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September 29, 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 (1) Prefiled Direct Testimony of Steven E. Watkins; (2) Prefiled Direct Testimony of Douglas D. Meredith; and (3) Prefiled Direct Testimony of William W. Magruder. This testimony is being filed on behalf of the petitioners in each of the above-referenced cases. Please file-stamp one copy of each and return it to our delivery person.

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

Sincerely,

Edward T. Depp

ETD/lb
Enclosures

cc: John N. Hughes, Esq.
Mary Beth Naumann, Esq.
Holland N. McTyeire, Esq.
Bhogin M. Modi
Mark R. Overstreet, Esq.
Tom Sams
Philip R. Schenkenberg, Esq.
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 Act of 1996	Case No. 2006-00298

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

PREFILED DIRECT TESTIMONY

OF

DOUGLAS D. MEREDITH

ON BEHALF OF THE

RURAL TELEPHONE COMPANY PETITIONERS

September 29, 2006

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PREFILED DIRECT TESTIMONY OF DOUGLAS D. MEREDITH

I. INTRODUCTION

Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND BUSINESS ADDRESS.

A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. (JSI). JSI is a telecommunications consulting firm headquartered in Greenbelt, Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah 84010.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND.

A: At JSI, I am the Director of Economics and Policy. In this capacity, I assist clients with the development of policy pertaining to economics, pricing and regulatory affairs. I have been employed by JSI since 1995. Prior to my work at JSI, I was an independent research economist in the District of Columbia and a graduate student at the University of Maryland – College Park.

In my employment at JSI, I have participated in numerous proceedings for rural and non-rural telephone companies. These activities include, but are not limited to, the creation of forward-looking economic cost studies, the development of policy related to the application of the rural safeguards for qualified local exchange carriers, the determination of Eligible Telecommunications Carriers, and the sustainability and application of universal service policy for telecommunications carriers. I have participated in and have

assisted a number of telephone companies in negotiation of interconnection agreements including situations similar to the one involved in this matter.

In addition to assisting telecommunications carrier clients, I have served as the economic advisor for the Telecommunications Regulatory Board of Puerto Rico since 1997. In this capacity, I provide economic and policy advice to the Board Commissioners on all telecommunications issues that have either a financial or economic impact. I have participated in a number of arbitration panels established by the Board to arbitrate interconnection issues under Section 252 of the Telecommunications Act of 1996 (the "Act").

I am participating or have participated in numerous national incumbent local exchange carrier and telecommunications groups, including those headed by NTCA, OPASTCO, USTA, and the Rural Policy Research Institute. My participation in these groups focuses on the development of policy recommendations for advancing universal service and telecommunications capabilities in rural communities and other policy matters.

I have testified or filed pre-filed regulatory testimony in various states including North Dakota, South Dakota, South Carolina, Vermont, New Hampshire, New York, Michigan, Texas Utah and Wisconsin. I have also participated in regulatory proceedings in many other states that did not require formal testimony, including Florida, Louisiana, Mississippi, North Carolina, Puerto Rico and Virginia. In addition to participation in state regulatory proceedings, I have participated in federal regulatory proceedings through filing of formal comments in various proceedings and submission of economic reports in an enforcement proceeding.

I have a Bachelor of Arts degree in economics from the University of Utah, and a Masters degree in economics from the University of Maryland – College Park. While attending the University of Maryland – College Park, I was also a Ph.D. candidate in Economics. This means that I completed all coursework, comprehensive and field examinations for a Doctorate of Economics without completing my dissertation.

Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED DIRECT TESTIMONY?

A: I am testifying on behalf of the following rural incumbent local exchange carriers: Ballard Rural Telephone Cooperative Corporation, Inc., Brandenburg Telephone Company, Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative Corporation, Inc., Gearheart Communications, Inc. d/b/a Coalfields Telephone Company, Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Corporation, Inc., North Central Telephone Cooperative Corporation, Peoples Rural Telephone Cooperative Corporation, Inc., South Central Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative Corporation, Inc.. (collectively "RLECs")

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: I testify on the steps the RLECs would need to take to produce a total element long run incremental cost study ("TELRIC") for the purpose of determining a transport and

termination rate. With regard to this proceeding, I submit that without significant shortcuts or compromises in producing the TELRIC studies, these necessary steps cannot be completed during the timeframe adopted for this arbitration.

I also provide materials which constitute the best available information that can be used to determine a fair rate for transport and termination in the timeframe of this proceeding. I divide my presentation of the best available information into four parts: (1) the current negotiated agreement and recent negotiated rates for the RLECs; (2) comparisons of rural LEC rates from other jurisdictions; (3) the RLECs' current interstate access rates; and (4) the use of proxy rates tailored to Kentucky RLECs.

I submit testimony showing these alternative best available forms of information may be used by this Commission to determine a fair transport and termination rate for the RLECs in the present arbitration involving indirect interconnection with a limited number of commercial mobile radio service ("CMRS") providers.

II. TELRIC STUDIES

Q: WHAT DOES THE TERM "TELRIC" SIGNIFY?

A: The term "TELRIC" was first used by the Federal Communications Commission ("FCC") in its 1996 Local Competition Order and signifies "total element long run incremental cost." FCC 96-325 at 678 TELRIC serves as the basis from which forward-looking economic cost is determined under current FCC rules. To calculate forward-looking economic cost, the FCC adds a reasonable allocation of forward-looking common costs to the TELRIC results. See 47 CFR § 51.505(a)

Recently, the FCC has expressed concerns about the use of TELRIC-based pricing. These concerns have been explained by RLEC witness Steven E. Watkins and I will not repeat these recent expressions by the FCC on the use of TELRIC-based pricing.

Q: PLEASE DESCRIBE YOUR UNDERSTANDING OF THE REQUIREMENT TO PRODUCE TELRIC STUDIES IN THIS PROCEEDING.

A: I have read the order dated July 25, 2006 in Case No. 2006-00215. That Order required the RLECs to file TELRIC studies supporting the proposed transport and termination rates on August 16, 2006 – 22 days from the date of the Order.

I have also read the order dated August 18, 2006 in the consolidated case. This Order required the RLECs to file such TELRIC studies on or before August 23, 2006 – extending the TELRIC study deadline one week from the original 22 day allowance.

Q: HAVE YOU PREPARED TELRIC STUDIES FOR TRANSPORT AND TERMINATION FOR OTHER RURAL LOCAL EXCHANGE CARRIERS IN OTHER STATES?

A: Yes. I have prepared transport and termination rate studies following the FCC's TELRIC methodology. Specifically, I recall two proceedings in 2002 and 2003 where I prepared studies for 22 North Dakota and 30 South Dakota companies respectively. These two proceedings were arbitrations with Western Wireless involving a number of issues. In both of these proceedings, the parties negotiated a settlement prior to the scheduled hearing thereby negating the need for a hearing and an arbitrated decision.

Q: ARE TELRIC STUDIES REGULARLY PREPARED BY THE RLECS?

A: No. TELRIC studies are special studies that involve many company resources. In additional to the financial resources required to gather and process outside engineering/consulting services, the RLECs need to devote internal resources, such as time from key employees, to develop meaningful TELRIC rates.

Q: WHAT IS INVOLVED IN DEVELOPING A TELRIC STUDY FOR TRANSPORT AND TERMINATION?

A: The FCC TELRIC methodology requires developing the total element long-run incremental cost using an efficient network configuration, forward-looking costs of capital, economic depreciation rates, and a reasonable allocation of forward-looking common costs. See 47 C.F.R. § 51.505 After these element costs are developed they are "divided by a reasonable projection of the total number of units of the element provided by the incumbent LEC to other telecommunications carriers and the total number of units of the element the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period." 47 CFR § 51.511(a)

Q: DOES A TELRIC STUDY CALCULATE THE ACTUAL COSTS FOR TRANSPORT AND TERMINATION ON THE RLECS' NETWORKS?

A: No. A TELRIC-based study is based on a hypothetical network. A TELRIC-based study is an approximation of the efficiently incurred costs of providing transport and termination.

Q: IN DEVELOPING PER UNIT RATES FOR TRANSPORT AND TERMINATION, ARE SPECIAL TRAFFIC MEASUREMENTS NECESSARY TO PRODUCE TELRIC RATES FOR TERMINATION?

A: Yes. The unit for a transport and termination TELRIC rate is a minute of use. The FCC rules require studies to use the total volume of traffic using end-office and tandem switches. Additionally, the FCC requires this reasonable projection of demand be based on "a reasonable measuring period." Absent some sort of shortcut, total traffic volumes will need to be collected over a reasonable measuring period.

The RLECs do not measure total traffic volumes passing through their switches for their normal operations. The RLECs generally have accurate information on access traffic. However, local traffic is not generally measured. None of the RLECs have measured local traffic for a TELRIC study. So in order to develop meaningful TELRIC rates, the RLECs need to measure and record total switched minutes, including local minutes of use.

Because of the novelty of measuring total switch minutes, I recommend measuring at least two months of traffic. Measuring for two months ensures there is a reasonableness check on the measured traffic for the first month. The actual measurement for these two months is after the measurement and recording process, customized for each RLEC, is developed and tested by RLEC central office engineers. Therefore, at minimum, the development, measurement, recording and processing of traffic requires 90 days. This is one reason why I suggested in the informal conference held September 12, 2006 that it would take 90 days to perform a TELRIC study for an RLEC.

Q: IN ADDITION TO THE TIME INVOLVED IN CAPTURING TOTAL TRAFFIC, ARE THERE OTHER RESOURCES REQUIRED FROM THE RLECS TO PRODUCE MEANINGFUL TELRIC STUDIES?

A: Yes. TELRIC studies require forward-looking decisions on network design. These decisions necessarily involve engineers, consultants and management. In some instances, outside engineering firms will be employed to develop current prices for network designs. The completion of a TELRIC study may depend upon the availability of these outside resources and vendors.

Q: BASED ON YOUR EXPERIENCE AND RECOMMENDATIONS, DOES A 29-DAY TIMELINE ORDERED BY THE COMMISSION PROVIDE RLECS THE OPPORTUNITY TO PRODUCE MEANINGFUL TELRIC STUDIES SUPPORTING RATES FOR TRANSPORT AND TERMINATION?

A: No. The timeframe ordered by the Commission does not permit the development of meaningful TELRIC studies supporting the proposed transport and termination rates for the RLECs. A 29-day cycle does not recognize first the necessity to measure total traffic. It also doesn't recognize any time constraints on management, engineering staff, nor the availability of necessary resources external to the RLECs.

Q: DIDN'T THE RLECS HAVE THE EXPECTATION THAT TELRIC STUDIES WOULD BE REQUIRED IN THIS PROCEEDING?

A: No. The reasons this expectation didn't exist are twofold. First, the RLECs are already operating under an agreement with the CMRS providers represented in this proceeding. The RLECs have had a reasonable expectation that the existing negotiated rate of 1.5

cents per minute of use would be accepted by the CMRS providers and adopted in the new agreement. Second, the RLECs are rural LECs and seek modification of the TELRIC standard to be used in this proceeding. See Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Suspension of, or Modification to, any Requirement to Conduct TELRIC Studies and RLEC Letter Dated September 14, 2006. Thus, there was no expectation that the RLECs would be required to perform TELRIC studies in this proceeding. A few of the RLECs have begun the process of determining how to capture and measure total traffic on their switches; however, no actual capture or measurement of total traffic volumes has begun.

Q: WITHOUT A FILED TELRIC STUDY FOR THE RLECS, WHAT INFORMATION CAN YOU PROVIDE TO ASSIST THE COMMISSION TO ESTABLISH A FAIR CHARGE FOR TRANSPORT AND TERMINATION?

A: My understanding is that in the event that TELRIC studies are not available for this proceeding, the Commission is authorized to determine a transport and termination rate based on the best available information available to it.

In response to the Commission's need for the best available information on transport and termination rates, I have four categories of data which represent the best available information the Commission may use to make a determination in this proceeding.

III. BEST AVAILABLE INFORMATION

Q: PLEASE PROVIDE YOUR FIRST CATEGORY OF INFORMATION FOR DETERMINING A FAIR TRANSPORT AND TERMINATION CHARGE.

A: The first category of information relates to the existing rural LEC agreements filed with this Commission. The agreement filed in Case No. 2003-00045 and effective on May 1, 2004 has a transport and termination rate of $0.015 per minute. This rate is the lower of three rates used over the course of the agreement and is the current rate for the 12 RLECs who terminate CMRS traffic when the CMRS provider chooses to use an indirect method of interconnection with the RLECs. This rate is based on voluntary negotiations between the parties and best reflects the value market participants place on RLEC transport and termination services. As such this rate is a valuable reference for a fair transport and termination rate.

In addition to this indirect agreement I just discussed, there are many direct interconnection agreements whose transport and termination rates have been established between CMRS providers and the rural LECs in Kentucky. In the past 12 months, I know of seven (7) agreements. I examined rate appendix of the most recent of these agreements and I have reviewed a summary of the remaining six transport and termination rates. From this information, I find that the range of the effective reciprocal transport and termination rate for rural LECs and CMRS providers in Kentucky is between 1.96 cents to 1.5 cents per minute of use ($0.0196 (2); $0.0184 (1); $0.0175 (2); $0.0160 (1); and, $0.0150 (1)). The average for these voluntarily negotiated rates with CMRS providers in the past 12 months is $0.0177 per minute of use.

Based on these recent agreements, the current rate paid by CMRS providers for indirect interconnection is lower than the effective reciprocal transport and termination rate

agreed to by CMRS providers operating in Kentucky. These seven agreements have even more significance because they are agreements for direct interconnection where the volume of traffic is larger than the volume of traffic used for indirect interconnection. Thus, I believe it is reasonable to conclude that carriers seeking direct interconnection are more sensitive to achieving a fair, just and reasonable transport and termination rate because this large traffic flow will result in higher overall payments.

Based on the best available information from Kentucky rural LEC transport and termination rates, the current $0.015 per minute rate for RLEC termination of indirect CMRS traffic is fair and is below the average rate of negotiated rates with directly interconnected CMRS providers and rural LECs in Kentucky over the past twelve months.

This information from current market participants in Kentucky shows that the market price for RLEC termination exceeds the price suggested by the RLECs in negotiations with the CMRS providers indirectly interconnecting with the RLECs. It also underscores the possibility that TELRIC-based pricing for RLEC transport and termination could exceed the $0.015 per minute rate offered by the RLECs in the event TELRIC-based studies are performed.

Q: WHY DO YOU BELIEVE THIS INFORMATION REFLECTS THE FORWARD-LOOKING ECONOMIC COST FOR RLEC TRANSPORT AND TERMINATION?

A: These agreements are voluntary agreements between the parties. Taken as a whole, they represent how much value market participants place on RLEC transport and termination.

The whole purpose of TELRIC studies is to estimate the market value for certain network elements or services. The FCC states TELRIC-based pricing "best replicates, to the extent possible, the conditions of a competitive market." And TELRIC pricing "simulates the conditions in a competitive marketplace." Local Competition Order at 679 In these Kentucky voluntary agreements, we are able to see the value placed on RLEC transport and termination. Rather than "simulate" competition, we can actually observe market participants signal the fair and reasonable price levels which recover economic costs for providing RLEC transport and termination. I believe the Commission may establish an RLEC transport and termination rate based on this data.

Q: DO THE RBOC AND LARGE ILEC TRANSPORT AND TERMINATION RATES REFLECT THE VALUE OF RLEC TRANSPORT AND TERMINATION?

A: No they do not. The average cost for RBOC operations does not reflect the economic cost of transport and termination for the RLECs whose size of operations is a small fraction of an RBOC. According to a publication reporting telephone lines by state, BellSouth serves over 1,300,000 lines in Kentucky; whereas the largest RLEC serves just over 27,500 and the smallest RLEC serves fewer than 6,700 lines. See Phone Lines 2006, JSI Capital Advisors, LLC, page 87 There is a wide disparity between the operational size of BellSouth and the RLECs. These operational size issues play a very important role in determining the cost of providing RLEC transport and termination services for CMRS calls.

One reason for the considerable cost variance between these carriers is the population density in the geographic area served. The RBOCs have vastly different geographic areas

in which they provide telecommunications service. Recognizing there are significant economic cost variances among differing geographic areas, the FCC requires that unbundled network element ("UNE") rates be set on a geographically-deaveraged basis. See 47 CFR § 51.507(f) Even FCC UNE default proxy rates recognize these geographic cost variances: The FCC requires the weighted average of separate geographically deaveraged UNE rates, rates that apply in separate areas in a state, to comply with the FCC UNE default proxy rate ranges. See 51.513(b)

Transport and termination rates include tandem and end office switching functionality. The central office switching equipment used to provide transport and termination is recognized as being more costly for smaller carriers. The industry has long recognized there is wide variance between the switching costs of a highly populated city center and the switching costs of serving rural areas. The FCC, for example, accounts for this high level of cost variance in its dial equipment minutes support factors for local switching support in its Federal universal service program. See e.g., 47 CFR § 36.125 and 54.301

Applying RBOC average transport and termination rates to the RLECs does not recognize the well known differences in cost for serving diverse geographic areas whose population densities create legitimate and well known cost variances. It would not be appropriate to use RBOC rates in this proceeding.

Q: YOU MENTIONED A SECOND GROUP OF INFORMATION RELATED TO OTHER JURISDICTIONS WHICH CONSTITUTES THE BEST AVAILABLE INFORMATION TO MAKE A JUDGMENT IN THIS PROCEEDING. PLEASE DESCRIBE THIS INFORMATION.

A: JSI has experience throughout the nation in working with its clients in negotiating CMRS interconnection including the development and negotiation of transport and termination rates. I asked our Austin and Atlanta offices to provide me a list of negotiated transport and termination rates for the past several years. In all of these instances, the activities in other jurisdictions mirrors what the RLECs have experienced in Kentucky.

In Texas for instance, I have information on eight (8) agreements with rural LECs approved since September 2003. The average transport and termination rate for rural LECs in these agreements is $0.01750 per minute of use. All of these agreements are on file with the Texas Commission and represent both direct and indirect interconnection with a variety of CMRS providers.

Five (5) of these agreements were signed since 2005. The average for these five agreements is $0.01880 per minute of use. I looked at the number of central offices served by these carriers and found some were similarly sized and configured to the Kentucky companies. Aside from the largest company, the other companies have host configurations ranging from one to three hosts. These five most recent (March 2005 – July 2006) agreements reflect the value of RLEC transport and termination for similarly sized rural LECs and provide yet another source confirming the value current market participants place on rural LEC transport and termination services. These CMRS providers are paying rates higher than the $0.0150 per minute rate the RLECs current charge the indirectly connected CMRS providers.

The information I received from our Atlanta is more voluminous. Our JSI-Georgia office has gathered information on transport and termination rates we have been involved with

in various states. I narrowed my analysis to those agreements effective from January 2005. In total there are 39 agreements in 10 states (Colorado, Florida, Georgia, Kansas, Maine, North Carolina, New Hampshire, New York, South Carolina and Utah). These agreements were for direct interconnection and indirect interconnection with a volume threshold where indirect is converted to direct interconnection. The average of these 39 agreements is $0.0169 per minute of use. The maximum rate was $0.020 and the minimum rate was $0.0120 per minute of use.

Based on this geographically diverse best available information, the value of rural LEC transport and termination services is priced at a level higher than $0.0150 per minute.

Taken together, the number of recent interconnection agreements from other jurisdictions supports the RLEC offer rate of $0.015 per minute of use. These prices, established through negotiation, signal the market value attached to rural LEC transport and termination services and reflect the economic value market participants assign to rural LEC transport and termination functionality. I recommend the Commission give these rates consideration in this proceeding.

Q: YOU OUTLINED A THIRD TYPE OF INFORMATION THAT YOU CONSIDER PART OF THE BEST AVAILABLE INFORMATION YOU RECOMMEND TO THIS COMMISSION. PLEASE IDENTIFY THIS INFORMATION.

A: I suggest that in addition to the market information I have provided, the RLECs interstate composite switched access rate also provides insight into TELRIC-based prices for transport and termination.

