicial decisions indicates that RLECs cannot have liability for interMTA traffic. The CMRS Providers are willing to accept sole interMTA liability for a small amount of CMRS-originated traffic, because that is the current industry practice. Such liability will arise solely by contract, however, not by FCC Rules.[33]

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[33] The technology currently does not exist to determine if a call is interMTA or intraMTA. Nor is there any evidence in the record of these consolidated cases to allow the Commission to make a determination as to what percentage of traffic exchanged between RLECs and CMRS Providers is interMTA. The CMRS Providers would be within their rights, therefore, to claim that there should be no billing at all for claimed interMTA traffic, because no such compensable traffic exists. The CMRS Providers' proposal of a three percent factor, to be paid solely by the CMRS Providers, is thus a significant compromise.

4. InterMTA Traffic Should Not be Billed Solely at Intrastate Access Rates

As discussed above, the RLECs claim that the CMRS Providers should pay intrastate access charges on all interMTA traffic. As also discussed above, however, it is uncontroverted that most of Kentucky is covered by a single MTA. Thus, most or all compensable interMTA traffic is likely to come from the interstate jurisdiction. As a compromise, the CMRS Providers are willing to agree that interMTA traffic should be billed half out of each RLEC's interstate access tariff, and half out of each RLEC's intrastate access tariff.

5. Significant Precedent Exists for a Three Percent InterMTA Factor

In a recent Tennessee arbitration, the Tennessee Regulatory Authority asked the parties to attempt to settle the dispute over the proper interMTA factor. The parties ultimately agreed, in a document filed with the TRA, on a factor of three percent – to be paid exclusively by the CMRS Providers. Brown Direct, p. 22. One of the RLECs in the Tennessee arbitration was North Central Telephone Cooperative, which is also an RLEC in these consolidated proceedings. North Central provides local service on the Tennessee/Kentucky border and has exchanges in both states. An MTA boundary (on the state line) divides the North Central local service territory. Brown Rebuttal, pp. 32-33.

The CMRS Providers believe that the compromise reached in Tennessee is appropriate in Kentucky, and therefore request the Commission to adopt a three percent interMTA factor to be split evenly between the interstate and intrastate jurisdictions, to be based upon total CMRS-originated traffic and to be paid solely by the CMRS Providers.

J. Issue 16 – Dialing Parity

Issue 16 is whether the RLECs are required to provide dialing parity for land-to-mobile traffic. The CMRS Providers propose that consistent with 47 U.S.C. § 251(b)(3) and 47 C.F.R. § 51.207, the parties' Interconnection Agreement should include a provision that requires the

RLECs to ensure that their customers can make calls to CMRS Providers' numbers in local and extended area service ("EAS") exchanges without dialing extra digits or paying extra charges. The RLECs, on the other hand, believe that they can choose to make calls to CMRS numbers long distance in all cases. This is not the law, and is bad for Kentucky consumers. The Commission should resolve Issue 16 in favor of the CMRS Providers.

1. The RLECs are Required to Provide Dialing Parity to Their Customers for Land-to-Mobile Calls

Dialing parity is required by the 1996 Act and by FCC Rules and Orders. Section 251(b)(3) of the Act[34] and 47 C.F.R. § 51.207[35] require all LECs to provide local dialing parity for competitors' telephone numbers. Dialing parity applies when RLEC customers call CMRS customers with numbers rated in the same local calling area (including an EAS area). The RLECs' suggestions to the contrary are incorrect. As T-Mobile's and the CMRS Providers' witness in these proceedings, Mr. David R. Conn, observed, the FCC has clearly stated that the dialing parity obligation applies to the telephone numbers of competing CMRS providers:

> We reject USTA's argument that the section 251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers. To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity.... [W]e find that under section 251(b)(3) each LEC must ensure that its customers within a defined local calling area be able to dial the same number of digits to make a local telephone call notwithstanding the identity of the calling party's or called party's local telephone service provider.

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[34] Section 251(b)(3) reads as follows: "The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."

[35] 47 C.F.R. § 51.207 reads as follows: "A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider."

In the Matters of Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996, CC Docket No. 96-98, FCC 96-333, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19429, 19430 (1996). *See also* Conn Direct, p. 15. Further, and as discussed in more detail below, the FCC has clearly held that CMRS providers provide "telephone exchange service" for these purposes. *See First Report & Order*, ¶ 1013 (quoted and discussed as Conn Rebuttal, pp. 10-11).

