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CHARLES E. THOMAS
(1913 - 1998)

January 31, 2005

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SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT FOLDER

In re: Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the ALLTEL Pennsylvania, Inc. Petition for Reconsideration, Clarification and Modification in the above-referenced proceeding. If at all possible, we would respectfully request that the Petition be considered at the Commission's February 3, 2005 Public Meeting.

Copies of the Petition are being served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By _____
Patricia Armstrong

Enclosures
cc: Certificate of Service
Chairman Wendell Holland (w/encl.)
Vice Chairman Robert Bloom (w/encl.)
Commissioner Glenn Thomas (w/encl.)
Commissioner Kim Pizzingrilli (w/encl.)
Cheryl Walker Davis (w/encl.)

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.	:	Docket No. A-310489F7004

ALLTEL PENNSYLVANIA, INC.
PETITION FOR RECONSIDERATION, CLARIFICATION AND MODIFICATION
OF COMMISSION ORDER ENTERED JANUARY 18, 2005

AND NOW, comes, ALLTEL Pennsylvania, Inc. ("ALLTEL"), by its attorneys, pursuant to 66 Pa. C.S.A §703(g) and 52 Pa. Code §5.572, and petitions the Pennsylvania Public Utility Commission ("Commission") for reconsideration, clarification and/or modification (collectively "reconsideration") of its Order entered January 18, 2005, in the above captioned proceeding at Docket No. A-310489F7004 (hereinafter "Arbitration Order"). In support of reconsideration, ALLTEL respectfully represents as follows:

I. BACKGROUND

1. The Arbitration Order addresses the Petition of Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") seeking arbitration pursuant to Section 252 of the Telecommunications Act of 1996 ("TA96") to establish an interconnection agreement with ALLTEL. In this Petition, filed on November 26, 2003, Verizon Wireless requested the arbitration of various unresolved issues stemming from its negotiations with ALLTEL to establish an interconnection agreement.

2. The procedural history of the proceeding is summarized on pages 4-6 of the Arbitration Order. The Commission in disposing of the issues raised in this arbitration also referenced its orders in two contemporaneous proceedings: ALLTEL Pennsylvania, Inc. Complainant v. Verizon Pennsylvania Inc. and Cellco Partnership d/b/a Verizon Wireless, Respondents, Docket No. C-20039321, Order entered January 18, 2005 ("Complaint Order") and Petition of Verizon Wireless to Terminate Section 251(f)(1)(B) Rural Exemptions of Bentleyville Telephone Company, et al., Docket No. P-00021995, et al., Order entered January 18, 2005. See Arbitration Order at 2-3.

3. This arbitration presents significant and complex issues of first impression never before addressed by this Commission, the Federal Communications Commission ("FCC") or courts, which have the potential for enormous repercussions on all rural ILECs operating in Pennsylvania. Thus, it is absolutely essential that reconsideration of the Arbitration Order be granted before possible court review.[1]

II. STANDARD OF REVIEW

4. The standard of review in connection with a petition seeking reconsideration of a final Commission order is set forth in Phillip Duick et al. v. Pennsylvania Gas and Water Co., 56 Pa. PUC 553, 559 (1982) ("Duick"), as follows:

[1]ALLTEL is seeking reconsideration on certain limited issues but reserves its right to seek Court review of any and all aspects of the Arbitration Order.

A petition for reconsideration under the provisions of 66 Pa.C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was said that "[parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against the . . . ." What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on the matter or issue was either unwise or in error.

5. In J.A.M. Cab v. Pa. PUC, 132 Pa. Commw. Ct. 390, 572 A.2d 1317 (1990), the Commonwealth Court specifically recognized that the Commission in addressing a petition seeking reconsideration must exercise good faith stating, as follows:

> [T]his Court's scope of review of a Commission's denial of reconsideration is limited to determining whether the Commission abused its discretion. Carbonaire Co. v. Pennsylvania Public Utility Commission, 114 Pa. Commonwealth Ct. 124, 538 A.2d 959 (1988). An abuse of discretion occurs if the agency decision demonstrates bad faith, fraud, capricious action or an abuse of power. Columbia Gas of Pennsylvania v. Pennsylvania Public Utility Commission, 112 Pa. Commonwealth Ct. 611, 535, A.2d 1246 (1988). Moreover, in deciding whether to deny reconsideration, the Commission considers whether the petitioner has presented new evidence, changed circumstances, or previously unconsidered law. Baltimore and Ohio Railroad Co. v. Pennsylvania Public Utility Commission, 77 Pa. Commonwealth Ct. 381, 465 A.2d 1326 (1983).

132 Pa. Commw. at 393.

6. ALLTEL respectfully submits that several determinations in the Arbitration Order justify reconsideration thereof consistent with the Duick standard.

III. JUSTIFICATION FOR RECONSIDERATION

A. The Arbitration Order's Institution of a Generic Rate Investigation Violates the Commission's Implementation Order and TAA96

7. The Arbitration Order directs that a generic investigation be opened into the reciprocal compensation rates of ALLTEL. Page 7 of the Arbitration Order, provides, as follows:

> 2. The Commission concludes that the rates produced by ALLTEL's cost study which was received into evidence as Exhibit (Exh.) CC-22 are TELRIC-compliant (Total Element Long-Run Incremental Cost) rates for the reciprocal compensation of local traffic. Consequently, we shall accept those rates produced by Exh.CC-2 for use in this proceeding. We further direct that the rates produced by Exh.CC-2 shall be deemed interim rates, and a generic investigation shall be instituted to establish permanent rates for these services. This generic investigation will provide notice and opportunity for other interested members of the industry to participate. (Emphasis added.)

See also Arbitration Order at 65 and 98.

Initially, it must be recognized that no party to this arbitration advocated instituting a generic investigation open to other interested parties to determine ALLTEL's reciprocal compensation rates applicable to Verizon Wireless. Thus, the right to institute a generic rate investigation as part of a Section 252 arbitration proceeding was not addressed before the Administrative Law Judge by either ALLTEL or Verizon Wireless.

8. Following the enactment of TA96, the Commission opened a proceeding to address, in part, the regulatory procedures to be employed in carrying out the mandates of the new legislation. See In Re: Implementation of the Telecommunications Act of 1996, Tentative Decision entered March 14, 1996,

Docket No. M-00960799. In the Tentative Decision at 20 and 39, the Commission sought comments as to whether arbitration proceedings should be open to participation by outside parties. This issue was resolved by the Commission in an Order entered June 3, 1996 at the same docket ("Implementation Order").

9. In the Implementation Order at page 32, the Commission precluded participation by outside parties in the hearing and briefing phases of a Section 252 arbitration proceeding. Outside parties' participation was instead limited to filing exceptions to the recommended decision. Likewise, we emphasize that the Implementation Order is directly consistent with FCC Rule 47 C.F.R. §51.807(g), which reads as follows:

> (g) Participation in the arbitration proceeding will be limited to the requesting telecommunications carrier and incumbent LEC, except that the Commission will consider requests by third parties to file written pleadings.

By Order on Reconsideration entered September 9, 1996 ("Reconsideration Order") the Commission made it even clearer that "Section 252 of the 1996 Act does not entitle private carriers to participate in arbitration proceedings involving an agreement to which they are not a party, unless the Commission decides to consolidate proceedings pursuant to §252(g) of the Act." Section 252(g) does not encompass generic rate investigations and, therefore, is not applicable. In fact, the Commission in its Reconsideration Order recognized that individual carriers have very different objectives and strategies making a generic investigation in this matter totally inappropriate and inconsistent with Section 252 and the Implementation Order. Applicable federal and state case law has also held that the use of generic

remedies or proceedings to set rates are precluded, finding such a procedure allows for circumvention of the TA96 negotiation and arbitration process. Verizon North Inc. v. John G. Strand, 309 F.3d 935 (6th Cir. 2002). The Court in Illinois Bell Telephone Company v. Illinois Commerce Commission et al., 343 Ill. App. 3d 249, 797 N E.2d 716, 724 (2003) held that a state commission did not have authority to allow a carrier to take part in a remedy (generic ruling) without first taking part in the negotiation and arbitration process.

10. The reciprocal compensation rates now at issue are rates to be established pursuant to Section 252 arbitration between ALLTEL and Verizon Wireless. There is no right given to outside parties in either Section 252 or the Implementation Order to openly participate in evidentiary hearings to determine reciprocal compensation rates applicable to interconnections between ALLTEL and Verizon Wireless.

11. Thus, the Arbitration Order's implementation of a generic rate investigation as part of this Section 252 arbitration is in error and must be corrected. Further, even if it were concluded that the Commission possesses the authority to open such a generic rate investigation, the opening of such investigation at this time makes no sense for two primary reasons. First, the interconnection agreement now in question is a two year agreement which expires in June 2005. Thus, it would make more sense to allow ALLTEL and Verizon Wireless to revisit the rate issue in their negotiations of a new interconnection agreement less than 6 months from now. Second, the Arbitration Order has concluded that the interim rates set forth in ALLTEL's cost study are TELRIC rates. Arbitration Order at 64. At the present

time, the FCC is undertaking revisions to its TELRIC rules. In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, WC Docket No. 03-173, FCC 03-224 (released September 15, 2003). Accordingly, ALLTEL submits that further proceedings addressing its TELRIC based rates would not be prudent at this time. The Commission should instead wait for the finalization of the new FCC TELRIC rules.

B. The Arbitration Order Must Be Clarified to Provide that a Direct Interconnection Must be at a Point on ALLTEL's Existing Network

12. With respect to the establishment of direct interconnections between the ALLTEL and Verizon Wireless networks, the Arbitration Order at page 57 provides "we shall further direct that the interconnection agreement incorporate Verizon Wireless commitment to establish one point of interconnection within each LATA where it terminates traffic with ALLTEL."[2] The Order does not define the location of the point of interconnection.

13. However, the Arbitration Order at pages 76-77 strikes language requiring the direct interconnection point as being applicable only where ALLTEL provides service or facilities. Furthermore, the Arbitration Order at pages 78-79 addressing Paragraphs 2.1.2.1 and 2.1.2.2 of the proposed agreement relating to

[2]The Arbitration Order on page 57 also erroneously states that ALLTEL was of the position that the FCC rules require it to transport its originated traffic "to the point of interconnection selected by Verizon Wireless." This statement is not correct. Throughout this arbitration, ALLTEL consistently argued that its responsibility regarding direct interconnections was limited to a point of interconnection on its existing network. See ALLTEL Statement No. 1 at 10-11.

direct interconnections found it not appropriate to insert "within ALLTEL's interconnected network."

14. Unless clarified, ALLTEL submits that the Arbitration Order from the standpoint of direct interconnections can be interpreted to require ALLTEL to directly interconnect with the Verizon Wireless network at any point Verizon Wireless chooses within a LATA. Such a finding would be in direct violation of TA96 and applicable regulatory law. As the Court in MCI Metro Access v. Bell South, 352 F.3d 872, 875 (4th Circuit 2003) held in interpreting the more onerous provisions of Section 251(c)(2):

> Under this provision, an incumbent must allow a CLEC to select any point of interconnecting (POI) with the incumbent's network that is 'technically feasible'. (emphasis added)

Thus, the Fourth Circuit was clear that the point of interconnection must be on the incumbent's network.