Q: AREN'T TELRIC-BASED PRICES ALWAYS LOWER THAN INTERSTATE ACCESS RATES?

A: No. There are instances where the TELRIC-based price is higher than interstate access rates. Witness Steven E. Watkins explained one reason why this occurs. There are also other reasons dealing with the comparison of the embedded costs to forward-looking economic costs. In summary, it is not correct to claim that TELRIC-based pricing is always lower than interstate switched access rates.

Q: DON'T CURRENT INTERSTATE SWITCHED ACCESS RATES HAVE CONTRIBUTIONS OR SUBSIDIES?

A: No. In the past there were particular loadings on interstate access rates for public policy purposes. These contributions or subsidies were recognized by the FCC in its Local Competition Order when it reported some parties claimed existing interstate access rates "contain inordinate amounts of contribution." See LCO 780. Since this observation, the FCC has eliminated the contributions in interstate access rates. The CALLS, and more particularly applicable to the RLECs, the MAG interstate reform efforts have stripped the contribution from interstate access rates and have left a cost-based rate that reflects the actual cost of providing services identical to transport and termination.

Q: WHAT IS THE NATIONAL AVERAGE INTERSTATE RATE COMPARED TO TRANSPORT AND TERMINATION FUNCTIONALITY?

A: According to information provided by the National Exchange Carrier Association ("NECA") to the Missoula Group, the average end office switching rate plus a modest amount of transport is $0.0170 per minute of use. This is a general number because of

the rate banding and transport variations that exist among NECA members. This per minute rate has been used in the Missoula Plan addressing intercarrier compensation reform. Under the Missoula Plan, intrastate access rates for Track 3 carriers will decline to interstate access levels. For purposes of computer modeling, the Rural Alliance, a participating group forming the Missoula Plan uses $0.0170 as an average terminating per minute rate. See The Missoula Plan for Intercarrier Compensation Reform, Appendix D Modeling the Impact of Intercarrier Compensation Reform, page 110.

Q: HOW DO THESE NATIONAL AVERAGES COMPARE WITH KENTUCKY SPECIFIC TRANSPORT AND TERMINATION FUNCTIONALITY?

A: I have examined the transport and termination for each RLEC if this functionality were priced from their respective interstate tariffs. Based on my examination, the average composite interstate access rate for the same functionality as transport and termination is $0.01335 per minute of use.

Q: HOW DOES THIS INFORMATION HELP THE COMMISSION DETERMINE A FAIR TRANSPORT AND TERMINATION RATE?

A: This information is useful as a comparison to the negotiated rates I have provided. Since the contributions that existed previously in interstate access rates have been removed by the FCC, the remaining costs represent the cost of transport and termination. Taken across the broad spectrum of rural LECs participating in the NECA tariff, the national average rate serves as a reasonableness check for providing transport and termination services.

As stated by Mr. Watkins in his testimony, there is considerable value in using interstate access rates as information in this proceeding. I encourage you to use this information to its fullest extent while determining a fair transport and termination rate for RLECs in Kentucky.

Q: DO YOU HAVE A FOURTH CATEGORY OF INFORMATION USEFUL AND AVAILABLE TO THE COMMISSION IN THIS PROCEEDING?

A: Yes. While I do not believe that FCC default proxy rates should be used in this proceeding, I do have some comments and recommendations for the Commission if FCC default proxy rates were used in developing Kentucky specific proxy rates for transport and termination.

Q: BEFORE YOU BEGIN YOUR COMMENTS AND RECOMMENDATION, PLEASE EXPLAIN WHY THE COMMISSION SHOULDN'T USE FCC DEFAULT PROXY RATES FOR LOCAL SWITCHING IN THIS PROCEEDING.

A: The FCC discusses its development of default proxy rates for local switching in its Local Competition Order. It used rates developed by various states that had this information available in 1996, e.g., Maryland, Florida, Massachusetts, Michigan and Illinois. See LCO at 812, 814 Neither the FCC nor the states suggest that these rates reflect forward looking costs for rural LECs. In its discussion of default proxy rates generally, the FCC recognized that "certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under Section 251(f)(2) of the 1996 Act." LCO at 783 I find this statement in

the FCC's application of default proxies particularly revealing. It seems to me that the FCC recognizes that default proxies are not appropriate for certain rural LECs and provides relief from these default proxies under at least two mechanisms. One is the modification and suspension approach (section 251(f)(2)) taken by the RLECs in this proceeding. The other is the determination by the Kentucky Commission that default proxies do not apply to the RLECs under section 251(f)(1).

Furthermore, as I mentioned earlier, the FCC has a longstanding history recognizing that rural LEC switching costs are much higher than their urban counterparts. The FCC applies a DEM weighting factor to switching costs in recognition of these cost variances.

Lastly, the FCC's local switching default proxy is a statewide average. The FCC requires geographic de-averaging of local switching rates and requires the rate to fall within a range "if converted through use of a geographically disaggregated average usage factor." LCO at 815 Thus, the range the FCC discusses is supposed to be used as an average local switching rate across, presumably, urban and rural service territories. This concept works for an RBOC; however, when focusing on a rural LEC, the cost characteristics of rural LEC service territory is more like the costs of a rural RBOC territory. The geographically averaged RBOC rate does not capture the RLEC cost variances recognized by the FCC.

In light of the origin and application of the FCC default proxies, the FCC discussion about application of default proxies, and staff's statements that this Commission must make a judgment under federal and/or state law, I do not believe it is appropriate to use the FCC's local switching default proxy in this proceeding.

Q: WHAT ARE THE FCC DEFAULT PROXIES FOR TRANSPORT AND TERMINATION?

A: The FCC has three default proxy rate elements for transport and termination. The first is local switching. The FCC ceiling for local switching is $0.004 per minute of use. The second proxy is for tandem switching which would apply for all of the RLECs (each of which have tandem functionality, e.g., have a Class 4/5 switch). The FCC ceiling for tandem switching is $0.0015 per minute of use. The last proxy is for transport. The FCC ceiling for this function is computed using the carriers' interstate costs or interstate tariff for shared transport. See 47 CFR § 51.513(4)

Q: SHOULD THE COMMISSION USE THE FCC'S LOCAL SWITCHING PROXY RATE OF $0.004 PER MINUTE?

A: No. As I have expressed above, this rate is an averaged rate that does not reflect known cost variances among geographic population densities. If the Commission used this FCC default proxy as a basis to develop a Kentucky specific proxy, it should recognize the FCC proxy as a geographically averaged rate and apply a higher rate to the RLECs.

Q: IF FCC DEFAULT SWITCHING PROXIES WERE USED AS A BASIS FOR KENTUCKY SPECIFIC PROXY RATES, HOW COULD THE COMMISSION USE THE FCC DEFAULT PROXY CEILING?

A: I do not recommend the local switching or tandem switching proxy rates because there are better sources of information available to the Commission to make a judgment in this proceeding. However, if the Commission wanted to use the proxy ceilings as a basis, I suggest the Commission apply the FCC's DEM weighting factors to these proxy

ceilings in order 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. This approach recognizes the switching costs vary by the size of the LEC and applies a standard FCC factor to capture these cost variances.

The DEM weighting factor is described in FCC rules and applies a weighting factor of 3.0 to study areas with fewer than 10,000 access lines; a 2.5 factor for study areas with access lines greater than 10,000 but less than 20,001; and a weighting factor of 2.0 for carriers whose access lines are greater than 20,000 and less than 50,001 access lines. See 47 CFR §36.125(f) In this application, the local switching proxy would be $0.012, $0.01 or $0.008 per minute of use depending on the size of the RLEC.

The same application would apply to the $0.0015 per minute tandem switching rate, where applicable. Tandem switching rates would be $0.0045, $0.0038 or $0.0030 per minute of use.

Q: BASED ON THIS RECOMMENDATION, WHAT WOULD BE THE TRANSPORT AND TERMINATION PROXY FOR THE RLECS?

A: The total transport and termination rate for the RLECs would depend on the transport rate proxy for each carrier. The transport rate proxy is based on interstate costs or tariffs. I supervised the development of the RLEC transport proxies and they range from $0.00060 to $0.00693 per minute of use.

After adding all of these proxy components for each RLEC (adjusted switching and tandem rates and transport rates), I have calculated what the Commission could conclude

to be a reasonable basis for an RLEC proxy and the range of rates is from $0.01160 to $0.02343 per minute of use. This range is similar to the rates I discussed that have been voluntarily negotiated across many states.

Q: PLEASE EXPLAIN HOW YOU CALCULATED THE TRANSPORT PROXY RATE.

A: There are two methods I used depending on the available data for each RLEC. For cost companies, I used interstate costs, mileage and circuits according to the FCC instructions, e.g., 9,000 minutes of use per DS-0 circuit. For average schedule companies, whose data is limited because of different reporting requirements, I used the applicable interstate tariff rates to determine the appropriate transport proxy according to FCC instructions. See 47 CFR §513(c)(4)

The development of FCC-based transport proxy rates for the RLECs relies on actual costs or tariffs – this fact supports my prior discussion regarding the appropriateness of interstate access tariffs. Considering how the FCC developed transport proxies, I believe, as I have mentioned earlier, it reasonable to rely on other aspects of the interstate access tariff to develop switching proxies. As mentioned earlier, the interstate tariff based average per minute of use rate for RLEC transport and termination functions is $0.01335 per minute of use (the range of interstate rates is from $0.00157 to $0.01856 per minute of use).

Q: DO FCC RULES REQUIRE THE USE OF FCC DEFAULT PROXY RATES IN THIS PROCEEDING?

A: No. In the event that the cost study available to this Commission does not support the adoption of transport and termination rates that are "consistent with the requirements set forth in §§51.505 and 51.511," the state commission "may establish rates for transport and termination of telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section..." 47 CFR §51.707(a) I have provided a variety of rates from various sources that appear consistent to the forward-looking requirements.

Only later in this same rule referenced above does the FCC states that if default proxies are used, certain requirements must be met. My plain English understanding of the rule suggests that there can be "proxies" different from the "default proxies" provided by the FCC. These non-default proxies must have a written basis for their selection, 47 CFR §51.707(a)(2), and are superseded in the event a study is performed. Furthermore, these state specific proxies need only be "consistent with" the FCC default proxies. I have expressed one method of using the FCC's own analysis to capture known cost variances among geographically diverse populations. This method severs as a basis to develop Kentucky specific proxy values that are consistent but not identical to the FCC proxies. This approach appears not only reasonable given the circumstances, but in line with 47 CFR §51.707(a). The information I have provided in this portion of my testimony provides information necessary for the Commission to set forth in writing the reasonable basis for its selection of transport and termination proxy rates.

Q: WILL YOU PLEASE HIGHLIGHT THE RECOMMENDATIONS YOU MAKE TO THIS COMMISSION?

A: I recommend this Commission recognize that TELRIC-based studies for the RLECs will take more time than what was allocated.

Furthermore, I recommend that the Commission accept the information I have provided and judge it to be the best available information related to transport and termination rates in this proceeding. I recommend that based on this substantive information, the Commission determine that the $0.015 per minute of use rate for transport and termination is a fair rate and adequately reflects the forward-looking economic costs of providing transport and termination to CMRS providers indirectly interconnected to the RLECs.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A: Yes.

Respectfully submitted,

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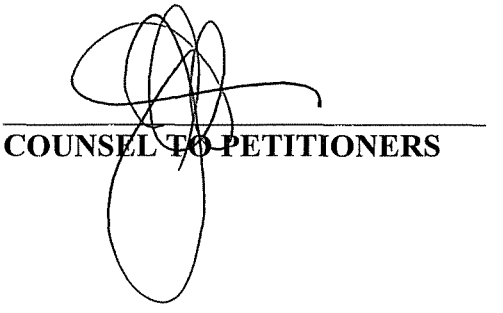

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular 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 Act of 1996	Case No. 2006-00298

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

PREFILED DIRECT TESTIMONY OF WILLIAM W. MAGRUDER

ON BEHALF OF THE

RURAL TELEPHONE COMPANY PETITIONERS

September 29, 2006

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PREFILED DIRECT TESTIMONY OF WILLIAM W. MAGRUDER

Q: Please state your name, title and address.

A: My name is William W. Magruder. I am Executive Vice President and Chief Executive Officer for Duo County Telephone Cooperative. Our company's address is P.O. Box 80, 2150 North Main Street, Jamestown, Kentucky 42629.

Q: Please describe your professional background.

A: I hold a Bachelor of Science degree in Electrical Engineering from the University of Kentucky. I have almost 40 years of experience working in the rural telephone company industry in Kentucky. I have testified before this Commission on numerous occasions in virtually every administrative case of industry importance that involves settlements and the restructuring of the telephone industry including the divestiture of AT&T. I am a former chairman of the National Exchange Carrier Association ("NECA") and have served as president of the Kentucky Telephone Association ("KTA") on numerous occasions and currently serve on the boards of US Telecom and KTA.

Q: Please provide a short description of your company.

A: My company provides local exchange service to approximately 13,000 customers in rural south central Kentucky. We serve all or parts of Russell, Adair, Cumberland and Casey counties. Many of our areas, unfortunately, have some of the lowest per capita income in the Commonwealth. I am particularly proud, however, that we have been providing modern state-of-the-art service to our customers for over 50 years. Today we provide the ability for all of our

customers to access broadband service regardless of where they live in our rural area. We depend heavily on Universal Service Funds ("USF"), access revenues and terminating revenues (including those from the CMRS carriers) to keep our rates at a level that our customers can continue to afford to pay.

Q: What is the purpose of your testimony today?

A: The purpose of my testimony is to introduce policy concerns and issues that the rural telephone companies ask the Commission to keep in mind as they work through this case and all the complications that the various industry experts will undoubtedly delineate at great length. It is important that the Commission keep some guiding principles at work to ensure that our local cooperative members or customers in rural Kentucky are not harmed.

Q: Please describe your policy principles.

A: 1. We comply with the interconnection rules of the FCC. We currently have interconnection within our network (within our Russel Springs exchange, where our company's tandem switch is located) with the following carriers.

a. Two ILECs – Windstream, for EAS, between two of our four exchanges and two of Windstream's exchanges, so that customers within the same county that we both serve can have local calling to each other. We also have connection with BellSouth for two distinct purposes. First, the Kentucky Restructured Settlement Plan ("KRSP") which the Commission approved allowed BellSouth to interconnect an intralata toll trunk group with our

company for the purpose of BellSouth's carriage of intralata toll to and from our local customers, based upon BellSouth's provision of that toll under the KRSP. Second, we recently entered into a Commission-approved interim settlement agreement between the rural LECs, CMRS carriers and BellSouth. This interim settlement agreement allowed BellSouth to terminate CMRS traffic on the same intralata toll trunk group to our tandem under the terms and conditions of that interim agreement which will expire at the end of 2006.

b. We also have interconnection with 12 interexchange carriers that connect to our access tandem (within our network) at the DS1 level for purposes of originating and terminating their interexchange traffic for customers who have selected them as their long distance carrier.

c. We also have three CMRS carriers that provide cellular service within our operating area, and they also connect at the DS1 level to our network in our tandem exchange area.

We are able to identify, bill and maintain control of all traffic entering our network today from all of these carriers that connect to our network through our tandem under PSC or FCC approved tariffs or interconnection agreements. We have not been required to accept or terminate traffic from any carrier that does not conform to applicable rules, regulations and agreements .

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.

2. We operate pursuant to Commission approved tariffs and agreements that have established the local calling scope of our local exchange customers. We should never be required to transport local calling traffic, or traffic of any nature, beyond the physical confines of our network. It is my understanding that the Commission has not required BellSouth to transport any traffic outside of its physical network. Certainly the small rural carriers should not be required to do so either.

3. The FCC established a rural exemption for small rural local carriers, such as the petitioners, that relieves us from having to perform expensive and unnecessary TELRIC studies for interconnection purposes. The industry currently has cost studies that produce the data that allows the NECA to establish cost-based access rates that are used to charge the interexchange carriers for originating and terminating traffic on our networks. Those NECA access rates are the minimum rate that should be allowed for interconnection. That rate is still below the costs of Duo County because our cost settlements from NECA exceed the amount of billed tariff rates that we bill the carriers and submit to NECA. The NECA access rate is below the effective rates that existing CMRS carriers pay, and any revenue reductions below current levels will ultimately have to be recovered from rural telephone company end-users in the form of higher local rates. Our customers live and work in a relatively low income area and cannot afford, and should not be required, to subsidize the large national CMRS carriers in this proceeding.

4. We are presenting expert witnesses who will address these issues in detail and will address FCC requirements and the best information that we can provide for the Commission's consideration. These experts will also address the rural telephone companies

areas of disagreement with the CMRS carriers, at least to the extent we understand the CMRS carriers' positions. We have proactively worked with BellSouth, Windstream and the CMRS carriers to develop the interim settlement plan that currently exists for CMRS carriers that do not operate in our own areas and do not have existing interconnection agreements. We initiated the interconnection negotiations that the interim agreement called for with little or no response from some or all of the CMRS carriers. We had to initiate this arbitration proceeding so we could get a final interconnection agreement and the necessary trunking arrangements in place by the end of this year when the interim agreement ends.

5. I am submitting this testimony to ask that this Commission do no harm to our small rural cooperative or the rural telephone companies, in general. Our experts will provide the details, but I ask you to base your decisions and order on the following four principles:

a. The rural telephone companies must be allowed to continue to identify, control and bill for any traffic entering our network.

b. The rural telephone companies must not be required to change the structure of our local calling areas or have to transport any traffic beyond our respective networks.

c. The rural telephone companies must not be required to accept traffic except under Commission or FCC tariffs or approved interconnection agreements.

d. We should not be required to terminate traffic at rates less than our costs; otherwise, our local cooperative members or customers will have to subsidize the national wireless carriers.

These principles are simple, and they make good common business sense. They are the principles under which we operate today. We interconnect with CMRS carriers and,

needless to say, those carriers seem to be doing very well. We look forward to interconnecting with the remaining CMRS carriers under terms and conditions that are fair, equitable and do no harm to the small rural companies of this Commonwealth.

Q. Does this conslude your testimony?

A. Yes, it does. Thank you.

Respectfully submitted,

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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 Act of 1996	)	Case No. 2006-00298

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

PREFILED DIRECT TESTIMONY
OF

STEVEN E. WATKINS

ON BEHALF OF THE

RURAL TELEPHONE COMPANY PETITIONERS

September 29, 2006

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Direct Testimony of Steven E. Watkins

September 29, 2006

Q: Please state your name, business address and telephone number.

A: My name is Steven E. Watkins. My business address is 2154 Wisconsin Avenue, N.W., Suite 290, Washington, D.C., 20007. My business phone number is (202) 333-5276.

Q: What is your current position?

A: I am self-employed providing telecommunications management consulting services.

Q: Did you provide testimony in this proceeding previously?

A: Yes. I filed testimony on some preliminary issues on August 16, 2006 in the proceedings captioned above.

Q: Did you include with your August 16, 2006 preliminary testimony further information regarding your background and experience?

A: Yes.

Q: On whose behalf are you testifying?

A: I am testifying on behalf of the entire set of Petitioners in the captioned proceedings. The Petitioners are twelve (12) small and rural telephone companies and cooperatives providing local exchange carrier ("LEC") services to end users primarily in rural Kentucky. I will refer to these LECs as the "RTCs."

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to set forth the positions of the RTCs with respect to the list of issues to be resolved in the proceedings captioned above. The Respondent Commercial Mobile Radio Service providers in this proceeding with be referred to as the "CMRS Providers."

Q: Before turning to the individual issues, do you have any general comments?

