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ATTORNEYS

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RECEIVED

MAY 29 2007

PUBLIC SERVICE
COMMISSION

May 25, 2007

Via Federal Express

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

Re: *In the Matter of: BellSouth Telecommunications, Inc. v. Brandenburg Telephone Company, Case No. 2006-00546*

Dear Ms. O'Donnell:

I have enclosed for filing in the above-styled case the original and eleven (11) copies of Brandenburg Telephone Company's Verified Motion for Partial Summary Judgment. Please return a file-stamped copy in the self-addressed, postage prepaid envelope furnished herewith.

Thank you, and if you have any questions, please call me.

Sincerely,

DINSMORE & SHOHL LLP



Holly C. Wallace

HCW/rk

cc: All Parties of Record

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 29 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2006-00546
)	
BRANDENBURG TELEPHONE COMPANY)	
)	
DEFENDANT)	

**BRANDENBURG TELEPHONE COMPANY'S
VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to CR 56.02, Brandenburg Telephone Company ("Brandenburg Telephone") moves the Kentucky Public Service Commission (the "Commission") for summary judgment on the claim of BellSouth Telecommunications, Inc. ("BellSouth") (in Public Service Commission Case No. 2006-00546) for alleged overpayment of Covered CMRS Provider Traffic charges. There are no genuine issues of material fact, and Brandenburg Telephone is entitled to judgment as a matter of law. In support of its Motion, Brandenburg Telephone states as follows.

INTRODUCTION

BellSouth's complaint in this matter alleges, in part, that Brandenburg Telephone has failed to abide by the terms of the parties' 2004 agreement for the transit of CMRS Provider Traffic to Brandenburg Telephone ("CMRS Agreement"). Specifically, BellSouth alleges that Brandenburg Telephone failed to accept BellSouth's measurement of minutes of use ("MOUs") and industry standard call detail records ("CDRs") as the

basis for billing and compensation, and failed to properly request an audit pursuant to the CMRS Agreement. In fact, Brandenburg Telephone accepted BellSouth's measurement of MOUs and CDRs, conducted audits as allowed by the CMRS Agreement, and billed BellSouth accordingly.

VERIFIED STATEMENT OF FACTS

On April 24, 2004, certain rural independent local exchange carriers ("Rural LECs") and Commercial Mobile Radio Services ("CMRS") providers entered into the CMRS Agreement with BellSouth ("CMRS Agreement"). (*See* Exhibit A.) The CMRS Agreement addressed BellSouth's provision of intermediary tandem switching and transport services to CMRS providers for the delivery of CMRS provider traffic to Rural LEC networks. Brandenburg Telephone was party to the CMRS Agreement as a Rural LEC.

Beginning in June 2004, when figuring its invoices to BellSouth pursuant to the Agreement, Brandenburg Telephone supplemented the measurement of MOUs and CDRs supplied by BellSouth with its own automatic message accounting ("AMA") records, reconciled all records, and billed BellSouth accordingly. (Answer at ¶14.)

In a Formal Complaint filed December 13, 2006, BellSouth alleges that Brandenburg Telephone violated Section 2.07 of the Agreement by failing to "accept BellSouth's measurement of minutes of use and industry standard call detail records as the basis for billing from and compensation to [Brandenburg Telephone] for Covered CMRS Traffic." (Complaint at ¶13.) BellSouth further complains that Brandenburg Telephone "failed to request an audit pursuant to Section 2.07." (Complaint at ¶13.) BellSouth now seeks reimbursement of \$363,867.24 for alleged overpayment of Covered

CMRS Provider Traffic, as well as interest at the rate of 1.5% per month from the date of the alleged overpayments until full reimbursement is received by BellSouth.¹ (Complaint at ¶16.)

ARGUMENT AND ANALYSIS

I. SUMMARY JUDGMENT STANDARD.

Summary judgment is appropriate in Kentucky "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56.03.