15. Under long established regulatory law, an ILEC is not responsible to make direct interconnections outside its own network. An ILEC's interconnection obligations arise only with respect to the geographic area within which it is certificated to operate and with respect to its incumbent network and facilities in that area. Section 251(h)(1)(A) of TA96, sets forth the definition of an "incumbent local exchange carrier" for the purpose of interconnection requirements as follows:

> For purposes of this section, 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 . . . .

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

Consistent therewith, the FCC's rules at 47 C.F.R §51.305 state that "[a]n incumbent LEC shall provide . . . interconnection with the incumbent LEC's network at any technically feasible point within the incumbent LEC's network[.]" (emphasis added.) Accordingly, to the extent that TA96 requires ALLTEL, as an ILEC, to provide interconnection with its network, that interconnection arises solely in connection with and is limited to its existing network. Contrary to the Arbitration Order, the point of interconnection is not at any location selected by a wireless carrier within a LATA. Consistent therewith, the Section 252(d)(2), 47 U.S.C. §252(d)(2), pricing standard applicable to reciprocal compensation limits cost responsibility to "transport and termination on each carrier's network facilities."

16. In Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part, and remanded in AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999) ("Iowa Utilities Board I"), the 8th Circuit Court of Appeals addressed the equal quality principles in TA96 and decided that an ILEC does not have the obligation to provide interconnection to other carriers at a level greater than it provides for itself and that there is no requirement to provide superior interconnection arrangements to requesting carriers. As the Court stated, the Act "does not mandate that incumbent LECs cater to every desire of every requesting carrier." Iowa Utilities Board I, 120 F.3d at 813. Accordingly, an ILEC's interconnection duties are limited to its network since it has never had an obligation to provide services or network facilities outside of its service territory.

17. Similarly the 9th Circuit Court of Appeals, in the context of reviewing issues related to CMRS interconnection, further confirmed that interconnection

obligations are established with respect to an ILEC's existing network, recognizing that "Sections 251 and 252 of the Act require ILECs to allow CMRS providers to interconnect with their existing networks in return for fair compensation." U.S. West v. Washington Utilities and Transportation Commission, 255 F.3d 990 (9th Cir. 2001). (emphasis added)

18. The Arbitration Order fails to recognize these regulatory decisions. Citing Section 251(c)(2)(B), 47 U.S.C. §251(c)(2)(B), ALLTEL witness Hughes addressed the long-established regulatory principles that ALLTEL's cost responsibilities are limited to costs within its service territory and network as follows:

> Verizon's proposed routing configuration and cost imposition has not historically existed in the telecommunications industry. In establishing local calling between telecommunications companies, for example in an EAS arrangement, each of the LECs' NPA-NXXs that are included in the local calling area are in separate and distinct rate centers that are directly connected. In this situation, Verizon Wireless has established an NPA-NXX within an ALLTEL rate center to receive local calling from ALLTEL customers and the associated switch for this NPA-NXX is located outside of the ALLTEL territory thus causing indirect routing of all traffic to this NPA-NXX. ALLTEL should not incur any third party transit charges associated with the routing of traffic to Verizon merely due to Verizon's choice, for purely Verizon's own economic reasons, of a distant network location. To my knowledge, an independent ILEC has never been required to incur additional costs to carry traffic to a point outside its service territory simply to suit the economic choice of a competitor.
>
> Here Verizon Wireless has specifically chosen not to establish direct interconnection facilities to ALLTEL and is attempting to place the costs of reaching Verizon's network on ALLTEL and ultimately upon ALLTEL's customers. Verizon Wireless argues that ALLTEL must be financially responsible for either constructing or using a transport facility to transport traffic originated by its customers to a point of interconnection with Verizon Wireless at any point designated by Verizon Wireless, irrespective of the distance from ALLTEL's network to that point of interconnection. There is no logical basis for Verizon Wireless's demand that ALLTEL obtain a service from

Verizon ILEC for which ALLTEL must pay Verizon ILEC to transport traffic beyond ALLTEL's network. Nor does ALLTEL have any obligation to establish an interconnection point with Verizon Wireless at a point outside of ALLTEL's network. Section 251(c)(2)(B) of the Act requires ALLTEL to interconnect with Verizon "at any technically feasible point within [ALLTEL's] network." ALLTEL has no obligation to establish and pay for interconnection with other requesting carriers at any point outside ALLTEL's network due to Verizon Wireless' desire not to establish a direct interconnection. While Verizon Wireless has the choice to interconnect indirectly in lieu of a direct interconnection, it cannot force ALLTEL to undertake obligations beyond ALLTEL's own network responsibilities and to incur costs to deliver traffic outside its network simply to accommodate Verizon Wireless' choice.

ALLTEL St. 1 at 6-7.

* * *

ALLTEL is responsible for facilities utilized in transporting traffic to Verizon Wireless for both direct and indirect interconnection within the ALLTEL interconnected network. ALLTEL cannot be responsible for any facilities or expenses associated with the use of any third party's facilities outside ALLTEL's interconnected network for local calls between the parties. Today, when there is a mandatory Extended Area Service (EAS) arrangement between two local exchange carriers (LECs), each LEC is responsible for the facilities contained in its respective franchise territory and recovers its' costs from its' end users. Each LECs' facilities and costs responsibility end at the meet point. This is precisely the scenario envisioned by the FCC in 47 CFR §51.5 where "meet point" is defined as "a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends." In the EAS scenario, neither company is assessed a charge for the use of any facilities outside its franchise territory. To make ALLTEL interconnect at a point outside its network and be responsible for the costs of constructing or using facilities beyond its network, would be totally inconsistent with §251(c)(2)(B) of the Act.

ALLTEL St. 1 at 10-11.

19. As the 8th Circuit Court of Appeals recognized, interconnection obligations in Sections 251(b) and (c) may pose an economic burden on rural ILECs:

> In the Act, Congress sought both to promote competition and to protect rural telephone companies as evidenced by the congressional debates. It is clear that Congress intended that all Americans, including those in sparsely settled areas served by small telephone companies, should share the benefit of the lower cost of competitive telephone service and the benefits of new telephone technologies, which the Act was designed to provide. It is also clear that Congress exempted the rural ILECs from the interconnection, unbundled access to network elements, and resale obligations imposed by § 251(c), unless and until a state commission found that a request by a new entrant that the ILEC furnish it any of § 251(c)'s methods to compete in the rural ILEC's market is (1) not unduly economically burdensome, (2) technically feasible, and (3) consistent with § 254. Likewise, Congress provided for the granting of a petition for suspension or modification of the application of the requirements of § 251(b) or (c) if a state commission determined that such suspension or modification is necessary to avoid (1) a significant adverse economic impact, (2) imposing a requirement that is unduly economically burdensome, and (3) imposing a requirement that is technically infeasible; and is consistent with the public interest, convenience, and necessity.

Iowa Utilities Board, et al. v. FCC, 219 F.3d 744, 761 (8th Cir.1999) ("Iowa Utilities Board II"), aff'd in part, rev'd in part, and remanded on other grounds in Verizon Communications Inc. v. FCC, 434 U.S. 467 (2002) (emphasis added; citations omitted). The Arbitration Order appears to have totally overlooked the 8th Circuit's economic conclusions.

20. Although Congress recognized that the Section 251(c) interconnection requirements on the ILEC network could be burdensome, the Arbitration Order by requiring ALLTEL to extend its network to a point of interconnection to be selected by Verizon Wireless anywhere within a LATA has gone far beyond imposing a

potential burden. The Arbitration Order has, if it is upheld, imposed a very real and substantial burden. ALLTEL respectfully submits that the Arbitration Order's holding subverts the intent of the local competition interconnection requirements of TA96, improperly eliminates the Section 251(f)(1) and (2) protections against interconnection requirements that are technically infeasible, economically burdensome and that threaten universal service, and presents an unwarranted construction of TA96.

21. As stated by the 8th Circuit, in interpreting TA96, a court "must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." Iowa Utilities Board II, 219 F.3rd at 765 (citations omitted). The Arbitration Order at pages 30 and 57 recognizes that TA96 by its terms does not mandate that a Rural LEC be forced to extend its facilities *anywhere* within a LATA beyond its certificated service territory and that there are no explicit directives, but then defers to some non-existent general rule – to impose the unprecedented obligation on ALLTEL to extend its facilities outside its network to meet Verizon Wireless at some distant location off ALLTEL's network. The Arbitration Order is clearly erroneous and should be the subject of reconsideration.

22. The Commission's finding on page 7 of the Arbitration Order that CMRS carriers can choose an interconnection point anywhere within the LATA was founded on decisions which were in fact premised on the fact that the interconnection point was on an ILEC's network. When the RBOCs (the ILECs involved in most of the cited case law) attempted to dictate where on their network a CMRS carrier could locate its interconnection point, the FCC declared that it was

the CMRS carrier's choice anywhere within the LATA. In the Matter of Petition of WorldCom, Inc. Regarding Interconnection Disputes with Verizon Virginia Inc., 17 FCC Rcd 27039 (2002). The underlying premise of the CMRS carriers' right to choose an interconnection point anywhere within the LATA remains premised on the basic understanding that the interconnection point was still on the RBOC's network. Any other result presents an absurd construction of the intent of TA96 and the obligations on ILECs. It also presents a discriminatory result for rural ILECs as few wireless carriers will choose to locate their facilities anywhere but RBOC systems. Rural ILECs will be wholly dependent upon and subservient to RBOC transit services and network architecture, or will be required to install facilities outside their network and certificated service areas - an obligation unprecedented in the history of telecommunications regulation.

23. The Arbitration Order's directive that ALLTEL is responsible for extending its network to a point of interconnection selected by Verizon Wireless outside the ALLTEL certificated service territory is also inconsistent with ALLTEL's certificate of public convenience and ALLTEL believes would be unconstitutional. ALLTEL's network obligations are to its certificated service territory and not throughout any LATA in locations in which it is not certificated. As the Commonwealth Court stated in Western Pennsylvania Water Company v. Pennsylvania public Utility Commission, 10 Pa. Commonwealth Ct. 533, 311 A.2d 370 (1973), quoting at length from the earlier decision in Akron v. Pennsylvania Public Utility Commission, 2 Commonwealth Ct. 625 (1971):

> We reiterate what we said in Akron, supra: 'If we were to hold, as the Commission argues, that a . . . [public] utility is subject to the unilateral power of the Commission, subject only to the qualification of reasonableness, to order extensions of service outside of the certificated area the utility is willing to serve (and as approved by the Commission in its certification), then the certification sections of the Public Utility Law are meaningless. Under such a proposed ruling, the Commission would become the super board of directors (and the super legislative body of municipalities providing utility service) of all . . . [public] utilities in the complicated field of service territories. Such a ruling would retard the ability of such utilities to attract investors for the necessary funds to develop or improve utility plant and service. One of the things an investor in utilities securities looks at is the stability of the service area. A certification gives some protection; an open-end certificate controlled by the Commission does not. It is conceivable that constitutional property rights may be violated by such unilateral power as argued by the Commission, but we need not rule on that point in this case. We can find no legislative direction or intent to give the Commission such power or jurisdiction...' 2 Pa. Commonwealth Ct. at 634.
>
> We also said in *Akron*: 'It is at the time of the hearings on the application for a certificate of public convenience that the Commission has complete control over the extraterritorial service area of a municipal [public] utility. If the Commission does not believe that the proposed service area is proper, it may refuse the application, if the utility is not willing to amend its proposal or accept conditions the Commission may propose to place in the certification; but the Commission does not have any statutory power to force any municipal [public] utility to accept any greater service area than it is willing to accept. Once the certificate is granted the Commission has complete power to *reasonably* control the extension of service within the certificated area. . . .' 2 Pa. Commonwealth Ct. at 633-634.

