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November 9, 2006

VIA HAND DELIVERY
Hon. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: ***Kentucky Public Service Commission Case Nos.***
1) 2006-00215; 2) 2006-00217; 3) 2006-00218; 4) 2006-00220;
5) 2006-00252; 6) 2006-00255; 7) 2006-00288; 8) 2006-00292;
9) 2006-00294: 10) 2006-00296; 11) 2006-00298; 12) 2006-00300

Dear Ms. O'Donnell:

I have enclosed for filing in the above styled cases the original and eleven (11) copies of the Post-Hearing Brief of Petitioners. Please file-stamp one copy and return it to our delivery person.

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

Sincerely,

Edward T. Depp

ETD/lb
Enclosures

cc: John N. Hughes, Esq.
Mary Beth Naumann, Esq.
Bhogin M. Modi
Mark R. Overstreet, Esq.
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Jeff Yost, Esq.
Amy E. Dougherty, Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular Corporation f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	)	Case No. 2006-00215
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 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, 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 Foothills Rural Telephone Cooperative Corporation, Inc., for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	)	Case No. 2006-00292

Petition of Gearheart Communications Inc. d/b/a Coalfields Telephone Company, for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/v/a Verizon Wireless, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	Case No. 2006-00294
Petition of Logan Telephone Cooperative, Inc. For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular Corporation f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	Case No. 2006-00218
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 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 Peoples Rural Telephone Cooperative 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/v/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	Case No. 2006-00298

Act of 1996	)	
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 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
Petition of West Kentucky Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular Corporation f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934 as Amended by the Telecommunications Act of 1996	)	Case No. 2006-00220

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EXECUTIVE SUMMARY OF BRIEF

The RLEC petitioners in this matter are twelve small, Kentucky rural local exchange carriers serving areas that pale in size to the service territories of either BellSouth or Windstream. Their diverse territories span rural areas across the Commonwealth. Many of the RLECs are member-owned cooperatives; the other three are private investor-owned companies. The RLECs' basic *raison d'etre* arose from the fact that "Ma Bell" had not historically deemed it advantageous to serve the predominantly rural areas of Kentucky served by these RLECs. Serving those areas of the Commonwealth was comparatively far more expensive (as a result of the lower population density, the lesser development of infrastructure, and the sheer distance separating customers) than the cities and urban areas, where population was more dense, infrastructure was more fully developed, and traffic volumes were significantly higher. In spite of these operational difficulties, the RLECs undertook to build networks and provide quality telecommunications service in those otherwise unserved areas, reinvesting in their local communities and providing not only services but economic stimulation to those same communities.

Opposite the RLECs stand five large, national CMRS providers: Cingular, Verizon Wireless, Sprint, T-Mobile, and Alltel. As a result of their frequently-run television and radio advertisements, little introduction to these respondents is necessary. They are all national companies whose aim is to serve a comparably large national customer base.

All the parties appear before the Commission pursuant to Kentucky Revised Statutes Chapter 278 and Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), which vests the Commission with the authority to "arbitrate any open issues" not resolved through the statutorily required negotiation window of approximately five months. *Id.* The RLECs have previously advised the Commission of the CMRS Providers' abject

failure to engage in meaningful negotiations during that negotiation window, and so there is little value in repeating those facts here, except to note that this entire arbitration process represents just one more significant cost that the CMRS Providers have forced the RLECs to incur in order to obtain appropriate interconnection terms prior to the expiration of the parties' settlement agreement (filed in Case No. 2003-00045), which expires at year's end.

Federal and state law applies two standards that should guide the Commission in its resolution of this proceeding. First, the Act provides that the Commission should:

> (1) ensure that such resolution and conditions meet the requirements of section 251 of [the Act], including the regulations prescribed by the Commission pursuant to section 251 of [the Act];
>
> (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.

Id.

In addition, Kentucky law requires the Commission to ensure that:

> (1) Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.
>
> (2) Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.
>
> (3) Every utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in any proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.

KRS 278.030.

With these standards in mind, the RLECs posit that ***there are four conceptual issues of paramount importance in this proceeding.***

1.

The RLECs should not be required to expand their networks in order to interconnect with the CMRS Providers.

First, the RLECs request that the Commission not require them to be financially responsible for transporting traffic subject to the interconnection agreement arising from this proceeding (the "Interconnection Agreement") outside of their existing network. The CMRS Providers will attempt to argue that it is "only fair" or "efficient" that the RLECs be required to incur the same costs to deliver traffic to the CMRS Providers that the CMRS Providers incur to deliver traffic in the opposite direction. They argue this despite the fact that the CMRS Providers refuse to undertake the basic responsibility to build or purchase facilities to the boundaries of the RLECs' networks. Instead, the CMRS Providers would have the RLECs pay for facilities to exchange local traffic at locations (for example, Louisville) far from the RLECs service territories and networks. This attempt to artificially impose additional costs on the RLECs is not efficient and is, by definition, not fair, just, or reasonable within the meaning of KRS Chapter 278.

The Act requires the CMRS Providers to come to the RLECs networks for purposes of interconnection. Moreover, it would be unreasonable to conclude that the requesting party (the CMRS Providers) could require the incumbent LEC to incur the additional and significant cost of building out its network just to satisfy an interconnection request.[1] BellSouth has not been required to transport traffic outside the boundaries of its network, and the RLECs ask simply to be treated no worse than BellSouth is in this respect.

[1] 47 U.S.C. 251(c)(2)(B) obligates the RLECs to provide interconnection "at any technically feasible point within the carrier's network," not outside of it. *Id.* (emphasis added).

2.

The CMRS Providers should be required to interconnect on a dedicated basis whenever the volume of traffic being exchanged exceeds a de minimus level.

Second, the RLECs request that the Commission require the CMRS Providers to interconnect on a dedicated trunk once the volume of traffic exceeds a de minimus level.[2] Absent interconnection by means of a dedicated circuit, the RLECs are left entirely at the mercy of disincentivized third-parties (for example, BellSouth) to deliver records that the RLECs use to bill for traffic terminated on their networks.[3] This is the classic case of the "fox guarding the henhouse." The RLECs have made significant capital investments in switching equipment to be able to perform traffic measurements for themselves. Moreover, common sense indicates that once traffic volumes exceed a de minimus level, the parties should be required to implement arrangements whereby the financially-invested parties (and not some third-party) are able to directly measure and bill for the traffic being exchanged. The CMRS Provider proposal, conversely, would require the RLECs to rely on some third-party unless the CMRS Providers unilaterally determined that they wanted to interconnect by means of dedicated circuits. In no other scenario are the RLECs placed at the mercy of another carrier for their own billing, and it is unreasonable to start implementing such a requirement in this case. BellSouth is not required to rely on third-parties for their billing purposes, and the RLECs ask simply to be treated no worse than BellSouth in this respect.

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[2] As discussed in the context of Issue 2, the Commission should determine that a traffic volume of 75,000 minutes per month constitutes traffic in excess of a de minimus level.

[3] This is true because the transit process involved in delivering traffic by means of undedicated circuits causes the relevant traffic measurement and billing data to be stripped from the incoming call.

3.

The Commission should adopt a
reciprocal compensation rate of 1.5 cents per minute.

Third, the reciprocal compensation rate implemented in the Interconnection Agreement is crucially important to the RLECs.[4] After all, it is the final variable in the equation of precisely "how much" compensation is due to the RLECs for the service of providing transport and termination to the CMRS Providers. The RLECs have proposed a rate of 1.5 cents per minute. That rate is identical to the reciprocal compensation rate contained in the parties' current settlement agreement (filed in Case No. 2003-00045); it is lower than the average of reciprocal compensation rates contained in a number of recently-filed interconnection agreements with Kentucky RLECs; it is lower than the average of reciprocal compensation rates contained in a number of RLEC interconnection agreements recently filed in other states. In addition, the rate approximates RLEC average interstate access rates, and it further approximates the rates that result from applying an FCC-approved weighting factor to the old FCC proxy rates advocated by the CMRS Providers. Given that TELRIC rates for reciprocal compensation are nothing more than approximations of the true market value of that service, the RLEC-proposal of 1.5 cents per minute clearly constitutes a fair, just, and reasonable rate that is consistent with the requirements of the Act and reflective of the market. Accordingly, the Commission should adopt the RLECs' 1.5 cent reciprocal compensation rate proposal.

[4] "Reciprocal compensation" is industry shorthand for the reciprocal "transport and termination" charges assessed upon the exchange of traffic subject to Subpart H of 47 C.F.R. 51.

4.

The RLECs should not be required to pay reciprocal compensation on toll traffic.

Fourth, and finally, the RLECs request that the Commission affirm that reciprocal compensation is not due on toll traffic destined for the CMRS Providers. Despite the fact that this request complies with the entire body of telecommunications law, the CMRS Providers continue to assert that (for certain interexchange carrier-originated traffic), the RLECs could be liable for reciprocal compensation on such traffic. Applicable law clearly provides that reciprocal compensation does not apply to interexchange carrier-originated traffic. Likewise, applicable law clearly provides that access charges are only applicable to interexchange carriers and those functioning as an interexchange carrier (as the CMRS Providers do when they transport calls across exchange boundaries). The RLECs, as their name signifies, are local exchange carriers, not interexchange carriers. The Commission should, therefore, order that the RLECs are not required to pay reciprocal compensation on interexchange carrier toll traffic destined for the CMRS Providers.

