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PUBLIC SERVICE
COMMISSION

January 23, 2007

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

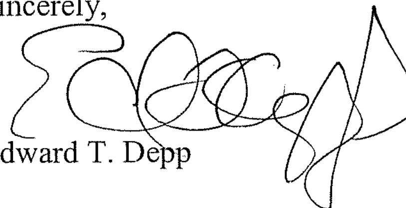
Re: Kentucky Public Service Commission Case Nos.
1) 2006-00215; 2) 2006-00217; 3) 2006-00218; 4) 2006-00220;
5) 2006-00252; 6) 2006-00255; 7) 2006-00288; 8) 2006-00292;
9) 2006-00294: 10) 2006-00296; 11) 2006-00298; 12) 2006-00300

Dear Ms. O'Donnell:

I have enclosed for filing in the above-styled cases the original and eleven (11) copies of the RLECs' Response to CMRS Providers Motion for Rehearing. Please file-stamp one copy and return it to our delivery person.

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

Sincerely,



Edward T. Depp

ETD/lb
cc: John N. Hughes, Esq.
Mary Beth Naumann, Esq.
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
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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) Case No. 2006-00294
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)

Petition of Logan Telephone Cooperative, Inc.)
For Arbitration of Certain Terms and)
Conditions of Proposed Interconnection)
Agreement with American Cellular Corporation) Case No. 2006-00218
f/k/a ACC Kentucky License LLC, Pursuant to)
the Communications Act of 1934, as Amended)
by the Telecommunications Act of 1996)

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) Case No.2006-00296
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)

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) Case No. 2006-00252
Communications Act of 1934, as Amended by)
The Telecommunications Act of 1996)

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) Case No. 2006-00298
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)

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) Case No. 2006-00255
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)

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) Case No. 2006-00300
Partnership d/b/a Verizon Wireless)
Pursuant to the Communications Act of 1934,)
as Amended by the Telecommunications)
Act of 1996)

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

RESPONSE TO CMRS PROVIDER MOTION FOR REHEARING

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 respond in opposition to the January 16, 2007 motion for rehearing ("Motion") filed by the CMRS Providers and state as follows.

I. Introduction.

The CMRS Providers' Motion is the classic attempt to take a "second bite at the apple." It presents no newly discovered evidence. It raises no new arguments. It simply recycles fully-briefed, fully-considered, fully-rejected legal arguments under the apparent belief that the Commission will suddenly conclude that its decision was nearly all wrong. Of course, this is not what motions for rehearing were designed to accomplish.

Even if it were, the CMRS Providers' legal conclusions are wrong. In the minds of the CMRS Providers, there is no justice until the RLECs are required to submit to a scheme of interconnection obligations exceeding those applicable even to BellSouth. The law, however, was never designed to impose such unilateral hardship on the Commonwealth's rural carriers and their

end-users. Section 251 of the Act[1] does not condone such injustice, and neither does Kentucky law. Instead, Kentucky law expressly vests the Commission with the authority, pursuant to KRS 278.030, to ensure that wireline and wireless services offered in the Commonwealth are fair, just, and reasonable. By applying the Act in a manner that is fair, just, and reasonable, the Commission's Order achieves this objective by delicately balancing the interests of all the parties. The Order is well-founded and well-reasoned, and there is no basis for the CMRS Providers' Motion.

Accordingly, the Motion should be denied.

II. The Motion is not a proper motion for rehearing.

Motions for rehearing, pursuant to KRS 278.400, are not – as the CMRS Providers believe – tantamount to motions for "reargument." As the statute instructs, motions for rehearing are designed to afford the parties and the Commission an opportunity to rehear arguments regarding a particular dispute in light of "additional evidence that could not with reasonable diligence have been offered on the former hearing." KRS 278.400. Absent any such "additional evidence," there is no basis for rehearing.[2] For example, in *In the Matter of Application of WirelessCo., L.P. d/b/a Sprint Spectrum,*

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[1] 47 U.S.C. § 251.