The FCC has also recognized that the rating of numbers in the Local Exchange Routing Guide, or LERG, controls how call rating to CMRS Providers' numbers in the local calling area is based. In implementing local number portability between LECs and CMRS providers, the FCC relied heavily on the rating of both landline and wireless numbers:

> To ensure that permitting porting beyond wireline rate center boundaries does not cause customer confusion with respect to charges for calls, we clarify that ported numbers must remain rated to their original rate center.

In the Matter of Telephone Number Portability, CC Docket No. 95-116, FCC 03-284, Memorandum Opinion and Order, ¶ 39 (rel. Nov. 10, 2003). Thus, according to the FCC, the rating of numbers in the LERG determines how calls are dialed, regardless of whether the called number is associated with a landline or a wireless customer. Conn Rebuttal, p. 13.

2. <u>It is Technically Simple for the RLECs to Provide Dialing Parity for Locally-Rated CMRS Numbers</u>

It is undisputed that a CMRS provider has the right under industry guidelines to obtain local numbers and assign them to customers residing in those local areas. Conn Direct, p. 16; Hearing Tr. 1 at 162 (testimony of Mr. Watkins, agreeing that wireless carriers can obtain numbers and assign those numbers to local rate centers). To provide local dialing parity for such numbers, an RLEC need only program its switch to recognize the local CMRS numbers, and deliver calls to those numbers at the applicable BellSouth tandem to which they are already

connected. Conn Direct, p. 17. In fact, in discovery, the RLECs failed to identify any such technical limitations to the provision of dialing parity. When asked, each RLEC simply stated that "the ability of its end users is dependent upon the existence of appropriate interconnection terms, conditions, and facilities. *See* RLECs' Response to Interrogatory 1.43. Such facilities do exist today: each RLEC is connected with a BellSouth tandem with two-way trunks. *See* RLECs' Supplemental Response to Interrogatory 1.13. To the extent the RLECs need to establish agreements with BellSouth to carry that traffic to a CMRS provider, the RLECs agreed in 2004 that they would negotiate such terms, and such negotiations are currently underway. Hearing Tr. 1 at 82; Wood Rebuttal, Ex. DJW-12.

The Commission should find, based on the record evidence, that the there are no technical limitations to the RLECs' provision of local dialing parity to locally-rated CMRS numbers.[36]

3. Land-to-Mobile Dialing Parity Ensures that Wireline Consumers are Treated Equitably, i.e., Comparably to Landline Carriers' Customers in the Same Local Calling Area

When rural LECs claim the right to make their own customers dial ten digits and pay long distance fees to call the locally-rated numbers of wireless carriers, the result is bad for consumers and anti-competitive. In fact, such a result would be directly contrary to the Act's pro-competitive goals.

There are three main policy reasons why the Commission should not allow the RLECs to decide whether calls to locally-rated CMRS numbers are recognized as such. First, the CMRS Providers compete with the RLECs, and the RLECs would have an incentive to use local calling

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[36] The CMRS Providers do not concede that the presence of technical issues would give the RLECs the ability to avoid their dialing parity obligations, but instead point out that the RLECs cannot claim any such technical issues exist.

scopes as a way to disadvantage the competition. Said another way, if an RLEC, at its own discretion, can choose not to recognize a competitor's numbers, the RLEC will have effectively kept that competitor out of the market. Second, in larger markets in Kentucky, such behavior by incumbents is mitigated by the presence of landline CLECs; customers have more than one option for landline service in areas served by BellSouth and Windstream.[37] This is not the case in areas served by the RLECs. Thus, the market does not provide an alternative to RLEC customers subject to anticompetitive action.

Third, and most significantly, consumers expect (as they should), that locally-rated numbers will be treated as such. The Commission should not create a regulatory environment in which local calling scopes are determined based on 1) the identity of the called customer's provider, and 2) the whim of the originating carrier. This is not how the concept of a "local calling area" has ever worked, nor would such a result be acceptable to consumers. Yet Mr. Watkins was clear and unapologetic in claiming that his clients should have "the power to choose whether or not all local-to-mobile calls homed to a local NPA-NXX are treated as toll calls." Hearing Tr. 1 at 164.