POST-HEARING BRIEF OF PETITIONERS

Petitioners Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard"); Brandenburg Telephone Company ("Brandenburg"); Duo County Telephone Cooperative Corporation, Inc. ("Duo County"); Foothills Rural Telephone Cooperative Corporation, Inc. ("Foothills"); Gearheart Communications Inc. ("Gearheart"); Logan Telephone Cooperative, Inc. ("Logan"); Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain"); North Central Telephone Cooperative Corporation ("North Central"); Peoples Rural Telephone Cooperative, Inc. ("Peoples"); South Central Rural Telephone Cooperative Corporation, Inc. ("South Central"); Thacker-Grigsby Telephone Company, Inc. ("Thacker-Grigsby"); and West Kentucky Rural Telephone Cooperative Corporation, Inc. ("West Kentucky") (collectively, the "Petitioners" or "RLECs"), hereby submit their post-hearing brief and state as follows.

I. Introduction.

This arbitration proceeding presents the Public Service Commission of the Commonwealth of Kentucky (the "Commission") with the important, yet novel, question of precisely what new financial burdens Kentucky's rural telephone companies should be forced to bear in the context of their interconnection arrangements with five large wireless service providers.[5] Certainly, there is more than one dispute at issue in this proceeding, but when the arguments and theories are reduced to their essence, the unifying theme is that of cost, and who should bear it. The CMRS Providers submitted much testimony on the subject of "efficiency" and why their proposals are more

[5] Although there are up to seven named respondents in these arbitration proceedings, two of those respondents (NTCH-West, Inc. and ComScape Telecommunications, Inc.) have chosen not to contest this matter. (*See* Hearing Transcript at 15-16 ("... although NTCH-West and ComScape apparently do not appear today by counsel"). As a result of their willful disregard of these proceedings, Petitioners submit that the Commission should adopt their proposed template agreement for these two carriers. Therefore, Petitioners' brief deals only with the five CMRS providers who actually contested the arbitration petitions: Cingular, Verizon Wireless, T-Mobile, Sprint PCS, and Alltel (collectively, the "CMRS Providers").

"efficient" than the Petitioners' proposals. Of course, a one-sided "efficiency" is not really efficiency at all. And, despite their claims to the contrary, the CMRS Providers seek to impose upon the RLECs obligations exceeding those applicable even to BellSouth, and certainly those applicable to the RLECs' interconnection arrangements with other carriers. The real losers in such a scenario are the RLECs' end-user customers, each of whom will ultimately bear the cost of such obligations. Accordingly, in an effort to preserve the availability of low-cost, high quality telecommunications services in the predominantly rural areas of this Commonwealth, the Commission should adopt the RLECs' proposals with respect to the issues remaining in this proceeding.

II. Argument and Analysis.

The RLECs position with respect to, and arguments in support of, each issue raised in this proceeding is set forth in detail, below.

ISSUE 1: How should the Interconnection Agreement identify traffic that is subject to reciprocal compensation?

Despite the intensity of disagreement among the parties regarding whether certain traffic (when routed in certain manners) is subject to reciprocal compensation (*see* Issue 9), the CMRS Providers present no meaningful reasons why the term "Subject Traffic" (as proposed by the RLECs) should be revised and called "Telecommunications Traffic." The parties agree in principle that the traffic being defined is that traffic that is subject to reciprocal compensation pursuant to Subpart H of the Code of Federal Regulations; the disagreement with respect to this issue is simply a matter of determining which proposed term ("Subject Traffic" or "Telecommunications Traffic") is less confusing.

The RLECs openly acknowledge that Subpart H uses the term "telecommunications traffic" in its discussion of reciprocal compensation, and it is for this reason that the RLECs chose not to use that term in the broader context of the Interconnection Agreement. In the restricted scope of Subpart

H, it is entirely appropriate for the FCC to refer to traffic subject to reciprocal compensation as simply "telecommunications traffic" because reciprocal compensation traffic is the only type of traffic that is being discussed in that subpart. Outside of that restricted scope, however, the use of the same term engenders unnecessary confusion for the simple reason that not all "telecommunications," as that term is defined in 47 U.S.C. 153(43) is subject to reciprocal compensation.[6] The RLECs proposed to use the term "Subject Traffic" to avoid such confusion[7] while still signifying that the traffic in question is subject to the Subpart H reciprocal compensation regulations.

Given the parties' fundamental agreement with respect to the "thing" being defined, therefore, the Commission should reject what constitutes merely stylistic proposals from the CMRS Providers. That is, if the CMRS Providers admit (as they should) that this issue concerns merely the naming of the body of traffic that is subject to Subpart H, then they should withdraw their dispute with respect to this issue and address their concerns in Issue 9, where the operational aspects of the dispute are implicated. Short of the CMRS Providers' agreement to withdraw their dispute regarding this issue, the Commission should adopt the RLECs' proposed language for section 1.22, which simply names the traffic subject to the FCC's Subpart H regulations.

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[6] 47 U.S.C. 153(43) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." *Id.* InterMTA traffic, for example, would therefore satisfy the Act's definition of "telecommunications," while clearly falling outside the scope of Subpart H's reciprocal compensation obligations. (*See* 47 C.F.R. 51.701(2), providing that "telecommunications traffic" means "[intraMTA t]elecommunications traffic...."

[7] This potential for confusion is one that the CMRS Providers exploit in the context of Issue 9, wherein they attempt to subvert common sense by arguing that interexchange carrier toll traffic is somehow subject to the RLECs' reciprocal compensation obligations.

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

The CMRS Providers have misleadingly phrased this issue to avoid the real subject of dispute: whether the CMRS Providers should ever be required to utilize dedicated trunks to exchange traffic with the RLECs. By phrasing the issue as they have, however, the CMRS Providers intentionally confuse "direct" interconnection with dedicated interconnection. "Direct" interconnection, is one of two permissible means of establishing facilities between interconnected parties. *See* 47 U.S.C. 251(a)(1) (providing that "[e]ach telecommunications carrier has the duty... to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"). The RLECs do not, and have not ever, disputed the CMRS Providers' statutory right to interconnect pursuant to – as they see fit – direct or indirect facilities.

Instead, the RLECs dispute the CMRS Providers' attempt to overburden this basic statutory concept with the notion that traffic being exchanged between interconnecting parties can be commingled with traffic from various other parties; the law does not impose such an obligation. Unfortunately, the lack of CMRS Provider negotiation prior to the close of the arbitration window necessitated the appearance that the RLECs were unwilling to agree to anything less than "all dedicated, all the time" interconnection. The RLECs candidly recognize that certain network efficiency considerations of the CMRS Providers could militate against the position espoused in the template agreement. Nevertheless, in keeping with the theory that there is no such thing as a one-sided "efficiency," the RLECs do insist that if the CMRS Providers intend to exchange traffic with them, they should be forced to do so pursuant to basic terms similar to those already in place between the RLECs and various other carriers (including a number of interexchange carriers and

certain CMRS carriers), each of which have dedicated interconnection with the RLEC network at a DS-1 level. (*See* WWM Test. at 3:7-13.)

Thus, when the RLECs request that the Commission require the CMRS Providers to exchange traffic by means of a dedicated interconnection above a "de minimus" level of traffic, the RLECs request that the Commission require dedicated interconnection once the volume of traffic being exchanged reaches 75,000 minutes of use per month (which is equivalent to the ordinary and reliable operating capacity of a DS-1 trunk). As further discussed in the context of Issue 6 and Issue 7, the use of such a threshold validates the RLECs' interest in identifying, billing, and controlling CMRS Provider traffic once that traffic exceeds a de minimus level. (*See* WWM Test. at 3:19-20.) Additionally, such a threshold validates the Kentucky law mandate that "[e]very utility... may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." KRS 278.030(2).

Conversely, the CMRS Providers' proposal that traffic be delivered by means of commingled trunks, until they unilaterally determine otherwise, makes reliable traffic measurement and verification all but impossible, and clearly goes beyond Section 251(a)(1)'s simple goal of ensuring that all telecommunications carriers could connect their networks together.[8] In the same breath, it destroys the RLECs' ability to "establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." KRS 278.030(2). All the RLECs ask is that once the traffic volume becomes significant, the CMRS Providers should be required to deliver traffic over dedicated circuits so that the traffic may be reliably measured and billed by the RLECs. This request is reasonable, it complies with applicable law, and the RLECs request that the Commission adopt it.

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[8] Indeed, Section 251(a) is entitled "General duty of telecommunications carriers." *Id.* (emphasis added).

Returning to the issue as phrased, however, the RLECs do not object to the Interconnection Agreement permitting the statutory standard of direct or indirect interconnection. Of course, to the extent that the CMRS Providers attempt to misuse these terms in support of their claim that the RLECs can be deprived of the right to reliably measure and verify the traffic being exchanged, that issue is addressed in greater detail in the discussion of Issue 7. As noted in that discussion, the Commission should, at a bare minimum, require the CMRS Providers to exchange traffic over dedicated facilities once the volume of traffic being exchanged exceeds a de minimus level.

ISSUE 3: Does the Interconnection Agreement apply only to traffic within the Commonwealth of Kentucky?

The CMRS Providers' position that this issue remains in dispute is untenable. RLEC witness Watkins testified explicitly that "the RTCs have agreed that the Interconnection Agreement with a CMRS Provider would not be limited to Kentucky." (SEW Rebuttal Test. at 10:5-6.) The only dispute marginally related to this issue arises in Issue 15, concerning the appropriate interMTA traffic factors (if any) applicable to the Interconnection Agreement. The RLEC proposal with respect to this issue requested only that the CMRS Providers' areas-served be identified so an appropriate interMTA traffic factor could be determined. To the extent that the appropriate interMTA traffic factor remains a subject of this arbitration proceeding (which it does), then there is no further dispute with respect to this issue, and the CMRS Providers should (as reasonably requested) specify the geographic area subject to the Interconnection Agreement. The RLECs, therefore, respectfully request that the Commission consider this issue resolved in accordance with the RLEC request that the Interconnection Agreement specify the geographic area served by the CMRS Providers.