A: Yes. The RTCs respectfully urge the Commission to review fully the background, the FCC's rules discussion that reflect directly on many of the issues, and my analysis set forth below in this Direct Testimony. When one reviews the entire record of FCC rules, one finds that many of the positions of the CMRS Providers simply cannot be squared with those rules and the FCC's own analysis of its rules. The CMRS Providers often attempt misleadingly to focus attention on one set of words in isolation of the full set of definitions and conditions that the FCC has found to apply with respect to particular interconnection

requirements. The CMRS Providers will likely avoid a full discussion of the issues, leaving a confused and incomplete analysis. The RTCs will show where the CMRS Providers' positions are inconsistent with the rules and with the FCC's own discussion of those rules. If the CMRS providers' arguments were to be accepted and relied upon without question, it could lead the Commission to improper policy conclusions inconsistent with the controlling statutory and regulatory requirements, as well as contrary to the best interests of the citizens of the Commonwealth.

The RTCs expect that the CMRS Providers will imply that the Commission should simply follow certain decisions in other States. The RTCs ask that this Commission examine the issues based upon the analysis we intend to set forth in this proceeding. It is not clear what conclusions the CMRS Providers will attempt to infer from other States' actions, but to the extent that those conclusions cannot be reconciled with the record set forth in this proceeding or with the FCC's own analysis of its rules, they do not provide a basis for decisions inconsistent with controlling federal and state regulations. To the extent that the confusion tactics of the CMRS Providers have prevailed in one, or even a few states, or that the record in those decisions omit critical analysis (as the CMRS Providers would want to omit here), it should not deter this Commission from exercising its own judgment consistent with the record developed in this proceeding. When the Commission looks closely at the extraordinary requirements the CMRS Providers seek to impose on the RTCs, it will be apparent that these proposals are not consistent with established statutory and regulatory requirements and are not consistent with sound public policy that would be in the best interests of the citizens of the Commonwealth.

The CMRS providers have attempted to stretch the rules, requirements, and law well beyond their explicit scope in an effort to create an unwarranted competitive advantage for themselves by attempting to shift costs associated with their own network design and interconnection choices onto the RTCs. For their sole benefit, the CMRS providers have also attempted to force obligations on the RTCs far beyond those that actually apply pursuant to statute and regulation -- obligations that (as the CMRS Providers propose) would require the RTCs to provision interconnection arrangements and services far beyond that which is equal to what they do for themselves or with other carriers.

Q: Do you have any other general comments?

A: Yes. The terms and conditions that the CMRS Providers have bilaterally entered into with BellSouth, including bilaterally designed "transit" arrangements, cannot result in a competitive disadvantage for the RTCs. But that is what the CMRS Providers intend. BellSouth decided without authorization or agreement from the RTCs to combine CMRS Provider traffic with BellSouth's own interexchange carrier access traffic for termination to the RTCs and then sought to remove itself from compensation responsibility -- a right that no other interexchange carrier has. Were it not for the legacy intrastate interexchange carrier role that BellSouth occupies, and the established access facilities with the RTCs, the commingled traffic, tandem-switched arrangement that BellSouth designed for its benefit and the CMRS Providers would not have been available. BellSouth offered transit arrangements to CMRS Providers which necessarily involved the RTCs but did not

provide notice to, or consent or authorization from, the RTCs. As such, BellSouth has offered arrangements to the CMRS Providers which BellSouth cannot deliver.

The RTCs have no obligation to accept the specific arrangement that BellSouth has designed for third-party traffic. Many of the RTCs have invested in switching, traffic identification, measurement, and recording equipment so that they would not have to rely on BellSouth to determine billing and compensation. The proposals of the CMRS Providers (bilaterally with BellSouth) would deprive the RTCs of their ability to use their own capabilities and would force them, involuntarily, to rely on BellSouth. It is important that any interconnection that BellSouth has with the RTCs for CMRS Provider traffic be designed in a manner that does not foreclose the RTCs from using their own facilities and capabilities, as must be the case in a competitive world.

In any event, the terms and conditions that may apply between BellSouth or any other third party intermediary and each RTC (for the sole benefit of the CMRS Providers) cannot provide BellSouth or the CMRS providers with an opportunity to impose anti-competitive terms on the RTCs. The RTCs are willing to continue to allow BellSouth to act as a facilities intermediary, but only pursuant to terms that address the RTCs' rights to identify, measure and record traffic for themselves under trunking arrangements that support that result. The apparent proposals of the CMRS providers would impose anti-competitive conditions because their terms assume that the RTCs are forced to accept a subordinate network position relative to BellSouth thereby making the RTCs involuntarily dependent on BellSouth. There can be no requirement for the RTCs' end offices to subtend a BellSouth tandem; there can be no requirement for the RTCs to be forced to rely on BellSouth to perform network functions for the RTCs that the RTCs are prepared to perform for themselves (*e.g.*, to identify and measure traffic for themselves using trunking arrangements that will allow that capability). BellSouth has no fundamental right to unilaterally commingle third party CMRS Provider traffic with its own interexchange carrier ("IXC") traffic over access facilities because this deprives the RTCs of the ability to identify and measure CMRS Provider traffic for themselves. The CMRS Providers and the RTCs can be interconnected indirectly via BellSouth, provided that BellSouth provisions dedicated trunking arrangements with the RTCs that will allow the RTCs to identify and measure traffic for themselves.

The RTCs have every reason, in a competitive world, not to want to rely on BellSouth. The CMRS Providers have no involuntarily obligation to rely on BellSouth; and the rights of the RTCs are no different.

Q: Have the CMRS Providers provided an explanation of their positions on the issues they have identified for arbitration?

A: No. The CMRS Providers, in their Consolidated Response filed on July 7, 2006, have identified issues and what their proposed resolution of those issues would be, but provide very little discussion about how that resolution is supported by the controlling rules and FCC analysis of those applicable rules. Therefore, the RTCs are limited here in their ability to respond with discussion and analysis without knowing the actual rationale that the CMRS Providers have relied upon for their proposed resolutions.

Q: How will you organize the remainder of your Direct Testimony?

A: I will set forth the explanation of, and rationale for, the RTCs' positions on each issue in a series of individual sections to follow. I will start my discussion of each issue on a new page to facilitate disassembly of this document into specific issues.

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

Q: What is the CMRS Providers' Position with respect to Issue 1?

A: CMRS Providers' Position: The Interconnection Agreement should use the term "Telecommunications Traffic" as defined in the FCC's Rules, instead of the term "Subject Traffic" as proposed by the RTCs.

Q: Can you summarize the RTCs' position on Issue 1?

A: Summary of RTC Position: This issue is simply whether the words "Subject Traffic" or "Telecommunications Traffic" should be used to denote traffic subject to Section 251(b)(5) of the Act. Use of the words "Subject Traffic" is simply designed to avoid unnecessary confusion. The RTCs maintain that the scope of traffic to be included and addressed in the Agreement is that traffic subject to the requirements of Section 251(b)(5) of the Act and the FCC's Subpart H interconnection rules. The changes that the CMRS providers propose to the Agreement go beyond that definition and the FCC's explicit discussion of the scope of traffic subject to its Subpart H rules. The RTCs chose to use the words "Subject Traffic" to mean traffic that is subject to the FCC's reciprocal compensation (*i.e.*, Subpart H) rules. (I am attaching as Exhibit 1 to this Direct Testimony a copy of the FCC's Subpart H rules.) The RTCs did not use the words "Telecommunications Traffic" (as proposed by the CMRS Providers) because not all Telecommunications is within the scope of the reciprocal compensation (Subpart H) rules, and the use of the word "Telecommunications" therefore leads to unnecessary confusion. The proposed use of the words "Subject Traffic" by the RTCs is intended to avoid this confusion.

Furthermore, the changes that the CMRS Providers have proposed for the definition of "Subject Traffic" or "Telecommunications Traffic" are not sufficiently detailed to avoid confusion with respect to the proper application of the terms of the Agreement. With this in mind, the RTCs' position is that the following alternative for this definition captures the appropriate concepts and conditions:

> "Subject Traffic" is as defined in 47 C.F.R. § 51.701(b)(2) and is traffic exchanged between a local exchange service end user of a LEC and a mobile wireless end user of a CMRS Provider that, at the beginning of the call, originates and terminates within the same Major Trading Area. The definition and use of the term "Subject Traffic" for purposes of this Agreement has no effect on the definition of local traffic or the geographic area associated with local calling under either Party's respective end user service offerings.

The substitution of the word "Subject" does not change the meaning of the Agreement compared to the use of the word "Telecommunications." It is the view of the RTCs that the use of this term further avoids the unnecessary confusion that could be the result by the use of the misleadingly termed "Telecommunications Traffic" definition proposed by the CMRS Providers.

FURTHER ANALYSIS

Q: How did the FCC define the scope of traffic subject to the FCC's Subpart H rules with respect to mobile user traffic?

A: It defines this scope of traffic as traffic between a LEC and a CMRS Provider that, at the beginning of the call, originates and terminates within the same Major Trading Area ("MTA").

Q: Is this issue related to other issues in this proceeding?

A: This issue overlaps with the other CMRS Providers' issues regarding the scope of traffic and the particular arrangements properly included under the FCC's Subpart H rules. Most directly, this Issue 1 overlaps with Issue 9 whereby the CMRS Providers would expand the scope of the Subpart H rules to improperly include traffic of Interexchange Carriers. This Issue 1 is also interrelated to Issue 2 whereby the CMRS Providers apparently seek to require the RTCs to accept CMRS Provider traffic from BellSouth over trunks on which BellSouth has commingled its own interexchange carrier traffic, an arrangement not included under the scope of the Subpart H rules and FCC discussion. I will further elaborate in the discussion of Issues 2 and 9. The discussion, below, in the context of this Issue 1, should be viewed as a prelude to that further discussion.

Q: Do the Subpart H rules include traffic between an interexchange service provider and a CMRS Provider?

A: No. I will further explain that conclusion in the discussion of Issue 9.

Q: How is the location of the mobile user of the CMRS Provider to be determined for the application of the rule cited above?

A: The location of the mobile user is based on the cell site serving the mobile user at the beginning of the call. *See* the FCC's *First Report and Order* in its competitive interconnection proceeding in CC Dockets 96-98 and 95-185 released August 8, 1996 at paragraphs 1043-1044 (to be referred to as the "*First Report and Order*").

Q: Has the FCC explained that the scope of the Subpart H reciprocal compensation rules apply with respect to a LEC's local exchange services?

A: Yes. In the section of the FCC's *First Report and Order* discussing the application of the Subpart H rules with respect to interconnection regarding "CMRS-Related Issues," the FCC explicitly states that the scope of the these rules is restricted to local exchange services. Specifically, the FCC's local interconnection order states:

> As discussed above, pursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange service. CMRS

> providers, including small entities, and LECs, including small incumbent LECs and small entity competitive LECs, will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and will pay such compensation for certain traffic that they transmit and terminate to other carriers. . . .

First Report and Order at para. 1045 (emphasis added).

Q: What significance does the use of the underlined words "certain traffic" have here?

A: The FCC recognized that not all traffic is subject to these rules. However, the CMRS Providers would like to impermissibly change the word "certain" to mean "all." Not all traffic that physically originates on the networks of LECs is within the scope of the Subpart H rules. Instead, as the language of the above-referenced discussion clearly demonstrates, only local exchange service traffic is within the scope of those rules. I will provide in my discussion of Issue 9 below further evidence that interexchange traffic is not Section 251(b)(5) traffic.

ISSUE 2. Should the Interconnection Agreement apply to traffic exchanged directly, as well as traffic exchanged indirectly, through BellSouth or another intermediary carrier?

Q: What is the CMRS Providers' Position with respect to Issue 2?

A: CMRS Providers' Position: Yes. Consistent with federal law and Commission precedent, the Interconnection Agreement should apply to traffic exchanged via direct and indirect interconnection arrangements.

Q: Can you summarize the RTCs' position on Issue 2?

A: Summary of RTC Position: The RTCs acknowledge the general requirement for carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. But that general requirement does not create specific requirements for, or determine the specific manner under which, carriers exchange traffic (subject to the FCC's Subpart H rules) with or through other carriers. It is the FCC's Subpart H rules that address those terms, and those terms are separate and apart from the any general requirements under Section 251(a) of the Act. The Subpart H rules require, at most, that the exchange of traffic subject to the Section 251(b)(5) of the Act take place at a point within the incumbent LEC's network within the LATA with which the LEC's service is associated. Whether the CMRS Provider is connected to that point directly or indirectly does not change this rule. The CMRS Providers are attempting improperly to expand the scope of the general Section 251(a) requirement to impose involuntary arrangements far beyond the RTCs' obligations.

The CMRS Providers also confuse the terms "direct" and "indirect" with the entirely different concepts of "dedicated" and "common" trunking. The CMRS Providers may connect according to the options that the FCC set forth in its rulemaking for its Subpart H. As such, dedicated trunking between the RTC and a CMRS Provider can be provisioned on an direct or indirect basis consistent with the options the FCC has described.

There are only two ways that a carrier may interconnect with the RTCs: either (i) pursuant to the terms of tariffs; or (ii) pursuant to a contractual agreement. If the CMRS Providers are to be allowed to utilize commingled traffic options for traffic delivery up to a threshold level of traffic, then mutually agreeable terms and conditions between the RTCs and any intermediary carrier (*e.g.*, BellSouth) will need to be established. The CMRS Providers, in the context of their bilateral agreements with BellSouth (to which the RTCs are not parties), do not have any right to dictate the trunking arrangements that BellSouth has with the RTCs or to restrict the RTCs' competitive rights to design and deploy their own networks without interference from BellSouth or the CMRS Providers. Moreover, the bilateral CMRS Provider-BellSouth agreements cannot be used to limit the RTCs' ability to identify and measure CMRS Provider traffic for themselves. Trunk groups for any allowable indirect interconnection arrangements that may involve an intermediary carrier (including BellSouth) must be constructed in a manner that requires dedicated trunks for indirect CMRS Provider traffic (albeit through an intermediary) when the volume of traffic is more than an insignificant amount. In this way, each RTC can identify and measure

traffic (provided that traffic is more than an insignificant level) without being forced to rely on BellSouth.

FURTHER ANALYSIS

Q: How will you organize your discussion of this issue?

A: I will discuss this issue in two parts: (i) How should the Interconnection Agreement address traffic that the CMRS Providers request to terminate on the networks of the RTCs pursuant to the applicable rules and requirements, including requirements related to direct and indirect interconnection; and (ii) How should the Interconnection Agreement address local exchange service traffic that the RTCs terminate to the CMRS Providers pursuant to the applicable rules and requirements?

Q: Is this Issue 2 related to other issues?

A: Yes, The (b) part of Issue 2 is related to Issues 5 and 16 where the CMRS Providers have apparently proposed arrangements that would improperly require the RTCs to provision interconnection and service arrangements for local exchange services (under the CMRS Providers' expanded concept of "indirect interconnection") which overreaches the RTCs' obligations under the controlling regulatory requirements.

CMRS ORIGINATED TRAFFIC TERMINATED ON THE RTCs' NETWORKS

Q: You state that the general requirements to interconnect directly or indirectly pursuant to Section 251(a) of the Act do not address the exchange of traffic. How did you come to that conclusion?

A: Section 251(a) of the Act sets forth the "general duty" of interconnection and is separate and distinct from the specific Section 251(b)(5) requirements and the FCC's Subpart H rules regarding interconnection for the transport and termination of traffic that is within the scope of Section 251(b)(5). Section 251(a) of the Act establishes no standards or requirements for the exchange of Section 251(b)(5) "local" traffic; it is the FCC's Subpart H rules which solely establish those standards. The general requirements of Section 251(a) create no obligation, whatsoever, for a LEC (i) to originate or deliver traffic; (ii) to provision a particular local service for its end users, or (iii) to provision some extraordinary form of service or interconnection arrangement at the request of some other carrier. While the FCC has stated these conclusions more than once, I will point to a few paragraphs in a *Memorandum Opinion and Order* released by the FCC on March 13, 2001, in File No. E-97-003 ("*Atlas Decision*") beginning at paragraph 23:

> 23. Complainants base their argument on an erroneous interpretation of the term "interconnect" in section 251(a)(1). We have previously held that the term "interconnection" refers solely to the physical linking of two networks, and *not* to the exchange of traffic between networks. In the *Local Competition Order*, we specifically drew a distinction between "interconnection" and "transport and

termination," and concluded that the term "interconnection," as used in section 251(c)(2), does not include the duty to transport and terminate traffic. Accordingly, section 51.5 of our rules specifically defines "interconnection" as "the linking of two networks for the mutual exchange of traffic," and states that this term "does not include the transport and termination of traffic."

24. Complainants argue that the term "interconnection" has a different meaning in section 251(a) than in section 251(c). According to Complainants, section 251(a) blends the concepts of "interconnection" and "transport and termination," and "the only way for AT&T and [Total] to interconnect under Section 251(a)(1) is for AT&T to purchase [Total]'s services at its tariffed rate."

25. We find nothing in the statutory scheme to suggest that the term "interconnection" has one meaning in section 251(a) and a different meaning in section 251(c)(2). The structure of section 251 supports this conclusion. Section 251(a) imposes relatively limited obligations on all telecommunications carriers; section 251(b) imposes moderate duties on local exchange carriers; and section 251(c) imposes more stringent obligations on incumbent LECs. Thus, section 251 of the Act "create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved." As explained above, section 251(c) does not require incumbent LECs to transport and terminate traffic as part of their obligation to interconnect. Accordingly, it would not be logical to confer a broader meaning to this term as it appears in the less-burdensome section 251(a).

26. Furthermore, among the subparts of this provision, section 251(b)(5) establishes a duty for all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Local exchange carriers, then, are subject to section 251(a)'s duty to interconnect *and* section 251(b)(5)'s duty to establish arrangements for the transport and termination of traffic. Thus, the term interconnection, as used in section 251(a), cannot reasonably be interpreted to encompass a general requirement to transport and terminate traffic. Otherwise, section 251(b)(5) would cease to have independent meaning, violating a well-established principle of statutory construction requiring that effect be given to every portion of a statute so that no portion becomes inoperative or meaningless . . . .

Id. (footnotes omitted, emphasis added).

To the extent that the CMRS Providers suggest requirements in this proceeding that go beyond the general and limited requirements of "direct and indirect" interconnection under Section 251(a) of the Act, their proposals should be rejected. An arbitration cannot result in the imposition of interconnection requirements that go beyond what the Act requires or go beyond the regulations prescribed by the FCC. *See* 47 U.S.C. § 252(c).

Q: Are the RTCs already in compliance with the requirements of Section 251(a)?

A: Yes. They have not refused to connect with any carrier. The RTCs are willing to connect their networks with any other carrier that requests such connection consistent with applicable regulatory requirements. However, under the most extreme requirements, the RTCs' obligations with respect to interconnection with the facilities and equipment of other carriers are limited to arrangements equal (but not greater than) that provided by the RTC to itself or to any other carrier. The RTCs are not required to provision superior or extraordinary arrangements beyond that level.

Q: Do the provisions of Section 251(a) create any specific requirements under which an intermediary such as BellSouth connects with the RTCs for purposes of terminating the CMRS Providers Section 251(b)(5) traffic?

A: No. Section 251(a) and the associated implementation rules (i) do not impose any specific standards; (ii) do not impose requirements to provide some specific local exchange service to end users; and (iii) do not dictate hierarchical network arrangements (*i.e.*, no requirement that the RTC's end offices subtend a BellSouth tandem for terminating CMRS Provider traffic and no requirement that the RTC abandon its own traffic identification and measurement capabilities and be forced to rely on BellSouth for those functions).

Q: If Section 251 creates a three-tiered hierarchy of requirements, what would be required under the most burdensome requirements under Section 251(c)?

A: Even under the most rigorous requirements that apply to non-rural incumbent LECs, the incumbent LEC must provide interconnection for the transmission and routing of calls at any technically feasible point within the incumbent carrier's network. Moreover, these requirements do not impose any obligations on the incumbent LEC that are more than a level equal to that which the incumbent LEC provides to itself or any other party. See 47 U.S.C. §§251(c)(2)(A)-(C).

Q: What rules govern the arrangements whereby the RTCs will terminate the CMRS Providers traffic that is within the scope of Section 251(b)(5) of the Act.