In his testimony, Mr. Conn gave a real-life example of the anti-competitive effects of the RLECs' non-compliance with dialing parity obligations in a situation involving T-Mobile and certain exchanges served by Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard"). Ballard customers in two Ballard exchanges can dial BellSouth wireline customers in the Paducah exchange as a local call, but those same Ballard customers must dial 11 digits and must pay long-distance charges to reach T-Mobile's locally-rated numbers. Conn Direct, pp. 16-17.

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[37] The CMRS Providers are not suggesting that BellSouth and/or Windstream are refusing to provide dialing parity.

If the RLECs were to prevail, the Commission could expect that customers' settled expectations regarding their local calling scopes would be put at significant risk. For example, calls between certain areas served by Brandenburg have local calling to numbers in Elizabethtown. Under the RLECs' theory, Brandenburg could simply stop providing local calling to wireless numbers in Elizabethtown, and there would be nothing the Commission could do about it. This inequitable result would impede communications by the RLECs' own customers, discourage land-to-mobile calling, act as a potential barrier to competition and generate significant complaints to the Commission. The Commission must ensure that this inequitable situation comes to a halt and does not spread, and that rural LECs fully live up to their dialing parity obligations under the Act and FCC Rules.

4. Courts, as well as this Commission, Have Found that RLECs Must Provide Local Dialing Parity to Competitive Carriers' Numbers

As Mr. Conn testified, there is a recent and continually growing body of precedent in the federal courts that rural LEC customers have federal dialing parity rights on land-to-mobile calls. Conn Direct, p. 18. The 10th Circuit Court of Appeals and the 8th Circuit Court of Appeals have both held that an originating LEC must provide local dialing parity for a CMRS provider's local numbers, and that the originating LEC must deliver the call to the CMRS provider at a serving tandem switch. *Atlas Telephone*; *WWC License*. In *WWC License,* the 8th Circuit Court of Appeals stated the following:

> Great Plains's argument, in essence, is that the duty to provide local dialing parity under 47 U.S.C. Section 251(b)(3) is dependent on the existence of a direct point of interconnection such that the duty to provide local dialing parity stops at the physical edges of the local exchange networks . . . .
>
> Great Plains emphasizes that Section 251(b)(3) and the relevant regulation, 47 C.F.R. Section 51.207, do not expressly state that a local exchange carrier must deliver locally dialed calls to a point outside the local exchange carrier's network. Great Plains infers from this silence that the duty to provide local dialing parity does not extend beyond the physical bounds of the local exchange network and is

> therefore dependent upon the existence of a competitor's direct point of interconnection within the local exchange. We believe that this inference is unwarranted. The relevant statutory and regulatory sections are not written in such narrow terms. Rather, the Act and the regulation state a broad duty without listing exceptions and without expressly defining a geographic limitation."

WWC License, at 12, 23. By trying to condition any local calling on the presence of direct interconnection facilities (instead of available indirect transit facilities), the RLECs in these proceedings are asking this Commission to require the CMRS Providers to do precisely what the *WWC License* Court found was contrary to the broad duties established by the Act and FCC Rules.

Moreover, this Commission has previously determined that calls to competitive carriers' numbers are entitled to the benefits of dialing parity. In 2002, the CLEC affiliate of one of the RLECs in this case, Brandenburg Telecom LLC ("Brandenburg Telecom"), filed a complaint with the Commission, claiming that the incumbent, Verizon South, Inc. ("Verizon") had improperly failed to transit calls from Brandenburg Telecom customers to the 304 NXX on a local basis. As a result of Verizon's actions, Brandenburg Telecom customers had to dial ten digits and incur toll charges to complete these calls. In its Order, the Commission found in favor of Brandenburg Telecom and ordered Verizon to "begin transiting all Brandenburg Telecom traffic destined for telephone numbers within the same local calling exchange, including traffic destined to the 304 NXX customers." In partial support of its ruling, this Commission stated the following:

> 47 U.S.C. Section 251(b)(3) unequivocally places upon Verizon, as an ILEC "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service." Parity does not exist when the CLEC's customers must dial 10 digits and incur toll charges to reach a "local" number an ILEC's customers may reach by dialing 7 digits without a toll charge.

In the Matter of Brandenburg Telecom LLC v. Verizon South, Inc., PSC Case No. 2002-00143, Order (May 23, 2002). The Commission also agreed with Brandenburg Telecom that a

competitor's inability to make a local call to an NXX that is local to the incumbent's customers is "highly destructive" to the competitor's ability to compete. *Id.*

5. The RLECs' Position is not Supported by the Act, FCC Rules, or by Common Sense

The RLECs ask the Commission to find that local dialing parity does not apply to wireless numbers, and thus that the RLECs are never required to allow their customers to dial CMRS numbers on a local basis:

> Q. Under your clients', the rural LECs, view of things in this case, the rural LECs have the power to choose whether or not all local-to-mobile call homed to a local NPA-NXX are treated as toll calls?
>
> A. That would be my position. . .