ISSUE 4: Should the Interconnection Agreement apply to fixed wireless services?

The Interconnection Agreement should not apply to fixed wireless services, if any, offered by the CMRS Providers. Fixed wireless traffic is not a form of CMRS traffic. The Act defines "mobile service" as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves...." 47 U.S.C. 153(27) (emphasis added). Because "mobile stations" are subsequently defined as "radio-communication station[s] capable of being moved and which ordinarily [do] move," *id.* at 153(28) (emphasis added), it seems somewhat obvious that a "fixed" radio communication would not qualify as the "mobile service" embodied in CMRS communications. The FCC confirmed this in its order that "[t]o the extent that [an entity] requires a determination of whether or not a particular service that includes a fixed wireless component should be treated as CMRS, that party should petition the [FCC] for a declaratory ruling." *In the matter of Amendment to the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, Second Report and Order and Order on Reconsideration, WT Docket No. 96-6 at para. 8 (July 20, 2000).

None of the CMRS Providers have obtained such a declaratory ruling from the FCC or the Commission. (SEW Reb. Test. at 25: 35-36 and 26:1-5.) Thus, there can be no *a priori* determination – such as that which the CMRS Providers would have the Commission make – that fixed wireless services constitute CMRS. Consequently, the RLECs respectfully request that the Commission order that the Interconnection Agreement not apply to fixed wireless services.

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

This issue is little more than a variation on the theme of Issue 8, which addresses the dispute over whether the RLECs' interconnection obligations extend beyond their networks. Although this issue is discussed in far greater detail in the context of Issue 8, the RLECs note that the Congressional determination that their interconnection obligations apply only "within [their] network," 47 U.S.C. 251(c)(2)(B) (emphasis added), compels the conclusion that they should not be responsible for any transit or other fees incurred as a result of the CMRS Providers' decision to establish an interconnection point at some distant location for the exchange of traffic. Moreover, to the extent that transit fees may be incurred as a result of the absence of undedicated interconnection facilities, this provides yet another reason (aside from those discussed in Issue 2, above) why dedicated interconnection circuits (whether provisioned directly or indirectly) should be utilized whenever the volume of traffic exchanged exceeds a de minimus level.[9]

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

Yet again, the CMRS Providers have phrased an issue to mislead the Commission from the real nature of the dispute among the parties. A more appropriate phrasing for this issue would have been, "Should the RLECs be forced to rely on BellSouth to measure and bill potentially significant

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[9] Given the disproportionately large volume of CMRS-originated mobile-to-land traffic, the CMRS Providers' unilateral decision to select a transit provider (for undedicated traffic exchange arrangements) would imbue that transit provider with immediate market power in the delivery of the RLECs' land-to-mobile traffic, thereby inflating the cost of the transit service. The natural effect of this arrangement would be that the CMRS Providers could unintentionally cause the RLECs to incur greater transit costs than they themselves incur for the same service. By requiring the CMRS Providers to utilize dedicated interconnection facilities once the traffic volumes exceed a de minimus level, the Commission will prevent a single transit provider from gaining and exerting monopoly power over the exchange of CMRS traffic.

volumes of mobile-originated traffic despite the fact that the RLECs have made capital investments in the facilities necessary to independently accomplish accurate measurement and billing?"

Quite simply, this is not an issue of capability (as phrased by the CMRS Providers); it is an issue of propriety, and given the direct implications of this issue on the RLECs' ability to collect compensation they are rightly due, it is also a fundamentally important issue to the RLECs. "The identification and measurement of traffic is vital to the RTCs'... operations."[10] (SEW Test. at 15:16-17.) As a result of the importance of this issue, "[m]any of the RTCs have made significant capital expenditures and investment in order to put in place the ability to identify, measure and record traffic that they terminate from other carriers." (*Id.* at 14:20-22.) Oftentimes, this has been done "for the express purpose of removing themselves from dependence on large LECs such as BellSouth." (*Id.* at 30-31.) "All small LECs remain concerned based on their experiences with inaccurate measurement, unidentified traffic, missing settlements, and other [problems] with respect to the large LEC's performance of these functions." (*Id.* at 14:31-34.)

To be clear, the CMRS Providers espouse the notion that BellSouth can tell the RLECs how much traffic the CMRS Providers are delivering. This is the classic case of the "fox guarding the

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[10] *See also* the testimony of RLEC witness William W. Magruder, stating:

> It is critical that our small rural company not be forced to accept traffic that our systems cannot identify, bill and control. It is my understanding that the Commission has never required BellSouth or Windstream to establish any connections at their tandems such that they could not control or identify the traffic entering their network. If our companies were required to allow traffic to enter our network without those stringent controls, it is clear that arbitrage could occur, and we could not ensure the integrity of traffic entering our network. Consequently, the whole structure of access or any other compensation mechanisms would be in jeopardy.

(WWM Test. at 3:19-20.)

henhouse," and it should be avoided at all costs.[11] BellSouth, after all, would be combining other traffic, including its own, on the commingled trunk groups proposed by the CMRS Providers. Under such an arrangement, BellSouth would have absolutely no incentive – in fact, it might have a negative incentive – to ensure the accuracy of the billing records being provided to the RLECs. The arrangement would result in too many intercarrier compensation disputes that could be avoided if the CMRS Providers were to take the modicum of responsibility to exchange traffic on dedicated trunks once the volume of that traffic exceeds a de minimus level.[12] Below a de minimus level of traffic, conversely, the significance of relying on BellSouth for this function is also de minimus, and the RLECs do not (in that limited case) object to relying on industry-standard EMI 11-01-01 records provided by BellSouth to bill for that traffic.[13]

ISSUE 7: If a direct connection is established between a CMRS Provider and an RLEC, what terms should apply?

This issue, although imprecisely phrased, is – in combination with Issue 2 (regarding direct and indirect interconnection), Issue 6 (regarding reliance on BellSouth traffic measurements) and Issue 8 (regarding financial responsibility for interconnection facilities) – of **paramount importance to the RLECs**. In essence, the dispute reduces to the question of when (at what traffic volumes?) the CMRS Providers must begin exchanging traffic with the RLECs by means of

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[11] Just because it is a different "fox" (BellSouth) than the CMRS Providers is irrelevant. The danger remains the same.

[12] As previously noted, the use of dedicated interconnection trunks will permit the RLECs to accurately measure and bill for subject traffic without having to rely upon BellSouth for such services.

[13] This statement is expressly conditioned upon BellSouth providing records for that de minimus level of traffic at no charge to the RLECs, as CMRS Provider witness Brown testified was the case. (*See* Hearing Transcript at 148:11-12 ("... those records are available at no charge to the RLECs....").)

dedicated trunks.[14] Unfortunately, there are no applicable federal statutes or regulations, nor any relevant caselaw, to inform the Commission's analysis of whether the CMRS Providers' proposed indirect interconnection arrangements may be "commingled." Despite this, common sense and KRS 278.030(2)-(3)[15] counsel that once the volume of traffic being exchanged exceeds a de minimus level, it is appropriate to require traffic exchange by means of a dedicated circuit so that the RLECs can reliably measure and verify the exchange of traffic.

The RLECs request nothing more than that their prior "significant capital expenditures and investment... to identify, measure and record traffic that they terminate from other carriers... not be rendered useless... [and that they] not be forced to rely on [BellSouth], just because the CMRS Providers and BellSouth demand such a result." (SEW Test. at 14:20-24.) KRS 278.030(2) expressly permits the RLECs to employ "reasonable rules... and conditions under which it shall be required to render service." *Id.* KRS 278.030(3) likewise provides that the RLECs have the "right to employ... suitable reasonable classifications of [their interconnection] service" being provided to the CMRS Providers. *Id.* The law expressly permits such classifications to account for "any...

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[14] As is noted in the discussion of Issue 2, the CMRS Providers intentionally confuse "direct" interconnection with dedicated interconnection. "Direct" interconnection, is one of two permissible means of establishing facilities between interconnected parties. *See* 47 U.S.C. 251(a)(1) (providing that "[e]ach telecommunications carrier has the duty... to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"). "Dedicated" interconnection, on the other hand, refers to an operational characteristic of the either "direct" or "indirect" facility interconnecting the carriers. For example, when the traffic exchanged between the parties exceeds a de minimus level, the arrangement proposed by the RLECs would be an "indirect" (because the facility would be leased by the CMRS Providers from BellSouth) interconnection on a "dedicated" (so the traffic could be reliably measured and verified) circuit. Prior to the time that the traffic volume exceeds a de minimus level, the arrangement proposed by the RLECs would be an "indirect" interconnection on a "commingled" circuit.

[15] KRS 278.030(2) provides that "[e]very utility... may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." *Id.* KRS 278.030(3) provides that "[e]very utility may employ in the conduct of its business suitable and reasonable classifications of its service... The classifications may, in any proper case, take into account the nature of the use, the quality used, the quantity used... the purpose for which used, and any other reasonable consideration." *Id.*

reasonable consideration." *Id.* Certainly, if there must be "reasonable rules... and conditions" as well as "reasonable consideration[s]," *id.*, the ability to utilize significant existing investments and measure traffic without having to rely on BellSouth qualify as such.

Accordingly, the Commission should order that when the volume of traffic being exchanged between the parties exceeds a de minimus level, the CMRS Providers shall be required to exchange traffic (whether directly or indirectly) with the RLECs over dedicated circuits. In addition, the Commission should order that any time the CMRS Providers establish facilities (for example, a cell site or some equivalent point of presence ("POP")) within the boundaries of the RLECs' incumbent networks, the RLECs shall be permitted to interconnect and exchange traffic with the CMRS Provider at that POP.

ISSUE 8: Pursuant to 47 C.F.R. § 51.703 and 51.709, what are the Parties' obligations to pay for the costs of establishing and using direct interconnection facilities?