In *Steelvest, Inc. v. Scansteel Service Center*, 807 S.W.2d 476 (Ky. 1991), the Kentucky Supreme Court held that "the proper function for summary judgment..." is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Id.* at 482 (citations omitted). Shortly thereafter, the court clarified its ruling in *Steelvest* and noted that "'impossible' is [to be] used in a practical sense, not in an absolute sense." *Perkins v. Hausladen*, 828 S.W.2d 652, 654 (Ky. 1992). Given *Perkins'* pragmatic standard, summary judgment is appropriate in "any case where the record shows that there is no real issue as to any material fact with respect to a particular claim or part thereof or defense thereto." *Continental Casualty Co. v. Belknap Hardware and Mfg. Co.*, 281 S.W.2d 914, 916 (Ky. 1995) (*Steelvest*, 807 S.W.2d at 482, reaffirmed this standard).

¹ As of the May 8, 2007 billing, Brandenburg Telephone acknowledges that it owes BellSouth \$89,211. As to the remainder of the \$363,867.24 claimed by BellSouth, Brandenburg Telephone respectfully requests that the Commission dismiss BellSouth's claim, for reasons stated herein.

While the movant must meet the initial burden of showing "the absence of a genuine issue of material fact," the movant can meet that burden by "pointing out...that the respondent, having had sufficient time for discovery, has no evidence to support...(its) case." *Steelvest*, 807 S.W.2d at 481. A complete failure of proof on an essential element renders all other facts immaterial and the movant is "entitled to judgment as a matter of law." *Id.* Under this standard, Brandenburg Telephone is entitled to summary judgment on BellSouth's claim as a matter of law.

II. THE CMRS AGREEMENT BELIES BELL SOUTH'S CLAIM THAT IT BRANDENBURG TELEPHONE BREACHED THE CMRS AGREEMENT.

BellSouth has no legitimate basis to claim that Brandenburg Telephone is in breach of the CMRS Agreement. Section 2.07 of the CMRS Agreement obligates Brandenburg Telephone to "accept BellSouth's measurement of minutes of use and industry standard call detail records as the basis for the billing from and compensation to (Brandenburg Telephone)...for Covered CMRS Provider Traffic." Brandenburg Telephone did that. Upon accepting BellSouth's measurements, Brandenburg Telephone then exercised its audit rights pursuant to the Agreement. Section 2.07 of the Agreement provides that "any party may request an audit of [BellSouth's measurement of MOUs and industry standard CDRs] within twelve months of the applicable billing date." By juxtaposing its own switch records with the accepted records provided by BellSouth, Brandenburg Telephone was able to audit the records provided by BellSouth. And, as the CMRS Agreement permitted, it did so.

Brandenburg Telephone had no duty to ask for BellSouth's *permission* to audit the MOU and CDR measurements, just the same as Brandenburg Telephone has no duty to credit BellSouth for verifiably incorrect MOUs/CDRs. Brandenburg Telephone accepted

BellSouth's MOU and CDR measurements, as contemplated by the CMRS Agreement. Brandenburg Telephone then audited those measurements, as contemplated by the Agreement. BellSouth then made payments to Brandenburg Telephone pursuant to bills generated by Brandenburg Telephone pursuant to those audits. Accordingly, there can be no genuine issue of material fact with respect to Brandenburg Telephone's claim. Brandenburg Telephone acted in accordance with the express terms of the CMRS Agreement, and the Commission should grant summary judgment in favor of Brandenburg Telephone with respect to BellSouth's claims under the CMRS Agreement.

III. THE CMRS AGREEMENT BELIES BELL SOUTH'S CLAIM FOR INTEREST ON ITS ALLEGED OVERPAYMENTS.

BellSouth also claims to be entitled to 1.5% interest on its alleged overpayment, from the date of the alleged initial overpayment until full reimbursement is provided.² BellSouth's claim for interest must also fail.

The CMRS Agreement provides, in Section 2.12, that "any undisputed charges incurred...that are not timely paid by BellSouth to the Rural LECs, or are not timely paid by a Signatory CMRS Provider to BellSouth, will accrue interest from the date such amounts are due." Interest was to be calculated at 1.5% or the highest rate of interest that may be charged under applicable law, whichever was lesser. (Agreement at Section 2.12.)