Hearing Transcript 1 at 163 (Watkins). Further, Mr. Watkins argued in his prefiled testimony that since the FCC stated that CMRS providers were allowed the benefits of dialing parity "to the extent that a CMRS provider offers telephone exchange service," RLECs are not obligated to provide dialing parity to CMRS providers because they do not provide "telephone exchange service." Watkins Direct, pp. 50-51.

The RLECs' position is simply wrong. For the reasons discussed above, federal law, FCC Rules and Orders, and state Commission precedent all dictate that local-to mobile calls to locally-rated CMRS numbers should be accessed using the same number of digits as calls placed to other carriers, and without incurring additional charges. In addition, by his own admission, Mr. Watkins acknowledged that the FCC in paragraph 1013 of the *First Report and Order* concluded that CMRS carriers do provide a kind of "telephone exchange service." Hearing Tr. 1 at 165. Accordingly, Mr. Watkins' statement in his prefiled testimony is incorrect: as noted above, under the *First Report & Order*, CMRS Providers do provide "telephone exchange service" for purposes of obtaining interconnection "for the transmission and routing of telephone

exchange service and exchange access" under Section 251(c)(2)(A), and for purposes of obtaining dialing parity as "competing providers of telephone exchange service" under Section 251(b)(3).

The Commission should similarly disregard the RLECs' discussion of the mobile nature of wireless service as a "red herring." In his Direct Testimony, Mr. Watkins discusses the mobile nature of wireless service, and states that a wireless subscriber's NPA-NXX cannot be used to determine call rating. Watkins Direct, p. 51. But the mobile nature of wireless service is irrelevant. Because CMRS providers are allowed to obtain telephone numbers and rate those numbers in the local exchange routing guide LERG to a specific rate center, those numbers are included in the local calling area associated with that exchange, and land-to-mobile calls must be delivered by the originating LEC to a CMRS provider over the same connection. It is then *the CMRS provider*, and not the RLEC, that delivers the call to the consumer who is traveling outside of his or her local calling area. Accordingly, the Commission should not permit itself to be distracted by the RLECs' irrelevant assertions on this point – the CMRS Providers in these proceedings are asking the RLECs to deliver calls *only* to the ILEC tandems to which they are already connected, and not to any distant location. *See* Conn Rebuttal, p. 11.

For the above reasons, the Commission should accept the CMRS Providers' position on Issue 16, and should require the Interconnection Agreement to contain a contract term requiring the RLECs to ensure that their customers can make calls to CMRS Providers' customers' numbers in local and EAS exchanges without dialing extra digits or paying extra charges.

K. Issue 17 – SS7 Signaling Parameters

Issue 17 is the appropriate contract term to govern the exchange of SS7 signaling information. The parties have proposed alternative language for consideration by the Commission. The CMRS Providers have proposed a contract term that:

1) Requires all parties to transmit signaling parameters in accordance with industry standards;
2) Accommodates both direct and indirect interconnection; and
3) Ensures that neither party will charge the other for exchanging SS7 signaling messages necessary for the exchange of traffic.

Clampitt Direct, pp. 5-6.

As Mr. Clampitt explained at the hearing, the RLECs' proposed contract language is a "mishmash" of terms and requirements that does not reflect industry standards or accommodate the indirect interconnection that will occur. Hearing Tr. 2 at 159. The Commission should thus accept the CMRS Providers' proposed contract language on Issue 17.

L. <u>Issue 18 – Incorporation of Tariffs</u>

Issue 18 is whether RLEC tariff provisions should be incorporated into the Parties' Interconnection Agreement. The CMRS Providers propose that absent express mutual consent, tariffs cannot supersede or supplement the terms and conditions of the Parties' Interconnection Agreement.

The Commission should accept the CMRS Providers' position on Issue 18. Where the contract specifically references access tariffs, those tariffs will apply as the contract provides, and there is no need to incorporate those tariffs into the Agreements. In other words, a cross-reference, not incorporation, is the right way to allow facilities or services to be purchased out of tariffs. The Commission should accept the CMRS Providers' recommendation on Issue 18.