[2] *See generally In the Matter of Joint Application for Approval of the Indirect Transfer of Control Relating to the Merger of AT&T and BellSouth Corporation*, Case No. 2006-00136, 2006 Ky. PUC LEXIS 697; *In the Matter of Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Case No. 2003-00266, 2006 Ky. PUC LEXIS 525; *In the Matter of Application of Kentucky Power company for Approval of an Amended Compliance Plan for Purposes of Recovering Additional Costs of Pollution Control Facilities and to Amend Its Environmental Cost Recovery Surcharge Tariff*, Case No. 2005-00068, 2005 Ky. PUC LEXIS 870; *In the Matter of Saied Shafizadeh v. Cingular Wireless*, Case No. 2003-00400, 2005 Ky. PUC LEXIS 398; *In the Matter of Adoption of Interconnection Agreement Provisions Between BellSouth Telecommunications, Inc. and Cinergy Communications Company by Southeast Telephone, Inc.*, Case No. 2004-00235, 2004 Ky. PUC LEXIS 867; *In the Matter of Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Case No. 2001-00105, 2005 Ky. PUC LEXIS 450; *In the Matter of Application of Doe Valley Utilities, Inc. for a Certificate of Convenience and Necessity for*

L.P. for Issuance of a Certificate of Public Convenience and Necessity to Construct a Personal Communication Services Facility in the Louisville Major Trading Area, Case No. 96-240, 1997 Ky. PUC LEXIS 32, *1-2 (hereinafter *Sprint PCS Application for CPCN*), the Commission pointedly held:

> The Commission will first address the request for rehearing. Pursuant to KRS 278.400, a party may offer at rehearing "additional evidence that could not with reasonable diligence have been offered on the former hearing." As the Intervenor Memorandum points out, [Sprint] offers no such evidence. It requests only another opportunity to reiterate arguments that it made, or that it could have made, at the original hearing. Accordingly, the petition for rehearing should be denied.

Id. (emphasis added).

Even in arbitration cases such as this, the standard for considering a motion for rehearing pursuant to KRS 278.400 remains the same:

> On May 21, 1997, the Commission entered an Order addressing issues for arbitration between Cincinnati Bell Telephone Company ("Cincinnati Bell") and ICG Telecom Group, Inc. ("ICG"). Cincinnati Bell has petitioned for rehearing of the restrictions on the use of unbundled elements issue and the "most favored nation" issue. ICG has petitioned for rehearing on the issue of performance standards and liquidated damages. Neither party states that additional evidence is available. Nor does either party produce any arguments

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Construction and Financing an Upgrade to Water Treatment Facilities, Case No. 2002-00353, 2003 Ky. PUC LEXIS 447; *In the Matter of the Application of Shadow Wood Subdivision Sewer Service, a Joint Venture of Fourth Avenue Corporation and Long Corporation d/b/a Shadow Wood Subdivision Sewer Service for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 2001-00423, 2002 Ky. PUC LEXIS 721; *In the Matter of Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH*, Case No. 2002-00018, 2002 Ky. PUC LEXIS 426; *In the Matter of Application of WirelessCo., L.P. d/b/a Sprint Spectrum, L.P. for Issuance of a Certificate of Public Convenience and Necessity to Construct a Personal Communication Services Facility in the Louisville Major Trading Area*, Case No. 96-240, 1997 Ky. PUC LEXIS 32; *In the Matter of Petition of ICG Telecom Group, Inc. for Arbitration of Its Interconnection Agreement with Cincinnati Bell Telephone Company Pursuant to Section 252(B) of the Telecommunications Act of 1996*, Case No. 97-042, 1997 Ky. PUC LEXIS 59; and *In the Matter of Ruben Barnett v. South Anderson Water District*, Case No. 95-397, 1996 Ky. PUC LEXIS 105.

> not previously considered by the Commission in its original decision. KRS 278.400 therefore dictates that these motions be denied.

In the Matter of Petition of ICG Telecom Group, Inc. for Arbitration of Its Interconnection Agreement with Cincinnati Bell Telephone Company Pursuant to Section 252(B) of the Telecommunications Act of 1996, Case No. 97-042, 1997 Ky. PUC LEXIS 59, *1 (emphasis added).