A: It is the FCC's Subpart H rules.

Q: In adopting the Subpart H rules, did the FCC discuss the options that CMRS Providers have for direct and indirect interconnection with the RTCs' networks for the transport and termination of traffic?

A: With respect to the establishment of the facilities between LECs and other carriers for the termination of traffic that is within the scope of the FCC's Subpart H rules and Section 251(b)(5) of the Act, the FCC explicitly stated what the direct and indirect options are:

> Many alternative arrangements exist for the provision of transport between the two networks. These arrangements include: dedicated circuits provided either by the incumbent LEC, the other local service provider, separately by each, or jointly by both; facilities provided by alternative carriers; unbundled network elements

> provided by incumbent LECs; or similar network functions currently offered by incumbent LECs on a tariffed basis.

First Report and Order at para 1039.

Q: Do the FCC's rules and regulations permit interexchange carriers to commingle CMRS Provider traffic with the IXC's own access traffic as a method of indirect interconnection for the exchange of traffic subject to the FCC's Subpart H rules?

A: No. Where an interexchange carrier carries the traffic of a CMRS Provider and terminates that traffic to a LEC, this traffic is subject to access charges, and the terms for access traffic are outside of the scope of the Subpart H rules. *See First Report and Order* at paras. 1043 (". . . most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC . . . .")

Q: Has the FCC conducted any rulemakings that examined whether IXCs should be allowed to commingle multiple carriers' traffic over access facilities?

A: In the context of access services required of LECs, and in direct response to the concerns of small LECs such as the RTCs, the FCC has decided that there should be no LEC requirement to offer access services whereby an access facility connection is "shared" among multiple carriers:

> "[T]he record indicates that a mandated split billing tariff would be costly and burdensome to many small LECs and, based on that record, we conclude that the benefits would not outweigh these costs. OPASTCO states that, although in general LECs may not be affected economically by mandated split billing, small LECs would be more likely to be harmed by non-payment, as well as by having to support the additional administrative costs that would be incurred to supervise the provision of split billing."

See Report and Order, In the Matter of Transport Rate Structure and Pricing, Resale, Shared Use and Split Billing, released by the FCC on March 5, 1998 in CC Docket No. 91-213, at para. 17 (footnote omitted).

Q: Did the FCC include in the Subpart H rules an arrangement whereby an intrastate interexchange carrier obtaining access from a RTC could commingle CMRS Provider traffic in what is referred to as a "tandem transit" arrangement?

A: No. In over 700 pages of the FCC's *First Report and Order* and its implementing rules, there is no discussion of commingled tandem-switched arrangements under which an interexchange carrier would commingle third-party CMRS Provider traffic under terms not subject to access. In fact, the words and/or concepts of "transit," "transit service," and "transit traffic" do not appear in that document. Furthermore, the so-called commingled traffic, tandem-switched transit arrangements present a whole set of competitive implications for which there has been no rulemaking notice, opportunity for comment or consideration of the issues (some, as I have explained where the competitive

choices of the RTCs could be limited by BellSouth and the CMRS Providers or where the ability of RTCs to utilize their own traffic identification and measurement is undermined by the actions of Bell companies and CMRS Providers).

Moreover, the FCC has concluded (in an arbitration proceeding with a large Bell company) that the FCC had "not had occasion to determine whether incumbent LECs have a duty to provide transit service under this [Section 251(c)(2)] provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty." *See Memorandum Opinion and Order* released July 17, 2002 by the FCC in CC Docket Nos. 00218, 00-249, and 00-251 at para. 117. There can be no presumption of regulations requiring the RTCs to acquiesce to BellSouth's interexchange carrier commingled traffic arrangement if there has been no finding that such arrangements are even required under the interconnection obligations set forth in the Act. The specific trunking design for such intermediary arrangements, as well as the rights of the RTCs to design their networks so that they can identify and measure CMRS Provider traffic, are issues that would have to be addressed in the context of any future proceeding that might establish such obligations. In fact, the only typical three-party arrangement recognized by the FCC in its 700 page interconnection order is one that involves an IXC as the intermediary, and such arrangements and all of the traffic being delivered through an IXC are subject to the terms of the terminating LEC's access tariffs. *First Report and Order* at para. 1034.

Q: Do the RTCs have to accept a transit arrangement with BellSouth where BellSouth commingles other carriers' traffic over access arrangements?

A: No. There is no requirement that the RTC participate in such arrangements with BellSouth. The Kentucky industry agreement that ends at the end of 2006 is only an interim measure, not required by the interconnection regulations, that provided the CMRS Providers with the opportunity to pursue new arrangements in the interim, which they apparently have not done.

Q: Do the Section 251(a) or 251(b) rules establish any greater requirements for the LECs than that which apply to the CMRS providers?

A: No. The RTCs cannot force the CMRS Providers into a transit arrangement with BellSouth, and neither the CMRS Providers nor BellSouth have any right to force the RTCs into a transit arrangement whereby the traffic of the CMRS Providers is commingled with interexchange carrier traffic. The Sections 251(a) and 251(b) rules effectively apply equally to the parties.

Q: Are the RTCs willing to allow for arrangements under which the CMRS Providers connect to the RTCs indirectly through BellSouth facilities for the termination of the CMRS Providers' traffic that is within the scope of the Agreement?

A: Consistent with the FCC's interconnection options that I outlined above, the RTCs are willing to establish mutually agreeable trunking arrangements with a third party provider (including potentially BellSouth) which would provide the CMRS Providers with the ability to terminate the CMRS Providers' traffic to the RTCs, but only under proper

conditions. This would entail -- at a bare minimum -- dedicated interconnection facilities to the RTCs whenever the volume of traffic exceeds a de minimus level.

Q: How should the trunking between any intermediary (including BellSouth) and the RTCs be provisioned so that the RTCs can identify and measure CMRS Provider terminating traffic without reliance on the intermediary?

A: Trunk groups separate and apart from the access trunks should be established for CMRS Provider traffic that BellSouth (or some other intermediary) would deliver to the RTCs. When the amount of traffic that any single CMRS Provider terminates in this manner is insignificant in terms of minutes and compensation dollars, then the CMRS Providers' traffic may be included in a combined CMRS Provider trunk group with other low volume CMRS Providers. When the terminating traffic from a single CMRS Provider reaches a DS-1 level of traffic, a separate trunk group should be established so that the RTC can identify and measure the traffic over the dedicated trunk group with its own facilities and equipment. Also, where de minimus levels of CMRS Provider traffic are combined on the same indirect trunk group, all signaling and call identification information should be passed and delivered to the RTCs.

Q: Why do the RTCs not want to be forced to rely on BellSouth for traffic identification and measurement?

A: In a competitive world, no carrier can be required involuntarily to rely on its competitor or potential competitor. Many 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. These carriers' efforts should not be rendered useless, and these carriers should not be forced to rely on a competitor (*i.e.*, BellSouth), just because the CMRS Providers and BellSouth demand such a result.

Q: Have the RTCs generally invested in their network so as not to have to rely on companies such as BellSouth?

A: Yes. I have over 30 years experience with LECs such as the RTCs. Over the last few decades, many small and rural LECs, including many of the RTCs, have reconfigured their networks and end office switching hierarchy and have deployed their own tandem switches and related measurement and recording facilities for the express purpose of removing themselves from dependence on large LECs such as BellSouth. All small LECs remain concerned based on their experiences with inaccurate measurement, unidentified traffic, missing settlements, and other less than acceptable methods and results with respect to the large LEC's performance of these functions. In response to circumstances, many smaller LECs have configured their networks (*i.e.*, established tandems and deployed measurement equipment) so that they can identify and measure traffic for themselves, thereby freeing themselves from reliance on a large LEC which may or, more likely, may not take sufficient care of these functions on behalf of the small LECs.

Q: Can you cite a specific example before the FCC?

A: Yes. In an access proceeding involving a small LEC and its relationship with BellSouth, the FCC agreed with the Public Service Telephone Company in Georgia ("PSTC") that it was allowed to reconfigure its network for these very purposes:

> Further, PSTC is upgrading its permanent network not only to provide equal access and 800 number portability, but to decrease its reliance on the facilities of a potential competitor with which PSTC has already allegedly encountered measurement and reliability problems.

Memorandum Opinion and Order, In the Matter of Allnet Communications Services, Inc. v. Public Service Telephone Company, released by the FCC on October 8, 1996, in File No. E-93-099 at para. 17.

The FCC noted PSTC's reason "that when [PSTC] noticed measurement and reliability problems with BellSouth's network, [PSTC] decided to reconfigure its own network to reduce reliance on BellSouth." *Id* at para. 9.

Q: How are the issues in this proceeding related to the RTCs' right not to rely on BellSouth for traffic identification, measurement, and records?

A: The identification and measurement of traffic is vital to the RTCs own, independent operations. BellSouth's actions over the last several years, under which it choose unilaterally to use its established access trunking arrangements in place with RTCs to commingle third party traffic and then to argue that it should not be responsible for such actions has essentially negated the RTCs' tandem and measurement options and has undermined the RTCs' investments in these functions and ability to measure for themselves. Additionally, by unilaterally changing the terms of the access trunking arrangements with the RTCs to include multiple carriers' traffic under different circumstances, the RTCs' network choices have been further undermined. There will be a chilling effect on competition if large LECs can dictate network design to smaller carriers.

Q: Regardless of whether or how a CMRS Provider may use the facilities of BellSouth to establish indirect interconnection with the RTC, where is the "interconnection point" to be pursuant to the FCC's Subpart H rules?

A: The FCC's Subpart H rules explicitly state that the interconnection point is established between the networks of two carriers that are the parties to the compensation arrangement. For example, Section 51.701(c) of the Subpart H rules defines transport as " . . . the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC." [Underlining added.] Similarly, in adopting the Subpart H rules, the FCC described this framework as: "[R]eciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call . . . . We define 'transport,' for purposes of Section 251(b)(5), as the transmission of terminating traffic

that is subject to section 251(b)(5) from the interconnection point between the two carriers . . . ." *First Report and Order* at para. 1034, underlining added.

Q: What requirements did the FCC establish to prescribe the location of that "interconnection point between the two carriers?"

A: In adopting the Subpart H rules, the FCC concluded that the interconnection point (for non-rural incumbent LECs subject to the Section 251(c) requirements of the Act) for the application of the Subpart H rules would be as set forth under Section 251(c)(2) of the Act. The requirements establish that this exchange of traffic takes place at a point of interconnection at a technically feasible point on the network of the incumbent LEC. While the discussion of the interconnection point for all of the interconnection rules appears many times throughout the FCC's *First Report and Order*, the most relevant discussion appears at para. 1015:

> "Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange access, under the plain language of section 251(c)(2)."

Id. (emphasis added).

Q: And what does Section 251(c)(2) of the Act state about this?

A: Section 251(c)(2) of the Act states:

> (2) Interconnection.-- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection . . . .

47 U.S.C. § 251(c)(2) (emphasis added).

This passage from the Act is also consistent with the FCC's rules at 47 C.F.R. § 51.305.

Q: Are the RTCs subject to the requirements of Section 251(c) of the Act?

A: No. The RTCs are Rural Telephone Companies and are not subject to the most burdensome Section 251(c) requirements pursuant to the protections afforded Rural Telephone Companies under Section 251(f)(1) of the Act.

Q: Is there any reason to believe that the RTCs should be subject to obligations that are greater than, or more burdensome than, those set forth in Section 251(c) which apply to non-rural incumbent LECs?

A: No. The requirements for Rural Telephone Companies such as the RTCs can certainly not be more burdensome than those that apply to non-rural telephone companies. As I quoted from the *Atlas Decision* in this testimony above, the FCC correctly observes that the (a), (b) and (c) paragraphs of Section 251(c) create an escalating set of requirements, and it would not be logical to confer a broader meaning to less burdensome parts than what is required by the more burdensome parts. *See Atlas Decision* at para. 25. Nor would it be logical to confer a broader interpretation for requirements on Rural Telephone Companies than the interpretation and requirements that apply to the much larger, non-rural telephone companies. However, a thorough examination of the proposals of the CMRS Providers in this proceeding reveals that they are attempting to impose interconnection obligations on the RTCs that are greater than what applies even to BellSouth.

Q: What conclusion must one draw from the explicit words in the Act and in the FCC's rules and rulemaking discussions?

A: The inescapable conclusion is that, even under the strictest application of the requirements, the interconnection obligations of the incumbent LECs apply only with respect to its own incumbent network, not with respect to the incumbent network of some other carrier or in areas where the LEC is not an incumbent. An incumbent LEC's obligation to establish an interconnection point "between the two carriers" with a requesting carrier; *i.e.*, a CMRS Provider, for purposes of application of the Subpart H rules is only within the incumbent service area of that incumbent LEC.

Regardless of what facilities options that a CMRS Provider may use to establish interconnection with a RTC for the termination of Subpart H traffic, such request of the CMRS Provider is dependent upon the obligation of the CMRS Provider to establish an interconnection point within the incumbent LEC network of the LEC receiving the request.

Q: Is this consistent with decisions addressing BellSouth interconnection?

A: Yes. While this Commission has apparently required BellSouth to deliver intraLATA traffic to competitive LECs at interconnection points not geographically located in the BellSouth local calling area of the traffic being exchanged, the interconnection points for such traffic delivery are nevertheless points on the incumbent network of BellSouth within each LATA. Everyone tends to forget that the interconnection point for Bell companies is a point somewhere on the Bell company's network. BellSouth does not interconnect with requesting carriers at points where BellSouth is not an incumbent LEC. The RTCs only ask for equivalent treatment here.

I am not aware of any example where the Commission has ever required BellSouth to establish a point of interconnection with a requesting carrier at a point where BellSouth is not an incumbent LEC. Consequently, I am not aware of any agreement under which BellSouth has agreed to deliver any traffic to a competing carrier at a point of interconnection that is not a point on BellSouth's network.

To the extent that the result of this proceeding would be the establishment of the "interconnection point between two carriers" -- a CMRS Provider and the RTC -- at a point that is not a technically feasible point within the RTC's incumbent LEC network within a LATA, then that result will impose a greater burden on the RTC than that which applies to BellSouth or any other incumbent. Furthermore, I am also not aware of any example in any other state where a Bell company has been required to establish an interconnection point with a requesting carrier at a point that is not within that Bell company's network area.

Q: What is meant by the use of the word "incumbent?"

A: The Act defines what is meant by incumbent. An incumbent LEC's interconnection obligations arise only with respect to the network within the geographic area within which it operates as an incumbent LEC. This is confirmed by a reading of Section 251(h)(1) of the Act:

> For purposes of this [Section 251], the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that---- (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the [FCC's] regulations . . . ; or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

47 U.S.C. § 251(h)(1) (emphasis added).

Q: Can you summarize your points here?

A: Yes. The RTCs have no interconnection obligations (i) in service areas in which they are not an incumbent (or not even a LEC) or (ii) with respect to networks in some other LEC's service area. In response to a request by a competitive carrier, including any request that may arise from the CMRS Providers, the RTC (as an incumbent LEC) only must establish an interconnection point with the requesting carrier at a point within its incumbent LEC network within the LATA.

Q: Is there anything more that you would like to add about the terms and conditions of the Interconnection Point?

A: I will further elaborate on this concept, immediately below, in the context of any local exchange service traffic of the RTCs that may be sent to the CMRS Providers for termination.

LOCAL EXCHANGE SERVICE TRAFFIC ORIGINATED BY THE RTCs TERMINATED ON THE CMRS PROVIDERS' NETWORKS.

Q: Now let's turn to local exchange service traffic originated by the RTC to be terminated to a CMRS Provider. Do the RTCs terminate traffic to the CMRS Providers via the existing interim industry arrangement between and among BellSouth, the CMRS Providers, and the RTCs?

A: No. The industry agreement is only for the termination of CMRS Provider originated traffic on the networks of the RTCs. It is my understanding that where the RTC may offer local exchange service calling to CMRS mobile users, these calls are terminated via dedicated facilities with the appropriate CMRS Provider under which an interconnection point within the incumbent network of the RTC within the LATA has been established with the CMRS Provider. In many cases, there are no local exchange service calls to the CMRS Provider for the RTCs. In such cases, the CMRS Provider may not provide any wireless service within the local exchange service calling area of the RTC or has not established any interconnection facilities over which the RTC would provision local exchange service consistent with its other service offerings.

Q: Does the general duty to interconnect directly or indirectly with the facilities and equipment of other carriers under Section 251(a) of the Act address what services a carrier provides to its own customers or how a carrier provisions its own services?

A: No. As I have already cited above, and as the FCC has confirmed, Section 251(a) does not address exchange of traffic. Moreover, Section 251(a) of the Act does not require any carrier to originate and complete a call to another carrier at the demand or pursuant to the design of the terminating carrier. There is absolutely no evidence in the rules or in the FCC's discussion adopting those rules that a CMRS Provider has any right to demand that the RTC must provision an indirect arrangement, at extraordinary cost to the RTC, to transport traffic through a BellSouth tandem. But that appears to be what the CMRS Providers are suggesting. No carrier, in a competitive world, has any right to force another carrier to obtain service from a third party. The RTCs have no right to demand that the CMRS Providers obtain transit services from BellSouth, and the CMRS Providers likewise have no such right to demand that of the RTCs. In the *Atlas Decision* I quoted above at paras. 22-27, the FCC concluded that 251(a) does not even require a carrier to deliver traffic. And, as I have explained, the interconnection point must be within the incumbent network of the incumbent LEC to which the CMRS Provider has requested interconnection for the exchange of traffic subject to Section 251(b)(5) of the Act.

Q: Do the FCC's rules require the RTCs to provision some superior or extraordinary interconnection arrangement in response to an interconnection request by the CMRS Provider?

A: No. The Courts have found that any attempt by the FCC to establish rules that would require an incumbent to provision a superior interconnection arrangement with a requesting carrier would be unlawful. On July 18, 2000, on remand from the United States Supreme Court, the United States Court of Appeals for the Eighth Circuit issued its

opinion in Iowa Utilities Board v. Federal Communications Commission ("*IUB II*"). *See* 219 F. 3d 744 (8th Cir. 2000). In *IUB II*, the Eighth Circuit Court reaffirmed its earlier conclusion, unaffected by the Supreme Court's remand, that the FCC had unlawfully adopted and attempted to impose interconnection requirements on incumbent LECs in its original interconnection decision that would have resulted in the incumbent LECs providing interconnection arrangements superior to that which the incumbent normally provides for itself and its own services. The Court concluded that "the superior quality rules violate the plain language of the Act." *IUB II* at 758. The Court was referring to those provisions in the Act that state that interconnection with requesting competitors is limited to levels that are only at least equal in quality to what the incumbent does for itself or with other carriers. The Court concluded that "at least equal in quality" does not mean "superior quality" and "[n]othing in the statute requires the [incumbent LECs] to provide superior quality interconnection to its competitors." *IUB II* at 758.

At most, a fundamental concept of the Act under Section 251(c)(2)(C) of the Act is that an incumbent LEC has no obligation to do something extraordinary just because a competitive carrier such as the CMRS Providers requests some new and/or superior arrangement.

Q: Under the FCC's original, invalidated superior quality rules, if an incumbent LEC were to have provisioned a superior arrangement in response to an interconnection request by a competitor, who would be responsible for the extraordinary costs of provisioning that superior arrangement?

A: The requesting carrier would be responsible for the costs. The original rules, among other requirements, stated that an incumbent LEC would have been required to provide interconnection arrangements with the incumbent LEC's network that, if so requested by a telecommunications carrier and to the extent technically feasible, are superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection. Specifically, the FCC stated:

> . . . [T]o the extent a carrier requests interconnection of superior or lesser quality than an incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection arrangement if technically feasible. Requiring incumbent LECs to provide upon request higher quality interconnection than they provide themselves, subsidiaries, or affiliates will permit new entrants to compete with incumbent LECs by offering novel services that require superior interconnection quality. We also conclude that, <u>as long as new entrants compensate incumbent LECs for the economic cost of the higher quality interconnection</u>, competition will be promoted.