10 Pa. Commonwealth Ct. at 533, 311 A.2d at 375.

What the Arbitration Order effectively mandates is that ALLTEL must extend its network facilities beyond its certificated service territory in direct contravention to the holdings cited above. Accordingly, from the standpoint of the point of interconnections for direct interconnections, ALLTEL respectfully submits that the Arbitration Order is ripe for reconsideration.

C. The Arbitration Order must Be Clarified to Recognize That ALLTEL's Tariff Rates Apply to IntraMTA Calls Originated by its Customers

In the Arbitration Order at page 49, the Commission stated the application of wide area calling would not pertain to intraMTA calls because intraMTA calls are, as noted, classified as "local" under FCC regulations. ALLTEL hereby seeks clarification that the FCC classification as local only applies to intercarrier compensation between ALLTEL and Verizon Wireless. ALLTEL'S end user customer rating of calls as local or toll is based upon ALLTEL'S approved tariffs filed before this Commission. It is ALLTEL'S position that the FCC regulations do not affect ALLTEL'S retail pricing or the charges it may impose upon its end user. Thus, the FCC classification of intraMTA traffic as local only applies to the classification of the traffic as between the carriers.

WHEREFORE, based upon the reasons stated herein, ALLTEL Pennsylvania, Inc. respectfully prays that reconsideration of the Commission's Order entered January 18, 2005, be granted.

Respectfully submitted,

ALLTEL PENNSYLVANIA, INC.

By _____

Patricia Armstrong
Regina L. Matz
D. Mark Thomas
Stephen B. Rowell

Attorneys for ALLTEL Pennsylvania, Inc.

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Dated: February 1, 2005

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Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.	:	Docket No. A-310489F7004

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of February, 2005, served a true and correct copy of the foregoing Petition for Reconsideration, Clarification and/or Modification on behalf of ALLTEL Pennsylvania, Inc. upon the persons and in the manner indicated below:

HAND DELIVERY

Office of Special Assistants
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17105-3265

VIA FIRST CLASS MAIL, POSTAGE PREPAID

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Patricia Armstrong

COMMONWEALTH OF PENNSYLVANIA

DATE: February 1, 2005

SUBJECT: A-310489F7004

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary KB

Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnect Agreement with ALLTEL Pennsylvania, Inc.

Attached is a copy of a Petition for Reconsideration, Clarification and Modification of Commission Order, filed by ALLTEL Pennsylvania, Inc. in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

ksb

DrinkerBiddle&Reath LLP

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February 2, 2005

Via Federal Express

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996, Docket No. **A-310489F7004**

Dear Secretary McNulty:

I enclose for filing at the referenced docket the original and four copies of the Petition for Reconsideration, Amendment and Clarification of Cellco Partnership d/b/a Verizon Wireless.

Thank you for your assistance. If you have any questions or require further information, please do not hesitate to contact me.

Very truly yours,

Christopher M. Arfaa

CMA/cms
Enclosures

cc: Certificate of Service (w/encl.)
Chairman Wendell Holland (w/encl.)
Vice Chairman Robert Bloom (w/encl.)
Commissioner Glenn Thomas (w/encl.)
Commissioner Kim Pizzingrilli (w/encl.)
Cheryl Walker Davis, Director (w/encl.)

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.	:	A-310489F7004

DOCKETED
FEB 16 2005

PETITION FOR RECONSIDERATION, AMENDMENT, AND CLARIFICATION OF CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

RECEIVED

FEB 02 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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DOCUMENT FOLDER

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Statutes:

Regulations:

Administrative Decisions:

Pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code. § 5.572, Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless" or "Cellco") hereby requests reconsideration, amendment and clarification of the Commission's Order entered January 18, 2005 (Arbitration Order) in the above-captioned matter. In support of this Petition, Verizon Wireless states as follows:

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Verizon Wireless seeks reconsideration, amendment and clarification of the Arbitration Order in order to ensure that the parties' interconnection agreement complies with federal law. The Arbitration Order accepts the reciprocal compensation rates produced by ALLTEL Pennsylvania Inc.'s (ALLTEL) second cost study, set forth in ALLTEL Exhibit CC-2, for use in this proceeding and also states that "a generic investigation shall be instituted to establish permanent rates for those services." (Arbitration Order at 7, 64.) However, the imposition of the rates produced by ALLTEL's cost study ***prior*** to the completion of the Commission's investigation of those rates violates controlling Federal Communications Commission (FCC) rules and thus constitutes an error of law warranting reconsideration.

2. FCC Rules require reciprocal compensation rates to be based upon (1) forward-looking economic costs, using a cost study that complies with FCC standards, (2) default proxy rates, or (3) a bill-and-keep arrangement whereby each carrier recovers its costs from its customers rather than the interconnecting

carrier. 47 C.F.R. § 51.705(a). The rules require that any state proceeding to set reciprocal compensation rates "shall provide notice and an opportunity for comment to affected parties." 47 C.F.R. § 51.505(e)(2). As ALJ Weismandel found, Verizon Wireless "amply demonstrated" that "ALLTEL Exhibit CC-2 was not presented in sufficient time nor in a format allowing it to be examined and tested by Cellco. (Tr. 49 – 57, 119 – 124, 135 – 136, 205 – 209, 215 – 217)." (Recommended Decision (RD) at 20.) The Commission apparently accepted this finding but reasoned that "the concerns of Verizon Wireless, to be afforded more time in which to review the study, will be addressed by the institution of a generic investigation of ALLTEL's reciprocal compensation rates." (Arbitration Order at 65.)

3. While Verizon Wireless supports the Commission's institution of a generic investigation into ALLTEL's reciprocal compensation rates,[1] the rates produced by that unexamined cost study cannot be adopted until that investigation is completed, and affected parties, including Verizon Wireless, are given a meaningful opportunity to comment as required by 47 C.F.R. § 51.505(e)(2). Furthermore, as ALLTEL's own cost witness admitted to ALJ Weismandel,[2] the format of CC-2 prevents thorough review of the study at this time, thus precluding

[1] ALLTEL also supports such an investigation. ALLTEL Exceptions at 32 & n.76 (proposing investigation like that of Verizon Pennsylvania's rates).

[2] Tr. at 257:17- 258:1.

the Commission itself from giving the "full and fair effect" to the FCC's pricing methodology required by FCC rules. 47 C.F.R. § 51.505(e)(1).

4. In the absence of a cost study that complies with FCC requirements, the only lawful reciprocal compensation arrangement is interim rates, proxy rates or a bill-and-keep arrangement. 47 C.F.R. §§ 51.707(a); 51.715. The record in this proceeding makes all of these options available to the Commission. Since the Commission cannot, at this time, adopt a permanent, TELRIC-based reciprocal compensation rate, the Arbitration Order should be amended to require the parties' interconnection agreement to provide that the interim reciprocal compensation rates approved by the Commission in the order entered January 18, 2005 in the ALLTEL – Verizon –PA complaint proceeding[3] (Complaint Order) and the Arbitration Order shall govern until the Commission completes its anticipated generic investigation into ALLTEL's proposed rates and cost study. Alternatively, the record permits the Commission to adopt either the blended rate of $.0078 per minute originally proposed by Verizon Wireless or Verizon Pennsylvania's Commission-approved, TELRIC-derived rates as proxy rates pending completion of the generic investigation. What the record does not permit is a finding that ALLTEL's proposed rates are based upon a valid cost study – indeed, if it did, there would be no need for the generic investigation into those rates that the Commission has ordered.

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[3] *ALLTEL Pennsylvania, Inc. v. Verizon Pennsylvania, Inc. et al.*, Docket No. C-20039321 (Pa. PUC Jan. 18, 2005).

5. In addition to the foregoing amendment, Verizon Wireless requests clarification of the Arbitration Order to provide that, whatever rates are incorporated into the parties' interconnection agreement in this proceeding, (1) those rates shall be superseded by the permanent rates approved in the Commission's generic investigation into ALLTEL's rates for local transport and termination, and (2) the parties shall "true-up" the amounts paid under the interconnection agreement from its effective date (June 23, 2003) until the incorporation of the permanent rates to reflect what would have been paid had the permanent rates been in place since the effective date.

ARGUMENT

A. Reconsideration Is Warranted.

6. This petition for reconsideration, amendment and clarification is brought pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g),[4] and Section 5.572(a) of the Commission's regulations, 52 Pa. Code § 5.572(a).[5] The standard for determining whether a petition for reconsideration

[4] Section 703(g) provides: "Rescission and amendment of orders. -- The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders." 66 Pa. C.S. § 703(g).

[5] Section 5.572(a) provides: "Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired." 52 Pa. Code § 5.572(a).

under Section 703(g) should be granted was articulated in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

> A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the Court in the Pennsylvania Railroad Company case (citation omitted), wherein it was said that: "Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them." What we expect to see raised in such petitions are new and novel arguments, not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.

Id. at 558-559. The Commission has also recognized that a petition for reconsideration is properly granted "where the petitioner pleads newly discovered evidence, alleges errors of law, or a change in circumstances." *Application of Superior Water Company for Approval to Begin to Offer, Render, Furnish or Supply Water Service to the Public in Portions of Douglass Township, Montgomery County, PA*, Docket No. A-212955F0012, 2004 Pa. PUC LEXIS 16 (Pa. PUC Feb. 18, 2004) (citing *Pennsylvania P.U.C. v. Fawn Lake Forest Water Co.*, Docket No. R-912117, 1993 Pa. PUC LEXIS 33 (Pa. PUC Jan. 4, 1993)). In the interconnection context, the Commission has concluded that reconsideration is warranted when the petitioner alleges that an interconnection arbitration order violates federal law. *See, e.g., Petition of NEXTLINK Pennsylvania, L.L.P. for*

Arbitration of an Interconnection Agreement with Bell Atlantic – Pennsylvania, Inc., Pursuant to the Telecommunications Act of 1996, Docket A-310260F0002, 1998 Pa. PUC LEXIS 71 (Pa. PUC Aug. 13, 1998) (granting reconsideration of arbitration order to ensure compliance with federal law governing interconnection agreements).

7. Reconsideration of the Commission's acceptance of the CC-2 rates is clearly warranted in this case. First, the Commission appears to have "overlooked or not addressed," *Duick, supra,* the fact that providing Verizon Wireless the opportunity to test ALLTEL's rates and cost model in a ***future*** proceeding does not provide a basis under federal law for imposing those rates on Verizon Wireless in ***this*** arbitration proceeding. Second, setting reciprocal compensation rates based on ALLTEL's CC-2 cost study prior to completing the Commission's investigation of those rates violates FCC rules and thus constitutes an "error[] of law," *Superior Water Co., supra.* Third, reconsideration is warranted to permit clarification of the Arbitration Order to state that the rates incorporated into the parties' interconnection agreement shall be replaced with the rates approved by the Commission pursuant to its generic investigation of ALLTEL's costs for local transport and termination and subject to true-up from the effective date of the agreement. True-up upon adoption of permanent rates is

required to ensure that Verizon Wireless pays no more, and ALLTEL receives no less, than the reciprocal compensation mandated by federal law.[6]

B. Federal Law Precludes Adoption of the Rates Produced by ALLTEL Exhibit CC-2 In This Proceeding.

8. Section 51.705 of the FCC's rules prescribe how state commissions may set the reciprocal compensation rates for incumbent local exchange carriers (LECs) such as ALLTEL:

> (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.