There are two fundamental flaws in BellSouth's claim for interest. For one, the CMRS Agreement does not provide for interest accrual on amounts allegedly owed from Rural LECs (e.g., Brandenburg Telephone) to BellSouth. It only addresses charges owed

² As of the date of the Complaint, December 13, 2006, the amount of interest allegedly due was \$130,751.06.

from BellSouth to Rural LECs, and not vice versa. More importantly, the CMRS Agreement *only* allows interest accrual in the event of *undisputed* charges. Brandenburg Telephone has disputed, and continues to dispute, the claim that it owes BellSouth any portion of BellSouth's alleged overpayment. Therefore, by the very terms of Section 2.12 of the CMRS Agreement between BellSouth and Brandenburg Telephone, interest charges cannot be added to BellSouth's claim.

As there is no genuine issue of material fact with respect to the claim for interest in the disputed amount, the Court should grant summary judgment in favor of Brandenburg Telephone on this issue, as well.

CONCLUSION

For the foregoing reasons, Brandenburg Telephone Company respectfully requests this Commission enter summary judgment in its favor on the issue of alleged overpayment for Covered CMRS Provider Traffic.

Respectfully submitted,



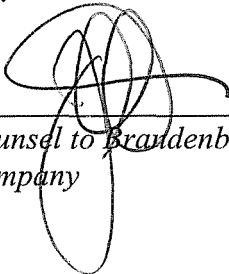
John E. Selek
Holly C. Wallace
Edward T. Depp
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, Kentucky 40202
(502) 540-2300
(502) 585-2207 (fax)
*Counsel to Brandenburg Telephone
Company*

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing was served on the following this ~~25th~~ day of May, 2007:

Mary K. Keyer
General Counsel/Kentucky
601 W. Chestnut Street
P.O. Box 32410
Louisville, KY 40232
Counsel for BellSouth Telecommunications, Inc.

J. Philip Carver, Senior Attorney
Suite 4300
675 West Peach Tree Street, NW
Atlanta, GA 30375
Counsel for BellSouth Telecommunications, Inc.



*Counsel to Brandenburg Telephone
Company*

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COMMONWEALTH OF KENTUCKY
BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Petition of BellSouth Telecommunications,) Case No. 2003-00045
Inc. Seeking Resolution of Third Party)
Transit Traffic Issues)

AGREEMENT

This Agreement is made and entered into by and between BellSouth Telecommunications, Inc. ("BellSouth"), the Commercial Mobile Radio Service ("CMRS") providers listed in Exhibit A hereto ("Signatory CMRS Providers"), and the rural independent local exchange carriers listed in Exhibit B hereto ("Rural LECs"), on their own behalf and on behalf of their past, present and future agents, employees, successors, assigns and anyone claiming for the benefit of any of them (collectively referred to as "the Parties").

Whereas, BellSouth has entered into various interconnection agreements with CMRS Providers under which BellSouth has offered and is providing intermediary tandem switching and transport services to such CMRS Providers for the delivery of CMRS Provider Traffic to the Rural LECs' networks for termination.

Whereas, under the "Kentucky Restructured Settlement Plan," BellSouth and the Rural LECs have established interconnection facilities and an interconnection point between their networks, and agreed to contractual terms and conditions pursuant to the "Kentucky Restructured Settlement Plan"; and

Whereas, by this Agreement, the Parties are agreeing to terms, as set forth herein, under which BellSouth may and shall deliver CMRS Provider Traffic, to the extent such traffic is delivered to BellSouth by the CMRS Providers, to the networks of the Rural LECs over the existing facilities referred to above.

Now, therefore, in consideration of the mutual agreements, undertakings and representations contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1.00 Definitions

For purposes of this Agreement only, the Parties agree to utilize the definitions set forth in this Section 1.00.