In short, when the questions raised in a motion for rehearing are questions of law (as opposed to fact), rehearing will be denied. *See In the Matter of Ruben Barnett v. South Anderson Water District*, Case No. 95-397, 1996 Ky. PUC LEXIS 105, *2 ("As the question before the Commission in this proceeding was a question of law rather than fact, rehearing should be denied.")

In light of the foregoing precedent, there can be little question that the Motion should be denied. The Motion presents not a modicum of "additional evidence that could not with reasonable diligence have been offered on the former hearing." KRS 278.400. Instead, it merely recycles the same legal arguments that the CMRS Providers unsuccessfully advocated in their post-hearing briefs, as though "the Commission... will simply recognize that its decision was in error." *Sprint PCS Application for CPCN*, 1997 Ky. PUC LEXIS 32 at *2. The law is clear that motions for rehearing, pursuant to KRS 278.400, are not functionally equivalent to "motions for reargument." *See* FN 2, *supra*. Likewise, the Motion is clear that the CMRS Providers seek nothing more than a "second bite at the apple." Accordingly, the Commission should deny the Motion.

III. Even on the merits, the Motion should be denied.

Although the Commission is not required by law to do so, even if it considers the substantive arguments in the Motion, the Motion must fail. The CMRS Providers make four claims in their Motion.[3] First, they claim that the Commission was wrong to conclude that the RLECs should not

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[3] Conceptually, the CMRS Providers actually make five proposals. However, the parties are presently attempting to negotiate a joint agreement with respect to the last of these proposals, which

be required to pay reciprocal compensation on interexchange carrier traffic. Second, they claim that the Commission was wrong to conclude that the CMRS Providers should be required to interconnect on a dedicated basis whenever the volume of traffic being exchanged reaches a DS1 level. Third, they claim that the Commission was unclear regarding the parties' financial responsibilities with respect to physical interconnection costs associated with the CMRS Providers' unilateral business decisions not to bring their networks to the service territory in which they hope to compete. And fourth, the they claim that the Commission meant to specify that BellSouth tandem records contain sufficient information to allow for appropriate RLEC billing. Each of these claims is meritless, as explained below.

A. The RLECs should not be required to pay reciprocal compensation on interexchange carrier traffic.

The CMRS Providers' entire re-discussion of this issue consists almost entirely of irrelevant expositions regarding the differences between major trading areas ("MTA's") and local calling areas. No doubt, the Commission is well aware of the differences, as are the RLECs. Those differences, however, are not determinative of this dispute. Instead, as the Order indicates, "the relevant factor for determining whether reciprocal compensation is due [on intraMTA calls] is which carrier originates the call, the RLEC or the interexchange carrier." (Order at 7 (emphasis added).)

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is the CMRS Providers' request that they be notified of, and permitted to participate fully in, any future proceedings concerning the RLECs' TELRIC studies and rates. As presently proposed, the RLECs would agree not to contest this particular portion of the CMRS Provider's Motion, and in exchange, the CMRS Providers would agree not to oppose the RLECs' Motion for Clarification of Single Issue. From a practical standpoint, then, the proposal would permit each RLEC to determine (subject to Commission approval) – on an individual basis – whether to use the proxy reciprocal compensation rate for the duration of the interconnection agreement. If an RLEC decided to use that proxy rate, there would be no need for a TELRIC proceeding. Conversely, if an RLEC decided to submit a TELRIC study, that RLEC would agree that any CMRS Provider who is a party to that RLECs' arbitration proceeding could participate fully in such TELRIC proceeding. Given the ongoing consideration of this proposal, the RLECs will not (in this response) address the CMRS Providers' TELRIC-related portion of the Motion.