Regardless of whether the parties interconnect directly or indirectly and whether those interconnections use dedicated or commingled circuits, the RLECs should not be obligated to pay for interconnection facilities beyond the boundaries of their incumbent networks. Within the boundaries of their incumbent networks, however, the RLECs' financial responsibility for interconnection circuits should be limited to its percentage of use for the circuits (as measured by the proportion of RLEC-originated "Subject Traffic" to the total two-way traffic traversing those circuits).

The Act is clear that the RLECs are not required to provide interconnection with the CMRS Providers outside their own networks. Specifically, even the most stringent pronouncement of interconnection obligations under the Act provides that "each incumbent local exchange carrier has... the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network... at any technically feasible point

within the carrier's network...." 47 U.S.C. 251(c)(2) (emphasis added). Therefore, blanket statements (such as those made by the CMRS Providers) that "the originating carrier pays" must only apply insofar as the RLECs' payment obligations end where their interconnection obligation ends: "within the carrier's network." *Id.* And, while the RLECs freely acknowledge that the language in 47 C.F.R. 51.703 provides that "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network," they also note that FCC regulations such as this cannot be construed to exceed the scope of the statutorily-limited RLEC obligation to provide interconnection only "within the [RLECs'] network." 47 U.S.C. 251(c)(2)(B).[16] Therefore, the RLECs should not be responsible for costs outside their networks.

The CMRS Providers additional reliance on the FCC's *TSR Wireless*[17] case and the Commission's *Level 3*[18] and *AT&T Broadband*[19] cases is inapposite because the results in those cases are all distinguishable from the proposal made by the CMRS Providers in this case.

- ***TSR Wireless* does not require the RLECs to pay for facilities located outside their network.**

In *TSR Wireless*, the non-incumbent LEC (TSR) provided "one-way paging service" in US West's service territory. *Id.* at para. 7. Thus, all traffic exchanged over the parties' interconnection

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[16] As is evidenced by their position on this issue, the RLECs fully support the proportionality concept embodied in 47 C.F.R. 51.709, provided that the concept is harmonized with the Congressional determination that the RLECs' interconnection obligations apply only "within [their] network." 47 U.S.C. 251(c)(2)(B) (emphasis added).

[17] *In the Matter of TSR Wireless, LLC, et al., v. US West Communications, Inc., et al.*, Memorandum Opinion and Order, FCC 00-194, 2000 WL 796763 (June 21, 2000) (hereinafter *TSR Wireless*).

[18] *In the Matter of The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Order, Kentucky Public Service Commission Case No. 2000-00404, 2001 Ky. PUC LEXIS 819 (May 30, 2001) (hereinafter *Level 3*).

[19] *In the Matter of AT&T Broadband Phone of Kentucky, LLC v. Alltel Kentucky, Inc. and Kentucky Alltel, Inc.*, Order, Kentucky Public Service Commission Case No. 2003-00023, 2004 Ky. PUC LEXIS 214 (March 25, 2004) (hereinafter *AT&T Broadband*).

facilities in that case was originated by the incumbent LEC (US West) and delivered to an interconnection point located within US West's network. *Id.* The dispute between TSR Wireless and US West arose from US West's position that it could charge TSR Wireless for interconnection facilities located within US West's network, despite the fact that US West actually originated all the traffic flowing on those facilities. *Id.* at para. 25. In the context of that factual scenario, the FCC ordered US West to pay for its originating traffic. *Id.* Notably, the decision did not require US West to pay for facilities located outside of its incumbent LEC network; the question was simply not in issue.

- ***Level 3* does not require the RLECs to pay for facilities located outside their network.**

In *Level 3*, the Commission addressed the issue of whether BellSouth (as the incumbent LEC) was required to pay for the cost of a dedicated interconnection facility beyond BellSouth's local calling area boundary. *Id.* at 3. BellSouth did not advance the US West argument that the requesting carrier had to pay for the entire interconnection facility; instead, it argued that it was responsible for its originating-traffic portion of the cost of the interconnection facility only "within a unified local calling area." *Id.* Rejecting this argument, the Commission noted that BellSouth equates a LATA and a local calling area in its own tariffs, and it therefore determined that the scope of BellSouth's network was the entire LATA. *Id.* The Commission, accordingly, ruled that BellSouth was responsible for its originating traffic portion of the cost of the interconnection facility within the LATA (which – in BellSouth's unique situation – is equivalent to the scope of its incumbent LEC network). *Id.* at 3-4. Again, nothing in this decision required BellSouth to pay for facilities located outside of its incumbent LEC network; the question was simply not in issue.

- ***AT&T Broadband* does not require the RLECs to pay for facilities located outside their network.**

Lastly, in *AT&T Broadband*, the Commission considered a formal complaint (not an arbitration) arising from a voluntarily negotiated interconnection agreement between AT&T Broadband and Alltel Kentucky. That negotiated agreement contained express language obligating Alltel to pay for its originating traffic. Relying expressly on the negotiated interconnection agreement, the Commission forced Alltel to honor its voluntarily-agreed obligation to pay for its originating traffic to AT&T Broadband. *Id.* at 3 ("The contract language requires this result"). Of course, negotiated obligations are far different in nature than statutorily-imposed obligations. As a consequence, this case (like the other two) does not support the CMRS Providers' contention that the Act forces the RLECs to pay for their originating-traffic portion of the interconnection facility once that facility leaves the RLEC network.

Quite to the contrary, none of these three cases even attempts to overstep the clear boundary drawn by Congress when it mandated that the RLECs' interconnection duty was to provide interconnection "at any technically feasible point within the carrier's network." 47 U.S.C. 251(c)(2)(B). "To the extent that the CMRS Providers' proposals expect that the RTCs will provision... trunks with transport responsibility to a point beyond a technically feasible point within their networks within the LATA, or beyond any point to which they transport any other local traffic... no such extraordinary obligations exist." (SEW Test. at 31:4-8 (emphasis added).) Therefore, the Commission should rule that: (i) outside the RLEC networks, the CMRS Providers are financially responsible for the cost of any interconnection facilities established pursuant to the Interconnection Agreement; and (ii) within the RLEC networks, the parties shall be financially responsible for the cost of any interconnection facilities in proportion with the volume of traffic delivered over such facilities.

ISSUE 9: **Are the parties 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?**

This issue encompasses perhaps the single most important issue to the RLECs in this arbitration. Unfortunately, the CMRS Providers' phrasing of the issue disguises the real source of dispute: whether the RLECs should be required to pay reciprocal compensation on an interexchange carrier's toll traffic. Such a position (as is espoused by the CMRS Providers) runs counter to the entire body of telecommunications law, and the Commission should therefore reject it.

As a general matter, the RLECs agree with the incontestable assertion that Subpart H of 47 C.F.R. 51 provides that reciprocal compensation is due with respect to "[t]elecommunications traffic 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(2). Likewise, there should be no dispute with respect to the FCC's incontestable order that "the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at para. 1034 (August 8, 1996) (hereinafter *First Report and Order*) (emphasis added). As a consequence, the relevant issue becomes how the Commission will harmonize the two unassailable statements of law.

The CMRS Providers propose that the Commission determine that 47 C.F.R. 51.701(2) somehow "trumps" the FCC's unequivocal statement in the *First Report and Order* that intra- and interstate interexchange traffic is not subject to reciprocal compensation. On the contrary, the RLECs' approach is far less violent to the applicable law; they propose simply that the Commission determine whether toll traffic is truly "[t]elecommunications traffic between a LEC and a CMRS

provider." Not only does the RLEC approach ensure a more thorough consideration of the issue, it comports with the statutory interpretation canon that the law should be construed in a harmonious manner whenever possible. Without doubt, such a harmonized interpretation can be accomplished.

As noted above, the key to unlocking this issue lies in the FCC's use of the phrase "telecommunications traffic between a LEC and a CMRS provider." There is no dispute that the toll traffic in question is (on the terminating end) traffic to a CMRS Provider. Therefore, the central question is whether that toll traffic is originated by a LEC; most certainly, it is not. As the term "rural local exchange carrier" expresses, the RLECs provide local exchange services, not interexchange services. Surprising as it may be, the CMRS Providers dispute this conclusion.

To the CMRS Provider way of thinking, the mere fact that the originating residential end-user is located within the RLECs' service territory causes toll traffic to become "telecommunications traffic [from] a LEC." The CMRS Providers attempt to support this untenable position by relying on caselaw confirming the relatively obvious conclusion that the FCC's Subpart H rules do not expressly except interexchange carrier traffic from the scope of reciprocal compensation obligations. Of course, because interexchange carrier traffic is not "telecommunications traffic between a LEC and a CMRS provider," such an exception was entirely unnecessary in the first place. Moreover, the CMRS Providers offer no rationale why the Commission should blindly follow such ill-considered decisions in the face of basic common sense arguments such as those advanced by the RLECs in this proceeding.

In fact, the CMRS Providers' strained conclusion that interexchange carrier toll traffic is "telecommunications traffic [from] a LEC" could not be further from the truth. The FCC has previously explained as much, ordering that "traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange

carrier." *TSR Wireless, supra,* at para. 31. (emphasis added). Whether the end-user originating the call is located within an RLEC service territory is irrelevant; what is relevant is which carrier (the RLEC or the IXC) originates the call. RLEC witness Watkins explained this relatively obvious conclusion that, for toll calls, "[t]he interexchange carrier is the carrier originating the interexchange service call." (SEW Test. at 35:18-19.) That is, "[t]he interexchange carrier is the carrier providing the calling service to the end user... An interexchange service call is between an IXC and a CMRS Provider." (SEW Test. at 35:19-20.)