1.01 "Act" refers to the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

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R.*

1.02 "CMRS Provider" is a telecommunications carrier providing commercial mobile radio service within the meaning of 47 C.F.R. § 20, et seq.

1.03 "CMRS Provider Traffic" is defined as Telecommunications traffic originated by a subscriber of a CMRS Provider for which BellSouth provides to a Signatory CMRS Provider intermediary tandem switching, and transport (i.e., transit functions) for delivery of such traffic to a Rural LEC for termination on the Rural LEC's network over the facilities established between BellSouth and the Rural LEC for such purposes, according to the terms of this Agreement.

1.04 "Commission" or "KPSC" means the Public Service Commission of the Commonwealth of Kentucky.

1.05 "Covered CMRS Provider Traffic" is defined as CMRS Provider Traffic of a Signatory CMRS Provider for which BellSouth generates and delivers to the terminating Rural LEC accurate industry standard call detail records identifying the originating CMRS Provider and minutes of use for such CMRS Provider Traffic (currently known as "110101 format message and billing records").

1.06 "Kentucky Restructured Settlement Plan" or "KRSP" is the Order of the Public Service Commission of the Commonwealth of Kentucky dated January 23, 1991, in Phase I of Administrative Case No. 323.

1.07 "Rural LECs" are defined as those local exchange companies ("LECs") as set forth in Exhibit B to this Agreement.

1.08 "Signatory CMRS Providers" are defined as the Commercial Mobile Radio Service Providers as set forth in Exhibit A to this Agreement.

1.09 "Telecommunications" is as defined in the Act.

2.00 Specific Terms

2.01 Pursuant to this Agreement, BellSouth may deliver, for termination, Signatory CMRS Provider Traffic to the Rural LECs' networks in the same manner, and over the same trunking facilities, as established pursuant to the KRSP Plan.

2.02 For purposes of this Agreement, Signatory CMRS Providers are limited to those CMRS providers that possess a CMRS license for CMRS service within a Major Trading Area(s) within Kentucky.

2.03 Reserved For Future Use.

2.04 BellSouth may deliver to the Rural LECs Signatory CMRS Provider Traffic for which BellSouth does not provide industry standard call detail records identifying the originating CMRS Provider and the minutes of CMRS Provider Traffic for each such provider (currently

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known as "110101 format message billing records") subject to all of the following terms: (a) BellSouth must establish mutually agreeable exchange of data and administrative processes with the Rural LECs to provide complete and accurate documentation of such traffic that will permit the Rural LECs to track, verify, and audit such CMRS Provider Traffic; and (b) the Rural LECs will bill BellSouth (or in those instances where the Rural LEC does not bill BellSouth, BellSouth will provide compensation through the monthly settlement process with that Rural LEC) and BellSouth shall compensate the Rural LECs in the same manner that it compensates the Rural LECs for intrastate access traffic as described in Section 2.01 above, provided, however, that the rate at which such CMRS Provider Traffic is compensated shall be \$0.027 per minute of use following the Effective Date of this Agreement and continuing through December 31, 2005. BellSouth will compensate the Rural LECs at a rate of \$0.022 per minute of use from January 1, 2006 through December 31, 2006. The Rural LECs will adjust the billing for the total traffic over the KRSP facility which is billed (or due through settlements), and due from, BellSouth to account for the minutes of CMRS Provider Traffic that is within the scope of this paragraph. BellSouth shall make payment to the Rural LECs pursuant to this Section 2.04, in immediately available U.S. funds, no later than 30 days after the invoice date. BellSouth shall continue to bill each Signatory CMRS Provider amounts due BellSouth from the Signatory CMRS Provider under the terms of the Interconnection Agreement between BellSouth and the CMRS Provider, including all effective Annexes and Attachments thereto.

2.05 The Rural LECs agree not to seek compensation from a Signatory CMRS Provider for (1) any CMRS Provider Traffic delivered by BellSouth to the Rural LECs pursuant to this Agreement; or (2) any CMRS Provider Traffic delivered by BellSouth to the Rural LECs prior to the Effective Date of this Agreement for which BellSouth compensates or has previously compensated the Rural LECs upon the same terms and conditions required of traffic terminated under the KRSP or on terms which are otherwise agreed to by the Rural LECs.