47 C.F.R. § 51.705(a). In addition, Section 20.11 of the FCC's rules requires that compensation between CMRS providers and LECs for termination of traffic be "reasonable." *Id.* § 20.11(b).

9. The FCC has established specific requirements for cost studies used to support proposed rates for network elements and intercarrier compensation rates based on those elements. 47 C.F.R. §§ 51.505, 51.511. An incumbent LEC must

[6] Reconsideration of the Commission's acceptance of the rates produced by Exhibit CC-2 is also warranted because admission of those rates and Exhibit CC-2, which ALLTEL

prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the FCC's "TELRIC" methodology. *Id.* § 51.505(e)(1). The FCC's rules also provide that affected parties – i.e., those who will pay the rates – must be afforded the opportunity to test the incumbent LEC's proof:

> ***any*** state proceeding conducted pursuant to this section ***shall*** provide ***notice and an opportunity for comment to affected parties*** and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

47 C.F.R. § 51.505(e)(2) (emphasis added). At a minimum, "notice and an opportunity to comment" requires the provision of the proffered cost study to affected parties in a suitable format with sufficient time to permit meaningful review. As Verizon Wireless Witness Wood testified, these requirements have produced an industry standard as to how cost models are constructed and presented:

> the models are presented in fully-functioning form, to the extent possible, the models are presented in a format that permits review and manipulation, the operation of the model is fully described and documented, and all inputs and assumptions are explained and their source documented. While parties

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presented during the rebuttal phase of this case, violated 52 Pa. Code § 5.243(e). *See infra* n.14.

> may disagree on the proper methodology to be employed in a cost study or the inputs and assumptions used, they do so on the basis of having complete access to the study and underlying computer models.[7]

This is precisely the standard this Commission endorsed when investigating Verizon Pennsylvania's UNE costs and rates in the landmark *MFS III* proceedings. In *MFS III,* the ability of interested parties to review the cost study's inputs and assumptions and their underlying documentation and, most critically, their ability to run various alternative inputs using the computer models used in the study, were critical to the Commission's conclusion that "the parties have had a meaningful opportunity to review and study Bell's cost studies." Interim Order, *Applications of MFS Intelenet et al.*, Docket Nos. 310203F0002 *et al.*, 1997 Pa. PUC LEXIS 50 at *34 (Pa. PUC Apr. 10, 1997). The timing and format of ALLTEL's presentation of Exhibit CC-2 in this proceeding deprived Verizon Wireless of any such opportunity.

10. Throughout this arbitration proceeding, ALLTEL consistently thwarted Verizon Wireless' attempts to conduct meaningful review of the two cost studies ALLTEL presented. Verizon Wireless's Interrogatory I-13 requested, for each rate proposed by ALLTEL in this proceeding, that ALLTEL "identify and provide copies of all cost models, cost inputs, and cost assumptions relating to the rate, including all supporting documentation."[8] ALLTEL provided its first study,

[7] Verizon Wireless St. 2.0 (Wood Direct) at 8:8 – 9:7.

[8] Verizon Wireless' first set of interrogatories were filed as Exhibit A to the Motion to Compel Discovery Responses filed by Verizon Wireless on Jan. 14, 2004 (Motion to

Exhibit CC-1 (but not Exhibit CC-2), and then responded to Verizon Wireless's Interrogatory I-13 with the statement: "Cost studies have been provided."[9] However, despite repeated requests, ALLTEL failed to provide the passwords necessary to examine and test the assumptions and inputs, forcing Verizon Wireless to file a motion to compel.[10] ALJ Weismandel granted the motion and ordered ALLTEL to "serve a full and complete answer and provide the documents requested" and to "take any and all actions necessary, including but not limited to providing all required passwords, to enable [Verizon Wireless] to change inputs and assumptions and recalculate results in the functioning electronic copies of the cost models provided to [Verizon Wireless]." ALLTEL's response to this order provided the requisite passwords to access Exhibit CC-1, but it did not inform Verizon Wireless of the existence of the study eventually admitted as Exhibit CC-2, even though ALLTEL had been working on CC-2 since the previous year.[11]

Compel). Interrogatory I-13 is also reproduced at page 2 of ALJ Weismandel's January 20, 2004 Order Granting Motion To Compel.

[9] *See* Order Granting Motion To Compel, Docket No. A-310489F0007, slip op. at 2 (Jan. 20, 2004).

[10] Verizon Wireless' attempts to extract this information is documented in its January 14, 2004 Motion to Compel. ALLTEL's representation in its Exceptions that Verizon Wireless "did not attempt, through any contact with ALLTEL, to review" this study, ALLTEL Exc. at 8 – a representation cited by the Commission in the Arbitration Order – is patently ***false***. As set forth in the Motion to Compel, Verizon Wireless personnel and attorneys requested the necessary passwords in telephone calls, e-mail messages, and meetings on multiple occasions. (Motion to Compel ¶¶ 9-14.)

[11] Tr. at 245:7-9.

11. ALLTEL did not identify or provide Exhibit CC-2 in its January 12, 2004 response to Verizon Wireless's Interrogatory I-13, nor did it do so on January 21, 2004, the date by which it was ordered by Judge Weismandel to provide a "full and complete answer" to that interrogatory. Nor did it include CC-2 in the direct testimony it served on Verizon Wireless on January 23, 2004. In fact, ALLTEL did not disclose the existence of CC-2 to Verizon Wireless until it served rebuttal testimony on February 4, 2004, six days before the February 10, 2004 hearing in this matter.[12] Even then, ALLTEL did not provide documentation of major portions of the new cost study to Verizon Wireless until the next day (February 5, 2004), and it ***never*** provided the underlying models for the investment portion of the study in electronic format.[13]

12. Despite the fact that they used different methodologies and produced different rates, ALLTEL introduced both studies into evidence.[14] Verizon Wireless demonstrated in detail how Exhibit CC-1 failed to comply with

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[12] *See* Tr. at 135:24 – 136:22 (Sterling).

[13] *See* Tr. 52:11-57:10 (Wood).

[14] Since ALLTEL had the burden of proving that its proposed rates comply with FCC requirements, 47 C.F.R. § 51.505(e), any cost study it intended to rely upon should have been included in its case-in-chief. In addition, Exhibit CC-2 differed substantially from the cost study ALLTEL had presented in its case-in-chief. Exhibit CC-2 was thus admitted over Verizon Wireless's objection that its submission during the rebuttal phase of this proceeding violated 52 Pa. Code § 5.234(e) ("No participant will be permitted to introduce evidence during a rebuttal phase . . . which should have been included in the participant's case-in-chief or which substantially varies from the participant's case-in-chief."). *See* Verizon Wireless and ALLTEL Pennsylvania, Inc.'s Joint Stipulation to Reopen Record (filed Feb. 13, 2004); *see also* Order Reopening Record and Admitting

applicable FCC rules.[15] ALJ Weismandel concurred and recommended rejection of the study. (RD at 20.) By requiring a generic investigation into ALLTEL's reciprocal compensation rates, the Commission has impliedly adopted this recommendation.

13. The timing and format in which ALLTEL submitted its new cost study (ALLTEL Exhibit CC-2) prevent the adoption of the rates it produced at this time because ALLTEL deprived Verizon Wireless of "notice and an opportunity for comment" on the cost study, the models on which it relies, and its inputs and assumptions. ***First,*** the submission of the cost study with ALLTEL's rebuttal testimony mere days before hearings simply did not afford sufficient time for review. Even ALLTEL's cost witness admitted that the extreme lateness of the submission of the new study deprived Verizon Wireless's cost expert of the opportunity to review the model in detail.[16]

Exhibits (Feb. 17, 2004). The Commission's reliance on Exhibit CC-2 thus violates the Commission's own regulations.

[15] Verizon Wireless St. No. 2.0 (Wood Direct) at 9-13; Verizon Wireless St. No. 2.1 (Wood Rebuttal) at 2-5. ALLTEL in effect acknowledged these deficiencies when it abandoned the rates produced by its initial study in favor of the rates produced by its new study. *See* ALLTEL St. No. 2R (Caballero Rebuttal) at 4-5) (proposing rates based on new study). In fact, ALLTEL Witness Caballero admitted that Exh. CC-1 was not a TELRIC study at all when he testified that, at the time it was filed, "we had not at ALLTEL finalized a TELRIC study for ALLTEL Pennsylvania." Tr. at 205:3-4 (Caballero).

[16] Tr. at 228:19 – 229:1 (Caballero).

14. ***Second***, although the "vast majority" of the FCC-mandated TELRIC methodology relates to the investment stage of a cost model,[17] ALLTEL failed to provide the actual cost models used to calculate the network investment in the new study, instead proffering several thousand pages of paper documentation.[18] As Verizon Wireless Witness Wood testified, "[e]ven if Verizon Wireless had time to assess a box full of documents [on the weekend before a Tuesday hearing], those particular documents would really have no value in determining whether this was a reasonable calculation."[19] This omission was substantial. As Mr. Wood testified, the investment associated with the facilities used to provide local transport and termination is "the most important input" to ALLTEL's cost studies.[20] The "bottom up" calculation of network investment in the new cost study was a "fundamentally different process" and required "a completely different computer model" from that used in the original study[21] – a computer model that was not provided to Verizon Wireless.[22] ALLTEL Witness Caballero confirmed the importance of the missing models when he testified that the investment in the new study was derived from a number of "very different models,

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[17] Tr. at 56:3-7.

[18] Tr. at 54:13 – 55:6; Tr. at 119:23 – 120:25.

[19] Tr. at 55:3-6.

[20] Tr. at 120:13 (Wood).

[21] Tr. 57:6 - 57:10 (Wood).

[22] Tr. at 57:2-57:10, 119:19 – 120:25.

engineering models, pricing models," that were not provided or made available to Verizon Wireless.[23] Mr. Caballero also confirmed that it was in this area where the real difference between the original and the new studies lay.[24]

15. ***Third***, the portion of the new study that ***was*** provided in electronic format was not verifiable. It was (and presumably remains) password-protected, in contravention of the ALJ's order compelling ALLTEL to provide complete responses to Verizon Wireless's interrogatories.[25] In addition, the model contained some 40 "hidden macros," which inhibited full examination of the model.[26] The negative effect on Verizon Wireless's ability to review the models was amply demonstrated by Verizon Wireless Witness Wood's testimony,[27] illustrated by the names ALLTEL gave to the macros (e.g.,

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[23] Tr. at 206:4-5.