The CMRS Providers, however, are attempting to obscure "the forest for the trees." The RLECs do not provide interexchange services; interexchange carriers do. Therefore, any toll traffic delivered to the CMRS Providers cannot be considered "traffic between a LEC and a CMRS provider." Such a conclusion utterly defies common sense, and it has been explicitly rejected by the FCC. Therefore, the Commission should order that interexchange carrier-to-CMRS traffic is not subject to reciprocal compensation.

ISSUE 10: Is each RLEC required to develop a company-specific TELRIC-based rate for transport and termination, what should the rate be for each RLEC, and what are the proper rate elements and inputs to derive that rate?

In light of the Commission's ruling that the RLECs' reciprocal compensation rates must be based on the forward looking costs of providing such services, the RLECs propose that the Commission adopt the 1.5 cent per minute rate supported by their witness, Douglas D. Meredith. Nevertheless, given the CMRS Providers' chorus of disapproval regarding the absence of RLEC total element long-run incremental cost ("TELRIC") studies, however, a brief recitation of the applicable law is necessary.[20]

[20] As Mr. Meredith notes, the twenty-nine day time-frame that the RLECs were given to complete their TELRIC studies "does not permit the development of meaningful TELRIC studies

The Act's sole pronouncement on the appropriate rate for reciprocal compensation reads, in relevant part, as follows.

> For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless ... (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)(A) (emphasis added). And while the Act's implementing regulations clearly contemplate the use of a TELRIC "cost study" to derive this "reasonable approximation," it bears noting that the cost studies are only useful insofar as TELRIC pricing "simulates the conditions in a competitive marketplace." *First Report and Order, supra,* at para. 679. Given this ultimate goal, then, to ensure that transport and termination rates are consistent with those in a competitive marketplace, the Commission may (in the absence of TELRIC studies) use the "best information available" to determine whether the RLEC-proposed rate of 1.5 cents per minute does, in fact, constitute a "reasonable approximation" of the reciprocal compensation rates for "a competitive marketplace." *See* 47 U.S.C. 252(b)(4)(B) (permitting the Commission to resolve issues "on the basis of the best information available to it from whatever source derived"). In this manner, the Commission will ensure that the RLECs' reciprocal compensation rate complies with the goals of the Act.

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supporting the proposed transport and termination rates for the RLECs." (DDW Test. at 8:13-14.) The CMRS Providers do not contest this testimony but, instead, claim that the RLECs "should have" known they would be required to produce TELRIC studies. As should be obvious by this point, the RLECs had (and continue to have) a very different understanding of their legal obligations pursuant to the Act. At no time did the RLECs act inconsistently with their belief that TELRIC studies were not required of rural local exchange companies like themselves. Moreover, even if the RLECs had been able to conduct TELRIC studies in the twenty-nine day time-frame, the parties would likely be disputing the resultant rates far beyond the time period allotted for this proceeding; BellSouth's TELRIC proceeding, for example, was not completed until five (5) years after it became subject to the requirement to provide forward-looking costs.

Mr. Meredith's testimony enunciates four reasons why the 1.5 cent rate reasonably approximates what a reciprocal compensation rate would be in a competitive marketplace. First, he explained that the 1.5 cent rate is actually lower than the average of the negotiated reciprocal compensation rates on file with the Commission and equivalent to the negotiated rate currently used in the parties soon-to-expire settlement agreement. (DDM Test. at 10-13.) Second, he explains how the 1.5 cent rate compares favorably with rural LEC reciprocal compensation rates from other jurisdictions. (*Id.* at 13-15.) Third, he explains how interstate access rates help demonstrate that the 1.5 cent rate constitutes a reasonable approximation of the appropriate reciprocal compensation rate. (*Id.* at 15-18.) Finally, he explains how the application of the FCC's dial equipment minutes ("DEM") weighting factors can be applied to the FCC's vacated proxy rates to develop reciprocal compensation proxy rates more applicable to the increased switching costs associated with the RLECs' rural service territories. (*Id.* at 18-23.)

- **1.5 cents is reasonable compared to negotiated, market rates in Kentucky.**

In reviewing recent Kentucky reciprocal compensation rates for rural LECs, Mr. Meredith found none to be lower than 1.5 cents per minute. (*Id.* at 10.) The first of these rates comes directly from the parties' voluntarily negotiated settlement agreement (filed in Case No. 2003-00045), and he notes that the 1.5 cent rate in that agreement is actually the lowest of the three stepped rates agreed to among the parties. (*Id.*) In addition, Mr. Meredith notes that, of the seven rural LEC interconnection agreements filed with the Commission in the preceding year, the average, voluntarily negotiated rate is actually higher, at 1.77 cents per minute.[21] Viewing these voluntarily

[21] The rates negotiated in these agreements range from 1.5 cents per minute to 1.96 cents per minute (two have 1.96 cent rates; one has a 1.84 cent rate; two have 1.75 cent rates; one has a 1.6 cent rate; and one has a 1.5 cent rate). (*Id.*) In fact, considering that the agreements containing these rates involved relatively large volumes of traffic, it is reasonable to conclude that the parties were particularly "sensitive to achieving a fair, just and reasonable transport and termination rate because

negotiated rates as reflective of the value that market participants place on rural LEC transport and termination services, Mr. Meredith notes that the 1.5 cent proposal made by the RLECs is actually below the market price. (*Id.* at 11:12-14.) Thus, he concludes that the RLEC-proposed 1.5 cent rate is fair and reasonable, especially insofar as it indicates that "TELRIC-based pricing for RLEC transport and termination could exceed the [1.5 cent] per minute rate offered by the RLECs in the event TELRIC-based studies are performed. (*Id.* at 11:14-17.)

- **1.5 cents is reasonable compared to negotiated rates in other jurisdictions.**

Mr. Meredith, through his company's nationwide experience and involvement with the development and negotiation of reciprocal compensation rates, also set out to review the reciprocal compensation rates applicable to rural LECs in other states. In his review of over forty agreements from Texas, Colorado, Florida, Georgia, Kansas, Maine, North Carolina, New Hampshire, New York, South Carolina, and Utah, Mr. Meredith determined that the average reciprocal compensation rate was set, once again, at a level higher than the RLEC-proposed 1.5 cent per minute rate. (*Id.* a 14-15.) In Texas, for example, the average rate since September 2003 was $1.75 cents per minute; since 2005, the average rate for the rural LECs was even higher, at 1.88 cents per minute. (*Id.* at 14:6-12.) The agreements from the other states contain rates ranging from a low of 1.2 cents per minute to a high of 2 cents per minute. (*Id.* at 15:6-7.) Even within this range, the average rate for those states remains 1.69 cents per minute of use. (*Id.* at 15:5-6.) Quite clearly, the market value of rural LEC transport and termination around the country remains substantially higher than the 1.5 cent rate proposed by the RLECs.

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this large traffic flow will result in higher overall payments." (*Id.* at 11:1-6.) (The RLECs acknowledge that, in several examples, the parties to the agreements filed a "netted" rate reflecting the expected balance of traffic to be exchanged. In all such cases, the rate was converted to an equivalent rate per minute, and that rate was appropriately used in the analysis provided by Mr. Meredith.)

- **1.5 cents is reasonable compared to interstate access rates.**

Next, Mr. Meredith examined interstate access rates as a "reasonableness check" for the proposed 1.5 cent rate. As he explains, one cannot simply assume that TELRIC-based rates will always be lower than interstate switched access rates. (*Id.* at 16:1-7.) More importantly, he notes that interstate access rates – despite the CMRS Providers' claim that they used to be inflated with various contributions and subsidies when the TELRIC rules were enacted – no longer possess such arguably above-cost characteristics that could have previously made them inappropriate for forward-looking cost elements like reciprocal compensation. (*Id.* at 16:10-14.) In fact, recent "reform efforts have... left a cost-based rate that reflects the actual cost of providing services identical to transport and termination." (*Id.* at 16:15-17.) The recent National Exchange Carrier Association ("NECA") filing to the Missoula Group[22], indicated that the average end office switching rate, plus a modest amount of transport, lead to a rate of 1.7 cents per minute, which is still 2/10 of a cent higher than the RLEC-proposed rate. (*Id.* at 16:20-22.) Even the average composite interstate access rate for the transport and termination functionalities is 1.335 cents per minutes of use, still less then 2/10 of a cent from the RLEC-proposed rate. Again, these figures show that the 1.5 cent proposed rate is a reasonable approximation of the additional costs incurred by the RLECs in providing transport and termination; moreover, it is a fair, just, and reasonable rate.

- **1.5 cents is reasonable compared to DEM-factored FCC proxy rates.**

Finally, Mr. Meredith noted that while "[n]either the FCC nor the states suggest that [the FCC's default proxy rates identified in the *Local Competition Order*] reflect forward-looking costs for rural LECS[,]" the FCC has recognized that the application of a DEM weighting factor to switching costs can be useful to determine what the FCC has further recognized as "rural LEC

[22] This filing was made in the context of the FCC's pending intercarrier compensation docket.

switching costs [that] are much higher than their urban counterparts." (*Id.* at 18-19.) Thus, while the FCC's default proxies are not reflective of the transport and termination functionalities provided by the RLECs, the FCC's DEM weighting factors can be used "to reasonably estimate the cost of local switching for the RLECs using the FCC's own method of adjusting for increased switching costs in calculating local switching support." (*Id.* at 21:1-3.) "This approach recognizes [that] the switching costs vary by the size of the LEC and applies a standard FCC factor to capture these cost variances." (*Id.* at 21:3-4.) Applying this approach to the FCC default proxies, Mr. Meredith calculates that the RLEC reciprocal compensation rates would range from 1.16 cents per minute to 2.343 cents per minute. (*Id.* at 22:1-2.) This range is similar to the rates negotiated by the rural LECs in Kentucky and at least eleven other states (*see supra*), and it encompasses the 1.5 cent proposal made by the RLECs.