2.06 Except as required by this Agreement, BellSouth and the Signatory CMRS Providers will treat CMRS Provider Traffic, including Covered CMRS Provider Traffic, consistent with the terms of the respective interconnection agreements between BellSouth and the Signatory CMRS Providers and all effective Annexes and Attachments thereto, including, but not limited to, the network provisioning, transport, termination, and billing and collection of such traffic.

2.07 Beginning on the Effective Date of this Agreement, and ending on December 31, 2005, the Rural LECs shall invoice, and BellSouth shall make payment to the Rural LECs for Covered CMRS Provider Traffic pursuant to this Section in immediately available U.S. funds, no later than thirty (30) days after the invoice date, at a rate of \$0.025 per minute of use unless an interconnection agreement between the Signatory CMRS Provider and the Rural LEC governs pursuant to the provisions and conditions set forth in Section 2.08. Beginning on January 1, 2006, and ending on December 31, 2006, and unless an interconnection agreement between the Signatory CMRS Provider and the Rural LEC governs pursuant to the provisions and conditions set forth in Section 2.08, the Rural LECs shall invoice, and BellSouth shall make payment to the Rural LECs pursuant to this Section for Covered CMRS Provider Traffic in immediately available U.S. funds, no later than thirty (30) days after the invoice date, at a rate of \$0.015 per

minute of use. Subject to the audit provisions set forth below in this subsection, the Signatory CMRS Providers and the Rural LECs agree to accept BellSouth's measurement of minutes of use and industry standard call detail records as the basis for the billing from and compensation to the Rural LECs for Covered CMRS Provider Traffic as set forth in this Section. Notwithstanding the foregoing, any party may request an audit of such measurements within twelve months of the applicable billing date. The Rural LECs will deduct the minutes of use for Covered CMRS Provider Traffic described in this Section from the total KRSP facility minutes of use which is billed to (or due through settlements), and due from, BellSouth. Beginning on the Effective Date of this Agreement and through the period ending on December 31, 2006, the Signatory CMRS Providers shall compensate BellSouth for Covered CMRS Provider Traffic at a rate of \$0.015 per minute of use, unless an interconnection agreement between the Signatory CMRS Provider and the Rural LEC governs pursuant to the provisions and conditions set forth in Section 2.08. BellSouth shall continue to bill each Signatory CMRS Provider amounts due BellSouth from the Signatory CMRS Provider for transit functions performed by BellSouth under the terms of the interconnection agreement between BellSouth and the Signatory CMRS Provider, including all effective Annexes and Attachments.

2.08 Nothing herein shall affect, modify, or supercede any existing interconnection agreement between a Signatory CMRS Provider and a Rural LEC. Such existing interconnection agreements shall continue in full force and effect in accordance with the existing terms and conditions contained in such agreements. Nothing herein shall affect any Party's right to seek interconnection with any carrier, including with a carrier that is a Party to this Agreement, or preclude any Party from negotiating an interconnection agreement with another Party consistent with Sections 251 and 252 of the Act. Moreover, in the event that a Signatory CMRS Provider and a Rural LEC execute an interconnection agreement after the Effective Date of this Agreement, such agreement shall supersede the rights and obligations set forth in this Agreement only to the extent the interconnection agreement specifically provides for the termination of CMRS Provider Traffic otherwise covered by this Agreement.

2.09 This Agreement applies solely to the Telecommunications traffic specifically defined within the scope of this Agreement. As such, the terms of this Agreement do not apply to any other facilities, any other traffic that is switched or transported over any other facilities, or to traffic of any carrier that is not a CMRS Provider. For any other CMRS Provider Traffic that BellSouth delivers to a Rural LEC for termination that is not covered under Sections 2.04 and 2.07 of this Agreement (i.e., traffic from a CMRS Provider that is not a signatory to this Agreement), BellSouth agrees to compensate the Rural LECs for such traffic during the term of this Agreement under the same terms and conditions as traffic terminated by BellSouth under the KRSP.

