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 F/K/A ACC KENTUCKY LICENSE LLC, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00215
PETITION OF DUO COUNTY TELEPHONE COOPERATIVE CORPORATION, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED INTERCONNECTION AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, GTE WIRELESS OF THE MIDWEST INCORPORATED D/B/A VERIZON WIRELESS, AND KENTUCKY RSA NO. 1 PARTNERSHIP D/B/A VERIZON WIRELESS, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00217
PETITION OF LOGAN TELEPHONE COOPERATIVE, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED INTERCONNECTION AGREEMENT WITH AMERICAN CELLULAR 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 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
PETITION OF NORTH CENTRAL TELEPHONE COOPERATIVE CORPORATION, FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED INTERCONNECTION AGREEMENT WITH AMERICAN CELLULAR CORPORATION F/K/A ACC KENTUCKY LICENSE LLC, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00252
PETITION OF SOUTH CENTRAL RURAL TELEPHONE COOPERATIVE CORPORATION, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED INTERCONNECTION AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, GTE WIRELESS OF THE MIDWEST INCORPORATED D/B/A VERIZON WIRELESS, AND KENTUCKY RSA NO. 1 PARTNERSHIP D/B/A VERIZON WIRELESS, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00255
PETITION OF 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 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/B/A VERIZON WIRELESS, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00294
PETITION OF MOUNTAIN RURAL TELEPHONE COOPERATIVE CORPORATION, INC., FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED INTERCONNECTION AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, GTE WIRELESS OF THE MIDWEST INCORPORATED D/B/A VERIZON WIRELESS, AND KENTUCKY RSA NO 1 PARTNERSHIP D/B/A VERIZON WIRELESS, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00296

PETITION OF PEOPLES RURAL TELEPHONE COOPERATIVE CORPORATION, INC., FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED INTERCONNECTION AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, GTE WIRELESS OF THE MIDWEST INCORPORATED D/B/A VERIZON WIRELESS, AND KENTUCKY RSA NO. 1 PARTNERSHIP D/B/A VERIZON WIRELESS, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00298
PETITION OF THACKER-GRIGSBY TELEPHONE COMPANY, INC., FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED INTERCONNECTION AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, GTE WIRELESS OF THE MIDWEST INCORPORATED D/B/A VERIZON WIRELESS, AND KENTUCKY RSA NO. 1 PARTNERSHIP D/B/A VERIZON WIRELESS, PURSUANT TO THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996	)	CASE NO. 2006-00300

O R D E R

On December 22, 2006, the Commission entered an Order addressing all unresolved issues in this arbitration proceeding. The commercial mobile radio service providers ("CMRS Providers")[1] petitioned for rehearing or clarification of several issues contained in the Commission's Order. On February 5, 2007, the Commission granted

[1] Alltel Communications, Inc.; New Cingular Wireless PCS, LLC, successor to BellSouth Mobility LLC, BellSouth Personal Communications LLC and Cincinnati SMSA Limited Partnership d/b/a Cingular Wireless; Sprint Spectrum L.P., on behalf of itself and SprintCom, Inc., d/b/a Sprint PCS; T-Mobile USA, Inc., Powertel/Memphis, Inc., and T-Mobile Central LLC; and Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated, and Kentucky RSA No. 1 Partnership.

rehearing of Issues 1 and 9, 2, 5 and 6, and 7 and 8 for the purpose of clarifying the December 22, 2006 Order. The rural local exchange carriers' ("RLECs")[2] motion for clarification of one issue was addressed in the February 5, 2007 Order.

ISSUES 1 AND 9: HOW SHOULD THE INTERCONNECTION AGREEMENT IDENTIFY TRAFFIC THAT IS SUBJECT TO RECIPROCAL COMPENSATION? ARE THE PARTIES REQUIRED TO PAY RECIPROCAL COMPENSATION TO ONE ANOTHER FOR ALL INTRA-MTA TRAFFIC ORIGINATED BY SUBSCRIBERS ON THEIR NETWORKS, REGARDLESS OF HOW SUCH TRAFFIC IS ROUTED, FOR TERMINATION TO THE OTHER PARTY?