[24] *See* Tr. at 205:19-21. At hearing, ALLTEL Witness Caballero sought to excuse ALLTEL's failure to provide the investment models in a reviewable format by asserting that they are not "easy to put on a CD-ROM" and the only practical way for Verizon Wireless to review them would be to travel to ALLTEL's premises in Arkansas. (Tr. at 208:13-22.) This may well be true, but by choosing to rely on such models to calculate investment and then submitting the resulting study only at the last minute, ALLTEL nevertheless deprived Verizon Wireless of notice and an opportunity to comment on the models, and thus the study itself. Perhaps if ALLTEL had notified Verizon Wireless in December or January that it was revising its cost study based on the models in question, or disclosed that fact in its interrogatory response, Verizon Wireless could have reviewed the models on ALLTEL's premises. ALLTEL, for whatever reason, did not do so.

[25] Tr. at 50:9-18.

[26] Tr. at 58:12 – 67:8; Verizon Wireless Exh. DJW-7.

[27] Tr. 58-67; 121-122.

"HideActiveSheetReallyWell"),[28] and even confirmed by ALLTEL Witness Caballero's admission on the stand that the macros were ***designed*** to inhibit access to the model.[29] As Mr. Wood testified, the hidden macros "make it impossible for anyone other than an ALLTEL employee to go through this and get any meaningful analysis, any meaningful sensitivity runs, any of that kind of review, the kind of review we'd normally do for this kind of model."[30] In short, the format of Exhibit CC-2 made it "***impossible to verify the accuracy of the results.***"[31] ***Even ALLTEL's cost witness, Mr. Caballero, agreed with this assessment.***[32]

16. ALLTEL has thus failed prove that its proposed rates are supported by a lawful cost study. By filing CC-2 at the last minute, by failing to provide the models underlying the calculations of its network investment in a reviewable format, and by making it impossible to verify the electronic models it did provide, ALLTEL has not only deprived ***Verizon Wireless*** of the notice and a meaningful opportunity to comment required by 47 C.F.R. § 51.505(e)(2) – it has also deprived ***the Commission*** of the basis on which it could adopt ALLTEL's proposed rates.

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[28] Tr. at 66:22.

[29] Tr. at 216:7 – 216:18.

[30] Tr. at 122:16 – 122:19.

[31] Tr. at 122:20 – 122:22 (emphasis added).

[32] Tr. at 257:17- 258:1.

17. ALJ Weismandel found that "as Cellco amply demonstrated, ALLTEL Exhibit CC-2 was not presented in sufficient time nor in a format allowing it to be examined and tested by Cellco. (Tr. 49 – 57, 119 – 124, 135 – 136, 205 – 209, 215 – 217)." (RD at 20.) On review, the Commission reasoned that this concern "will be addressed by the institution of a generic investigation of ALLTEL's reciprocal compensation rates." (Arbitration Order at 65.) The Commission thus necessarily accepted ALJ Weismandel's finding with respect to notice and opportunity to comment but rejected his conclusion with respect to the legal effect of that finding. Despite this finding and ALLTEL's admission that verification of the model was "***impossible,***"[33] and the further finding that a generic proceeding to investigate ALLTEL's transport and termination rates is required, the Commission found Exhibit CC-2 to be an "acceptable" TELRIC study and accepted the rates produced by Exhibit CC-2 for use in this proceeding. (Arbitration Order at 7, 64.)

18. Verizon Wireless respectfully submits that the Commission's acceptance of the rates produced by Exhibit CC-2 for any purpose prior to the completion of its investigation of those rates constitutes an error of law in at least two fundamental respects. ***First,*** the Arbitration Order accepts the CC-2 rates without having provided Verizon Wireless adequate notice and opportunity for comment and thus violates the clear command of FCC Rule 51.505(e)(2), 47

[33] Tr. at 257:17- 258:1 (emphasis added).

C.F.R. § 51.505(e)(2). ***Second,*** since ALLTEL failed to provide the models used to calculate the network investment inputs into CC-2, and since even ALLTEL agrees that the electronic models it did provide were "impossible" to verify, the Commission cannot have given "full and fair effect" to the FCC's cost based pricing methodology as required by FCC Rule 51.505(e)(1).[34] ***This is confirmed by the Commission's determination that a generic proceeding is required to investigate ALLTEL's reciprocal compensation rates.*** The Commission's determination in the Arbitration Order that CC-2 is an "acceptable TELRIC study" – that is, compliant with FCC requirements – prior to the completion of that proceeding to determine that very issue was unlawful, arbitrary and capricious.[35]

C. The Parties' Interconnection Agreement Should Incorporate The Interim Reciprocal Compensation Rates Approved by the Commission, Verizon Wireless's Proposed Proxy Rates, or Another Pennsylvania Incumbent LEC's Approved Rates Pending Completion of the Commission's Generic Investigation of ALLTEL's Permanent Rates.

19. Since there is no basis for the Commission to set permanent reciprocal compensation rates on the basis of ALLTEL's forward-looking economic costs at this time, the Commission must select interim or proxy rates (or bill-and-keep) for inclusion in the parties' interconnection agreement until permanent rates are adopted at the conclusion of the Commission's generic

[34] ALLTEL's failure also prevents the "creation of a written factual record that is sufficient for purposes of review" required by 47 C.F.R. § 51.505(e)(2).

[35] In addition, the admission of Exhibit CC-2 in violation of the Commission's own regulation at 52 Pa. Code § 5.243(e) was unlawful, arbitrary and capricious. *See supra* n.14.

investigation of ALLTEL's reciprocal compensation rates – a procedure expressly approved by the FCC. *See* 47 C.F.R. § 51.707. Although in *Iowa Utilities Board v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000), *aff'd in part and rev'd in part on other grounds sub nom. Verizon Communications v. FCC*, 535 U.S. 467 (2002), the FCC's specific proxy ***prices*** were vacated as rates that are properly within the discretion of state commissions to determine, "[t]he court did not . . . find unlawful the establishment and use of proxies by State commissions." *In re Covad Communications Company's (U 5752 C) Petition for Arbitration of Interconnection Agreement with Roseville Telephone Company (U 1015 C)*, Decision No. 01-06-089, 2001 Cal. PUC LEXIS 596, *12 (Cal. PUC June 28, 2001). Thus, in the absence of a TELRIC-compliant cost study, the Commission may adopt proxy reciprocal compensation rates provided they are superseded once the Commission establishes permanent rates (or a bill-and-keep arrangement) and the Commission sets forth a reasonable basis for the selection of the particular proxies, 47 C.F.R. § 51.707(a).[36] Such an approach is consistent with federal law as well as with this Commission's prior orders. *See, e.g., Petition of MCI Metro Access Transmission Services, Inc. for Arbitration of Its Interconnection Request to Bell Atlantic-PA, Inc.*, Docket No. A-310236F0002, 1996 Pa. PUC LEXIS 169, *10-11 (Pa. PUC, Dec. 20, 1996) (holding that, despite the Eighth Circuit's stay of the FCC's proxy rules, "to the extent that this Commission is not satisfied with

[36] In addition, rates charged CMRS providers for termination of traffic must be "reasonable." 47 C.F.R. § 20.11.

any cost studies proffered in a proceeding for the establishment of rates for the completion of this interconnection arbitration, we may use the FCC-specified proxies, should those proxies coincide with our informed, independent judgment concerning the applicable rates").

20. The record in this proceeding supports adoption of one of several different sets of proxy rates.[37] ***First***, the Commission could order the parties to utilize the interim rates it has already approved in the ALLTEL complaint proceeding and incorporated into the Arbitration Order ($.012 per minute for direct traffic and bill-and-keep for indirect traffic), subject to true-up.[38]

21. ***Second***, the Commission could adopt the blended rate of $.0078 per minute for both direct and indirect traffic originally proposed by Verizon Wireless as a proxy pending the setting of ALLTEL's permanent reciprocal compensation rates, subject to true-up. This blended rate is based upon the tariffed rates of other Pennsylvania ILECs for similar services, the reciprocal compensation rates

[37] As Verizon Wireless argued extensively below, since both parties agree that Exhibit CC-2 is unverifiable, and because even limited review has raised substantial questions as to the inputs used in the study, there is no "reasonable basis" in the record for the adoption of the rates produced by Exhibit CC-2 as proxies. *See* Main Brief of Cellco Partnership d/b/a Verizon Wireless at 27-29; Reply Brief of Cellco Partnership d/b/a Verizon Wireless at 31-32.

[38] True-up of amounts paid commencing on June 23, 2003 would ensure consistency between this solution and the Commission's determination in the Complaint Order that interim rates otherwise should only be effective until the effective date of the interconnection agreement.

contained in Verizon Wireless's agreements with Pennsylvania ILECs similar to ALLTEL, and a "best in class" analysis for ALLTEL's cost study areas.[39]

22. ***Third,*** the Commission could adopt the approved, TELRIC-based reciprocal compensation rates of another incumbent LEC as proxies for ALLTEL's rates. This approach ensures that the parties' agreement incorporates rates that, while not ALLTEL-specific, are based on a TELRIC-compliant cost study. This was the approach taken by the California Public Utilities Commission (CPUC) in an arbitration where a midsize incumbent local exchange carrier (Roseville), like ALLTEL here, had failed to produce a lawful cost study. *See In re Covad Communications Company's (U 5752 C) Petition for Arbitration of Interconnection Agreement with Roseville Telephone Company (U 1015 C)*, 2001 Cal. PUC LEXIS 596 (*Covad – Roseville Arbitration*). The CPUC found that a particular set of approved UNE rates for Pacific Bell came closest to complying with TELRIC-derived prices and that, therefore, it was reasonable to adopt them for Roseville, subject to true-up, pending completion of the investigation into its own UNE rates. *Id.* at *24-25. Similarly, and most recently, the Tennessee

[39] Verizon Wireless St. No. 2.0 (Wood Direct) at 13-14. Although ALLTEL took great issue with Verizon Wireless's proposal because it was based in part on the rates of LECs that have service territories more contiguous than ALLTEL's, Verizon Wireless Witness Wood explained that the non-contiguous character of ALLTEL's service territory – the product of ALLTEL's voluntary choice to purchase LECs in different geographical areas – does not cause an increase of local transport and termination costs. (Tr. at 98:8 – 98:22.) This is because the cost of transport facilities between these territories is driven not by the facility mileage (length) but by the facility termination equipment (the electronics on both ends), and the slight cost of increased mileage is offset by the efficiencies generated by aggregation of traffic from widely dispersed customers. (Tr. at 114:18 – 117:11.).

Regulatory Authority (TRA) adopted the TELRIC-derived reciprocal compensation rates of BellSouth as interim proxy rates for rural LECs, subject to true-up upon the establishment of permanent rates. *See* Transcript of Proceedings of Jan. 12, 2005 before the Tennessee Regulatory Authority, *Petition for Arbitration of Cellco Partnership d/b/a*, TRA Docket No. 03-00585, at 40-41 (*Tennessee Transcript*) (attached hereto as Exhibit A). In Pennsylvania, the approved, TELRIC-based reciprocal compensation rates of Verizon Pennsylvania similarly could provide proxies for ALLTEL's rates, subject to true-up.

23. On balance, the first approach – the use of the interim rates approved in the ALLTEL complaint proceeding and incorporated into the Arbitration Order – seems the best at this stage in the proceeding. The record and determinations the Commission has already made in the ALLTEL complaint proceeding provide ample "reasonable basis" for the use of the interim rates as proxies and thus would allow the Commission to resolve this matter with a minimum of additional findings and analysis. The record would also support use of Verizon Wireless's proposed blended rate or Verizon Pennsylvania's approved rates as interim proxies.