2.10 For Covered CMRS Provider Traffic, BellSouth is responsible for providing to the appropriate terminating Rural LEC accurate industry standard call detail records identifying the originating CMRS Provider and the minutes of CMRS Provider Traffic for each such provider (currently known as "110101 format message and billing records"). BellSouth will provide such records to the terminating Rural LEC not later than 60 days after such usage occurs. The Signatory CMRS Providers are responsible for providing to BellSouth complete and

accurate information regarding the billing address and billing contacts for the Signatory CMRS Providers. BellSouth will provide its billing address and contact information to the Rural LECs.

2.11 The terms and conditions set forth in this Agreement only apply on and after the Effective Date of this Agreement. With respect to the Signatory CMRS Providers, BellSouth agrees not to seek any additional compensation from a Signatory CMRS Provider for any Covered CMRS Provider Traffic for which BellSouth has paid, or has agreed to pay, the Rural LECs prior to the Effective Date of this Agreement.

2.12 Any undisputed charges incurred pursuant to this Agreement that are not timely paid by BellSouth to the Rural LECs, or are not timely paid by a Signatory CMRS Provider to BellSouth, will accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law. The Parties agree that interest shall accrue and be paid on all overdue disputed amounts that are resolved in favor of the non-disputing party.

3.00 Term and Termination of the Agreement

3.01 This Agreement will become effective on the first calendar day of the month following KPSC approval (the "Effective Date"). This Agreement has an absolute termination date of December 31, 2006 regardless of, and in addition to, any other provisions herein under which this Agreement may be terminated by any Party. Therefore, all duties, rights, and obligations hereunder terminate on December 31, 2006. 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. In the event that any Signatory CMRS provider desires to continue to route CMRS Provider Traffic destined for the Rural LECs through BellSouth's network after the expiration of this Agreement, the Signatory CMRS provider must initiate interconnection negotiations with the Rural LECs consistent with Section 251 and Section 252 of the Act by no later than January 1, 2006. Such negotiations, which may include but are not limited to rates, terms, and conditions of interconnection between and among the Parties, shall be conducted in good faith. In the event such negotiations are unsuccessful and the Commission is asked to arbitrate any open issues, the Parties shall submit to the arbitration processes and deadlines as set forth in Section 252(b) of the Act to settle any open issues relating to interconnection and compensation arrangements between and among the Parties. For purposes of determining all deadlines related to the negotiation and arbitration pursuant to this Section, the request date for all negotiations shall be deemed to be January 1, 2006 unless the actual request date for negotiations under Section 251 and 252 of the Act is earlier. The Parties agree that this Agreement will not prejudice the negotiations in any way.

3.02 In the event of Default by a Party, as defined below in this subsection, any of the non-defaulting Parties may terminate any and all terms and conditions of this Agreement with respect to the defaulting Party provided that a non-defaulting Party seeking termination with respect to the defaulting Party notifies the defaulting Party and the KPSC and any other affected

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Party in writing of the Default, the defaulting Party does not cure the alleged Default with thirty (30) days after receipt of such written notice, and the KPSC consents to the termination. With respect to a Defaulting Party, Default is defined as: (a) that Party's material breach of any of the material terms of this Agreement, including the compensation terms; or (b) any aspect of a Party's operations or actions that are determined by a court with proper jurisdiction or the Commission to be unlawful or not authorized.