M. <u>Issue 20 – Post Termination Arrangements</u>

Issue 20 relates to post-termination arrangements to be included in the Interconnection Agreement. The CMRS Providers propose that if either party seeks post-termination arrangements, the Interconnection Agreement will remain in place, subject to true-up following the conclusion of negotiations. The Commission should accept the CMRS Providers' position on this issue. As described by Mr. Clampitt, if the contract is terminated, it should be used to

maintain continuity during subsequent negotiations, but only rates should be subject to true-up once final terms are negotiated or arbitrated. Clampitt Direct, pp. 7-8; Clampitt Rebuttal, p. 10. The Commission should accept the CMRS Providers' recommendation on Issue 20.

N. Issue 21 – Definitions

The RLECs have accepted the CMRS Providers' proposed modifications and/or deletions to four definitions: "Central Office Switch," "Termination," "Transport" and "Multifrequency." (Sections 1.4, 1.18, 1.25, and 1.26; see Joint Issues Matrix filed October 27.) Accordingly, the Commission should resolve the remaining definitions as recommended by the CMRS Providers as follows:

- "Interconnection" (1.12): The Interconnection Agreement must allow CMRS Providers to indirectly interconnect and exchange traffic with the RLECs (Issue 2 above). The RLECs propose a definition of "Interconnection Point" that would allow only direct interconnection at "a demarcation point on the incumbent network of LEC between networks." (1.13) The Commission should strike the RLECs' "Interconnection Point" definition on that basis and because, contrary to the RLECs' assertions, it is neither useful nor a term defined by the FCC.[38] The Commission should instead adopt the CMRS Providers' definition of "Interconnection" that explicitly contemplates the

[38] *See* Farrar Direct, at 24-27. The reference to "interconnection point" at 47 C.F.R. § 51.701(c) that the RLECs cite as a definition is merely the use of an undefined term to refer to the point between the LEC's network and the "linking" interconnection facilities for purposes of determining "Transport" subject to reciprocal compensation. As mentioned previously, during cross-examination, the RLECs' witness, Mr. Watkins, acknowledged that "interconnection point" is not defined in the FCC's rules, but merely a term referred to in the definition of "Transport." Hearing Tr. 1 at 177-178.

direct and indirect linking of the CMRS and RLEC networks and which is based on FCC definitions.[39]

- "InterMTA Traffic" (1.15) Because it is used in the Interconnection Agreement to implement the FCC's transport and termination pricing rules with respect to traffic between a CMRS provider and a LEC, this definition must be consistent with the FCC's pricing rules at 47 C.F.R. § 51.701(b)(2). The CMRS Providers seek only to clarify the RLEC definition to track the FCC Rules by expressly recognizing that categorization of a call as an interMTA call is based on the end points of the call at the time the call is originated. The RLECs have not explained why this clarification is either wrong or unnecessary, and the Commission should adopt the definition as revised by the CMRS Providers.

- "Rate Center" (1.21): The Commission should remove the sentence "The Rate Center point must be located within the Rate Center area" from this definition and provide for additional modifications proposed by the CMRS Providers to ensure the definition is consistent with the CMRS Providers' dialing parity and interconnection rights. At the hearing, Mr. Watkins confirmed the CMRS Providers' concerns that this sentence may be cited by the RLECs to contend a CMRS Provider must directly connect in a given LEC Rate Center before the RLEC will route seven or ten-digit dialed calls to a CMRS Provider NPA-NXX associated with that rate center in the LERG. Hearing Tr. 1, at 163. As set forth in the discussion of Issues 2 and 16 above, there is no legal basis

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39 *See* definitions of "Interconnection" at 47 C.F.R. §§ 51.5 and 20.3.

for requiring interconnection within an RLEC rate center in order to provide local dialing parity for calls to the CMRS Providers' customers.

- "Telecommunications Traffic" (1.22): As set forth in the discussion of Issues 1 and 9 above, the legal authority is clear that LECs must pay reciprocal compensation for all traffic originating and terminating within an MTA, including traffic that is routed via IXC or other intermediary carrier. The CMRS Providers' proposed definition of "Telecommunications Traffic" must be included to incorporate that obligation in the Parties' Interconnection Agreement. The RLECs' proposed use of the alternative defined term "Subject Traffic" would limit the payment of reciprocal compensation to intraMTA traffic that is exchanged on dedicated facilities (*i.e.*, direct connections) between the parties. Thus the RLECs would not be required to pay reciprocal compensation for intraMTA traffic that is exchanged via indirect connection through the utilization of any type of intermediary carrier, including the currently existing common facilities of BellSouth and Windstream. The CMRS Providers' proposed definition must be adopted to allow the parties to continue exchanging traffic through indirect interconnection.