D. The Arbitration Order Should Be Clarified To Provide That The Rates Adopted In This Proceeding Shall Be Superseded By and Subject to True-up With The Permanent Reciprocal Compensation Rates Set in the Commission's Generic Investigation of ALLTEL's Rates.

24. Since any interim or proxy rates may differ from the ALLTEL-specific, TELRIC-compliant rates ultimately approved in the Commission's

generic investigation, true-up is required to ensure ultimately that Verizon Wireless pays no more, and ALLTEL receives no less, than the reciprocal compensation rates mandated by the 1996 Act and the FCC's implementing regulations. *See Tennesee Transcript* (attached hereto as Exhibit A) at 41-42 ("the [proxy] rate will be subject to true-up, thus mitigating the risk that either the ICOs or CMRS providers would be unduly enriched or left inadequate compensation once the final rate is established"); *Covad – Roseville Arbitration,* 2001 Cal. PUC LEXIS 596, *21 (true-up required to compensate either carrier for difference between proxy rates and permanent rates).[40]

25. In addition to producing a just and reasonable result, truing up the interim or proxy rates with TELRIC-derived rates will lessen the vulnerability of the Arbitration Order to challenge on the ground that it fails to comply with the federal pricing standards, thus increasing the likelihood that this dispute will, at long last, be brought to an end. Therefore, irrespective of the rates approved in this proceeding, the Arbitration Order should be clarified to provide that, upon the

[40] This Commission has taken a similar approach in the past. In arbitrating an interconnection agreement between AT&T Communications of Pennsylvania, Inc. and GTE North, Inc., the arbitrator, upon finding that GTE North had failed to support its proposed nonrecurring charges for ordering and installation of unbundled network elements, recommended that GTE North bear the cost of the nonrecurring charges subject to reconciliation and reimbursement after permanent rates are implemented. *Petition of AT&T Communications of Pennsylvania, Inc. for Arbitration to Establish an Interconnection Agreement with GTE North, Inc.*, Docket No. A-310125F0002, 1996 Pa. PUC LEXIS 157, *31 (Pa. PUC Dec. 6, 1996). The Commission agreed, stating "the prudent course is to wait for the completion of our analysis of an approved TELRIC study so that permanent rates for non-recurring charges can be established. At that time, AT&T will be required to reimburse GTE for any non-recurring charges borne by GTE at its initial cost and expense." *Id.* *32.

completion of the Commission's investigation into ALLTEL's reciprocal compensation rates, (1) the parties shall amend their interconnection agreement to incorporate those rates, and (2) the parties shall adjust their past compensation to allow each carrier to receive the level of compensation it would have received had the rates adopted in this proceeding equaled the rates approved in the ALLTEL generic investigation proceeding.

CONCLUSION

For all of the foregoing reasons, Verizon Wireless respectfully requests that the Commission—

a. Grant reconsideration of the Arbitration Order entered January 18, 2005;

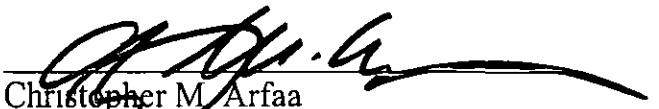
b. Amend the Arbitration Order to provide that the parties' interconnection agreement shall incorporate the interim rates for reciprocal compensation for transport and termination of local traffic of $.012 per minute for directly exchanged traffic and bill-and-keep for indirectly exchanged traffic pending completion of the Commission's generic proceeding to investigate ALLTEL's reciprocal compensation rates;

c. Clarify the Arbitration Order to provide that, upon the completion of the Commission's investigation into ALLTEL's reciprocal compensation rates, (1) the parties shall amend their interconnection agreement to incorporate those rates, and (2) the parties shall adjust their past compensation to allow each carrier to

receive the level of compensation it would have received had the rates adopted in this proceeding equaled the rates approved in the ALLTEL generic investigation proceeding; and

d. Grant such other relief as is just and reasonable.

Respectfully submitted,



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Counsel for Cellco Partnership d/b/a Verizon Wireless

DATED: February 2, 2005

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:	)	
	)	
PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS	)	Docket No. 03-00585

TRANSCRIPT OF PROCEEDINGS

Wednesday, January 12, 2005

APPEARANCES:

For the CMRS providers: Mr. William T. Ramsey
Mr. Stephen G. Kraskin
(Present by telephone)

For AT&T Wireless: Mr. Henry Walker

Reported By:
Patricia W. Smith, RPR, CCR

(The aforementioned cause came on to be heard on Wednesday, January 12, 2005, beginning at approximately 9:13 a.m., before Chairman Pat Miller, Director Deborah Taylor Tate, and Director Ron Jones, when the following proceedings were had, to-wit:)

CHAIRMAN MILLER: Good morning. We're here in Docket No. 03-00585, petition of arbitration of Cellco Partnership doing business as Verizon Wireless.

We're here for deliberations today.

And what's the pleasure of my fellow directors? How would you like to proceed? Just issue by issue, and I'll begin, and y'all jump in anywhere you feel appropriate -- interrupt me whenever you feel it's appropriate?

DIRECTOR JONES: I think that's appropriate. It's likely that we may all have differing support. So to keep it neat, I think we should go one at a time.

CHAIRMAN MILLER: As a matter of record, the TRA rejected the Tennessee Rural Independent Coalition members' claim that this matter is inappropriate for a Section 252 arbitration proceeding. This matter came to the Authority as a direct result of Docket No. 00-00523. In Docket

No. 00-00523, the hearing officer ordered the parties to continue negotiation and stressed that a settlement of the matter was in the best interest of all parties. However, the Order was clear that if an ICO member could not reach a settlement with the CMRS providers, the Authority may be called upon to arbitrate the disputed issues. The CMRS providers then petitioned the Authority to arbitrate this matter, and the Authority accepted the arbitration and all issues within.

In the proceeding, the ICO members are always careful to point out that they have not voluntarily engaged in negotiations regarding interconnection and reciprocal compensation. The ICO members have, therefore, essentially refused to negotiate these issues.

Regardless of whether they have elected to voluntarily negotiate an interconnection agreement, or any portion thereof, they have a duty to interconnect as a telecommunications carrier and, as a local exchange carrier, an obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. To the extent this duty and obligation are not resolved through negotiation, they remain unresolved, open

issues, subject to arbitration pursuant to 47 USC Section 252(b)(1).

Upon the jurisdiction afforded to the states in 47 USC 252(b), this arbitration was accepted by the Authority on December 8, 2003.

With this said, we will proceed with the outstanding issues in this arbitration.

DIRECTOR JONES: Chairman Miller, I do have a -- I do have some comments I'd like to make with respect to jurisdiction. And I will try mightily not to duplicate unnecessarily anything that has previously been said by either you or Director Tate, as the case may be.

I'd like to offer the following comments with respect to jurisdiction.

And, first, it is my opinion that the automatic exemption applicable to the ICOs pursuant to 47 USC Section 251(f)(1) does not apply to the 251(a) and (b) obligations. ICOs may only request suspension or modification of Section 251(b) requirements pursuant to Section 251(f)(2).

Second, it is my opinion that the obligations of 47 USC Section 251(a) and (b) are independent of the obligations listed in 251(c).

Thirdly, it is my opinion that

negotiation and arbitration provisions of 47 USC Section 252 apply to the obligations listed in Sections 251(a) and (b). Section 252(a)(1) provides for negotiations pursuant to Section 251 generally, and Section 252(b)(1) allows for arbitration of any open issue remaining from those negotiations.

Fourth, it is my opinion that the issues related to direct interconnection are properly before the arbitrators. It appears from the record that the parties exchanged terms related to direct interconnection. The CMRS providers included open issues related to these terms in their petition. And the hearing officer in Docket 00-00523 did not limit the scope of the negotiations or subsequent arbitration.

Fifth, the ICO's argument that this agency may not arbitrate indirect interconnection issues because the FCC has not established standards is, in my opinion, without merit. States are instructed by Section 252(c)(1) of the Act to -- quote -- ensure that such resolution and conditions meet the requirements of Section 251, including -- and I emphasize "including" -- the regulations prescribed by the commission, that is the FCC, pursuant to Section 251. The plain language of this section instructs that

the Authority must apply the requirements of Section 251, in my opinion, even when the FCC is silent.

Moreover, Section 251(d)(3) specifically preserves the rights of states to establish policies involving LEC interconnection obligations as long as those obligations are consistent with the requirements of Section 251.

There is nothing in this section preventing a state commission from taking such action in a 252 arbitration.

Sixth, it is my opinion that to the extent that CoServe Limited Liability versus Southwestern Bell Telephone Company, a case relied on by the ICOs, is inconsistent with this opinion, it must be disregarded, as the holding is dependent on the facts of that dispute, and those facts are markedly distinguishable from this docket.

For instance, the case did not involve the arbitration of a Section 251(a) or (b) obligation. Instead, the issue of controversy in that case involved compensated access.

Therefore, Chairman Miller, I would also join your move that -- in concluding that this proceeding is properly a Section 252 arbitration and that this agency has the authority to resolve the open

issues presented in it.

CHAIRMAN MILLER: Thank you.

Any comment from Director Tate?

DIRECTOR TATE: Yes. I would just like to agree as well regarding the jurisdictional issue and am confident in rejecting the ICO members' claim regarding that we do not have jurisdiction.

This proceeding is properly a 252 arbitration. The CMRS providers have requested the terms of interconnection. These issues are squarely Section 251 matters, and the matter is properly before the state commission in an arbitration proceeding, and we correctly accepted it as such.

Thank you.

CHAIRMAN MILLER: I will proceed with Issue No. 1.

Issue No. 1: Does an ICO have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunication carriers?

Both parties agree that they are telecommunications carriers. Additionally, both concede that they are required to interconnect either directly or indirectly. Faced with those facts, and with the strict wording of the issue, it would appear

that there really is no issue at all. In fact, the ICO's members make that exact statement. However, additional statements by both parties indicate otherwise.

Issue No. 2 reads, "Do the reciprocal compensation requirements of 47 USC Section 251(b)(5) and the related negotiations and arbitration process in Section 252(b) apply to traffic exchanged indirectly by a CMRS provider and an ICO?" In my opinion, the resolution of Issue No. 2 will revolve the issue of the ICO members interconnecting on an indirect basis for the mutual exchange of intraMTA traffic stated above.

Additionally, once Issue No. 2 is decided, it only follows that a compensation arrangement will be required. It is logical that such arrangement or arrangements should be resolved in Issue No. 2 as well.

For those reasons, I move that the ICO has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, including CMRS providers. The additional arguments raised in this issue are properly addressed in the resolution of Issue No. 2.

And I so move.

DIRECTOR TATE: Second.

DIRECTOR JONES: I agree.

CHAIRMAN MILLER: Issue No. 2: Do the reciprocal compensation requirements of 47 USC Section 251(b)(5) and the related negotiations and arbitration process in Section 252(b) apply to traffic exchanged indirectly by CMRS providers and an ICO?

The question of whether the related negotiation and arbitration process in 47 USC 252(b) applies to traffic exchanged indirectly by a CMRS provider and an ICO is also included in this issue. I am convinced that 47 USC 252 of the Act is clear in this matter.