3.03 The Parties agree to the terms and conditions of this Agreement related to the network arrangement for CMRS Provider Traffic, including specifically, but not limited to, BellSouth's provision of tandem switching of CMRS Provider Traffic and the delivery of that CMRS Provider Traffic to the Rural LECs over the same trunks that BellSouth uses to deliver its own interexchange service traffic, and compensation arrangements between and among the Parties for the Rural LEC's termination of such CMRS Provider Traffic, is a voluntary arrangement and represents a compromise between and among the Parties for the limited purpose of this Agreement, and does not create and should not be construed to create any obligations that do not otherwise apply to any Party. Notwithstanding the terms and conditions set forth in this Agreement, each Party has the right, at its sole discretion, to modify its network (including but not limited to the right to design and deploy its own network and facilities, upgrade its network, modify its end office and tandem switching hierarchy and/or architecture, modify trunking arrangements with other carriers, install new equipment or software, maintain its network, determine and designate the tandem switch(es) which its end offices will subtend for any traffic), except that the Parties agree for the limited term during which this Agreement remains in place between and among the Parties, they will not make any such modifications which materially alter, interfere with, disrupt, or discontinue the ability of the Signatory CMRS Providers to deliver CMRS Provider Traffic to the Rural LECs via BellSouth's network. This agreement to commit to keep in place these network arrangements for the limited term of this Agreement does not affect any Party's right to modify such arrangements following the term of this Agreement.

3.04 The Parties understand and agree that this Agreement will be filed with the Commission in Docket No. 2003-00045. The Parties agree that they will support approval of this Agreement before the Commission in settlement of such Docket as it relates to the issues in this Agreement.

4.00 No Waiver

4.01 The Parties agree that this Agreement represents a voluntary arrangement and compromise between and among the Parties, including the terms and conditions for compensation, and any compensation terms hereunder should not be construed as the agreement of any Party as to the appropriateness of such level of compensation.

4.02 Nothing in this Agreement shall be construed to create legal or regulatory requirements for the Parties that do not otherwise apply. Nothing in this Agreement shall be construed as a waiver by any of the Parties of any of the rights afforded, or obligations imposed, by Sections 251 or 252 of the Act. The terms of the arrangements set forth in this Agreement shall not prejudice the outcome of any subsequent interconnection negotiations or arbitrations

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between or among the Parties or any Commission arbitration.

4.03 Nothing in this Agreement shall preclude any Party from participating in any Commission proceeding or proceeding before the Federal Communications Commission ("FCC") relating to any issue, including matters specifically related to the subject matter of this Agreement or from petitioning the Commission or the FCC to resolve any issue, including matters specifically related to the subject matter of this Agreement. The Parties reach this Agreement without waiving or prejudicing any positions they have taken previously, or may take in the future, in any judicial, legislative, regulatory, or other public forum addressing any matters, including matters specifically related to, or other types of arrangements prescribed in, this Agreement.

5.00 Warranties

5.01 The Parties represent and warrant that they have the sole right and exclusive authority to execute this Agreement and to make or receive payments hereunder.

5.02 The Parties represent and warrant that they have fully read and understand the terms of this Agreement, and have freely and voluntarily executed this Agreement. The Parties represent and warrant that they enter into this Agreement without reliance upon any statement, inducement, promise or representation of the other Party or anyone else not fully expressed herein.

5.03 The Parties agree that the terms and conditions set forth herein will be made available on a nondiscriminatory basis to any CMRS Provider in Kentucky that becomes similarly situated to the Signatory CMRS Providers, provided that such similarly situated CMRS Providers agree to the terms of this Agreement. BellSouth shall provide written notice to the Rural LECs at least 30 days prior to any additional CMRS Provider becoming a party to this Agreement. This Agreement will be amended to include such additional CMRS Providers.

5.04 The Parties agree that in the event that the KPSC or the FCC renders an effective decision establishing the rights and obligations of the originating, terminating and intermediary carriers, then upon request of any Party hereto, the Parties will renegotiate all of the terms and conditions of this Agreement to be consistent with all controlling laws and regulations. In the event that the Parties are unable to reach a new agreement for alternative arrangements, the affected Parties shall petition the KPSC to determine the rights and obligations of the Parties. The effective date of any new agreement will be mutually agreed by the Parties or determined by the KPSC.

6.00 Entire Agreement and Successors in Interest

6.01 This Agreement reflects the entire agreement and understanding between the Parties with respect to the scope of the subject matters addressed herein, supersedes all prior agreements, arrangements, understandings, communications, representations or warranties, both oral and written, related to the subject matter hereof, and shall be binding upon and inure to the



benefit of the executors, administrators, personal representatives, heirs, assigns, and successors of each Party.