- **The Commission should adopt the 1.5 cent rate proposed by the RLECs.**

As all of the foregoing discussion with respect to this issue indicates, the 1.5 cent proposal made by the RLECs (and never countered by the CMRS Providers) constitutes a "reasonable approximation" of the RLECs' forward-looking cost of providing transport and termination services to the CMRS Providers. Moreover, the 1.5 cent rate is fair, just, and reasonable compensation for the services being rendered by the RLECs. Therefore, the Commission should adopt the 1.5 cent reciprocal compensation rate proposed by the RLECs.

ISSUE 11: If the RLECs fail to demonstrate rates that meet the requirements of 47 U.S.C. § 252(d)(2)(A) and the FCC's Regulations, what rate should the Commission establish for each RLEC?

This issue is virtually indistinct from Issue 10, above. Section 252 of the Act authorizes the Commission to resolve arbitrated issues on the basis of the "best information available." *Id.* Section 278.030 of the Kentucky Revised Statues entitles every utility (including the RLECs) to collect "fair,

just and reasonable rates for the services rendered or to be rendered by it to any person." *Id.* Construed in harmony, the Commission may set the reciprocal compensation rate of each RLEC in accordance with the best information available to it, provided the information evidences that the RLEC-proposed 1.5 cent rate is a reasonable approximation of its forward-looking costs of providing transport and termination services to the CMRS Providers.

The involuntary imposition of a "bill and keep" arrangement, whereby the RLECs would not be entitled to any compensation for the transport and termination of CMRS Provider Subject Traffic, would clearly run afoul of the statutory mandate in KRS 278.030, which entitles the RLECs to collect a "fair, just and reasonable rate" for such services. *Id.* This is particularly the case when the traffic volumes between the CMRS Providers and RLECs are so substantially imbalanced – as even the CMRS Providers admit by their proposed traffic factors of 70% mobile-originated to 30% land-originated. Coupled with the fact that the FCC's default proxy rates were vacated by the United States Court of Appeals for the Eighth Circuit in its July 18, 2000 decision in *Iowa Utilities Board II*, 219 F.3d 744, 757 (8th Cir. 2000), the Commission is left with little choice other than to determine a "fair, just and reasonable" reciprocal compensation rate from the "best information available," as explained the discussion of Issue 10. Accordingly, the Commission should determine that its ruling with respect to Issue 10 moots this Issue 11.

ISSUE 12: **Resolved.**

The parties have negotiated a resolution of this issue.

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

The CMRS Providers' phrasing of this issue assumes too much. Provided that the Commission agrees that traffic should be exchanged on a dedicated basis once traffic volumes

exceed a de minimus level, there will be no practical need for intraMTA factors at all. This is true because, "[w]ith dedicated trunks, whether interconnected directly with the CMRS provider or indirectly through BellSouth, the RTCs can measure total mobile-to-land terminating traffic." (SEW Test. at 42:18-20.) "[T]he CMRS Providers have known for more than ten years that they should expend the resources to put in place the necessary equipment to measure traffic" so that traffic factors would not be necessary in the first place. (SEW Reb. Test. at 23-24.) The CMRS Providers, however, have not done so.[23] This simply means that their business decision not to invest in reliable traffic measurement capabilities will force them to rely on the RLECs' traffic measurements. The Commission should, therefore, order that (once the total volume of traffic exceeds a de minimus level such that dedicated interconnection is required) the parties will use the RLECs' traffic measurements to determine the actual traffic distribution.

Under circumstances where de minimus levels of traffic are exchanged by means of facilities other than dedicated trunks, the Commission should order the CMRS Providers to operate as though all of the exchanged traffic is CMRS-originated. Despite vague protestations to the contrary, the CMRS Providers deemed this very arrangement to be reasonable when they executed the settlement

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[23] The CMRS Providers do little to counter this fact. CMRS Provider witness Brown claims that it can conduct "limited traffic studies to determine traffic ratios" for its own agreements. Mr. Brown never explains what he means by "limited" traffic studies, although the mere thirty (!) day timeframe upon which he based his so-called "limited traffic studies" certainly bespeaks a significant limitation on the reliability of the "data." CMRS Provider witness Clampitt relies on equally unreliable "data" for the proposed traffic ratios with Verizon Wireless: BellSouth transit reports. As RLEC witness Watkins explained with some emphasis, the problem with relying on BellSouth records is that "it is clear that the records are not complete." (SEW Test. at 29:1.) Finally, CMRS Provider witnesses Farrar (and, to the extent that Cingular has not conducted its "limited traffic studies" for certain RLECs, Mr. Brown) claims that it is his client's "general experience" that considering 70% of the total traffic to be mobile-originated is "reasonable." (RGF Test. at 222:3-6.) That alleged "general experience" certainly does not hold true for the existing settlement agreement (filed in Case No. 2003-00045), which recognizes that the RLECs do not send the CMRS Providers any traffic that is subject to reciprocal compensation. To that end, traffic factors assuming that the RLECs send any traffic to the CMRS Providers is certainly not supported by their current (or past two years) experience in Kentucky.

agreement (filed in Case No. 2003-00045), and they offer nothing in this proceeding to rebut the continuing presumption going forward. Therefore, with respect to de minimus levels of traffic, there is no reason to modify the status quo.

ISSUE 14: Resolved.

The parties have negotiated a resolution of this issue.

ISSUE 15: What is the appropriate compensation for interMTA traffic?

The CMRS Providers' phrasing of this issue does not reflect the dual-faceted nature of this dispute. Although there is certainly disagreement regarding whether interMTA traffic is subject to intrastate access, interstate access, or some mix of the two, this dispute also goes to the heart of the more important, hidden issue of whether the RLECs should be required to pay access charges to the CMRS Providers when the CMRS Provider is functioning as an interexchange carrier. For reasons more fully described, below, the answer to this question is, "no."

It is a fundamental tenet of telecommunications law that when a carrier accesses a LEC's network for purpose of transporting telecommunications traffic between exchanges, that carrier is subject to either originating or terminating (depending on the direction of the traffic) access charges by the LEC. Access charges are not "reciprocal" in nature; they are, instead, tied to the operational question of whether a particular carrier is providing interexchange service. (SEW Test. at 48:28-29 ("There is no such concept as reciprocal access charges").) Accordingly, "[w]hen an RTC end user places a call to a mobile user that uses a telephone number that appears to be in a local calling area in Kentucky, and the CMRS provider carries the call to a mobile user in another MTA," the CMRS Provider is providing interexchange service (not local exchange service). (SEW Test. at 47:38-42.)

The FCC confirms this conclusion:

> Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried

> by an IXC, with the exception of... some "roaming" traffic... which is subject to interstate access charges. [FN 2485]

First Report and Order at para. 1043 (emphasis added). The FCC's footnote to this language clarifies that it is the CMRS Provider (and not the RLEC) who is subject to access charges in such a scenario:

> [FN 2485] "[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is "roaming" in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge ... Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier [*i.e.*, access] charges is defined by § 69.5(b) of our rules." *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 RR 2d 1275, 1284-85 n.3 (1986). *See also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994) (parenthetical omitted).

Id. at FN 2485 (emphasis added). "The same analysis applies with respect to interMTA intrastate traffic." (SEW Test. at 48:3.)

Importantly, 47 C.F.R. 69.5 (referenced above) makes no mention whatsoever of any "reciprocal" obligation of the RLECs to pay the CMRS Providers access charges for interMTA traffic. This seems particularly obvious considering that "the RTCs do not [carry] calls to other MTAs...." (*Id.* at 47:4.) The RLECs, as their name signifies, provide local exchange service, not interexchange service. Consequently, "[i]n both directions, when it is the CMRS Provider that is carrying traffic to or from another MTA, it is the CMRS Provider that is using the local exchange

access facilities of the RTC pursuant to the FCC's Part 69 rules." (*Id.* at 48:31-33.) Pursuant to applicable law, then, the CMRS Providers owe originating or terminating (depending on the direction of the traffic) access charges to the RLECs.

Having addressed the major dispute raised by this issue, the RLECs propose that all interMTA traffic should be subject to the RLECs' tariffed intra- or interstate access charges, as is appropriate based on the actual jurisdiction of the traffic. Because the RLECs have no way of determining the location of the cell site serving a CMRS Provider end-user at any given time, they have no way of determining the percentage of interMTA traffic that is intra- or interstate in nature. Moreover, because only the CMRS Providers have access to this data, this determination should be made in accordance with CMRS Provider actual measurement data. Absent the ability or willingness of the CMRS Providers to provide actual, accurate data, the Commission should approve the RLECs' proposed language making interMTA traffic subject to the RLECs' tariffed intrastate access charges.

ISSUE 16: Are the RLECs required to provide dialing parity (in terms of both number of digits dialed and rates charged) for land to mobile traffic?

The Act is clear that the RLECs are not required to provide dialing parity to the CMRS Providers. Starting at section 251(b)(3) of the Act, it is apparent that the RLECs have "[t]he duty to provide dialing parity to competing providers of telephone exchange service...." *Id.* (emphasis added). Thus, the RLECs must address whether the CMRS Providers offer "telephone exchange service" because, as the FCC has concluded, "[t]o the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity." *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98 at

para. 68 (August 8, 1996). As the FCC's language implies, this determination is not the foregone conclusion that the CMRS Providers make it out to be.

"Telephone exchange service" is defined as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange... or
>
> (B) comparable service... by which a subscriber can originate and terminate a telecommunications service.

Id. (emphasis added). In common parlance, then, "telephone exchange service" is really nothing more than: (i) a service provided within a specific, limited geographic area (the exchange or exchange area); or (ii) a comparable service. *Id.* This much is uncontroversial.