The applicable federal regulation bears this out. Specifically, 47 C.F.R. § 51.703 provides that intraMTA "traffic exchanged between a LEC and a CMRS provider" is subject to reciprocal compensation. *Id.* (emphasis added). The analysis, then, hinges "not... merely upon the location of the originating call," (Order at 7), but on whether the intraMTA traffic is exchanged between a CMRS Provider and a LEC. In the specific case of toll traffic, the intraMTA traffic is traffic exchanged between (not a LEC, but) an interexchange carrier and a CMRS Provider. (*See* RLEC Post-Hearing Reply Brief at 14-15.)

Interexchange carriers are not "intermediary" carriers to be effectively ignored in the blind pursuit of the CMRS Providers' legal fallacies. As the FCC rightly recognizes, they are originating and terminating carriers. (*See id.*; *see also 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. 186 (August 8, 1996) (finding that interexchange carriers purchase access services "to originate or terminate an interexchange toll call..." (emphasis added))(hereinafter *First Report and Order*). And, it is for this very reason that toll calls originated by IXC end-users (or, conversely, toll calls terminated by IXC end-users) do not constitute "traffic exchanged between a LEC and a CMRS provider." Consequently, 47 C.F.R. § 51.703 does not apply on its face, and such traffic is not subject to reciprocal compensation.

The Commission should deny the CMRS Providers' Motion.

B. The CMRS Providers should be required to interconnect on a dedicated basis whenever the volume of traffic being exchanged reaches a DS1 level.

The CMRS Providers next make two separate attacks on the Commission's authority to require interconnection on a dedicated basis once the volume of traffic being exchanged reaches a DS1 level. In the first instance, they claim that it is the CMRS Providers (not the Commission) who are the ultimate arbiters of interconnection methods. In the second instance, they claim that (even if

dedicated interconnection is required) dedicated interconnection should not be required until the volume of traffic exceeds 18,144,000 minutes per month.[4] Each attack fails for the reasons described, below.

1. The Commission may determine when dedicated interconnection should be established.

The CMRS Providers' contention that they are the ultimate arbiters of interconnection methods rests on a glaring misstatement of the law. At page 6 of their motion for rehearing (and at the core of their previous briefs on this issue), the CMRS Providers contend that "[t]he FCC stated clearly that the choice of interconnection type is to be made by the carriers 'based upon their most efficient technical and economic choices.'" *Id.* In support of this claim, the CMRS Providers cite to paragraph 997 of the *First Report and Order*. That paragraph makes absolutely no implication (much less any "clear" statement) that the requesting carriers have the ultimate authority to determine the most "efficient technical and economic choices" for interconnection. In fact, the paragraph is utterly silent regarding this linchpin of the CMRS Providers' argument. It provides, instead, as follows.

> 997. Regarding the issue of interconnecting "directly or indirectly" with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices....

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[4] The RLECs derive this figure by relying on three claims advanced by the CMRS Providers. First, the CMRS Providers claim that the Commission should require dedicated interconnection only when the volume of traffic reaches an OC3 level. (Motion at 8.) Second, the CMRS Providers state that "[a]n OC3 level is the equivalent of 84 DS1s." (*Id.*) Third, the CMRS Providers' testimony regarding the calculation of proxy reciprocal compensation rates assumed that a DS1 had a reasonable operating capacity of approximately 216,000 minutes of usage. Taking these three claims, together, the CMRS Providers' position must be that dedicated interconnection should not be required until the volume of traffic being exchanged by the parties reaches, at least, the astronomical level of 18,144,000 minutes of use per month.

Id.

Nothing in this sentence remotely suggests that the requesting carrier is the ultimate arbiter of "efficient technical and economic choices." Likewise, nothing in this sentence implies that the Commission is devoid of power to determine what the "most efficient technical and economic choices" for interconnection might be.[5] Quite to the contrary, if one starts with the incontestable premise that the Commission has express authority to ensure that the parties provide "fair, just, and reasonable service[s]"[6] to one another, it is easy to conclude that the Commission possesses the authority to determine when dedicated interconnection may be technically and economically efficient. The CMRS Providers' claim that the Commission cannot require interconnection on a dedicated basis must, therefore, fail.