The first sentence refers to "interconnection services or network elements pursuant to Section 251." The question is automatically answered upon finding in Issue 1 of this arbitration that an ICO has the duty to connect directly or indirectly pursuant to 47 USC Section 251.

Additionally, 47 USC Section 252(b)(4)(a) states that the state commission shall limit its consideration of the petition for arbitration to the issues set forth in the petition and in the response. Issue 2 was set forth in the petition and the response; therefore, the matter of traffic exchanged indirectly by a CMRS provider and an ICO is

subject to the arbitration process.

After thoroughly examining the record in this docket, I move that reciprocal compensation requirements of 47 USC 251(b) subsection 5 and the related negotiation and arbitration process of 47 USC 252(b) apply to traffic exchanged indirectly between CMRS providers and an ICO.

And I so move.

DIRECTOR TATE: I would second that and only add that the parties are presently exchanging traffic and an arrangement is technically feasible.

DIRECTOR JONES: I would agree and also add to the record my comments that Section 251(b)(5) requires the ICOs to establish reciprocal compensation arrangements for the transport and termination of traffic. And, generally, such traffic includes all telecommunications not excluded by Section 251(g). No petition for suspension or modification of Section 251(b)(5) has been filed by the Coalition members. LEC and CMRS providers must comply with the principles of mutual compensation pursuant to Rule 20-1(b) and the applicable provisions of Part 51 pursuant to Rule 20-11(c).

Rule 51.703(a) requires a LEC to -- quote -- establish reciprocal compensation arrangements

for the transport and termination of telecommunications traffic with a requesting telecommunications carrier -- end quote.

Rule 51.701 defines "transport and termination." The Coalition argues that Rules 51.701 and 703 do not apply because the arrangements sought by the CMRS providers does not meet the definition of "transport." Specifically, the Coalition asserts that there is no transport as defined by the FCC because there is no interconnection point between the two carriers. This argument, in my opinion, must be rejected, because it assumes that the definition of "interconnection" found at Rule 51.5 contains limitations on how two networks must be linked when, in fact, the definition contains no such limitation.

Because Rule 51.5 is broad and general, one can reasonably in these circumstances conclude that the interconnection point between the two carriers is at the office of the transiting carrier; i.e., the point where the two networks are linked for the mutual exchange of traffic.

The Coalition also relies on the first report and order, paragraph 1039, for the proposition that the indirect interconnection arrangements sought by the CMRS providers is not the type of indirect

interconnection arrangement for which the FCC has said that reciprocal compensation applies. This position, too, in my opinion, must be rejected, as the language of paragraph 1039: (1) does not provide an exhaustive list of transport alternatives, and (2) through the use of the phrase -- quote -- facilities provided by alternative carriers -- end quote -- includes, in my opinion, the interconnection arrangement sought by the CMRS providers.

The application of Section 251(b)(5) is not limited through its express language or FCC's rulings or regulations to direct interconnection or specific forms of indirect interconnection.

Instead, the language of the statute and FCC regulations is broad and, again, can reasonably be interpreted to include traffic exchanged indirectly between the CMRS providers and an ICO. This conclusion is consistent with the FCC's comments in the memorandum -- memorandum opinion and order in Texcom, Inc. versus Bell Atlantic Corp. and the intercarrier compensation NPRM, United States District Court decisions in Atlas Telephone Company versus Corporation Commission of Oklahoma, and Three Rivers Telephone Cooperative, Inc. versus US West Communications, Inc. and the Oklahoma State Commission decision.

Having determined that the reciprocal compensation requirements of 47 USC 251(b)(5) apply to traffic exchanged indirectly by a CMRS provider and an ICO, it is without question that the negotiation and arbitration process in Section 252(b) apply to traffic exchanged indirectly by a CMRS provider and an ICO.

Having provided those comments, I agree with the motion.

CHAIRMAN MILLER: Director Tate.

DIRECTOR TATE: I would merely add an agreement that the plain reading of the rules indicate that the FCC intended for 47 USC 251(b)(5) to apply to traffic exchanged between a CMRS provider and an ICO. And I can find nothing in the Act, the first report and order, rules, or other cases that indicate otherwise. And, additionally, the ICO members presented no citations to applicable authority that would indicate otherwise and would be in agreement.

CHAIRMAN MILLER: Issue 2b: Do reciprocal compensation requirements of 47 USC Section 251(b)(5) apply to land-originated intraMTA traffic that is delivered to a CMRS provider via an interexchange carrier?

Access charges were developed to address a situation in which three carriers, typically

the originating LEC, the IXC, and the terminating LEC, collaborate to complete a long distance call. Reciprocal compensation for transport and termination of calls is intended for the situation in which two carriers collaborate to complete a local call. The FCC has stated that long distance traffic is not subject to the transport and termination provisions of 47 USC Section 251 of the Act and that the reciprocal compensation provisions of 47 USC Section 251(b)(5) for the transport and termination of traffic do not apply to interstate or intrastate interexchange traffic.

I do not agree with the CMRS position that the reciprocal compensation requirements is not affected by the manner by which the traffic is delivered or by the type of intermediary carrier, whether a transiting carrier or an IXC.

The FCC's Memorandum Opinion and Order states, ". . . 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 the interexchange carrier. This may result in the same call being viewed as a

local call by the carriers and a toll call by the end user."

The FCC could not be clearer on this issue. Many times LATA boundaries traverse MTAs. When this situation occurs, an intraMTA call that originates in one LATA and terminates in another LATA will necessarily involve an IXC and will be subject to access charges -- to the access charge regime rather than the reciprocal compensation.

However, based upon the plain language of the FCC, I am of the opinion that the wireless -- any wireline to wireless traffic that does not cross a LATA boundary and that originates and terminates within the same MTA is subject to reciprocal compensation whether it is carried by an IXC or not.

Therefore, I move that the reciprocal compensation requirements of 47 USC Section 251(b)(5) applies to land-originated intraMTA traffic that is delivered to CMRS providers via an interexchange carrier unless the call crosses a LATA boundary.

And I so move.

DIRECTOR JONES: My comments are with respect to this issue, and they're a little different than the comments that were just provided.

Here the Coalition argues that the

definition of "telecommunications traffic" does not include traffic carried by an interexchange carrier.

Rule 51.701(b)(2) defines telecommunications traffic, as relevant to this docket, as traffic that is exchanged between a LEC and a CMRS provider that at the beginning of the call originates and terminates within the same major trading area. There are no further limitations or exceptions contained in the rule -- none.

Adopting a conclusion that all intraMTA traffic is subject to reciprocal compensation regardless of whether it is transported by an IXC is consistent with: (1) the United States District Court ruling in Atlas Telephone Company versus Corporation Commission of Oklahoma, in which the Court concluded -- quote -- that reciprocal compensation obligations apply to all calls originated by an RTC and terminated by a wireless provider within the same major trading area without regard to whether those calls are delivered via an intermediate carrier; (2) the FCC's first report and order in which it concluded that reciprocal compensation applies to intraMTA traffic and interstate access applies to interMTA traffic; and (3) the FCC's decision in the ISP remand order that -- quote -- reciprocal compensation, rather than interstate or

intrastate access charges, applies to the LEC CMRS traffic that originates and terminates with the same major trading area -- end quote.

Therefore, it is my position and I would move that the reciprocal compensation requirements of 47 USC 251(b)(5) applies to the land-originated intraMTA traffic that is delivered to a CMRS provider via an interexchange carrier when those calls are within the same major trading area.

DIRECTOR TATE: So you-all are in agreement --

DIRECTOR JONES: With the exception of the LATA boundary, I believe, if I understand Chairman Miller's motion correctly.

CHAIRMAN MILLER: That's correct.

DIRECTOR TATE: Could I have about five minutes?

CHAIRMAN MILLER: Certainly.

DIRECTOR JONES: Yes.

(Recess taken from 9:37 a.m. to 9:51 a.m.)

CHAIRMAN MILLER: We're ready to reconvene.

DIRECTOR TATE: Thank you, Chairman.

CHAIRMAN MILLER: Could I ask a

question of Director Jones before you proceed?

DIRECTOR TATE: Absolutely.

CHAIRMAN MILLER: Under your motion, an ICO would lose access fees for an interMTA call that crosses a LATA boundary because under your motion it would be treated as a local call; right?

DIRECTOR JONES: Under my motion, the requirements of the FCC order in the cases that I've cited makes no exception for non-251(g) traffic as being 251(b)(5) traffic because a LATA boundary intersects an intraMTA.

CHAIRMAN MILLER: So the answer to my question is yes?

DIRECTOR JONES: That would be the result of that, as is the result of the decisions that we're making here today with respect to the types of compensation mechanisms that were previously in place with respect to transit and toll traffic. I mean, all these decisions have some type of economic effect.

CHAIRMAN MILLER: I understand that. I'm just -- so you couldn't amend your -- amend your motion to say if it crossed a LATA boundary or an MTA boundary -- I mean and an MTA -- or an MTA boundary, I mean.

DIRECTOR JONES: If it crosses an

interMTA boundary, then we're talking about something different. But I've not been able to find in the FCC rules or in the case law that I've provided in my deliberations any exception for --

CHAIRMAN MILLER: Okay. Thank you. Thank you for that clarification.

DIRECTOR TATE: While I may not agree with the way that all of these regimes have been set up -- and goodness knows you-all have heard me say many times how much I wish you-all would negotiate -- we have what we have.

And I appreciate Director Jones' logic and his use of the cases that he has brought to our attention.

And as much as I might wish that there was no distinction, I think that, actually, traffic does change and that at least with regard to the present state of things, our law -- state and federal law that gives us authority over traffic in our state, that the traffic does change character as it moves across the LATA boundary. And, therefore, I would agree with Chairman Miller's motion.

CHAIRMAN MILLER: Issue No. 3: Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged

indirectly between a CMRS provider and an ICO?

The 1996 Telecom Act requires telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. The local exchange carriers who make up the Coalition are responsible for establishing reciprocal compensation arrangements for both the transport and termination of telecommunications traffic. Therefore, the ICO members have a statutory obligation to interconnect with the CMRS providers. The FCC rules dictate that each LEC shall establish reciprocal compensation for transport and termination of telecommunications traffic with any requesting carrier and a LEC may not assess charges on any other telecommunications carrier for traffic that originates on the LEC's network.

I disagree with the Coalition's claim that there is no interconnection point between the ICO's members -- ICO members and the CMRS providers because the CMRS providers have opted to use the existing BellSouth common trunk group. Obviously, there is an existing POI between BellSouth and the ICO members with regard to the common trunk. The architecture of the common trunk is not at issue.

What is at issue here is the point of

indirect interconnection on the network which determines the compensation obligation of Coalition members or a CMRS provider.

Therefore, I conclude the most efficient means to resolve this issue is by maintaining the existing point of interconnection that currently exists between the ICOs and BellSouth and the CMRS providers and BellSouth.

Therefore, for these reasons, I move, pursuant to 47 C.F.R. Section 51.703(a) and (b), the company that originates the call is responsible for paying the terminating party.

DIRECTOR TATE: I would agree. Second.

DIRECTOR JONES: I would agree in the conclusion.

CHAIRMAN MILLER: Issue No. 4: When a third-party provider transits traffic, must be -- must -- when a third-party provider transits traffic, must an interconnection agreement between the originating and terminating carriers include the transiting provider?