The CMRS Providers seek rehearing of the Commission's determination that the RLECs do not owe reciprocal compensation for calls made by their customers using a 1+ arrangement that are carried by an interexchange carrier. The Commission, in its December 22, 2006 Order, found that these are toll calls, and compensation in the form of access charges is due by the interexchange carrier, but compensation in the form of reciprocal compensation is not due by the RLEC.

In their request for rehearing, the CMRS Providers reiterate their view that all intra-major trading area ("MTA") traffic is traffic for which reciprocal compensation is due. They argue that the Commission has applied legal standards that are inappropriate for CMRS providers. The CMRS Providers' argument for rehearing

[2] Ballard Rural Telephone Cooperative Corporation, Inc.; Duo County Telephone Cooperative Corporation, Inc.; Logan Telephone Cooperative, Inc.; West Kentucky Rural Telephone Cooperative Corporation, Inc.; North Central Telephone Cooperative Corporation; South Central Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company; Foothills Rural Telephone Cooperative Corporation, Inc.; Gearheart Communications, Inc. d/b/a Coalfields Telephone Company; Mountain Rural Telephone Cooperative Corporation, Inc.; Peoples Rural Telephone Cooperative Corporation, Inc.; and Thacker-Grigsby Telephone Company, Inc.

hinges on the application of 47 U.S.C. § 251(b)(5), wherein all local exchange carriers are obligated to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The CMRS Providers stress that this language applies to all "telecommunications" and does not restrict reciprocal compensation arrangements to "local traffic." As further justification, the CMRS Providers reference the Federal Communications Commission's ("FCC") determination in its First Report & Order implementing the Telecommunications Act of 1996,[3] wherein the FCC concluded that § 251(b)(5) applies to "traffic to or from a CMRS network that originates and terminates within the same MTA"[4] and that "traffic between an incumbent LEC and a CMRS network that originates and terminates in the same MTA. . .is subject to transport and termination rates. . . ."[5]

The CMRS Providers cite 47 C.F.R. § 51.701(b)(2), which defines telecommunications traffic as "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area. . . ." The CMRS Providers draw a significant distinction between this definition of telecommunications traffic and that contained in 47 C.F.R. § 51.701(b)(1), where telecommunications traffic is defined as that which is exchanged between a LEC and a telecommunications carrier other than a CMRS provider "except for

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[3] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185 (Aug. 8, 1996).

[4] Id. at ¶ 1036.

[5] Id. at ¶ 1043.

telecommunications traffic that is interstate or intrastate exchange access. . . ." The CMRS Providers argue that the FCC "intentionally crafted" different reciprocal compensation standards for CMRS providers from other telecommunications carriers.

Finally, the CMRS Providers point to the FCC's April 27, 2001 decision to substitute "telecommunications traffic" for the term "local traffic" in 47 C.F.R. § 51.701(b) as grounds for the FCC to "prevent state commissions from using historical concepts of 'local calling areas' when applying reciprocal compensation rules."[6] The CMRS Providers cite several federal court decisions where they claim arguments for the payment of reciprocal compensation for all intraMTA traffic are addressed.

In response, the RLECs assert that 47 C.F.R. § 51.703 provides for reciprocal compensation of the intra-MTA traffic exchanged between a local exchange carrier ("LEC") and a CMRS provider. According to the RLECs, toll traffic carried on a 1+ dialed basis does not constitute traffic exchanged between a LEC and a CMRS provider.

The Commission's decisions have been based on the premise that an incumbent local exchange carrier ("ILEC") is not the originator of toll traffic. Rather, 1+ dialed traffic is interexchange traffic and is not subject to reciprocal compensation. The Commission has carefully reviewed the CMRS Providers' arguments to the contrary.

Section 251 of the Telecommunications Act ("the Act)" establishes the duties and obligations of interconnection for all telecommunications carriers, which include specific requirements for LECs and then further expanded obligations for ILECs. Of particular

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[6] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Order on Remand and Report and Order, ¶ 34 (April 27, 2001).

significance in this proceeding are those requirements that govern the means by which facilities are to be interconnected and the extent to which each carrier is to be compensated for carrying the others' traffic.