The Commission may determine when dedicated interconnection must occur.

2. Dedicated interconnection should occur when traffic reaches a DS1 level.

The CMRS Providers are also incorrect that the Commission should change the dedicated interconnection threshold to an OC3 level. The entire basis for this contention rests on two faulty premises.

First, the CMRS Providers claim that "there was no evidence" in the record to support the imposition of a DS1 threshold. This is abject fiction. Not counting the post-hearing brief, the RLECs devoted at least four full pages of just their reply brief to this very topic. (*See id.* at 6-10.) Lest there be any doubt, the evidence supporting the imposition of a DS1 threshold relates generally to the RLECs' significant concerns that they be able to "identify, bill and control" traffic entering

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[5] In fact, if read generously, the FCC's use of the phrase "telecommunications carriers should be permitted to provide interconnection…" *id.* (emphasis added), suggests that – if any one carrier has the power to dictate whether interconnection should be direct or indirect – it is the RLEC (and not the CMRS Provider) who has that power. After all, it is the RLEC who is being requested to provide the interconnection.

[6] KRS 278.030.

their networks. (*Id.* at 6 (citing testimony of William M. Magruder).) RLEC witness Steven E. Watkins further testified that a prime reason for imposing a threshold was that the RLECs "remain concerned based on their experiences with inaccurate measurement, unidentified traffic, missing settlements, and other [problems] with respect to the large LECs' performance of these functions [in an indirect interconnection scenario]." *Id.* The fact that neither the CMRS Providers nor the RLECs advocated a DS1 threshold is immaterial. The record reflected reasons why a threshold was appropriate, and the Commission – in the exercise of its jurisdiction to ensure "fair, just, and reasonable" services – determined that the relative technical and economic efficiencies balanced one another when the volume of traffic reached a DS1 level.

Second, the CMRS Providers claim that "the Commission presumably wished to incorporate the standard in the *Level 3 Order* [(an OC3 threshold)] into the Order in this matter." (Motion at 8 (emphasis added).) Again, there is no basis for this assumption. Even granting (strictly for sake of argument) that the *Level 3* order did find that an OC3 threshold was appropriate, that threshold was for purposes other than the establishment of dedicated interconnection facilities.[7] In *Level 3* and its progeny, the threshold related to the establishment of a second, dedicated point of interconnection with a carrier. This threshold was implemented to balance "(1) the efficiencies to be gained by not requiring new entrants to deploy a POI in every local calling area and (2) the incumbent's interest in paying minimal originating traffic costs." *Level 3*, 2001 Ky. PUC LEXIS 873, *2.

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[7] The *Level 3* decision does not, of course, stand for the proposition that dedicated interconnection should be required when traffic volumes reach an OC3 level. The *Level 3* decision – as noted in *In the Matter of Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc., Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2001-00224, 2001 Ky. PUC LEXIS 1418, *7 (hereinafter *Brandenburg Telecom*) – stands for the propositions that: (i) a carrier "has the right to establish a minimum of one point of interconnection per LATA;" and (ii) a carrier "is also required to establish another POI when the amount of traffic passing through a[n] ... access tandem reaches a DS-3 level." *Id.*

In the present case, the threshold is not addressed to that particular balancing test. Here, the threshold is addressed to the entirely different question of when the CMRS Provider will be required to make an initial dedicated interconnection. In this case, the record reflects that the balancing of interests involves: (i) the RLECs' economic interest in identifying, measuring, and controlling traffic that enters their networks; and (ii) the CMRS Providers' technical interest in the simplified network architecture of indirect interconnection. Accordingly, the CMRS Providers' contention that the Commission should modify the dedicated interconnection threshold to an OC3 level should be rejected. A DS1 threshold appropriately and reasonably balances the specific interests invoked by this dispute.

Accordingly, the Commission should deny the CMRS Providers' Motion.