- "Interexchange Carrier" (1.14): The Commission should strike this definition for the same reasons it should strike the RLECs' definition of "Subject Traffic": the RLECs would use the definition expressly to avoid paying reciprocal compensation to CMRS Providers for intraMTA traffic originated on an RLEC network and routed to an interexchange carrier for delivery to the CMRS Provider network. The RLECs' position should be rejected on the same bases set forth in the discussion of Issues 1 and 9 above.

O. Issue 28 – Management Agreements

As described in detail in Mr. Farrar's Rebuttal Testimony, the use of management agreements to enlarge CMRS networks is common in the industry. Farrar Rebuttal, pp. 8-9. Usually provisions such as the one proposed by the CMRS Providers in Section 4.4 are not controversial.[40] In fact, such provisions are designed to ensure not only that the CMRS Providers have the flexibility to enlarge their networks by using third parties for the construction and operation of CMRS systems *under the CMRS Providers' license*, but also to ensure that the LECs with whom CMRS Providers exchange traffic are appropriately compensated. Thus, management agreements are drafted to ensure that the CMRS Providers remain responsible for the interconnection of an extended network to the public switched network, as well as the usage associated with that extended network.

Contrary to the RLECs' assertions in their September 22, 2006 Response to CMRS Providers' Issues Matrix, the provision, by its express terms, would not "effectively allow a single CMRS Provider to extend the agreement unilaterally to any and all wireless carriers without negotiation or consent of the RLEC." To the contrary, it ensures that "[t]elecommunications traversing on such extended networks shall be deemed to be and treated under this Agreement as 'CMRS Provider's Telecommunications.'" The proposed provision does not permit the CMRS Provider to extend the agreement to *other wireless carriers*, but instead allows the CMRS Provider to expand and operate *its own network* through construction

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[40] Language similar to that being proposed by the CMRS Providers can be found in Sprint PCS's Commission-approved interconnection agreement with Brandenburg Telephone Company in Kentucky. The language proposed by the CMRS Providers in these consolidated cases is identical to language proposed by CMRS providers in a recent Tennessee arbitration involving a number of RLECs. The Tennessee Regulatory Authority adopted the CMRS providers' general terms and conditions, which included the disputed language.

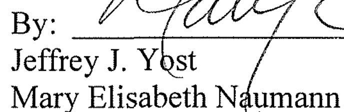
and operation contracts with third parties. The CMRS Providers will remain fully responsible for all obligations under the Interconnection Agreement.

The Commission should adopt the CMRS Providers' proposed section 4.4.

CONCLUSION

As the CMRS Providers noted in their opening statement at the hearing, the Commission's determinations regarding reciprocal compensation, dialing parity and terms for direct and indirect interconnection in this arbitration will have a real, palpable impact on the quality and availability of phone service that Kentuckians are able to enjoy in the future. Those determinations will also impact the wireless companies, companies that have undertaken substantial investment in this state to provide competitive telecommunications services. While the RLECs have been vocal in pointing out their investment and presence in the state, the Commission should not forget that the CMRS providers also have made substantial investment in property, facilities, and employees in Kentucky. The availability of competitive choices for consumers in Kentucky in a robust telecommunications marketplace is dependent on: 1) efficient interconnection alternatives; 2) fair reciprocal compensation for exchange of traffic that does not exempt one class of carrier from paying while heaping unlawfully high rates on another; and 3) the availability of dialing parity so that customers can reach others in the same local calling area without dialing extra digits or paying extra charges. The CMRS Providers' positions in this arbitration address these issues and will foster competitive choices for Kentucky consumers in a manner consistent with the law. In recognition of the foregoing, the CMRS Providers respectfully request that the Commission adopt the CMRS positions and proposed contract language as set forth above.

Dated: November 9, 2006

By: 

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CERTIFICATE OF SERVICE

This is to certify that a copy of the CMRS Providers' Joint Post-hearing Brief was served on the parties listed below by electronic mail (as indicated) and by depositing in the United States mail, first class and postage prepaid, on the 9th day of November, 2006.

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