The controversy begins when the CMRS Providers make the tacit assumption that the generally geographically-unlimited, commercial mobile radio services they provide can be equated with the limited, geographically-defined services defined by Congress to be "telephone exchange services." Here, the CMRS Provider argument fails because "[t]here is no defining area for mobile wireless services." (SEW Test. at 51:6-7.) The FCC has confirmed that:

> [b]ecause wireless service is spectrum-based and mobile in nature, wireless carriers do not utilize or depend on the wireline rate center structure to provide service: wireless licensing and service areas are typically much larger than wireline rate center boundaries, and wireless carriers typically charge their subscribers based on minutes of use rather than location or distance.

In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues, Memorandum Opinion and Order, CC Docket 95-116 at para. 22 (October 7, 2003) (emphasis added). Absent some limited geographic scope comparable to the exchange area concept expressed in the rules, it follows, the CMRS Providers do not provide telephone exchange

service. Pursuant to the Act, then, the RLECs are not required to provide the CMRS Providers with dialing parity.[24]

In any event, dialing parity has no relation whatsoever to "rates charged" by a carrier. Dialing parity, as defined in 47 C.F.R. 51.5, simply means:

> ... that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation....

Id. This "dialing only" concept is echoed in the FCC's implementing regulations, specifically in 47 C.F.R. 51.207 ("Local dialing parity"), which provides that "[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." *Id.* Quite simply, end-user rates have no place in interconnection arbitrations involving carrier-to-carrier terms and conditions.

For the foregoing reasons, the Commission should resolve this issue in the favor of the RLECs.[25]

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[24] This conclusion is buttressed by the fact that none of the RLECs provide local exchange services enabling their own end-users to call out-of-state (much less even out of exchange area) end-users of other carriers on a local basis. Thus, what the CMRS Providers are actually requesting is dialing imparity.

[25] Regardless of the disagreement regarding whether the CMRS Providers provide "telephone exchange service," it bears noting that the RLECs have not blindly refused to provision calls to mobile end-users as locally dialed calls. To the extent that the CMRS Providers establish proper interconnection with an RLEC, such that the RLEC can deliver traffic to points located within the boundaries of its incumbent LEC network, the RLECs would be voluntarily willing to provision local calling (under local dialing arrangements) to mobile end-user telephone numbers associated with local calling rate center areas. This compromise proposal still stands.

ISSUE 17: What SS7 signaling parameters should be required?

There is very little dispute among the parties with respect to this issue. First, despite CMRS Provider witness Clampitt's accusations to the contrary, the RLECs do not propose to assess SS7 charges "for the simple exchange of traffic or delivery of signaling information contemplated and addressed under the draft agreement." (SEW Test. at 56:32-33.) Thus, there is no dispute with respect to charges for SS7 functions.

The apparent dispute relates solely to whether the CMRS Providers will be required to provide data that the RLECs can use to verify the location of the CMRS Provider switch delivering the traffic to the RLECs. As RLEC witness Watkins testified, a particularly important subset of the data that can be transmitted through SS7 functionality is the Jurisdictional Information Parameter ("JIP"). The JIP "is a tool to manage the determination of the scope of traffic" being delivered by the CMRS Providers to the RLECs. (SEW Reb. Test. at 30:6-7.) As he further explained, although the JIP may not indicate the precise geographic location of a mobile end-user, it is certainly useful in determining whether mobile-originated traffic is being delivered from other MTA's. (*See* SEW Reb. Test. at 30:4-9.) To this end, it provides an important means for the RLECs to monitor and verify that the actual interMTA traffic exchange remains consistent with the stated traffic factors; if the data indicates that the interMTA traffic factors are inaccurate, it will become the source data for an appropriate amendment to reflect the actual scope of traffic.

Given the Commission's statutory task to "ensure that [the arbitrated agreement meets] the requirements of section 251..." 47 U.S.C. 252(c)(1), the CMRS Providers' reliance on "industry standards" in inapposite. In order to safeguard the appropriate application of interMTA traffic factors (and, thereby, ensure that the arbitrated agreement complies with section 251), the RLECs should be entitled to receive at least the JIP information, in addition to the other uncontroverted data

that the CMRS Providers propose to exchange: that data identified in GR-317-GORE. (JLC Reb. Test. at 8:12-13.) The Commission should decide this issue accordingly.

ISSUE 18: Should RLEC tariff provisions be incorporated into the contract?

The CMRS Providers mischaracterize the RLECs' proposals with respect to the incorporation of tariffs into the Interconnection Agreement. First, the RLEC proposal is not a unilateral one; that is, to the extent tariffs are referenced and incorporated into the Interconnection Agreement, the RLEC-proposed language expressly includes the tariffs of both the RLECs and the CMRS Providers. Second, the RLECs have not proposed that tariff terms and conditions would "supersede... the terms and conditions of the Parties' Interconnection Agreement." (CMRS Providers' Issues Matrix at Issue 18.) Quite to the contrary, as the RLEC-proposed language for section 2.2 of the Interconnection Agreement expressly provides, "If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this Agreement shall prevail." (*Id.* (emphasis added).) Accordingly, the only tariff-related issue truly in dispute is whether tariff terms will be permitted to supplement the terms and conditions of the parties' Interconnection Agreement.

Because the CMRS Providers seek to have the RLECs exchange (in addition to local traffic) non-local traffic pursuant to the terms of the Interconnection Agreement, tariffed access services will necessarily be involved. Given this fact, it is difficult to imagine why tariffed access terms and conditions should not be incorporated by reference, especially when the proposed language is clear in its statement that tariffs will not supersede conflicting provisions of the Interconnection Agreement. Even the CMRS Providers appear not to contest such a reasonable position insofar as

their proposed section 4.1.1.3 seeks to reference access tariffs.[26] Moreover, each party's tariffs are generally applicable, in any event, and no attempt to remove references to those tariffs will prevent their applicability. Therefore, the Commission should order that the Interconnection Agreement include the RLEC-proposed language referencing and incorporating the parties' applicable tariffs.

ISSUE 19: Resolved.

The parties have negotiated a resolution of this issue.

ISSUE 20: What post-termination arrangements should be included in the Interconnection Agreement?

The Commission should ensure that the parties remain incentivized to negotiate a new agreement following the termination or expiration of the Interconnection Agreement. The RLEC proposal accomplishes this objective by providing that, following termination, the parties may operate pursuant to the terms of the agreement for up to twelve months, provided that the parties are actively engaged in negotiation of a replacement agreement. Pursuant to this proposal, if (during the twelve month negotiation period) the parties enter arbitration, the parties would continue to operate pursuant to the terms of the agreement until the new agreement resulting from the arbitration was implemented. Thus, the parties would remain assured that they would be able to operate pursuant to the terms and conditions of the terminated/expired interconnection agreement so long as they continue to proceed with negotiation/arbitration as is contemplated in the Act. Conversely, if the parties do not proceed with negotiation/arbitration as contemplated by the Act, the RLECs' proposed terms appropriately provide for a definitive cut-off date (twelve months after termination/expiration)

[26] Although the RLECs do not support the CMRS Providers' proposed section 4.1.1.3, that proposal nevertheless undermines the CMRS Providers' position with respect to Issue 18. In particular, the CMRS Providers proposed that "To the extent that the LEC provisions all, or part, of the two-way facilities, the facilities cost will be based on LEC's effective intrastate access tariff for connecting facilities." (*Id.* (emphasis added).) If the CMRS Providers believe that tariff references are appropriate when they propose them, then they should be equally appropriate when the RLECs propose them.

based on the disinterest imputed by a failure to proceed with negotiation/arbitration as contemplated by the Act.

The CMRS Providers' proposal does not place any sort of restriction on the period of time for which the terminated/expired terms and conditions will govern the parties' actions. Instead, the CMRS Providers propose simply to true-up the agreement after whatever indefinite period of time passes until the potential execution of a new agreement. This approach offers no incentive for the parties to work toward implementing a new agreement. It further creates the additional administrative burden of having to determine what needs to be trued-up for how much, all the while exposing the comparatively much smaller RLECs to uncertain future costs and obligations without any assurance of future relief. Accordingly, the Commission should adopt the RLECs' proposal with respect to this issue.

ISSUE 21: How should the following terms be defined?

The RLECs note that the parties have resolved their differences with respect to some of the originally disputed defined terms. Accordingly, the only remaining disputed defined terms are as follows.

- **"Interconnection"**

Despite initially failing to identify the RLEC-proposed definition for "Interconnection" (proposed section 1.12) as an issue in dispute, the CMRS Providers have indicated in testimony that this term is also in dispute.[27] The RLEC proposal for this definition provides that "Interconnection" for purposes of this Agreement is "the linking of the CMRS Provider and LEC networks for the

[27] As a result of the CMRS Providers' failure to identify this dispute on the issues matrix (both in the initial matrix and in their review of the context of the updated matrix), the RLECs unintentionally neglected to identify this issue when they filed the updated issues matrix on Friday, October 26, 2006. For this reason alone, the CMRS Provider dispute with respect to this issue should be resolved in the favor of the RLECs.

delivery of traffic." *Id.* This proposed definition is consistent with the definition of this term set forth in 47 C.F.R. 51.5, which defines "interconnection" as "the linking of two networks for the mutual exchange of traffic."[28] The CMRS Providers go beyond this definition by incorporating unnecessary, "direct" and "indirect" concepts raised in 47 C.F.R. 20.3. To the extent these concepts must be addressed in the Interconnection Agreement, they may be addressed elsewhere, most notably in proposed section 4, which goes to this very concept. (*See also* Issue 2 and Issue 7.) However, because the statutory standard for deciding interconnection agreement arbitrations mandates that the agreement comply with "the requirements of section 251, including the regulations prescribed by the [FCC] [in part 51]." 47 U.S.C. 252(c)(1), the RLEC-proposed definition best comports with the statutory standard. Therefore, the Commission should adopt the RLEC-proposed definition of "Interconnection" and address matters such as "direct" or "indirect" interconnection in the context of Issue 2 and Issue 6, where there are more appropriately involved.