First, § 251(a)(1) requires each telecommunications carrier to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." The term "interconnect" implies a mutual and reciprocal connection with the facilities of another carrier. Furthermore, the connection can be accomplished directly without intervening parties, or indirectly through the use of intermediaries.

Second, § 251(b) specifies the requirements of LECs, including the obligation of § 251(b)(5) to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The Act does not explicitly define "transport" or "termination," but such definitions are contained in the FCC rules. The FCC rules define 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."[7] Termination is defined as "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."[8] The FCC defines a reciprocal compensation arrangement between two parties as "one in which each of the two carriers receives compensation from the other carrier for the transport and

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[7] 47 C.F.R. § 51.701(c).

[8] 47 C.F.R. § 51.701(d).

termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."[9]

Third, § 251(c)(2) specifies interconnection obligations of ILECs, including the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network. . .for the transmission and routing of telephone exchange service and exchange access. . .at any technically feasible point within the carrier's network."

Therefore, the interconnection obligations of an ILEC can be summarized as the duty to mutually link facilities, directly or indirectly, at any technically feasible point within its network, with the facilities of other requesting telecommunications carriers for the transmission and routing of telephone exchange service and exchange access. The reciprocal compensation obligations of two interconnected LECs can be generally summarized as the duty of each carrier that originates telecommunications traffic from its network facilities to compensate the other carrier for the transmission, switching, and delivery of such traffic from the interconnection point to the called party's premises.

CMRS providers are ostensively categorized as LECs, while RLECs are defined as ILECs, and each have the attendant obligations of ILECs and LECs related to interconnection and compensation; but those obligations are not identical or even symmetrical. The requirements of ILECs are clearly more extensive than those of competing LECs. For example, ILECs, unlike competitive LECs, must permit unbundled access to network elements[10] and physical collocation of a competing carrier's

[9] 47 C.F.R. § 51.701(e).

[10] 47 C.F.R. § 251(c)(3).

equipment when feasible.[11] These differences in obligations recognize the ILECs' unique standing as the "carriers of last resort" and the ubiquitousness of the overall incumbent networks. Nevertheless, there are limitations on such obligations.

The Act is careful to explain that an ILEC's obligation to interconnect is "for the transmission and routing of telephone exchange service and exchange access"[12] and extends only to a "point within the carrier's network."[13] These requirements, unique to ILECs, could have been omitted if the broader but less definitive interconnection requirement of § 251(a)(1) for telecommunications carriers in general were desired. Instead, the law restricts where interconnection must occur and clarifies the type of traffic an ILEC is obligated to transmit and route.

The concepts and policies of interconnection and reciprocal compensation are inextricable, each relying on the other to ensure the just, reasonable, and nondiscriminatory treatment of telecommunications carriers and their respective traffic. It is important to note that interconnection between two carriers, including the costs associated with interconnection, does not include transport and termination of traffic over those facilities.[14] The costs of transport and termination are recoverable, instead, through reciprocal compensation arrangements wherein the terminating carrier is compensated for the transmission and routing of traffic originated by the other carrier

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[11] 47 C.F.R. § 251(c)(6).

[12] 47 C.F.R. § 251(c)(2)(A).

[13] 47 C.F.R. § 251(c)(2)(B).

[14] See 47 C.F.R. § 51.5.

"from the interconnection point" to the "called party's premises."[15] Hence, telecommunications traffic is subject to § 251(b)(5) only to the extent that it is originated by one carrier and transmitted and routed by the other carrier utilizing the interconnection arrangement established by agreement between the two carriers. The CMRS Providers' desire to be compensated for traffic originated by interexchange carriers and routed via toll facilities cannot be reconciled with the coupled concepts of interconnection and reciprocal compensation prescribed by the Act. Nor has the FCC established any definitive policies that support the CMRS Providers' position.[16]

The CMRS Providers clearly are entitled to compensation for terminating calls originated by RLECs that are transmitted and routed over interconnecting facilities and that, at the beginning of these calls, originate and terminate within the same MTA. But requiring RLECs to compensate the CMRS Providers for traffic that is neither originated by the RLEC nor traverses the interconnection point established between the two carriers is directly contrary to the scope and purpose of the RLECs' interconnection and compensation obligations related to the exchange of telecommunications traffic. Furthermore, requiring RLECs to commandeer presubscribed toll traffic bound for an interexchange carrier is directly at odds with the toll dialing parity requirements of

[15] 47 C.F.R. § 51.701(c) and (d).