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

The CMRS Providers next claim that "[d]espite ... clear precedent, the RLECs interpret the Commission's reference to Section 251(c)(2)(B) [of the Act] as modifying the RLECs' compensation obligations."[8] (Motion at 11.) On the basis of this inaccurate characterization that the RLECs believed that the Commission's reference to Section 251(c)(2)(B) [of the Act] allegedly modified any compensation obligations, they proceed to request that the Commission "clarify that its reference in the [Order] to Section 251(c)(2)(B) applies only to the location of the physical interconnection with the RLEC network, and does not modify compensation obligations...." (*Id.*) This is textbook circular reasoning, and it does nothing to distract from the Commission's obvious conclusion that the CMRS Providers should bear the physical interconnection costs (such as facility costs and third-

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[8] Although sections IV and VI of the CMRS Providers' Motion claim to address separate issues, they both rely on an alleged lack of clarity with respect to the Commission's reference to Section 251(c)(2)(B) of the Act. Accordingly, the RLECs will address sections IV and VI of the Motion together.

party transit costs) necessitated by their own unilateral business decision to interconnect with the RLECs outside of the RLECs' incumbent networks.

First, the RLECs have never interpreted the Commission resolution of this issue as having modified *any* compensation obligations. The CMRS Providers use the word "modified" simply because they have misconceived the very nature of the RLECs' compensation obligations in the first place. Clearly, if the CMRS Providers assume that the RLECs are financially responsible for extending their networks in order to interconnect with the CMRS Providers, then they can claim that the Commission must not have intended any references to Section 251(c)(2)(B) to have modified that "obligation." Of course, in the process of trying to make this claim, the CMRS Providers must ignore the rules of logic by assuming the very conclusion they are trying to prove.

Even carried to its (il)logical end, however, the CMRS Providers' argument concludes that the Commission decided a "dispute" that never even existed. Specifically, they claim:

> The issue of the location of an RLEC's point of interconnection with a transit provider is not in dispute. Each RLEC is and will continue to be physically connected with BellSouth within the RLEC's own service territory, and the CMRS Providers do not propose otherwise. The question asked in Issue 5, however, was whether an RLEC... must pay the transit charges associated with traffic originated by its own customers.

(Motion at 9.) The RLECs find it difficult (to say the least) to believe that the Commission failed to decide a dispute that the RLECs identified as one of the "four conceptual issues of paramount importance in this proceeding." (RLEC Post-Hearing Brief at 3 (emphasis removed).) It is as if the CMRS Providers are ostriches: if they ignore the ruling, it did not happen.

Quite apart from the CMRS Providers' claims, the Commission's Order was patently clear regarding the RLECs' financial responsibilities with respect to facility and transit charges directly tied to the specific physical interconnection arrangements the CMRS Providers have sought. The

Order clearly recognizes the Commission's longstanding precedent that the "originating carrier pays." (Order at 12.) The Order also clearly circumscribes the limits of that longstanding precedent by noting that the precedent is, in turn, "governed by 47 U.S.C. § 251(c)(2)(B), which limits the duty to interconnect to 'any technically feasible point within the carrier's network.'" (*Id.*) The RLECs advanced this very argument, and there is no reason for the CMRS Providers to assume that the Commission did not agree. (*See* RLEC Post-Hearing Reply Brief at 2-6.)[9]

In short, the RLECs requested that the CMRS Providers bear the physical interconnection costs associated with their independent business decisions not to bring their networks to the service territory in which they hope to compete. This approach is consistent with the Act's mandate that the RLECs only be obligated to interconnect "within [their] network," 47 U.S.C. § 251(c)(2)(B), and it is "fair, just and reasonable" within the meaning of KRS Chapter 278. Moreover, it is what the Commission concluded. Accordingly, the Order needs neither clarification nor correction.

The Commission should deny the CMRS Providers' Motion.

D. The Commission did not and should not determine that BellSouth's tandem records contain sufficient information to allow for appropriate RLEC billing.