First Report and Order at para. 225 (footnote omitted, emphasis added).

Q: Why is this discussion important?

A: If one examines the proposals of the CMRS Providers in this proceeding, it becomes apparent that the CMRS Providers seek a much superior treatment with respect to the

intended interconnection arrangements and related obligations to be imposed on the RTCs. At the CMRS Providers' request and sole choice, the CMRS Providers are apparently expecting the RTCs to provision some new form of local exchange service that would require the RTCs to transport traffic to distant points, apparently to obtain tandem switching services from BellSouth which the RTCs do not need or want, and to incur the additional costs associated with fulfilling the CMRS Providers' request.

Q: Can you provide an illustrative example of what the CMRS Providers intend?

A: Yes. Let me use Duo County Rural Telephone Cooperative as an example to illustrate my point. Duo County provides local exchange services to its end users, and those local exchange service offerings allow local calling to certain other exchanges that Duo County serves and to some nearby, neighboring exchanges of Windstream (formerly Alltel). In providing these local exchange services to its end users, Duo County is not required to transport traffic beyond points within its incumbent network. Where it has local calling to a neighboring LEC's exchange, Duo County's responsibility is only to get those calls to a point within its incumbent network on the border where it meets the other carrier.

In contrast, while the various CMRS Providers have not provided a clear idea of what arrangements they intend to establish with Duo County, it is apparent from their issues discussion and Agreement proposals that they would intend for Duo County to be obligated to transport Duo County's local exchange service traffic to much more distant points, presumably to a tandem operated by BellSouth in Louisville which is a hundred, or so, miles away, and furthermore, to obtain tandem switching services from BellSouth.

Q: Does Duo County provide any local exchange service to its customers (or with other carriers) under which Duo County is obligated to be responsible for transport of local exchange service calls to Louisville or under which Duo County is obligated to obtain switching services from another carrier in Louisville?

A: No.

Q: Do the CMRS Providers have a right to demand that Duo County provide such local exchange services to its customers?

A: For all of the reasons set forth above, the answer is no.

Q: How do the end users of Duo County complete calls that must be transported to Louisville?

A: The end users obtain interexchange carrier services from interexchange carriers; Duo County originates these interexchange calls for the IXC that the end user has chosen, and it is interexchange carriers that transport calls to Louisville.

Q: Would your testimony regarding the examples with Duo County have the same application and lead to the same conclusions with respect to the other Petitioners?

A: Yes, the discussion would be equally relevant to all of the Petitioners.

Q: Has the FCC concluded that a LEC could be expected to treat calls to a distant location as interexchange service toll calls?

A: Yes. In a complaint proceeding, US West objected to the potential costs to deliver traffic to a wireless carrier at a point within the network of US West but beyond the local calling area of the call. In addressing the concerns of US West and other wireline LECs about potential unbounded costs to be incurred in delivering traffic to wireless carriers at distant points, the FCC responded that nothing prevents US West from treating these calls as toll calls.

Memorandum Opinion and Order, In the Matters of TSR Wireless, LLC, *et al.*, Complainants, v. US West Communications, Inc., *et al.*, Defendants, released June 21, 2000 in File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 ("*TSR Order*") at para. 31.

In this particular example, the FCC also went on to explain that if the wireless carrier wanted these calls to be provisioned as a local call rather than a toll call, then the wireless carrier could enter into "reverse billing" or "buy down" arrangements with US West (to the extent US West offered such arrangements). *Id.* Under reverse billing, the wireless carrier pays the toll charge in lieu of the end user paying the toll charge. As the FCC has concluded, such reverse billing arrangements are not required under the interconnection rules.

Q: Alright, just briefly then, can you explain how toll services are provided to the end users of the RTCs?

A: The interexchange carrier of the end user's choosing provides toll services to the RTC's end users. In order to originate and terminate toll calls, the interexchange carrier uses the originating and terminating access facilities and services of the RTC. The interexchange carrier, with its own facilities, then completes and terminates the call pursuant to existing terminating arrangements that the interexchange carrier has with terminating carriers.

Q: Do the RTCs transport interexchange traffic?

A: No. The RTCs hand off interexchange carrier traffic to IXCs that, in turn, transport their own traffic to complete IXC calls.

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

Q: What is the CMRS Providers' Position with respect to Issue 3?

A: CMRS Providers' Position: Interstate calls may be delivered between the Parties and are subject to the terms of the Interconnection Agreement.

Q: Can you first summarize the RTCs' position on Issue 3?

A: Summary of RTC Position: The CMRS Providers are wrong in their interpretation of the Agreement proposed by the RTCs. The RTCs' proposed agreement does not confine the traffic to that within the Commonwealth of Kentucky as claimed by the CMRS Providers. The proposed agreement anticipates that the geographic scope (area) from which the CMRS providers will originate calls from their mobile users and will, in turn, be terminated pursuant to the terms of the Agreement, is defined by a list of counties which can include counties in more than one state. The need to define the area from which mobile users can originate CMRS Provider calls for delivery to the RTCs is crucial for the determination of the relative amount of interMTA traffic that can be expected to be delivered by the CMRS providers to the RTCs. As such, this issue is related to Issues 13 and 15.

FURTHER ANALYSIS

Q: Can you explain how the scope of geographic area from which the CMRS Provider will originate traffic for delivery to an RTC under the terms of the Agreement is related to the relative interMTA amount of traffic?

A: As the area from which the CMRS Provider will collect originating calls, switch them through its network, and deliver this traffic to the RTC pursuant to the terms of the Agreement grows larger, the relative amount of interMTA traffic will increase. For example, if the CMRS Provider warrants that its switching network only collects originating CMRS calls from a geographic area (*i.e.*, counties) within the same MTA as the particular RTC is located, then the proportion of interMTA traffic that the CMRS Provider will deliver will be zero. If the CMRS Provider warrants that the list of counties from which it will originate mobile calls and switch them to the RTC under the Agreement includes many counties in Kentucky and many in the surrounding States, some or many of which are not in the same MTA, then the proportion of interMTA traffic will be greater than zero. And if the CMRS Provider warrants that the list of counties are those in a twenty state area, the proportion will be greater than the previous example. Finally, if the CMRS Provider warrants that it intends to deliver to the RTC mobile traffic that has originated anywhere in the United States (or, for that matter, the entire world), then the proportion of interMTA traffic will be the greatest.

Moreover, because the operating territories of the RTCs are relatively small, the proportion of interMTA traffic to intraMTA traffic that the CMRS Providers deliver under the Agreement will depend on the location of the RTC's service area relative to MTA

boundaries. There is higher probability that a mobile user in a neighboring MTA will want to call a RTC end user if the RTC's service area is very near the community of interest of the neighboring MTA area.

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

Q: What is the CMRS Providers' Position with respect to Issue 4?

A: CMRS Providers' Position: The Agreement applies to all CMRS traffic. An additional limitation related to "fixed wireless services" is unnecessary. It is also confusing because "fixed wireless" is not a defined term or a term that has any regulatory significant.

Q: Can you summarize the RTCs' position on Issue 4?

A: Summary of RTC Position: The FCC has concluded that the regulatory treatment of any proposed fixed wireless services will be examined and determined on a case-by-case basis. The FCC has found that there is no presumption that fixed wireless applications of carriers are automatically deemed to be CMRS. Unless and until a CMRS Provider proposes a form of fixed wireless service, and the regulatory treatment is examined and determined, it is impossible to determine what the interconnection terms and conditions should be for any traffic or interconnection associated with fixed wireless services. If and when a fixed wireless service is proposed and its regulatory treatment is determined, the RTCs are willing to negotiate terms and conditions consistent with that regulatory treatment.

FURTHER ANALYSIS

Q: How did the FCC determine what the treatment should be for fixed wireless services?

A: In an order addressing issues related to flexible service offerings of CMRS Providers, the FCC rejected any presumption that fixed wireless services would be treated as CMRS, stating:

> We also do not adopt the rebuttable presumption proposed in the *FNPRM*. Just as we find the evolving nature of wireless services makes it inappropriate to adopt a bright-line test, we also find that the ongoing changes in technology and services make it difficult to set out in advance factors that we should consider in establishing such a presumption or otherwise determining the regulatory treatment of any particular fixed wireless or integrated fixed/mobile service. To the extent that a party 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.

Second Report and Order and Order on Reconsideration, released July 20, 2000, in WT Docket No. 96-6 at para. 8.

A review of the decision demonstrates that the determination of whether a fixed service application of a wireless carrier will be treated as CMRS is dependent on a ruling by the FCC, and there is no presumed expectation that such service will be treated as CMRS.

Q: Has any CMRS Provider proposed a fixed service for inclusion in the Interconnection Agreement in Kentucky?

A: No.

Q: Has the CMRS Providers sought a ruling from the FCC with respect to the regulatory treatment of any fixed wireless application in Kentucky?

A: I am not aware of any such request, and the CMRS Providers have not made us aware of any ruling.

Q: The CMRS Providers claim that the definition of what is meant by fixed wireless in the Agreement is vague. Do you have any comment?

A: Yes. It is the RTCs' intention that the definition of "fixed wireless" be the same as that of the FCC's in its order cited above. It is apparent that the FCC is confident that its own rules define what is meant by fixed wireless service. The RTCs are agreeable to the use of the same definition as the FCC uses for purposes of the Agreement.

Q: If a CMRS Provider sought a ruling from the FCC that some form of fixed wireless service should be treated as CMRS, would the RTCs be agreeable to including such service within the Agreement?

A: Yes. The exclusion of fixed wireless in the Agreement is necessary because there can be no presumption that any potential fixed wireless service of the CMRS Providers will be CMRS unless and until a ruling is obtained on case-by-case basis. Anything else would necessarily involve improper speculation.

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?

Q: What is the CMRS Providers' Position with respect to Issue 5?

A: CMRS Providers' Position: Each originating Party should pay any transit charges imposed by a transiting carrier to deliver traffic to a terminating carrier, as well as all costs of facilities linking its own switch to the third party transiting tandem.

Q: Can you summarize the RTCs' position on Issue 5?

A: Summary of RTC Position: The CMRS Providers issue statement is misleading and deceptively avoids the real issues. What the CMRS Providers fail to recognize in the issue statement is whether the RTCs are obligated to provision or obtain, at the request of the CMRS providers: (i) some new local exchange service that involves an extraordinary arrangement including the transport to a distant point beyond the point that any other local exchange service is transported; and/or (ii) switching services from BellSouth that the RTC does not need and does not want. Of course, as already explained in the extensive discussion of Issue 2, above, there is no such obligation.

The CMRS Providers have no interconnection right to require the RTCs to involuntarily obtain some service, at potential additional charges, from BellSouth or some other tandem provider just because the CMRS Provider chooses not to establish even a single Interconnection Point on the incumbent network of the RTC within the LATA with which the RTC is associated. As explained in the discussion of Issue 2, the RTCs have no obligation to provision interconnection arrangements or services beyond what they do for themselves or with other carriers. It is firmly established that the requirements of the Act, at most, only require an incumbent LEC to provision interconnection arrangements and services that are at least equal to that which the LEC does for itself or with other carriers.

It is the CMRS Providers' request and choice to interconnect at a tandem located beyond the RTCs' incumbent network, and to the extent that the RTC were willing to provision some extraordinary and superior form of local exchange service for the transport of its local traffic to a distant point, the RTC would do so only under the condition that the CMRS Provider is responsible for the extraordinary costs incurred by the RTC in doing so. As discussed in the Issue 2, above, this would have been the result of the now invalidated superior interconnection rules if the FCC rules had remained. Because those interconnection rules were invalidated, however, the RTCs have no involuntary obligation to provision such superior arrangements. To the extent that they may be willing to do so, the extraordinary costs that arise as a result of the CMRS Providers' choice and request, including the costs to transport traffic through a third party tandem, would have to be the responsibility of the CMRS Provider. Otherwise, calls that must be transported to distant points are provisioned as interexchange service calls, not local exchange service calls; the caller is an end user of the interexchange service provider that the end user has selected, and the calls are, therefore, the service responsibility of that interexchange carrier.

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?

Q: What is the CMRS Providers' Position with respect to Issue 6?

A: CMRS Providers' Position: This form of industry-standard billing should be maintained.

Q: Can you summarize the RTCs' position on Issue 6?

A: Summary of RTC Position: The CMRS Providers issue statement is misleading and deceptively avoids the real issues. What the CMRS Providers fail to recognize in the issue statement is whether the RTCs are obligated to be forced to depend on switching and trunking arrangements with BellSouth whereby CMRS Provider traffic is commingled with BellSouth's access traffic. As explained in the discussion of Issue 2, there can be no requirement for one carrier to be forced to depend on its competitor for traffic measurement and billing records. Where the RTC has its own tandem and has deployed its own measurement and traffic recording equipment, it does not need and does not want the services of BellSouth. BellSouth's trunking arrangements, as explained in the discussion of Issue 2, cannot deny the RTCs of their ability and right to design and utilize their networks as they have planned, without interference from competitors like BellSouth or the CMRS Providers.

The problem with the BellSouth interim arrangements with the CMRS Providers is that calls terminated to the RTCs over the BellSouth provisioned trunks do not contain the necessary call details that would allow the RTCs to record calls on a real-time basis for themselves. That is because the interim arrangements are provisioned over inferior trunk types, and the traffic of multiple carriers is commingled with BellSouth's access traffic. The terms and conditions between BellSouth and the RTCs for the delivery by BellSouth to the RTCs of third party traffic must be determined consistent with methods that will allow the RTCs to identify, record and measure traffic on a real time basis, for themselves. Traffic should be transmitted to the RTCs in a manner over trunking arrangements that allows the RTCs to identify and measure the CMRS providers' traffic accurately without reliance on BellSouth. This can be accomplished by requiring any indirect interconnection to occur by means of dedicated trunks when the volume of traffic being delivered to the RTC is more than a de minimus level of traffic. There is no interconnection requirement or rule which obligates the RTCs to be dependent on BellSouth for the measurement of traffic that terminates to the RTCs.

FURTHER ANALYSIS

Q: Under the interim arrangements, is BellSouth capable of producing complete and accurate after-the-fact records?

A: BellSouth is not capable of recording the proper information in all instances. It is not clear with respect to which CMRS Provider, and at what locations, BellSouth is producing

records, but it is clear that the records are not complete. Because those records are incomplete, they are, therefore, inaccurate.

Q: Did the FCC recognize that carriers such as the RTCs may need and want to expend resources to deploy the necessary measurement capability to identify and measure traffic that is subject to the FCC's Subpart H rules?

A: Yes. In its *First Report and Order*, the FCC stated:

> "We also recognize that, to implement transport and termination pursuant to section 251(b)(5), carriers, including small incumbent LECs and small entities, may be required to measure the exchange of traffic, but we believe that the cost of such measurement to these carriers is likely to be substantially outweighed by the benefits of these arrangements."

First Report and Order at para. 1045.

In the later sections of that order, in the Regulatory Flexibility Act analysis of costs imposed on small businesses, the FCC again stated that:

> "As such, small incumbent LECs and small entities offering competitive local exchange services may be required to measure the exchange of traffic, and to bill and collect payment from other carriers."

Id. at para. 1412.

Many RTCs have invested in the necessary network arrangements and traffic identification, measurement and recording equipment within their networks, and the actions of a potential large LEC competitor such as BellSouth, in conjunction with the arrangements with CMRS Providers, should not be allowed to undermine a RTC's ability to use its network for its intended purpose, without interference from BellSouth.

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

Q: What is the CMRS Providers' Position with respect to Issue 7?

A: CMRS Providers' Position: A Party can elect to provision one way facilities, or a CMRS Provider may request that the Parties jointly establish two way facilities. Interconnection facilities can be purchased from RLEC or from a third party.

Q: Can you summarize the RTCs' position on Issue 7?

A: Summary of RTC Position: This Issue 7 is essentially the same as Issue 8. The CMRS Providers, again, confuse the concept of "direct" with dedicated trunks. The CMRS Providers' issue discusses the establishment of dedicated trunks which may be either direct or indirect. In any event, the interconnection point between the two carriers must be a point within the network of the incumbent RTC within the LATA in which the RTC is located. The CMRS Providers' position that it can establish the dedicated connection via a third party's facilities is evidence of the indirect option for dedicated facilities. For the portion of the dedicated trunking facilities provided by the RTC or the CMRS Provider within the incumbent service area of the RTC, those facilities costs should be shared based on the proportion of Subject Traffic originated by one Party divided by the total Subject Traffic exchanged over the dedicated facility. The RTCs do not provision local calling services which would involve transport costs to distant locations. This issue is also related to Issue 15 regarding compensation for interMTA traffic.

FURTHER ANALYSIS

Q: Where have the CMRS Providers provided evidence that dedicated facilities can be provisioned by indirect means?

A: In their proposals for the resolution of this issue, they assume that they may be using the facilities of some other network provider. *See* proposed section 4.1.1.4 where the cost is described as what may be "charges to the CMRS Provider" obviously by some other carrier. If one reviews the details of the CMRS Providers' Issue 8, their position recognizes the correct concept -- dedicated facilities. In any event, dedicated trunking arrangements between the parties can be direct or indirect; *i.e*, via another carrier's facilities as the FCC recognized in its stated options as I have set forth in my testimony on Issue 2.

Q: What Subject Traffic may be originated by a RTC that would be delivered over dedicated facilities to a CMRS Provider?

A: Only traffic that is included in the local exchange service offerings of the RTC. As such, such local exchange service traffic will be calling to areas that are within the relatively small local calling areas of the RTCs.

Q: Do the RTCs have any interconnection obligation to provision some new form of local exchange service which may involve extraordinary transport obligations beyond that which is equal to what the RTCs do now for any other local exchange service?

A: No. To the extent that the CMRS Providers' proposals expect that the RTCs will provision one-way or two-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, then as already explained, no such extraordinary obligations exist. The RTCs' responsibility, at most, is to deliver any local exchange service traffic to an interconnection point between their network and the CMRS providers network at a technically feasible point within their networks, within the LATA. This could be at the extreme border of their network, provided that the point is within the RTC's incumbent LEC network within the LATA.

Q: Do the RTCs question the provisions proposed by the CMRS Providers at Sections 4.1.1.1 through 4.1.1.4?

A: Yes. First, as explained above, the discussion in those sections is with respect to "dedicated facilities" which, as I have explained, can be either direct or indirect. The RTCs' original proposal already set forth the option of indirect dedicated trunking facility arrangements. *See* Section 4.1.2 as originally proposed by the RTCs: "CMRS Provider shall be permitted to use a third party carrier's facilities for purposes of establishing interconnection indirectly with [the RTC] at the [Interconnection Point.]" The discussion of the interconnection facilities in the Agreement should be stated as "one-way dedicated facilities" and "two-way dedicated facilities" since the provisioning of those dedicated facilities may be directly between the parties or may involve the use of a third party's facilities in an indirect arrangement.

Also, under Section 4.1.1.1, the CMRS Providers' proposed provision states that the originating Party will be responsible for 100% of the costs associated with the facilities. However, there is no definition or description of what "interconnection facilities" means in this context. Where the RTCs elect to provision one-way dedicated trunks for their originating local exchange service traffic, the RTCs responsibility is only to deliver such traffic to a point within their incumbent LEC network within the LATA. That point could be the extreme border of their territory.

However, the CMRS Providers appear to believe that the RTCs are financially responsible to provision one-way trunks for local exchange service traffic to the point where the CMRS Providers' switch is located (which literally could be hundreds, or even thousands, of miles beyond any technically feasible point within the network of the incumbent RTC in the LATA). This belief is unfounded. As I have already stated above, the RTCs have no obligation to provision some new and extraordinary form of local exchange service to respond to a request by the CMRS Provider for some interconnection arrangement superior to what the RTC does for other local exchange services. The RTCs' obligation is to deliver traffic to a properly defined interconnection point within the RTC's incumbent LEC network (within a LATA) as the regulations and law require.

Q: What about two-way dedicated facilities?