[16] The Commission notes that intercarrier compensation issues, including reciprocal compensation arrangements, in the telecommunication industry are at the forefront of regulatory debate. In its FNPM addressing the development of a unified intercarrier compensation regime, CC Docket 01-92 at 137-138, issued March 3, 2005, the FCC itself debates the interpretation of its "intraMTA" ruling, even going so far as to "recognize that the current Commission rules may require that intraMTA calls dialed on a 1+ basis be routed through IXCs [interexchange carriers]."

47 C.F.R. § 51.209(b), wherein such traffic is to be "routed automatically" to the interexchange carrier of the calling customer's choosing.

The CMRS Providers also request clarification of footnote 8 of the Commission's December 22, 2006 Order and how it relates to the treatment of intraMTA mobile-to-land calls.[17] The CMRS Providers claim that the footnote "suggests mobile-to-land calls are not subject to reciprocal compensation unless they are made to land-line customers within a local calling area identified in the LERG."[18] The CMRS Providers request that the Commission clarify how mobile-to-land intraMTA calls that are not rated as local calls between the RLECs' customers should be treated.

Footnote 8 of the Commission's Order attempted to note a significant difference in how CMRS providers and RLECs handle interexchange traffic. RLECs are required to automatically direct all 1+ traffic to the presubscribed toll carrier chosen by the calling party. This is distinctly different from CMRS providers, who have no obligation to engage toll carriers for similar interexchange-like calls originated by CMRS subscribers. These differences in the way calls are routed materially affects whether or not such calls should be subject to reciprocal compensation.

As more thoroughly discussed earlier, a terminating carrier is only entitled to compensation for the transport and termination of telecommunications traffic if the traffic is first originated by the other carrier and, second, actually routed and transmitted

[17] Footnote 8 of the December 22, 2006 Order provides: "CMRS providers, unlike the RLECs, are generally responsible for performing the interexchange function for calls that originate on the CMRS Provider's network. Nevertheless, only local traffic is subject to reciprocal compensation between the carriers."

[18] CMRS Providers' motion at 5.

through an interconnection point established by agreement between the two carriers. Because interconnection arrangements between a telecommunications carrier and an ILEC are to be used for the exchange of telephone exchange service (i.e., local or comparable service) or exchange access service (i.e., local access for the origination or termination of toll service), it logically follows that reciprocal compensation between two carriers is similarly limited to the "local" traffic exchanged between them. The Commission hereby affirms its previous determination on Issues 1 and 9.

ISSUE 2: SHOULD THE INTERCONNECTION AGREEMENT APPLY TO TRAFFIC EXCHANGED DIRECTLY, AS WELL AS TO TRAFFIC EXCHANGED INDIRECTLY, THROUGH BELLSOUTH OR ANY OTHER INTERMEDIARY CARRIER?

The Commission required that direct and indirect interconnection be made available by the interconnection agreement. However, the Commission required that interconnection be "dedicated" when the traffic exchanged between an RLEC and a CMRS Provider reached a DS1 level.

The CMRS Providers ask that the Commission require that direct interconnection be based upon the choice of the requesting CMRS provider and not on a traffic threshold. The CMRS Providers argue that the Commission erred when it decided that "dedicated" trunking arrangements would be required for traffic that exceeds a DS1 level. The CMRS Providers claim that "dedicated" and "direct" are synonymous and that requiring direct interconnection upon reaching a DS1 level is contrary to law. The CMRS Providers further argue that the Commission's reference to the Level 3 decision indicates that an OC3 threshold, if any, would be more appropriate before direct interconnection would be required. Moreover, the CMRS Providers assert that the record contains no basis for the establishment of a DS1 level threshold.