7.00 Severability of Provisions

7.01 The Parties agree that any provision of this Agreement, which is or becomes prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. In the event of the prohibition or unenforceability of any provision of this Agreement in any jurisdiction, the Parties agree to negotiate in good faith to revise such provision to accomplish the intent of the Parties in a manner permissible and enforceable within such jurisdiction.

8.0 Governing Law

8.01 This Agreement including all matters of construction, validity and performance shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without giving effect to the choice of law or conflicts of law provisions thereof.

9.0 Additional Documents and Negotiations

9.01 The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement, including, but not limited to, resolving any and all operational issues associated with the implementation of this Agreement.

9.02 Upon execution of this Agreement, the Parties agree to work cooperatively to identify and resolve any other issues associated with the delivery of traffic between the Parties that is within the scope of this Agreement.

10.0 Counterparts

10.01 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.0 Dispute Resolution

11.01 Any dispute between or among any of the Parties regarding the interpretation or enforcement of this Agreement, or any of its terms and conditions, shall be addressed by good faith negotiation between and among the Parties, in the first instance. Should such negotiations fail to resolve the dispute in a reasonable time, any Party to the dispute may initiate an appropriate action at the KPSC to resolve the dispute. Pending such resolution, all the terms and conditions of this Agreement shall remain in full force and effect and the Parties shall continue to perform the services described in this Agreement.



IN WITNESS THEREOF, the Parties have fully executed this Agreement as of _____, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


By: _____

Title: _____

Jerry H. [Signature]
AVP ICS Marketing

EXHIBIT A
Signatory CMRS Providers

AMERICAN CELLULAR CORPORATION
f/k/a ACC KENTUCKY LICENSE LLC

By:  _____

Timothy J. Duffy

Title: Sr. Vice President & CTO

EXHIBIT A
Signatory CMRS Providers

AT&T WIRELESS PCS, LLC, on behalf of itself
and its affiliate, Tritel Communications, Inc.

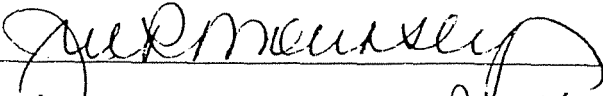
By: 
Title: Director - Industry Relations

EXHIBIT A
Signatory CMRS Providers

BELLSOUTH MOBILITY LLC d/b/a CINGULAR
WIRELESS and BELLSOUTH PERSONAL
COMMUNICATIONS LLC d/b/a CINGULAR
WIRELESS

By: Michael J. Vambalunda

Title: Director - sem - Network

Handwritten initials and signature

EXHIBIT A
Signatory CMRS Providers

SPRINT SPECTRUM L.P., on behalf of itself
and SprintCom, Inc., d/b/a SPRINT PCS

By: W. Richardson

Title: Vice President - External Affairs

EXHIBIT B

BALLARD RURAL TELEPHONE COOPERATIVE CORP., INC.

By: *Harold E. Parker*

Title: *General Manager*

BRANDENBURG TELEPHONE COMPANY, INC.

By: _____

Title: _____

DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.

By: _____

Title: _____

FOOTHILLS RURAL TELEPHONE COOPERATIVE CORP., INC.

By: _____

Title: _____

COALFIELDS TELEPHONE COMPANY, INC.

By: _____

Title: _____

EXHIBIT B

BALLARD RURAL TELEPHONE COOPERATIVE CORP., INC.

By: _____

Title: _____

BRANDENBURG TELEPHONE COMPANY, INC.

By: Walter K. Kinsley

Title: Gen. Mgr.

DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.

By: _____

Title: _____

FOOTHILLS RURAL TELEPHONE COOPERATIVE CORP., INC.

By: _____

Title: _____

COALFIELDS TELEPHONE COMPANY, INC.

By: _____

Title: _____