A: To the extent that the RTC has any local exchange service traffic to deliver to the CMRS Provider for termination under the Agreement, and the CMRS Provider has Subject Traffic to deliver to the RTC, and presuming that fair terms are imposed regarding the responsibilities to the "Interconnection Point," the RTC may prefer two-way facilities. Just as with one-way dedicated facilities, a RTC's responsibility for its local exchange service Subject Traffic is to deliver it to points no further than to the most distant point within the RTC's incumbent network within the LATA.

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?

Q: What is the CMRS Providers' Position with respect to Issue 8?

A: CMRS Providers' Position: Each Party should be financially responsible for any additional costs for the origination of its traffic. Recurring and non-recurring costs of any dedicated facilities connecting the respective RLEC and CMRS Provider networks should be prorated based on respective shares of traffic exchanged over those facilities.

Q: Can you summarize the RTCs' position on Issue 8?

A: Summary of RTC Position: *See* RTCs' Position with respect to Issue 7. The RTCs are not required to provision superior interconnection arrangements at the request of the CMRS Providers and are not required to establish some form of extraordinary local exchange service calling for transport to a distant point. To the extent that the request of the CMRS Provider would involve superior interconnection or service arrangements beyond that which the RTC does for itself or with other carriers, the provisioning of such superior arrangement is not required and, in any event, would not be provided unless the CMRS Provider agreed to be responsible for the extraordinary costs. Otherwise, calls to distant points are provisioned as interexchange carrier calls, are provided by interexchange carriers, and are the responsibility of those interexchange carriers. The RTCs are only required to transport Subpart H rules Subject Traffic to an interconnection point within their incumbent network in the LATA with which they are associated. The proration of facilities within the potential area for transport to a properly defined Interconnection Point is based on the proportion of LEC originated Subject Traffic to all traffic exchanged over two-way dedicated 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?

Q: What is the CMRS Providers' Position with respect to Issue 9?

A: CMRS Providers' Position: FCC Regulations require that CMRS Providers and RLECs compensate each other for intraMTA traffic regardless of existence or nature of an intermediary carrier.

Q: Can you first summarize the RTCs' position on Issue 9?

A: Summary of RTC Position: The CMRS Providers' statement of this issue is misleading and avoids the real issue. The CMRS Providers propose incorrectly that where an end user is a customer of an interexchange carrier service provider, such interexchange service traffic should somehow be subject to the LECs' reciprocal compensation responsibility. The RTCs have already set forth in the discussion of Issue 1, above, a preview of some of the reasons why the CMRS Providers are wrong about this position and how it cannot be reconciled with the explicit law and conclusions of the FCC. When an end user places a call with an interexchange carrier, it is the interexchange carrier that is providing the service to the customer that allows the end user to complete that call, and as such the customer is an end user of the interexchange carrier, not the local exchange carrier service provider. The scope of traffic that is subject to the FCC's Subpart H rules (reciprocal compensation for traffic subject to Section 251(b)(5) of the Act) is explicitly related to local exchange service traffic of the RTC, to traffic between the LEC and the CMRS Provider, and not to traffic between an IXC and a CMRS Provider. For interexchange service traffic originated by the end users of the RTC, the IXC is not an intermediary provider to the RTC; the IXC is the originating and call completion carrier to the end user. Interexchange carrier traffic is subject to the rules, terms, and conditions of access; access service traffic is subject to the requirements of Section 251(g) of the Act and Part 69 of the FCC's rules, and traffic subject to Section 251(g) of the Act is mutually exclusive from traffic that is subject to Section 251(b)(5).

FURTHER ANALYSIS

Q: What were the reasons that you previously set forth in the discussion of Issue 1 that support the RTCs' position on this issue?

A: Interexchange carrier traffic is not within the scope of the Subpart H rules because the FCC explicitly stated this conclusion. The FCC stated that the scope of traffic subject to the duty of reciprocal compensation (the Subpart H rules) between a LEC and a CMRS Provider is for the transport and termination of "local exchange service" traffic. The FCC also explicitly recognized that the reciprocal compensation obligations apply to "certain" traffic, not all traffic, as the CMRS Providers would confusedly leave as the interpretation of its position. The FCC stated unequivocally 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.

First Report and Order, at para. 1034, (emphasis added).

These statements are not my speculation about what I think the FCC intended; these are the explicit statements of the FCC which I have not altered. The CMRS Providers apparent view (as well as unexplained actions in other states) that interexchange carrier traffic is LEC local exchange service traffic cannot be reconciled with these explicit statements of the FCC.

Q: Do the Subpart H rules say that reciprocal compensation traffic is traffic between a LEC and a CMRS Provider?

A: Yes. Section 51.701(b)(2) of the Subpart H rules defines the scope of traffic subject to transport and termination is traffic "between a LEC and a CMRS Provider."

Q: When an end user of a RTC makes an interexchange service call, which carrier originates the call?

A: The interexchange carrier that the end user chooses either originates such interexchange service calls on the facilities that it provisions for the end user or uses the local exchange carrier's exchange access facilities to originate the end user's call. The interexchange carrier is the carrier originating the interexchange service call. The interexchange carrier is the carrier providing the calling service to the end user.

Q: Is an interexchange carrier call between a LEC and a CMRS Provider?

A: No. An interexchange service call is between an IXC and a CMRS Provider.

Q: Have the CMRS Providers asked the FCC to clarify what compensation terms apply when a CMRS Provider terminates a call from an interexchange carrier?

A: Yes. Sprint PCS asked the FCC to declare that the framework of access applies to traffic that IXCs terminate to CMRS providers, and the FCC found that the framework of access applies. *See Declaratory Ruling*, In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges, released by the FCC on July 3, 2002 in WT Docket No. 01-316.

The CMRS providers will attempt, after the fact, to suggest that the FCC's findings regarding IXCs and the access charge framework were confined to interMTA IXC traffic only. That is once again wrong for the following reasons: (a) there is no evidence that the FCC's decision is confined to interMTA IXC traffic; the discussion is with respect to interstate access which is both interMTA and intraMTA; and (b) the CMRS provider's declaratory request petition and the FCC's discussion does not even mention this issue.

Calls delivered by an IXC to the network of a CMRS provider for termination are subject to the access compensation framework between the IXC and the CMRS provider. In an earlier action, the FCC stated that:

> "[i]n the context of the existing access charge regime, we tentatively conclude that CMRS providers should be entitled to recovery of access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa). . . . We proposed to require that CMRS providers be treated no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from IXCs and LECs for interstate interexchange traffic."

See Notice of Proposed Rulemaking, In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, released by the FCC on January 11, 1996 in CC Docket Nos. 95-185 and 94-54) at para. 116.

In the Sprint PCS declaratory ruling released by the FCC on July 3, 2002, the FCC agreed with Sprint PCS that CMRS providers are not prohibited from charging IXCs access charges when IXCs terminate traffic to wireless carriers, but recognized that there was a question about whether Sprint PCS had established a contractual right to bill and collect the IXCs. Because CMRS providers are not permitted, however, by the FCC to file access tariffs, they have generally been unsuccessful at establishing contractual terms with IXCs. This fact does not support any effort by the CMRS providers to use this arbitration proceeding to establish a new extension of reciprocal compensation obligations on the RTCs to pay where the CMRS Providers cannot collect from the interexchange carriers.

Q: What provision in the Act governs the terms and conditions of access services provided by local carriers to interexchange carriers?

A: Section 251(g) sets forth the terms for interexchange carrier access. Section 251(g) provides:

> On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the [Federal Communications] Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.

47 U.S.C. § 251(g) (emphasis added).

Q: What conclusions has the FCC drawn about this provision of the Act?

A: The terms and conditions (specifically the language in the Act cited above under which "the receipt of compensation" for "exchange access" to interexchange carriers) for traffic subject to the framework of access as set forth in Section 251(g) of the Act cannot be read in any other way other than to conclude that access traffic subject to Section 251(f) is mutually exclusive from traffic subject to Section 251(b)(5) of the Act. In its ISP-Bound traffic remand decision (and separate and apart from any conclusions associated with ISP bound traffic with which the Courts have taken issue), the FCC explained that Section 251(g) excludes certain traffic from the scope of Telecommunications subject to Section 251(b)(5) of the Act. See *Order on Remand and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Intercarrier Compensation for ISP-Bound Traffic*, released by the FCC on April 27, 2001 in CC Docket Nos. 96-98 and 99-68, at paras. 30-41 ("*Section 251(g) Order*"). For example, the FCC went on to conclude:

> This limitation in section 251(g) makes sense when viewed in the overall context of the statute. All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access . . . . [B]oth the Commission and the states had in place access regimes applicable to this traffic . . . . Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).

Id. at para. 37, footnote omitted.

Q: Are there any other reasons you can point to which provide additional evidence that interexchange carrier traffic does not fall within the scope of Section 251(b)(5) traffic?

A: Yes, there are common sense reasons. For interexchange service calls, the IXC is the service provider; the IXC bills and receives the revenues for the provision of the interexchange service call, and it is the IXC that collects the revenue to compensate the terminating carrier. That is the access framework that has applied for more than two decades.

In fact, the very way the CMRS Providers have characterized this issue points to the common sense flaws. The CMRS Providers use the word "subscribers" regarding the question posed by the traffic scope. When an end user uses the services of an interexchange carrier, the end user is a subscriber of the interexchange carrier's services, not the LEC. And the CMRS Providers also use the word "route" in the issue question. Of course, it is the end user that routes its call to the interexchange carrier based on the end user's choice of interexchange carrier service provider. And it is the chosen interexchange carrier that then routes the call to the CMRS Provider. The LEC has no involvement in the routing of the call. The LEC provides equal access to IXCs and hands the call off to the chosen IXC so that the IXC can route the interexchange service call.

Q: Has the FCC specifically recognized that intraMTA traffic when the IXC is the service provider carrier of the call is subject to the framework of access, not reciprocal compensation?

A: Yes. I do not know how more clear or how many times the FCC would need to make statements that come to the same conclusion. Four years after its initial *First Report and Order*, in reviewing a complaint against a large Bell company, the FCC once again came to the same conclusion as I have been emphasizing here. The FCC concluded that a LEC could and would "hand off" traffic, destined to a CMRS provider's end user within the same MTA, to an interexchange service provider and that the framework of access applies:

> Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such 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.

See *Memorandum Opinion and Order, In the Matters of TSR Wireless, LLC, et al., Complainants, v. US West Communications, Inc. et al., Defendants*, released by the FCC on June 21, 2000, in File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 at para. 31 (underlining added).

This conclusion is also consistent with the discussion of the FCC in its *First Report and Order* at paras. 1041-45.

Q: Can you summarize the RTCs' positions on this issue?

A: The terms and conditions that apply with respect to the RTCs' origination of access traffic for interexchange carriers under Section 251(g) of the Act are mutually exclusive from the terms that apply to certain "local" Telecommunications traffic that is within the scope of Section 251(b)(5) of the Act. The arbitration issues in this proceeding are confined solely to traffic that is within the scope of Section 251(b)(5) of the Act. Moreover, the terms and conditions under which the RTCs provide access services for the origination of access traffic are set forth in interstate and intrastate access tariffs, and the terms of these tariffs are not subject to negotiation or arbitration under Section 252 of the Act. To the extent that the CMRS Providers have included this issue only to pursue the improper inclusion of interexchange carrier traffic within the scope of reciprocal compensation traffic, this position should be rejected and this issue dismissed for all of the reasons stated herein.

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

Q: What is the CMRS Providers' Position with respect to Issue 10?

A: CMRS Providers' Position: Each RLEC must develop a company-specific rate that properly reflects the total long run incremental cost ("TELRIC") for the transport and termination of traffic on its network. CMRS Providers reserve the right to review the RLECs' cost studies, conduct discovery, propose reciprocal compensation rates consistent with TELRIC, and identify issues raised by any cost studies produced by the RLECs.

Q: Can you summarize the RTCs' position on Issue 10?

A: Summary of RTC Position: As explicitly stated by the FCC, the FCC's pricing rules, specifically including the TELRIC pricing methodology for transport and termination of traffic subject to Section 251(b)(5) of the Act, do not apply to a Rural Telephone Company that possesses an exemption under Section 251(f)(1) of the Act. All of the RTCs are Rural Telephone Companies that possess such exemption. The rates for transporting calls from an interconnection point on the incumbent LEC network to the end office(s), and the rate for termination of those calls, should be established based on the preliminary testimony I filed in this matter on August 16, 2006, as well as the more detailed testimony expected to be submitted in this proceding by Douglas Meredith on behalf of the RTCs.

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?

Q: What is the CMRS Providers' Position with respect to Issue 11?

A: CMRS Providers' Position: For any RLEC that fails to meet its burden of proof, the Commission should establish an initial rate for that RLEC consistent with 47 C.F.R. §51.715(b)(3) until appropriate RLEC cost studies establish permanent rates.

Q: Can you summarize the RTCs' position on Issue 11?

A: Summary of RTC Position: The rates for transport and termination should comply with rates to be determined from information available to the Commission in this proceeding, consistent with my preliminary testimony filed on August 16, 2006 in this proceeding, as well as the more detailed testimony to be submitted by Douglas Meredith on behalf of the RTCs.

ISSUE 12. Should the Interconnection Agreement provide both reciprocal and net billing options?

Q: What is the CMRS Providers' Position with respect to Issue 12?

A: CMRS Providers' Position: Billing provisions should be available, and net billing should be an option where appropriate.

Q: Can you summarize the RTCs' position on Issue 12?

A: Summary of RTC Position: Either option is acceptable to the RTCs, provided that the billing accurately reflects the actual net obligations of the parties.

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

Q: What is the CMRS Providers' Position with respect to Issue 13?

A: CMRS Providers' Position: IntraMTA traffic factors should be used in the absence of measurement, and factors should be developed on a company-by-company basis.

Q: Can you first summarize the RTCs' position on Issue 13?

A: Summary of RTC Position: If this issue is intended to ask how the portions of total mobile-to-land traffic and land-to-mobile traffic should be identified and measured, then actual measurement is available and traffic factors are not needed. Actual measurement of total amounts of traffic exchanged between the Parties should be utilized. Under proper interconnection arrangements, the RTC can provide actual measurement of the proper scope of traffic in both directions. The portion of the total amounts of traffic that is interMTA traffic should either be based on a reasonable representative factor or a surrogate measure.

FURTHER ANALYSIS

Q: How would measurement be available for total mobile-to-land or land-to-mobile traffic?

A: The RTC can measure total land-to-mobile traffic that it sends to the CMRS Provider including Subject Traffic and interMTA traffic. With dedicated trunks, whether interconnected directly with the CMRS provider or indirectly through BellSouth, the RTCs can measure total mobile-to-land terminating traffic. If the CMRS Provider needs or wants to rely on BellSouth as an intermediary for traffic that the CMRS Provider terminates (subject to the conditions discussed in this Testimony), then measurement will be available to the CMRS provider from BellSouth. The RTCs do not need or want to rely on BellSouth; the RTCs are prepared to establish the necessary trunking arrangements and are prepared to measure traffic for themselves, and they have deployed recording equipment as the FCC recognized carriers would need to do for reciprocal compensation traffic.

The only remaining issue is how the component of the land-to-mobile and mobile-to-land traffic that is interMTA will be accurately established by CMRS Providers.

Q: How should the component of interMTA traffic be determined?

A: The CMRS Providers should be required to provide accurate, representative information about the extent of interMTA traffic. Only the CMRS Providers know from which cell site a mobile user is served at the beginning of a call. *See* Section 1.15 of the draft Agreement.

Q: Why is it important to have an accurate accounting of the portion of traffic that is interMTA?

A: As I will establish in my discussion of Issue 15, InterMTA traffic is subject to the LEC's intrastate and interstate access charges for origination and termination because the FCC has found that when the CMRS provider carries traffic to another MTA, or delivers traffic to the RTC that has originated in another MTA, the CMRS Provider is acting as an interexchange carrier.

Moreover, the amount of interMTA traffic that CMRS providers are likely to originate and terminate will continue to increase from already significant levels. As everyone is aware, users continue to use their wireless phones as a replacement for traditional intrastate and interstate long distance interexchange calls. Because CMRS services are used as a replacement, it is likely that interMTA traffic will increase in the same manner that the FCC has observed that interstate CMRS traffic is increasing:

> To address the concerns raised in the record that the current interim safe harbor [for the percentage of interstate revenue] for mobile wireless providers is inappropriate in light of changing market conditions, we raise the safe harbor from 15 to 28.5 percent.

Report and Order and Second Further Notice of Proposed Rulemaking, In the Matter of Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the American with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; and Truth-in-Billing and Billing Format, released by the FCC on December 13, 2002, in CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 and 98-170, FCC 02-329 ("*Safe Harbor Order*") at para. 19.

On June 21, 2006, the FCC announced that it was again raising the wireless "safe harbor" percentage:

> [T]he [FCC] raises the existing wireless "safe harbor" percentage used to estimate interstate revenue from 28.5 percent to 37.1 percent of total end-user telecommunications revenue to better reflect growing demand of wireless services. This interim wireless safe harbor was last updated in 2002. Wireless carriers continue to retain the option to base contributions on their actual revenues or on traffic studies that estimate their actual interstate revenues.

News released by the FCC on June 21, 2006, "FCC Updates Approach For Assessing Contributions To The Federal Universal Service Fund." On June 27, 2006, the FCC released another order in the same "Safe Harbor" dockets as set forth above. This order reflects the substance of the announcements contained in the *News* release.

Q: Is interstate traffic the same as interMTA traffic?

A: No. There is some intrastate interMTA traffic because Kentucky is divided by more than one MTA. And some MTAs associated with Kentucky also include portions of other states. Therefore, in this case, some interstate traffic would not be interMTA.

Q: What significance do the FCC's conclusions have here?

A: If the proportion of interstate usage and revenues is growing, then the proportion of interMTA traffic is very likely also growing. The interstate percentage provides meaningful information that reflects upon what a reasonable proportion of interMTA traffic may be. The RTCs want to make sure that the Agreement incorporates interMTA factors that reasonably reflect the actual amount of interMTA traffic originated and terminated by each CMRS Provider.

Q: If the CMRS Providers cannot provide actual data to document the amount of traffic that they originate with their mobile users in other MTAs, and the amount of traffic that they carry to their mobile users in different MTAs, how should the proportion of interMTA traffic be determined?

A: The Commission should base the determination of the proportion of interMTA traffic on the best available information. There are a couple options.

One method would be simply to use the same interstate percentage that the CMRS Providers use for interstate USF contribution. The mismatches between interstate and interMTA that I explained above effectively cancel each other out. That is, some intrastate mobile calls are actually interMTA and some interstate calls are not interMTA. As such, this surrogate may be the most accurate available.

Although the location of the mobile end user, for purposes of determining whether a call in intraMTA or interMTA, is based on the cell site that serves the end user at the beginning of the call, another surrogate method might be to use the rate center area associated with the mobile user's telephone number for each mobile-to-land call to determine whether a call is intraMTA or interMTA. In other words, if the telephone number is associated with a rate center area that is not within the same MTA as the RTC is located, the call from that mobile user would be presumed to be interMTA. The availability of calling party numbers and called party number on calls between mobile users and RTCs' end users would provide the necessary information to establish an interMTA portion of usage for mobile-to-land calls. This proportion could then also apply to land-to-mobile traffic.

ISSUE 14. Should the Interconnection Agreement prohibit the Land-to-Mobile Traffic Factor from exceeding 50%?

Q: What is the CMRS Providers' Position with respect to Issue 14?

A: CMRS Providers' Position: No such limitation is lawful or appropriate.

Q: Can you summarize the RTCs' position on Issue 14?

A: Summary of RTC Position: The RTCs agree to remove this condition.

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

Q: What is the CMRS Providers' Position with respect to Issue 15?

A: CMRS Providers' Position: InterMTA traffic factors should be developed on a company-by-company basis. The originating Party should compensate the terminating Party at the rate contained in the RLEC's tariffs.

Q: Can you first summarize the RTCs' position on Issue 15?