In response, the RLECs contend that the Commission reasonably established a dedicated interconnection threshold. According to the RLECs, the Commission's Order appropriately balanced the RLECs' goal of identifying, measuring, and controlling traffic that comes into their networks and the CMRS Providers' goal in simplifying their network architecture.

The Commission notes that the Level 3 decision ultimately established a "DS3"[19] threshold for aggregated traffic transported from a distant exchange to a point of interconnection on the ILEC's network before a dedicated transport arrangement or direct interconnection with a serving exchange would be required. The Level 3 decision contemplated traffic from multiple exchanges being routed by the ILEC across its network to a single point of interconnection within a LATA. Because this traffic would be aggregated to include traffic throughout a system that covered numerous exchanges and local calling areas within the state, a DS3 level was established to allow for a significant volume of calls before alternative interconnection arrangements would need to be established with individual serving exchanges.[20]

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[19] The Digital Signal ("DS") level of a DS1 supports data rates of 1.544 megabits per second (equivalent to 24 simultaneous voice channels or DS0s) while a DS3 supports 44.736 megabits per second (equivalent to 672 DS0s). Therefore, the capacity of a DS3 is 28 times that of a DS1.

[20] Case No. 2000-00404, The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996, Order on reconsideration at 1 (April 23, 2001), and Case No. 2001-00224, Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South, Inc. Pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996 (November 15, 2001).

Although similar in concept, the threshold established in the instant proceeding was limited to traffic exchanged between a CMRS provider and an RLEC with significantly fewer exchanges and, hence, less potential traffic than the ILEC in the Level 3 proceeding. Therefore, the Commission decided that a DS1 would be an appropriate traffic level before dedicated facilities would be required.

Most importantly, the Commission clearly differentiated between "direct" interconnection and "dedicated" facilities. Direct interconnection, necessarily, implies facilities dedicated to the exchange of traffic between the two interconnected carriers. However, indirect interconnection, i.e., interconnection utilizing an intermediate carrier, may involve "dedicated" facilities where specific trunks are used for the exchange of traffic solely between two interconnecting carriers or "shared" facilities where entire trunk groups may be used to exchange commingled traffic between many different carriers. It is the latter case that the Commission was attempting to address. When facilities of an intermediate carrier are being used for indirect interconnection, an RLEC may request that dedicated trunk groups be established with the intermediary for traffic exchanged between a particular carrier if the traffic level exchanged with that carrier exceeds a DS1. The Commission further determined that when shared facilities continue to be used for indirect interconnection, i.e., through an intermediary, sufficient information should be included for the terminating carrier to identify and measure the originating carrier's traffic. At no point did the Commission intend to restrict a CMRS provider's ability to interconnect "indirectly," but it intended, rather, to limit such interconnection to dedicated facilities when traffic exceeds a DS1 level. The Commission hereby affirms its decision that the DS1 traffic threshold is an appropriate

amount, reasonably weighing the concerns of both the CMRS Providers and the RLECs.

ISSUES 5 AND 6: 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? 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?

The CMRS Providers seek clarification regarding whether the Commission's determination that RLECs should not be required to establish interconnection points beyond their local service territory was referring to facilities issues or compensation issues. The CMRS Providers believe that the RLECs should pay for the cost of transiting traffic to the CMRS Providers' interconnection point even if that interconnection point is beyond the RLECs' network. The RLECs, on the other hand, argue that they should only have to pay transiting charges up to the point of interconnection within their network. They believe the Commission appropriately determined that the RLECs' obligation to pay for the originating traffic ended at the edge of their own networks.

The Commission found, in its December 22, 2006 Order, that the requirement for the ILEC to pay for the traffic is limited by the duty to interconnect at "any technically feasible point within the carrier's network." According to 47 U.S.C. § 251(c)(2)(B), ILECs are responsible for delivering traffic they originate to the interconnection point but not beyond.