Finally, the CMRS Providers request that the Commission "clarify" that BellSouth's tandem records contain sufficient information to allow appropriate RLEC billing. This request presupposes, of course, that BellSouth's tandem records actually contain such information. The parties hotly

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[9] Rather than reproduce the RLECs' entire argument herein, the RLECs refer the Commission particularly to their discussion (*see* RLEC Post-Hearing Reply Brief at 2-5) of how *MCImetro Access Transmission Services, Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4th Cir. 2003) and *Southwestern Bell Tel. Co. v. Public Utilities Commission of Texas*, 348 F.3d 482 (5th Cir. 2003) – each of which was ironically cited by the CMRS Providers – support the basic conclusion that applicable law permits the Commission to: (i) order the CMRS Providers to pay the cost of any physical interconnection facilities necessitated as a result of the CMRS Providers' business decision(s) not to extend interconnection trunks to the network boundaries of the RLEC with whom each CMRS Provider seeks to compete; and (ii) to the extent that such CMRS Provider business decisions require the RLECs to establish physical interconnection at a BellSouth tandem, order the CMRS Providers to bear financial responsibility for any transit charges imposed by BellSouth.

disputed this issue, and the record does not establish that BellSouth's tandem records contain sufficient information to permit appropriate RLEC billing. Instead, the record raises important concerns that BellSouth's tandem records may not be sufficient. Accordingly, the Commission should deny the CMRS Providers' Motion.

In prefiled testimony, the RLECs specifically testified that they "remain concerned based on their experiences with inaccurate measurement, unidentified traffic, missing settlements, and other [problems] with respect to the large LECs' performance of [traffic measurement and recording] functions."[10] (RLEC Post-Hearing Reply Brief at 6, citing to SEW Test. at 14:31-34.) The Commission's Order then proceeded to validate the RLECs' stated concern that "a terminating carrier should have the ability to adequately and independently verify traffic exchanged with an originating carrier." (Order at 12.) To this end, the Commission found that dedicated trunk groups are appropriate when "the transit carrier (here BellSouth) cannot provide to the RLECs adequate verification of the jurisdictional nature and the rating of transited calls[.]" (*Id.*)

Thus, it is difficult to understand how the CMRS Providers believe it appropriate to "clarify" that BellSouth's tandem records actually contain sufficient information to permit appropriate RLEC billing. Nothing about either the record of the case or the Order suggest that the Commission has determined that BellSouth's tandem records permit accurate RLEC billing. Quite to the contrary, the Order recognizes the RLECs' concerns with respect to this issue. It then provides that, if the BellSouth tandem records are not adequate, the parties shall interconnect by means of dedicated trunks, so that accurate traffic measurement and verification may occur.

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[10] In fact, this very testimony was previously referenced as an explicit rebuttal to the CMRS Providers' continuing misapprehension that the RLECs "have made no claim – and have introduced no evidence – that 11-01-01 records are unreliable." (*See id.* at n. 4.)

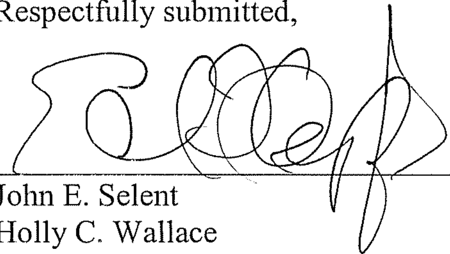
Therefore, the Commission should not "clarify" that BellSouth's tandem records contain sufficient information to allow appropriate RLEC billing. That conclusion remains to be determined as the interconnection agreements are implemented, and BellSouth begins sending its tandem records to the RLECs. If the records ultimately provide the RLECs with "adequate verification of the jurisdictional nature and the rating of transited calls," then the RLECs will bill accordingly. If, however, the records are insufficient in that they do not provide the RLECs with adequate verification of the jurisdictional nature and the rating of transited calls, the Order specifies the appropriate remedy: dedicated interconnection.

Accordingly, the Commission should deny the CMRS Providers' Motion.

IV. Conclusion.

The CMRS Providers' Motion presents no new evidence, and no new arguments. Regardless, the Motion presents no substantive legal basis to grant rehearing or modify/"clarify" the Order. Therefore, the Commission should deny the Motion.

Respectfully submitted,



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