- **"Interconnection Point"**

The Commission should reject the CMRS Providers' proposal to delete the term "Interconnection Point" from the Interconnection Agreement. First, this definition is perhaps the most crucial definition in the entire agreement because it references the actual location where the networks of the parties are joined. Indeed, it seems strange to suggest that the parties will have an Interconnection Agreement without defining what an "interconnection point" means. Second, to the extent there is any lingering dispute with respect to the RLEC-proposed use of the phrase "on the incumbent LEC network," such dispute can be resolved by reference to the express language of section 251(c)(2) of the Act, which provides for "[t]he duty to provide... interconnection with the

[28] 47 C.F.R. 51.1(b) explicitly states that "[t]he purpose of [this section] is to implement sections 251 and 252 of the Communications Act of 1934, as amended, 47 U.S.C. 251 and 252." 47 C.F.R. 20.1 makes no such provision.

local exchange carrier's network... at any technically feasible point within the carrier's network...." *Id.* (emphasis added). The RLEC-proposed language goes no further than this.

The CMRS Providers' alleged dispute with respect to this term relate more to the operational and technical characteristics associated with the interconnection point rather than a true disagreement with the inert definition proposed by the RLECs[29]; accordingly, the real dispute with respect to this issue may be resolved in the context of Issue 2 and Issue 6 and the operational disputes associated with those issues. Consequently, the Commission should adopt the RLEC's proposed definition for "Interconnection Point."

- **"Interexchange Carrier"**

The Commission should also reject the CMRS Providers' proposal to delete the term "Interexchange Carrier." Again, the CMRS Providers' dispute with respect to the proposed definition of this term has noting to do with the proposed definition and everything to do with the operational terms and conditions associated with interexchange carrier routing of toll traffic to CMRS Provider end-users. This is confirmed upon review of the generic nature of the proposed definition: "a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services." (RLEC-proposed section 1.14.) It is merely a description of what an interexchange carrier is and does, and the inclusion of the definition brings no harm whatsoever to the CMRS Providers.

CMRS Provider witness Farrar claims that the RLECs have defined this term to "expressly seek to avoid paying reciprocal compensation to CMRS Providers for intraMTA traffic originated on

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[29] Incidentally, the RLECs have discovered a typographical error in the updated, redlined agreement filed with the Commission on October 26, 2006. Rather than the language included in that agreement, the RLEC-proposed language for section 1.13 should read, "'Interconnection Point' or 'IP' is a demarcation point on the incumbent network of LEC where the delivery of traffic from one Party to the other Party takes place pursuant to this Agreement." (SEW Reb. Test. at 34:28-33.)

an RLEC network that it hands off to an Interexchange Carrier for delivery to the CMRS Provider network." (*Id.*) It is not difficult to see that the proposed definition most certainly does not bear out Mr. Farrar's stated concern. Quite to the contrary, his stated concern only confirms the fact that interexchange carriers will, in fact, be involved in the delivery of their traffic to CMRS Providers for termination, and the agreement needs to address that issue to avoid the uncertainty and dispute that would inevitably arise when this occurs. This, alone, justifies the inclusion of the RLEC-proposed definition. As with other disputes regarding the defined terms, the CMRS Providers' alleged operational concerns are more appropriately addressed in the context of other issues (in this case, Issue 9). Therefore, the Commission should accept the RLEC's proposed definition of "Interexchange Carrier."

- **"InterMTA Traffic"**

The Commission should accept the RLECs' proposed definition of "InterMTA Traffic." The CMRS Providers' sole testimony related to the definition of this term bespeaks a concern simply with recognition 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." (RGF Test. at 28:2-5.) Despite this stated concern, the CMRS Providers propose no revisions to the RLEC language addressing this concept. Instead, the CMRS Providers have stricken an RLEC-proposed sentence providing, "InterMTA Traffic is subject to LEC originating and terminating Switched Exchanged Access Service charges." (RLEC-proposed section 1.15.) Given the CMRS Providers' failure to offer even a modicum of testimony supporting their proposed deletion of that sentence, the Commission should adopt the RLECs' proposed language on this issue. (*See also* Issue 15.)

- **"Rate Center"**

There is no real dispute with respect to this term; therefore, the Commission should accept the RLECs' proposed definition. The only difference in the parties' positions regarding this definition is that the CMRS Providers have stricken a proposed sentence stating that "The Rate Center point must be located within the Rate Center area." (*Id.*) In testimony, CMRS Provider witness Farrar expressed a concern that this language somehow equates a rate center point with an interconnection point (despite the proposed, separate definition for that term) and somehow requires the CMRS Providers to directly connect in RLEC rate centers. (RGF Test. at 29:13-15.) Nothing about this sentence remotely suggests such a position, and the CMRS Providers do not explain how they have reached this conclusion other than by relying on an unsubstantiated suspicion of the RLECs.

As RLEC witness Watkins testified, he could not understand "why the CMRS Providers would object to such a logically obvious and basic point" that the rate center point must be located within the rate center area. (SEW Test. at 64:23-24.) After all, [t]he identification of a Rate Center Area is based on the identification of the Rate Center Point." (*Id.* at 64:24-25.) Quite simply, "[i]t is obvious that a Rate Center Point that identifies a Rate Center Area would be somewhere in that area." (SEW Reb. Test. at 36:9-10 (emphasis added).) In the absence of any legitimate, countervailing concerns, therefore, the Commission should accept the RLECs' proposed language for this term.

- **"Subject Traffic"/"Telecommunications Traffic"**

This issue is identical to Issue 1; accordingly, the RLECs hereby incorporate by reference their arguments in support of Issue 1.

ISSUES 22-27: **Resolved.**

The parties have negotiated a resolution to these issues.

ISSUE 28: **Should the CMRS Providers be allowed to expand their networks through management contracts?**

The CMRS Providers' phrasing of this issue disguises the real dispute among the parties: potential changes in the geographic scope of the Interconnection Agreement and the volume of interMTA traffic being exchanged. In essence, the CMRS Providers propose that they be permitted to expand the size of their respective networks so that they may serve a larger geographic territory pursuant to the terms and conditions of the Interconnection Agreement. Viewed in isolation, this proposal seems relatively benign; it simply permits the CMRS Providers to grow their network consistent with their business judgment. The practical effect of the proposal, however, is that it permits the CMRS Providers to expand their networks beyond the MTA boundaries, thereby increasing the percentage volume of interMTA traffic being exchanged.

Despite this natural consequence of a CMRS Provider's unilateral decision to expand its network and extend the terms of the Interconnection Agreement to additional wireless "partners," however, the CMRS Providers propose no means of adjusting the interMTA traffic factors to reflect the increased percentage of such traffic being exchanged. Instead, the CMRS Providers propose that "Telecommunications traversing on such extended networks shall be subject to the terms and conditions of this Agreement." (CMRS Providers' Proposed Section 4.4.) So, despite the fact that such network expansion could significantly increase the percentage of interMTA traffic being exchanged, the CMRS Providers would propose that the RLECs be forced to continue billing as though there were less interMTA traffic than actually exists. Because interMTA traffic is subject to access charges, this would result in a significant loss of revenues to the RLECs.

To the extent that a CMRS Provider wants to expand its network, thereby affecting the appropriateness of certain terms and conditions (for example, those dealing with interMTA traffic) of the Interconnection Agreement, the RLECs have a right to negotiate, and if not resolved, to arbitrate the terms of any new agreement or amendment that would be required as a result of that CMRS Provider decision. The Act does not permit the CMRS Providers to unilaterally "pry open" the Interconnection Agreement for wireless "partners" when doing so could adversely impact the RLECs. For these reasons, the Commission should adopt the RLEC proposal that the Interconnection Agreement remain silent with respect to the issue of network management contracts.

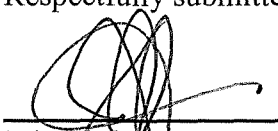
III. Conclusion.

Although each of these issues is important to the RLECs, it is crucial that the Commission accept four conceptual proposals: (i) the RLECs should not be required to expand their networks in order to interconnect with the CMRS Providers; (ii) the CMRS Providers should be required to interconnect on a dedicated basis whenever the volume of traffic being exchanged exceeds a de minimus level; (iii) the Interconnection Agreement should incorporate a reciprocal compensation rate of 1.5 cents per minute; and (iv) the RLECs should not be required to pay reciprocal compensation on toll traffic destined for the CMRS Providers.

The RLECs have invested significant amounts of money in their networks in order to provide the service that traditionally national companies like the CMRS Providers have historically shunned. Now, those same national companies have come to this Commission to ask that Kentucky's RLECs be forced to bear not only their own costs of serving those areas, but also the CMRS Providers' cost of attempting to compete in those areas. This request is particularly troubling because it is the RLECs' historical investments in rural Kentucky that have made CMRS service in those areas profitable in the first place.

Accordingly, the Commission should ensure that – however it rules with respect to the specific disputed issues identified in this proceeding – it protects the RLECs' rights to: (i) bear the cost of interconnection only within its network; (ii) require the CMRS Providers to interconnect by means of dedicated circuits so that the RLECs can measure and bill (without reliance upon BellSouth) for traffic delivered pursuant to the Interconnection Agreement; (iii) receive a fair, just, and reasonable rate of 1.5 cents for providing reciprocal compensation services to the CMRS Providers; and (iv) not pay reciprocal compensation or access charges on toll traffic destined for the CMRS Providers.

Respectfully submitted,



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