As previously discussed, the Commission draws a very significant distinction between the obligations of telecommunications carriers in general "to interconnect directly and indirectly with. . .other carriers" and the more specific duty of ILECs to provide interconnection "for the transmission and routing of telephone exchange service and exchange access. . .at any technically feasible point within the carrier's network." An ILEC's obligation to interconnect extends only to a "point within the carrier's network" and includes "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic." As defined by the FCC, interconnection is the linking of two networks for the mutual exchange of traffic but does not include the transport and termination of traffic. The costs of a terminating carrier to transport and terminate traffic are the exact costs intended to be recovered through reciprocal compensation arrangements with the originating carrier.

A telecommunications carrier's election to interconnect indirectly, i.e., through an intermediary, rather than directly does not change the obligations of the ILEC. The originating carrier is responsible for delivering traffic from the calling party's premises to the interconnection point without assessing charges, and the terminating carrier is required, in kind, to deliver traffic from the interconnection point to the called party's premises for which it is entitled to compensation. The Commission hereby affirms its prior decision.

The CMRS Providers also ask for rehearing of Issue 6, regarding whether the RLECs can use industry standard records to measure and bill CMRS providers for terminating mobile-originated telecommunications traffic. The CMRS Providers ask that the Commission clarify the Order to reflect that the terminating carrier should be

provided with information, including through a third-party transit carrier's records, that allow it to bill appropriately under its interconnection agreement. If the terminating carrier can confirm the numbers of minutes received from a CMRS provider, such information is sufficient to bill the CMRS provider. The traffic factors established by the Commission may then be applied to the total number of minutes. This clarification sought by the CMRS Providers is reasonable. The Commission never intended that the requirement that a terminating carrier have the ability to verify traffic exchanged with an originating carrier could be used by RLECs to require direct interconnection under circumstances where the terminating carrier either has or has not been provided with adequate verification of the total amount of traffic exchanged with a carrier.

ISSUES 7 AND 8: IF A DIRECT CONNECTION IS ESTABLISHED BETWEEN A CMRS PROVIDER AND AN RLEC, WHAT TERMS SHOULD APPLY? 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?

The CMRS Providers ask the Commission to clarify its Order regarding sharing of direct interconnection facility costs. The December 22, 2006 Order specified that for two-way trunking arrangements, the facilities should be established in an efficient manner, whether they are provided by the CMRS provider or by the RLEC. Moreover, the Order found that the cost should be shared proportionately, based on the level of traffic being exchanged. For one-way trunking facilities, each party should bear the cost of establishing the direct interconnection. Now the CMRS Providers postulate that the RLECs will view these Commission-established requirements as limiting the RLECs' obligations to pay the cost of the dedicated facilities.

The CMRS Providers argue that the Commission's reference to § 251(c)(2)(B) of the Act may be misconstrued by the RLECs and used as a basis to limit the RLECs' financial requirements related to interconnection. The CMRS Providers further suggest that direct interconnection of facilities requires the originating carrier to extend facilities beyond its network in order to deliver originating traffic to the terminating carrier.

The Commission understands that various methods may be employed for the direct interconnection of facilities and attempted to explain that, regardless of the method chosen, each carrier would be responsible for its proportional costs incurred to deliver originating traffic to the interconnection point. As previously discussed in this Order, the interconnection obligations of an ILEC are limited to "any technically feasible point within the carrier's network." Each carrier is responsible for the transmission and routing of traffic to and from the interconnection point established between the two carriers.

The Commission expects the carriers to use the most efficient means to establish interconnection but recognizes that an RLEC, as an ILEC, cannot be required to establish interconnection points beyond its network. The Commission's decision is not intended to preclude carriers from negotiating such arrangements or to prohibit standard interconnection methods that are routinely employed by interconnecting carriers, including meet point interconnection arrangements.[21]

The Commission affirms and clarifies its decisions regarding Issues 7 and 8.

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[21] 47 C.F.R. § 51.321.

The Commission HEREBY ORDERS that:

1. The December 22, 2006 Order is clarified as specified herein.

2. Within 30 days of the date of this Order, the parties shall file their respective interconnection agreements, to be effective January 1, 2007, incorporating the decisions contained in the December 22, 2006 Order, the February 5, 2007 Order, and the clarifications specified in this Order.

Done at Frankfort, Kentucky, this 19th day of March, 2007.

By the Commission

ATTEST:

Executive Director