A: Summary of RTC Position: As set forth in the discussion of Issue 13, InterMTA traffic proportions should be based on factors that accurately reflect the amount of interMTA traffic for each arrangement. The amount of interMTA traffic is growing and most likely greater than the level that the CMRS Providers will admit or propose. *See* discussion above regarding the RTCs' position with respect to Issue 13.

According to the FCC's rules, all interMTA traffic is subject to the terms of the RTCs' intrastate and interstate access tariffs and rates. As the FCC has explicitly concluded, where an end user of the RTC originates a call that is delivered to a CMRS provider which, in turn, carries that call to its mobile user for termination in another MTA, the CMRS Provider is acting as an interexchange carrier and owes originating access charges to the RTC. In the opposite direction, where the CMRS Provider originates a call for its mobile user located in a different MTA than the MTA in which the RTC is located, and the CMRS Provider carries that call across MTA boundaries for termination with the RTC, the CMRS Provider is obtaining terminating access service from the RTC and owes terminating access charges to the RTC.

There is no such concept as "reciprocal" access charges with incumbent LECs.

FURTHER ANALYSIS

Q: Do the CMRS Providers agree that, for a CMRS Provider to LEC call, when a mobile user is located in a different MTA than the terminating end user of the LEC, and the CMRS Provider delivers this traffic for termination on the network of the LEC, the CMRS Provider owes terminating intrastate or interstate access charges to the RTC?

A: Yes. That appears to be the essence of their proposal.

Q: What about when the end user of the RTC originates a call that the RTC delivers to the CMRS Provider and the CMRS Provider, in turn, carries that call to a mobile user in another MTA?

A: The FCC has explained that in such a case, the CMRS Provider is acting as an interexchange carrier (it is the CMRS Provider that is carrying the call to the other MTA) and the CMRS Provider is obtaining originating access from the RTC.

Q: How do you come to this conclusion?

A: It is exactly what the FCC stated and explained in its original *First Report and Order*. IntraMTA traffic is the only traffic within the scope of the reciprocal compensation rules. The RTCs do not provide any services for calls to other MTAs other than the provision of access services as set forth in tariffs provided to other carriers that route calls to other MTAs. The FCC recognized this structure in its order:

> We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. 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 certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. [fn 2485]
>
> > [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) (concluding that there should be no distinction between incumbent LECs' interconnection arrangements with cellular carriers and those with other CMRS providers).

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

The obligation to pay carrier access charges pursuant to Section 69.5 of the FCC's access rules is the obligation to pay the RTC for the use of the RTC's facilities to originate or terminate a call subject to access. When 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 routes (carries the call) to a mobile user in another MTA in another state, the CMRS Provider is providing "not local exchange service but interstate, interexchange service" as the footnote above makes clear. As such, the CMRS provider is using the

facilities of the RTC to originate an "interstate, interexchange service" and owes interstate originating access charges to the RTC as Section 69.5(b) of the access charge rules states.

The exact same analysis applies with respect to interMTA intrastate traffic. An intrastate call between two MTAs within the state is not traffic subject to the reciprocal compensation rules. Where a CMRS Provider carries (routes) a call to its mobile user in the state that is in an MTA other than the MTA in which the RTC end user is located, the CMRS Provider is not providing local exchange service, but is providing intrastate, interexchange service, just as the FCC explained in its footnote.

Q: How do the FCC rules define what is Subject Traffic under the FCC's Subpart H rules as opposed to traffic where the CMRS Provider is acting as an interexchange service provider?

A: The MTA determines that distinction. Calls delivered to or received from a CMRS Provider (and not carried by an interexchange carrier) are considered Subject Traffic if they originate and terminate within the same MTA. Calls that a CMRS Provider delivers to an RTC that originated in another MTA, and calls that a CMRS Provider routes (carries) to another MTA are not Subject Traffic; such calls are the interexchange service calls of the CMRS Providers. As the FCC stated, the CMRS provider is acting as an interexchange carrier.

Q: What terms apply with respect to the origination or termination of traffic on the networks of the RTC for traffic where the mobile user of the CMRS Provider is either the calling or called party?

A: IntraMTA traffic between the RTC and a CMRS Provider (not carried by an interexchange carrier) is subject to the contractual terms and conditions of an interconnection agreement pursuant to requirements of the FCC's Subpart H rules. All other traffic that originates or terminates on the network of the RTC is not reciprocal compensation traffic and is subject to the RTC's originating or terminating access charge terms. Those two options are the only options available for the origination or termination of traffic on the RTCs' networks. There is no such concept as reciprocal access charges. The RTC's access tariffs apply with respect to both the origination and termination of interexchange traffic on their networks. It is the mobile nature of the CMRS Providers' wireless service that affects this framework. In 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.

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?

Q: What is the CMRS Providers' Position with respect to Issue 16?

A: CMRS Providers' Position: RLECs should ensure that their customers can make calls to CMRS Providers' customers' numbers in local and EAS exchanges without dialing extra digits or paying extra charges.

Q: Can you first summarize the RTCs' position on Issue 16?

A: Summary of RTC Position: The dialing parity rules are explicitly related to calling and local services based on a specific local calling geographic area, not telephone numbers. This concept does not logically apply to mobile users as the CMRS Providers suggest. Regardless of any dialing parity requirements, the interconnection requirements do not obligate the RTCs to provision interconnection or service arrangements that are beyond that which is equal to what they do for themselves or with other carriers. To the extent that the RTCs recognize telephone numbers of mobile users to define their local calling services, they do so under the condition that they are not required to provision some extraordinary or superior interconnection arrangement or service for such calls. The dialing parity rules have nothing to do with what the RTCs charge their customers for calls to or from commercial mobile radio service users.

FURTHER ANALYSIS

Q: Do you have any initial comments about this issue?

A: Yes. The CMRS Providers' presentation of this issue is misleading, incomplete, wrong, and creates unnecessary confusion.

Q: What is dialing parity?

A: Dialing parity is a concept related to the dialing of local calls and toll calls, not what services a carrier offers its customer, and not what a carrier charges its end users for services. No where do the interconnection rules dictate what services the RTC or the CMRS Provider offer to its own customers, what either one charges its customers for those services, or the manner in which the RTC or the CMRS Provider provisions such services.

Section 51.205 of the FCC's rules defines dialing parity as:

> A local exchange carrier (LEC) shall provide local and toll dialing parity to competing providers of telephone exchange service or telephone toll service, with no unreasonable dialing delays. Dialing parity shall be provided for all originating telecommunications services that require dialing to route a call.

This has nothing to do with what local exchange services a carrier provides or what charges the carrier applies to its services. Dialing parity is:

> The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have discriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

47 U.S.C. § 251(b)(3) (emphasis added).

Local dialing parity is a concept that applies to a specific geographic area, not telephone numbers:

> We anticipate that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251. . . . [W]e find that under section 251(b)(3) each LEC must ensure that its customers within a defined local calling area be able to dial the same number of digits to make a local telephone call notwithstanding the identity of the calling party's or called party's local telephone service provider.

Second Report and Order and Memorandum Opinion and Order; released by the FCC on August 8, 1996 in CC Docket Nos. 96-98, 95-185, 92-237, and 94-102; and NSD File No. 96-8; and IAD File No. 94-102, at para. 71, (emphasis added).

Furthermore, in adopting the rules to implement this statutory requirement, the FCC specifically addressed any applicability to Commercial Mobile Radio Service providers by concluding that:

> "[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."

Id. at para. 68.

No CMRS Provider has indicated any intent to provide "telephone exchange service," a statutory defined term distinct from the provision of CMRS. The Act defines "telephone exchange service" as (underlining added):

> (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, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."

Q: If local dialing parity is a concept that applies only with respect to a local calling area and only with respect to telephone exchange service for calling within that local calling area, do the CMRS Providers' services fit those conditions?

A: No. The mobile users of the CMRS Providers can be located virtually anywhere in the nation to place or receive calls. Telephone exchange service is service defined with respect to a specific service area. There is no defining area for mobile wireless services. Furthermore, the RTCs do not provide any local exchange service to call mobile users anywhere in the United States.

Q: Does the telephone number used by a mobile user necessarily determine the location of the mobile user or the jurisdiction of a call to or from a CMRS user?

A: No. Considerable confusion arises because of the attempt to mix the concepts that arise with the geographically static assignment of a landline number that is associated with a specific exchange area with the concepts of a number assigned to a mobile service user which has no geographic significance. Because the wireless customer is mobile and the service areas of CMRS providers are very large, with many denominating the entire nation as their service area, the telephone number (or more specifically the NPA-NXX of the telephone number) of a mobile user does not determine the mobile user's geographic location. And with respect to jurisdiction, it is the actual location of the mobile user and the other party to a call that determines the jurisdiction of a call, not the telephone number.

With landline service, the static location of the user enables association of the number with a specific location. Accordingly, the landline number accurately can be used to determine the geographic terminating or originating point of the call for purposes of determining the jurisdiction of a point-to-point landline call. That is not true, however, with respect to a call that is placed to or from a wireless number. The wireless number is not, in any way, an indication of the geographical location of the wireless end user when the end user places or receives a call.

The CMRS Providers can cite no logical discussion of what dialing parity means with respect to a "defined area" in the context of mobile service where the mobile service defined area is the entire nation. More importantly, there can be no requirement that forces a wireline LEC to treat as "local" a call to a mobile user that is located in California just because the telephone number appears to be a number that would only be used at a location in Kentucky if it was assigned to landline service.

Q: Do some LECs, nevertheless, utilize an approach for the design of some of their local exchange service offerings for CMRS calls that relies partly on the NPA-NXX of the mobile user and other conditions?

A: Yes. I will discuss this in more detail below. Nevertheless, partial reliance on the NPA-NXX to determine local exchange service offerings by a RTC is not a requirement of the Act or the interconnection rules; and, regardless, where an RTC has opted to design a local exchange service offering for calling to mobile users, it is conditioned on the

availability of an interconnection point within its incumbent service area that the LEC can use to deliver such local traffic without extraordinary cost, and such treatment is also conditioned on mutual agreement on prerequisite terms between the RTC and the CMRS Provider. If acceptable conditions are satisfied; *i.e.*, the service requires no more from the RTC for local calls to a CMRS provider than what the RTC does for itself for similar calls and does not subject the RTC to extraordinary costs, then the RTC may be willing to treat CMRS calls as local calling under this voluntary surrogate method.

If these satisfactory conditions are present, the RTC may elect to provision local exchange service calls to mobile users based on telephone numbers, but in any event, the RTC is totally within its rights to treat CMRS calls as toll calls. And toll calls are not subject to local dialing parity; toll calls are subject to toll dialing parity.

Q: What do you base your conclusions on?

A: The FCC's own statements and conclusions. The FCC has used the example of callers, including mobile wireless users, in the multi-state area surrounding the District of Columbia to illustrate the facts. Because wireless mobile users often cross state lines and are mobile, a cellular customer with a telephone number that appears to be associated with Richmond, Virginia may travel to Baltimore, Maryland. A call between the mobile user in Baltimore and, for example, a wireline end user in Alexandria, Virginia might appear to be an intrastate call "placed from a Virginia telephone number to another Virginia telephone number, but would in fact be interstate . . . ." 11 FCC Rcd 5020, 5073, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, CC Docket Nos. 95-185 and 94-54, (1996) at para. 112, (emphasis added).

Similarly, a call between a wireline end user in Richmond to the same mobile user in Baltimore might also appear to be an intrastate call because the call is placed from a "Virginia telephone number" to another number that also appears to be associated with Virginia, this call would also in fact be an interstate call. When one end of the call is in Maryland and the other is in Virginia, the call is interstate. The telephone number assigned to the mobile user does not determine the jurisdiction and any reliance on the telephone number of mobile users is an arbitrary practice.

Q: Has the FCC come to any other conclusions about the lack of any geographic relationship between the rate center areas associated with mobile user telephone numbers?

A: Yes. In its 2003 number portability order related to wireless-wireless porting, the FCC concluded that:

> Because 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."

Memorandum Opinion and Order, released by the FCC on October 7, 2003 in CC Docket 96-116 at para. 22.

The FCC's conclusion confirms that the specific geographic areas known as rate center areas for wireline LECs have no relevance to the services offered to, or provided to, the typical mobile user of the large wireless carriers. The "defined local calling area" that is the criterion for local dialing parity is not the entire United States.

Q: Now turning to the CMRS Providers' notion that dialing parity somehow affects the rates that the carriers charge for calls, how do you respond?

A: There is absolutely no discussion anywhere in the statute or by the FCC to suggest that rules addressing dialing of local calls or dialing of toll calls somehow requires some particular service offering treatment or some particular rate result.

The CMRS Providers have no more right to dictate to the RTCs what services the RTCs must offer and what the RTCs should charge for their services than the RTCs can dictate to the CMRS providers what they should provide and charge their mobile users. The CMRS providers offer services based on usage, while the RTCs generally offer local services on an unlimited basis, at a fixed rate. What the CMRS providers actually seek here is not parity, but disparity. They seek a favorable and disparate arrangement under which the RTCs would be forced to provide calling for their wireline end users to make unlimited calls to mobile wireless users that may be located anywhere in the nation, and to pay the CMRS providers for doing so, while the CMRS providers continue to charge their customers based on a rate structure that is usage-based for calls in both directions. What a carrier charges its end users is not an interconnection issue for arbitration.

Q: Is there any rate regulation of CMRS calls?

A: No. The fact that traffic between wireline and wireless networks constitutes CMRS traffic is often overlooked by parties reviewing these issues.

Section 332 of the Act defines "commercial mobile radio service" or "CMRS" as:

> any mobile service (as defined in section 3) that is provided for profit, and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the [FCC] . . . ."

47 U.S.C. § 332(d)(1).

Moreover, Section 3(27) of the Telecommunications Act and Section 20.3 of the FCC's rules define "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. § 3(27); 47 C.F.R. § 20.3 (emphasis added).

The statutory definition of CMRS does not rely on or refer to whether the call originates on the wireline or wireless network. Both landline-to-mobile and mobile-to-landline calls fall within the definition of a Commercial Mobile Radio Service, consistent with the analysis of the FCC. This same analysis is set forth fully in *Memorandum Opinion and Order on Reconsideration and Order Terminating Proceeding*, released by the FCC on April 13, 2001 in WT Docket No. 97-207 ("*Calling Party Order*") at paras. 10-19.

Accordingly, the landline-to-mobile and mobile-to-landline calls are the same calls and subject to the requirements set forth in §332(c)(3) of the Act including exemption from regulation of service entry and rates for Commercial Mobile Radio Services. If the CMRS providers seek rate regulation when the call is originated on the wireline network, then there is no basis to deny the RTCs equal protection and impose the same requirements when the call originates on the wireless network.

Q: Do the CMRS Providers have discriminating rate structures?

A: Yes. I am aware that at least some, if not all, of the CMRS Providers have rate structures under which the ultimate financial consequence to the wireless user is less for wireless calls to or from another mobile user of the same CMRS Provider than the rate consequence of calling, or being called by, some other carrier's end user. In-system calls may be provided on an unlimited basis, but out-of-system calls are subjected to usage limits and per-minute rates.

Q: How should the Commission resolve this issue?

A: This issue should be dismissed as beyond the scope of interconnection arbitration and beyond any standards for arbitration.

The CMRS providers are attempting to use their misinterpretation of dialing parity to suggest improperly that the RTCs are required to provision local service calls, deliver them to a distant point, be responsible for transporting and switching calls through BellSouth, or be responsible for dedicated trunking to deliver local calls to distant points, all of which would subject the RTC to extraordinary costs beyond the costs that apply to any other local exchange service call. No such requirements exist.

Q: Even though the CMRS Providers have improperly distorted the meaning of the rules in an attempt to impose dialing parity requirements, are the RTCs prepared to provision some voluntary form of local calling to CMRS Provider's mobile users?

A: There is no involuntary requirement for any LEC to provision a local exchange service calling service to mobile users that may be located anywhere in the nation. However, several of the RTCs have reached mutual agreement with some wireless carriers regarding the conditions under which the RTC could provision local calling to mobile users. These mutually agreeable arrangements most often rely on a set of telephone numbers as the surrogate method to determine what calls are to be treated as local, and the provision of

such calling service (so that mobile users can receive some local calls from other users) is conditioned on the RTCs not incurring extraordinary costs and not having to transport local calls to distant points. Where the RTCs have mutually agreed to these arrangements, they would be willing to extend the same treatment, but not superior treatment, to equivalent arrangements with other CMRS Providers. If the calls are to be transported to distant points at additional cost to the RTC, then the RTC will provision those calls as interexchange service calls, as the FCC has stated is the RTCs' choice.

ISSUE 17. What SS7 signaling parameters should be required?

Q: What is the CMRS Providers' Position with respect to Issue 17?

A: CMRS Providers' Position: The Interconnection Agreement should contain language (proposed by the CMRS Providers) that establishes separate obligations based on whether the Parties are directly or indirectly interconnected, and which prevents either Party from assessing SS7 tariff or message charges on the other for the exchange of traffic.

Q: Can you first summarize the RTCs' position on Issue 17?

A: Summary of RTC Position: The creation and delivery of all SS7 signaling parameters does not, and should not, depend on whether traffic is routed through third party networks. All SS7 information should be created and sent by both parties. The SS7 information is necessary to ensure accurate identification and measurement of traffic and compliance with the terms of the agreement. The RTCs have no intention of charging the CMRS Providers any SS7 related charges.

FURTHER ANALYSIS

Q: Does the creation or transmittal of SS7 signaling parameters depend on the routing of the actual voice call?

A: No. SS7 signaling including call set-up information and all other transaction information included with SS7 signaling is created and sent through an entirely different signaling network than that used for the actual voice call. The separate signaling path is a key component to the usefulness of SS7. SS7 signaling messages are created by Service Signaling Point equipment at the point where a call is originated. There are separate signaling links to special routers that are used solely for SS7 signaling purposes. There is no reason for the CMRS Providers to distinguish SS7 signaling based on the way the actual voice call is routed. All SS7 information or all calls should be created and sent by both parties.

Q: Do CMRS providers use SS7 signaling?

A: Yes. The advanced features that are typically available and used on wireless phones depend on SS7 signaling capability. Caller ID depends on the receipt of SS7 information from the originating carrier.

Q: Are the RTCs proposing to charge the CMRS Providers anything for SS7 signaling activity under the terms of the interconnection agreement?

A: No, not for the simple exchange of traffic or delivery of signaling information contemplated and addressed under the draft agreement. Of course, outside the scope of interconnection for the transport and termination of Subpart H traffic, should the CMRS Providers have other uses of the RTCs' physical SS7 network operations, that would be

handled under separate terms and conditions not included in these negotiations or in the draft agreement.

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

Q: What is the CMRS Providers' Position with respect to Issue 18?

A: CMRS Providers' Position: Absent express mutual consent, tariffs cannot supersede or supplement the terms and conditions of the Parties' Interconnection Agreement.

Q: Can you first summarize the RTCs' position on Issue 18?

A: Summary of RTC Position: Where required and appropriate, the Agreement must refer to the terms and conditions of tariffs. For example, the origination and termination of interMTA traffic is subject to the application of the terms and conditions contained in the RTCs' intrastate and interstate access tariffs.

FURTHER ANALYSIS

Q: Does the proposed draft agreement refer to tariffs?

A: Yes. Section 2.2 as proposed by the RTCs acknowledges that some of the terms and conditions of the agreement may depend on terms and conditions contained in tariffs. While the terms and conditions for the provision of interconnection facilities between the parties is a matter under review, and I have set forth the positions of the RTCs above with respect to Issues 7 and 8, it should be noted that the CMRS Providers have, themselves, proposed terms that reference tariffs. In the CMRS Providers' proposed section 4.1.1.3, they propose a reference to the effective intrastate access tariff of the RTC. As I explained in the response to Issue 14, the origination and termination of interMTA traffic on the network of the RTCs is subject to the terms of interstate and intrastate access tariffs. Accordingly, the RTCs' Proposed Section 5.4 properly refers to those access tariffs.

For these reasons, the provisions of the draft agreement that would recognize that tariffs may need to be referenced should remain.

ISSUE 19. Under what circumstances should a Party be permitted to block traffic or terminate the Interconnection Agreement?

Q: What is the CMRS Providers' Position with respect to Issue 19?

A: CMRS Providers' Position: The CMRS Providers propose a mechanism for notice of default and termination that will ensure customers will not be unnecessarily affected as a result of carrier disputes. Blocking of traffic should be allowed only if authorized by the appropriate regulatory agency.

Q: Can you first summarize the RTCs' position on Issue 19?

A: Summary of RTC Position: The RTCs can agree to the CMRS Providers' proposals for this issue provided that the proposed Section 8.6.4 is modified to state:

> "In any event, no Party shall terminate the services and facilities arrangements or discontinue the termination of traffic under this Agreement without express authorization from an appropriate government agency authorizing such discontinuation or without a decision from a court of competent jurisdiction granting the right to discontinue the services under this Agreement."

FURTHER ANALYSIS

Q: How has this provision been modified by the RTCs?

A: It has been modified to recognize that a carrier must seek approval in order to terminate services, facilities, or termination of other party's traffic under the Agreement and that approval can come from either the Commission or a court that has competent jurisdiction.

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

Q: What is the CMRS Providers' Position with respect to Issue 20?

A: CMRS Providers' Position: If either party seeks post termination arrangements, the agreement will remain in place, subject to true-up following the conclusion of negotiations.

Q: Can you first summarize the RTCs' position on Issue 20?

A: Summary of RTC Position: The RTCs are willing to alter their original proposal such that the 12-month limit would not apply to the extent that the Parties are engaged in lawful arbitration; *i.e.*, the agreement would remain in place if the parties are engaged in lawful arbitration. There is no provision in the rules for a true-up as proposed by the CMRS providers in Section 8.2.1, and the CMRS Providers have themselves (at the informal conference) expressed their own disagreement with the use of "true-up" arrangements. The RTCs do not intend to be subject to terms and conditions that would subject them to uncertainty.

FURTHER ANALYSIS

Q: How would the proposed, modified provision read?

A: Section 8.2.1 should read:

> 8.2.1 Post-Termination Arrangements. Upon termination or expiration of this Agreement pursuant to Section 8.2 above, and upon the written request of either Party, this Agreement shall remain in full force and effect until a replacement agreement has been executed by the Parties either (a) under an agreement voluntarily executed by the Parties; (b) under a new agree arrived at pursuant to the provisions of the Act; or (c) under an agreement available to and requested by CMRS Provider according to the provisions of Section 251(i) of the Act, but in no case will the existing service arrangements continue for longer than 12 months following the date on which notice of termination is provided, except that the agreement will remain it place beyond the 12 month period to the extent, and for the period, that the Parties are engaged in lawful arbitration under the Act.

The underlined portion reflects the RTCs' modified position.

If neither party seeks arbitration, or if the parties abandon arbitration, then the RTCs would not want the status of the agreement to linger without resolution. This provision means that there can be no uncertainty about the status of the agreement.

Q: Have you included any provision for a true-up as proposed by the CMRS Providers?

A: No. The interconnection requirements and rules do not require that the RTCs be subjected to uncertain terms that could be retroactively adjusted at some point in time in the future. Moreover, the CMRS Providers themselves have indicated (at the informal conference) that true-up mechanisms do not work in practice. Either the existing terms remain in place with certainty for a limited amount of time, or new terms replace the existing terms within a reasonable amount of time after termination. The terms must be certain. The RTCs do not want, and cannot be expected, to endure a period of uncertainty where the terms are unknown and a retroactive impact is pending. Any period of uncertainty with a retroactive financial impact for the RTCs would be tantamount to retroactive ratemaking. If any new replacement terms imposed additional costs on the RTCs in the form of retroactive settlement, there may be no means available to the RTC for recovery of such costs.

ISSUE 21. How should the following terms be defined: "Central Office Switch," "Interconnection Point," "InterMTA Traffic," "Interexchange Carrier," "Multifrequency," "Rate Center," "Subject Traffic," "Telecommunications Traffic," "Termination," and "Transport."

Q: What is the CMRS Providers' Position with respect to Issue 21?

A: CMRS Providers' Position: The position of the CMRS Providers is not known because their Response in the issues matrix only refers to the CMRS redline agreement that was attached to their Response.

Q: Can you summarize the RTCs' position on Issue 21?

A: Summary of RTC Position:

The change to the "Central Office Switch" definition is acceptable.

The deletion of the definition for "Interconnection Point" is not acceptable. Interconnection Point is explicitly defined in the FCC's Subpart H rules, and the definition set forth by the RTCs in their proposed Agreement is consistent with those rules.

The CMRS Providers' changes to the first sentence of the definition of "Inter-MTA Traffic" are acceptable. The deletion of the last sentence of the definition of "Inter-MTA Traffic" is not correct, and the RTCs do not accept that change for the reasons already set forth in the discussion of Issue 15, above.

The definition of "Interexchange Carrier" as proposed by the RTCs is accurate and correct, should not be deleted, is necessary to address other provisions of the Agreement, and is necessary to avoid confusion about the scope of traffic subject to reciprocal compensation under the FCC's Subpart H rules.

The RTCs accept the deletion of the definition of "Multifrequency."

The RTCs do not agree to the CMRS Providers' proposed change to the definition of "Rate Center," and the CMRS Providers have not set forth their position on this issue. This issue should be dismissed.

The changes that the CMRS Providers have proposed for the definition of "Subject Traffic" and/or "Telecommunications Traffic" are not sufficiently detailed to avoid confusion with respect to the proper application of the terms of the Agreement. The CMRS Providers incorrectly confuse interexchange carrier traffic that is mutually exclusive from certain "local" traffic subject to the FCC's Subpart H rules under Section 251(b)(5) of the Act. The RTCs' position is that the use of words "Subject Traffic" avoids the confusion created by the use of "Telecommunications Traffic" because not all Telecommunications is subject to the terms of reciprocal compensation. With this in mind, the RTCs would agree to the following alternative for this definition:

"Subject Traffic," is as defined in 47 C.F.R. § 51.701(b)(2) and is traffic exchanged between a local exchange service end user of a LEC and a CMRS end user of a CMRS Provider that, at the beginning of the call, originates and terminates within the same Major Trading Area. The definition and use of the term "Subject Traffic" for purposes of this Agreement has no effect on the definition of local traffic or the geographic area associated with local calling under either Party's respective end user service offerings.

The substitution of the word "Subject" does not change the meaning of the Agreement compared to the use of the word "Telecommunications."

The RTCs agree with the changes to the definition of "Termination" and "Transport" as proposed by the CMRS Providers; however, the words originally proposed by the RTCs have the same meaning as those proposed by the CMRS Providers.

FURTHER ANALYSIS

Q: Regarding the CMRS Providers' proposal to delete the use of the term interconnection point and the definition, why do you disagree?

A: As I have explained above, the Interconnection Point with respect to the exchange of traffic that is subject to the FCC's Subpart H rules is explicitly set forth in the Act and in the FCC's rules. Without repeating that discussion, the FCC decided that the Interconnection Point between two carriers for the exchange of traffic (without any distinction about whether the interconnection is direct or indirect) is as the Act sets forth in Section 251(c)(2)(B). Section 51.701(c) of the FCC's Subpart H rules specifically addresses the "interconnection point" between the two carriers. As such, this concept and term is used throughout the Act and rules with respect to the interconnection arrangement contemplated between the parties.

Q: Does the definition for Interconnection Point proposed by the RTCs comply with the FCC's rules, discussion and the Act?

A: Yes. The FCC has concluded, as I have established above in this testimony, that the Interconnection Point between the two carriers (without any distinction about whether the interconnection is direct or indirect) is as set forth in Section 251(c)(2)(B) which states that the point must be within the incumbent carrier's network, and the definition proposed by the RTCs also states that condition. In the FCC's Subpart H rules, it states under Section 51.701(c) that the transport of traffic for termination on the terminating carrier's network takes place at the "interconnection point between the two carriers." Again, the definition proposed by the RTCs is consistent with that rule -- the RTCs' proposed language states that this "Interconnection Point" is where the "delivery of traffic from one Party to the other Party takes place." There is no basis for objection to the inclusion of this concept and definition because it is consistent with the Act and the controlling rules.

Q: With respect to the changes that the CMRS Providers propose for the definition of Inter-MTA Traffic, why do you disagree with the deletion of the last sentence proposed by the RTCs?

A: As I have explained in the response to Issue 15, above, and as the FCC has explicitly explained in its *First Report and Order*, when the CMRS Provider carries a LEC-originated call to another MTA, the CMRS Provider is acting as an interexchange carrier and is obtaining originating access services from the RTC. Also, when a CMRS Providers' mobile end user originates a call in a different MTA than the RTC is located and terminates that call to the RTC, the CMRS Provider is obtaining terminating access services from the RTC. Accordingly, the last sentence in the definition of Inter-MTA Traffic as proposed by the RTCs simply reflects the requirements as the FCC has defined them. This sentence should be retained.

Q: Why do the RTCs object to the deletion of the definition of "Interexchange Carrier?"

A: As I have quoted several times above, the scope of traffic that is subject to the FCC's Subpart H rules with respect to reciprocal compensation and the definitions of traffic are affected depending on whether a call is carried by an interexchange carrier. Therefore, to reflect these requirements, the agreement needs to refer to the concept of interexchange carrier. For this reason, and to be consistent with the FCC's discussion of its own rules, the agreement needs to include the concept of interexchange carrier.

Q: With respect to the modification to the definition of "Rate Center" proposed by the CMRS Providers, why do the RTCs object to these changes?

A: The CMRS Providers appear to be troubled about the sentence that states that the Rate Center Point must be within the Rate Center Area. I cannot see why the CMRS Providers would object to such a logically obvious and basic point. The identification of a Rate Center Area is based on the identification of the Rate Center Point. If they expect that there would be some significance to NPA-NXXs associated with Rate Center Areas in Kentucky, then the Rate Center Point for such Rate Center Area would have to be identified in that area. Perhaps the CMRS Providers have some other misunderstanding about the concept.

ISSUE 22. What notice and consent requirements should apply prior to assignment of the Interconnection Agreement?

Q: What is the CMRS Providers' Position with respect to Issue 22?

A: CMRS Providers' Position: A Party should be allowed to assign to an affiliate with notice, and to a third party upon written consent, which consent will not be unreasonably withheld.

Q: Can you first summarize the RTCs' position on Issue 22?

A: Summary of RTC Position: The RTCs can agree simply to require notice with respect to assignment to an affiliate, and written notice and consent for assignment to non-affiliates, except that all assignments must be conditioned on the assignee demonstrating that it has the resources, ability, and authority to satisfy the assigned terms and conditions. The final sentence in section 14.7 of the Agreement as proposed by the RTCs should not be deleted. This sentence recognizes legitimate and customary obligations that flow to a successor or assignee.

ISSUE 23. If the parties to an Interconnection Agreement are unable to resolve a dispute, should either party be allowed to raise such dispute before any agency or court of competent jurisdiction?

Q: What is the CMRS Providers' Position with respect to Issue 23?

A: CMRS Providers' Position: Disputes may be resolved before the Commission, the FCC, or a court of competent jurisdiction.

Q: Can you first summarize the RTCs' position on Issue 23?

A: Summary of RTC Position: The RTCs maintain that the FCC has no jurisdiction over the enforcement of what is a state approved interconnection agreement (*i.e*, contract). Any action that either Party may take at the FCC would be pursuant to the FCC's complaint processes, and the agreement terms proposed by the RTCs do not affect either Party's right to pursue a complaint before the FCC. Regardless of this difference of opinion, the RTCs would nevertheless be agreeable to the changes in both sections 14.8.4 and 14.9 where the CMRS providers have inserted new language if that inserted language, in both instances, states: " . . . or any agency of competent jurisdiction or court of competent jurisdiction." This alternative language would fully address the CMRS Providers' issue because if the FCC or a court has competent jurisdiction, then the provision will apply.

ISSUE 24. Should the CMRS Providers be required to provide "rolling" six months' forecasts of "traffic and volume" requirements?

Q: What is the CMRS Providers' Position with respect to Issue 24?

A: CMRS Providers' Position: Such forecasts are unnecessary.

Q: Can you first summarize the RTCs' position on Issue 24?

A: Summary of RTC Position: The RTCs would be agreeable to forecasts once a year as necessary for the Parties' planning of interconnection facilities and trunking capacity. The RTCs would be agreeable to a form of forecasts that is mutually determined by the Parties.

ISSUE 25. Should the Interconnection Agreement require the Parties to maintain specific insurance not required by law?

Q: What is the CMRS Providers' Position with respect to Issue 25?

A: CMRS Providers' Position: Such insurance requirements are unnecessary.

Q: Can you first summarize the RTCs' position on Issue 25?

A: Summary of RTC Position: The requirements of Section 7.8 are reasonable and customary in interconnection agreements and in business relationships in general, and they should be retained.

ISSUE 26. Should a Party be required to insert in its tariffs and/or service contract language that attempts to limit third-party claims for damage arising from service provided under the Interconnection Agreement, and should the Interconnection Agreement itself attempt to limit claims of one Party's customer against the other Party?

Q: What is the CMRS Providers' Position with respect to Issue 26?

A: CMRS Providers' Position: Such requirements are unnecessary, not commercially reasonable and unenforceable.

Q: Can you first summarize the RTCs' position on Issue 26?

A: Summary of RTC Position: The RTCs do not intend to be liable to the CMRS Providers' customers to any greater degree than the RTCs have liability with respect to their own customers. The RTCs are agreeable to a modified version of this provision which would not require the CMRS providers to place terms in their contracts or tariffs but would state that the limitation on liability would apply in the event that such terms are not included. The RTCs propose the following alternative language for Section 10.3:

> 10.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party (First Party) elects not to place in its tariffs or contracts such limitations of liability, and the other Party (Second Party) incurs a loss as a result thereof, the First Party shall, except to the extent caused by the Second Party's gross negligence or willful misconduct, indemnify and reimburse the Second Party for that portion of the loss that would have been limited had the First Party included in its tariffs and contracts the limitations of liability that the Second Party included in its own tariffs at the time of such loss.

Also, the first sentence of Section 11.3 should be modified to state: "The Parties agree that the liability to each other's customers shall be governed by the provisions of Section 10.3.

ISSUE 27. If the Parties cannot agree upon a replacement for invalidated language, should either Party be allowed to terminate the Interconnection Agreement, or should the stalemate be resolved pursuant to Dispute Resolution?

Q: What is the CMRS Providers' Position with respect to Issue 27?

A: CMRS Providers' Position: Agreement should be modified via the dispute resolution provision, not terminated.

Q: Can you first summarize the RTCs' position on Issue 27?

A: Summary of RTC Position: The change in this provision proposed by the CMRS Providers is acceptable to the RTCs.

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

Q: What is the CMRS Providers' Position with respect to Issue 28?

A: CMRS Providers' Position: Yes. The Interconnection Agreement should accommodate this standard industry practice.

Q: Can you first summarize the RTCs' position on Issue 28?

A: Summary of RTC Position: The CMRS Providers cannot provide any reference to any interconnection requirement that supports their position; there is no "standard industry practice" as claimed by the CMRS Providers.

The CMRS Providers' proposed addition in Section 4.4 is unreasonably vague and would effectively allow a single CMRS Provider to extend the agreement unilaterally to any and all wireless carriers, without negotiation with the RTC and without consent of the RTC. The RTCs oppose the arbitrary expansion of the scope of any specific agreement to include some other carrier not contemplated by the negotiated or arbitrated terms. The expansion to include some other carrier would alter the scope of traffic, the jurisdictional proportions of traffic, and could present problems as to the identity of which carriers to bill.

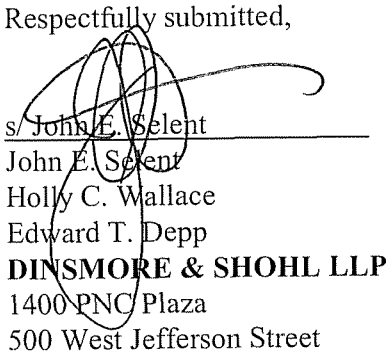
The Agreement already contains provisions for assignment, if this is what the CMRS Providers are concerned about.

Absent assignment of the agreement, however, if some other entity not affiliated with a CMRS Provider wants to establish CMRS-LEC interconnection with the RTC, such entity must either request interconnection and negotiate terms or must adopt, in its entirety, an existing interconnection agreement.

The terms of the Agreement with one particular CMRS Provider depend on the geographic scope of the particular CMRS provider that is party to the agreement (*e.g.*, the amount of interMTA traffic). To the extent that the agreement is extended to parties that widen the geographic scope of the Agreement, the terms and conditions would require amendment to reflect the new scope. The RTCs have the right to negotiate and arbitrate, if necessary, any new and different arrangements with different consequences. The CMRS Providers' proposal would write the interconnection request, negotiation, arbitration, and/or adoption of existing agreements provisions out of the Act.

For these reasons, this provision should be rejected.

Respectfully submitted,



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FCC Rules
Related to the Transport and Termination of Traffic Subject to Section 251(b)(5) of the Act.

§ 51.221 Reciprocal compensation.
The rules governing reciprocal compensation are set forth in subpart H of this part.
. . .

Subpart H - Reciprocal Compensation for Transport and Termination of Telecommunications Traffic.

§ 51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.

(b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, paras. 23, 36, 39, 42-43); or

(2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

§ 51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

§ 51.705 Incumbent LECs' rates for transport and termination.

(a) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(1) the forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

~~(2) default proxies, as provided in § 51.707;~~ or

(3) a bill-and-keep arrangement, as provided in § 51.713. (b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

~~**§ 51.707 Default proxies for incumbent LECs' transport and termination rates.**~~

~~(a) A state commission may determine that the cost information available to it with respect to transport and termination of telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511. In that event, the state commission may establish rates for transport and termination of telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:~~

~~(1) any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and~~

~~(2) the state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of local telecommunications traffic, or for specific components included within transport and termination.~~

~~(b) If a state commission establishes rates for transport and termination of telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:~~

~~(1) *Termination.* The incumbent LEC's rates for the termination of telecommunications traffic shall be no greater than 0.4 cents ($0.004) per minute, and no less than 0.2 cents ($0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents ($0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.~~

~~(2) *Transport.* The incumbent LEC's rates for the transport of telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(c)(3), (4), and (5) of this part that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.~~

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, a state commission shall establish rates for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

§ 51.711 Symmetrical reciprocal compensation.

(a) Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of

telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

(2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(b) A state commission may establish asymmetrical rates for transport and termination of telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

(c) Pending further proceedings before the Commission, a state commission shall establish the rates that licensees in the Paging and Radiotelephone Service (defined in part 22, subpart E of this chapter), Narrowband Personal Communications Services (defined in part 24, subpart D of this chapter), and Paging Operations in the Private Land Mobile Radio Services (defined in part 90, subpart P of this chapter) may assess upon other carriers for the transport and termination of telecommunications traffic based on the forward-looking costs that such licensees incur in providing such services, pursuant to §§ 51.505 and 51.511. Such licensees' rates shall not be set based on the default proxies described in § 51.707.

§ 51.713 Bill-and-keep arrangements for reciprocal compensation.

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).

(c) Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of

telecommunications traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

~~(2) In a state in which the state commission has established transport and termination rates consistent with the default price ranges and ceilings described in § 51.707, an incumbent LEC shall use these state-determined rates as interim rates.~~

~~(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in § 51.707, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in § 51.707(b)(2)).~~

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of telecommunications traffic subject to the interim arrangement:

(1) a voluntary agreement has been negotiated and approved by a state commission;

(2) an agreement has been arbitrated and approved by a state commission; or

(3) the period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equalled the rates later established by the state commission pursuant to § 51.705.

§ 51.717 Renegotiation of existing non-reciprocal arrangements.

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.