Based upon the record, I am of the opinion that when a third-party provider transits traffic, the third party is not legally required to be

included in the interconnection agreement between the originating and terminating carriers.

It should be noted, however, that this circumstance will require the ICO members to also negotiate a new interconnection agreement with BellSouth. Support for this position is found at 47 C.F.R. Section 51.5 in the definition of "interconnection," which states that the interconnection is the physical linking of two networks for the mutual exchange of traffic. The FCC did not include transport and termination of traffic within the meaning. The definition calls for the linking of two networks which out of necessity will result in an interconnection agreement between the two owners, parties, of the networks being linked.

I find no reference in the '96 Act, the FCC rules, or any orders that mention three-party interconnection agreements. As a result, one must draw the conclusion that neither Congress nor the FCC envisioned three-party interconnection agreements.

I therefore move when a third party provides transit traffic, the interconnection agreement between the originating and terminating carrier should not include the transiting provider as a party. However, the interconnection agreement should address

the method of transit and how -- and who pays the transiting provider.

DIRECTOR TATE: Second.

DIRECTOR JONES: And I would agree that there is nothing in the Act that prevents the adoption of a three-way indirect interconnection arrangement through the execution of multiple two-party agreements or that requires the use of a single multi-party agreement to create a three-way indirect interconnection agreement.

And I also note that the -- that the CMRS providers propose that the arbitrators answer this issue in the negative. And although ultimately asserting the affirmative of this issue, the Coalition has agreed, nevertheless, that a three-way arrangement can be memorialized in three distinct agreements.

With those comments on the record, I agree.

CHAIRMAN MILLER: Issue No. 5: Is each party to an indirect interconnection agreement obligated to pay the transit costs associated with the delivery of the intraMTA traffic originated on its network to the terminating party's network?

Effectively, the ICO members have a network that currently stretches beyond their existing

boundary to the BellSouth tandem via the existing commingled common trunk group. It is for this reason that the ICO's assertion that the Authority cannot require the ICO members to take financial responsibility for the transport of traffic -- or traffic beyond the rural LEC's network must be rejected.

As the network exists, utilizing BellSouth's tandem, the ICO members have an obligation for the cost associated with utilizing the trunking facility. Furthermore, since the FCC defined an MTA as a local calling area for the purposes of reciprocal compensation, the ICO members' network has, in fact, been extended.

FCC rules define "transport" as the transmission and any necessary tandem switching of telecommunications traffic subject to 47 USC Section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office. Currently, the ICO members and the CMRS providers are both relying on BellSouth to provide tandem switching in order to complete calls outside their respective network. Therefore, by rule they are required to include existing commingled trunk groups as part of their network.

Each carrier is responsible for transporting a call originated on its network to the furthest point in its network. If a call originates at a switch site in one party's network, then that party is responsible for the transiting costs -- the costs associated with utilizing BellSouth's trunk group -- in order to get that call through its network to the IPO -- to the POI.

In the instance where the CMRS provider originates the call, the CMRS provider has an obligation to pay the costs associated with the transport and termination of the call. The call terminates at the furthest point on the ICO's network where, currently, BellSouth has terminated its trunk group. Therefore, it is the responsibility of the CMRS provider to negotiate terms with BellSouth for the traffic transversing the commingled trunk group.

Similarly, calls that originate on an ICO member's network which transverse the BellSouth trunk group obligates the ICO member to pay the appropriate transport and termination charges associated with getting that call to the POI of the CMRS provider, which is -- which is at the BellSouth tandem. Likewise, the ICO member would negotiate terms for utilizing the commingled group or discontinue its

traffic exchange via the trunk group and begin offering its own tandem switching.

I therefore move, pursuant to 47 C.F.R. Section 51.703(b), the originating carrier pays for the transport and termination of all traffic originated on its own network and terminated on another carrier's network.

I further move that the transit of traffic includes traffic from the originating switch to the point of interconnection, which is at the BellSouth tandem for traffic originated by the ICO members and the existing termination point for the BellSouth common trunk group, the furthest point on the ICO members' network -- the furthest point on the ICO members' network -- for all traffic originated by CMRS providers.

And at any point if you-all want to look at my motions and read them, I have a copy of them here. I know I -- they're pretty lengthy and they may need some --

DIRECTOR JONES: I think I followed your last one, the relevant portions of it.

CHAIRMAN MILLER: Even the ones that I was tongue-tied on?

DIRECTOR JONES: Well, I was -- I'm

listening for certain buzz words in there and phrases. So here I go.

I conclude that this issue should be answered in the affirmative, but instead offer the following explanation that, first, according to the FCC's orders in the Texcom docket, transit costs are initially paid to the transit provider.

In Texcom, a case involving transit traffic between a paging carrier, GTE North, and a third-party originating carrier, the FCC explained that the payment of transit costs should be such that the originating third-party carrier's customers pay for the cost of delivering their calls to the LEC while the terminating CMRS carrier's customers pay for the costs of transporting that traffic from the LEC's network to their network. The same reasoning would apply when the CMRS provider is the originating carrier and the ICO is the terminating carrier.

Nevertheless, it is my opinion that the rates for such services and the terms and conditions through which such payments are billed are best left to negotiations between the ICOs and the transiting provider and the CMRS providers and the transiting provider.

Second, the FCC has further determined

in Texcom that a CMRS provider -- quote -- may seek reimbursement of the transiting costs from originating carriers through reciprocal compensation. Thus, transit costs may be recovered through the assessment of transport and termination costs as provided for in Part 51 of the FCC rules.

Third, consistent with my positions on the preceding issues, it is my opinion that reciprocal compensation applies to intraMTA traffic delivered via an indirect interconnection agreement.

I would agree with your motion, having provided those comments, Chairman Miller, and perhaps I could make a friendly amendment. Instead of specifically identifying BellSouth as the tandem provider, to make that the tandem provider of choice for any provider, although I realize that BellSouth is the current tandem provider, but that need not be the case, in the resolution of this issue.

CHAIRMAN MILLER: I'll accept that as a friendly amendment.

DIRECTOR TATE: And I will agree with the motion as amended.

CHAIRMAN MILLER: Issue No. 6: Can CMRS traffic be combined with other traffic types over the same trunk group?

Currently, BellSouth provides the ICO members, EMI 11-01-01 records, which are recorded in the BellSouth tandem. The format and content of these records are defined by the Alliance for Telecommunications Industry Solutions, an industry standards body that manages standardization activities for wireless and wireline networks. Such activities include managing interconnection standards, number portability, toll-free access, telecom fraud, and other billing issues. In addition, BellSouth provides Signaling System 7 (SS7) signaling to the ICO members.

In response to the Authority's data request for August 30th, 2004, BellSouth stated that while SS7 data is realtime for call setup purposes, it is not typically used to generate billing. BellSouth also stated that it also provides the ICO members with the EMI 11-01-01 records, which are not part of the realtime SS7 data accompanying the call. These EMI 11-01-01 records are sent to the ICO members on a weekly or daily basis.

BellSouth states that the SS7 data may be used to assist in verifying the accuracy of the EMI 11-01-01 records. While the method of verification may not be realtime, BellSouth can and does provide sufficient information to the ICOs to enable them to

identify and separate this traffic. Therefore, either with direct or indirect interconnection, the combination of traffic types over the same trunks should be permitted, provided that the calls are properly timed, rated, and billed.

And I so move.

DIRECTOR JONES: I agree.

DIRECTOR TATE: I agree.

CHAIRMAN MILLER: Issue No. 7(A): Where should the point of interconnection be if a direct connection is established between a CMRS provider's switch and an ICO's switch?

And, (B), What percentage of the cost of the direct connection facilities should be borne by the ICO?

The 1996 Act obligates incumbent LECs to provide interconnection within their networks at any technically feasible point. The FCC has concluded that the term "technically feasible" refers solely to the technical or operational concerns, rather than the economic, space, or site considerations. The FCC has further concluded that the obligations imposed by Section 251 of the Act include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection.

In such cases where the incumbent must modify its facilities in order to accommodate such interconnection, the FCC has not said that the costs associated with those modifications cannot be incorporated into interconnection rates. Therefore, the cost to build out the network to facilitate interconnection between the parties could be recovered through interconnection rates.

Additionally, the FCC concluded that an incumbent LEC must prove to the state commission that a particular interconnection or access point is not technically feasible. Any further direct interconnection agreement between the parties would be subject to the CMRS providers designating the POI. Then, if the ICO feels that the designated POI is not technically feasible, the ICO must demonstrate that to the Authority.

CMRS providers state that a POI for a dedicated two-way facility may be established at any technically feasible point on the ICO's network or at any other mutually agreed-upon point pursuant to applicable federal rules and the cost of the dedicated facilities between the two networks should be fairly apportioned between the parties.

Once the CMRS providers request direct

interconnection, the parties should negotiate and the specific issue should be brought to the TRA for arbitration if the parties are unable to reach agreement. The interconnection agreement between the ICO and the CMRS provider, whether negotiated or arbitrated, will determine the rates, terms, and conditions for interconnection between the parties.

This issue relates to the direct interconnection which is not the subject of the arbitration. However, to address this issue and enable the parties to include direct interconnection in the agreement, if they so choose, I provide the following motion:

The CMRS providers have the right, pursuant to the Act and the FCC rules, to designate the points of interconnection at any technically feasible point; (2) the CMRS providers shall be responsible for delivering the calls to the POI with the ICO members; the ICOs shall be responsible for delivering the calls to the POI, as they would with any other provider, whether it happens to be an ILEC, a CLEC, or a CMRS provider; and cost for the direct connection facilities should be borne by the CMRS provider to the POI, and the facilities on the other side of the CMRS provider's POI should be borne by the ICOs.

DIRECTOR JONES: As to Issue 7(A), the ICOs stated in their post-hearing brief, at page 45, that they would agree to permit the CMRS provider to establish their POI at any established point of interconnection within the rural LEC's network or any other mutually agreeable point.

The CMRS providers -- quote -- have no objection to this concession -- end quote. That's in their joint reply brief at page 23.

I'm of the opinion that, given those two positions of the parties, that there is no issue here to decide. So my position would be with respect to 7(A) that that issue should be dismissed.

As to Issue 7(B) -- What percentage of the cost of the direct connection facilities should be borne by the ICO? -- I found that there is insufficient evidence in the record to specify a percentage of the cost of the direct connection facilities to be borne by the ICOs.

In general, however, I conclude that the appropriate standard to apply to this determination can be found at 47 C.F.R. 51-709(b).

And that's my position.

DIRECTOR TATE: I guess that in order to -- regarding Director Jones' remarks about 7(A), I

can read the post-hearing brief and -- but I don't know if it would be appropriate or inappropriate, Chairman Miller, for us to have the parties come forward and tell us if you are in agreement with how Director Jones has interpreted the statements there.

Obviously, you-all know me well and that my advice to you-all is to negotiate what you can.

And so if -- if you-all are in agreement, then great, and I'll agree that this shouldn't be before us and you-all have come to an agreement. But if not, then it may change my vote. So --

CHAIRMAN MILLER: If the parties could come forward, we'll just ask them.

MR. RAMSEY: Chairman Miller, this is Bill Ramsey. I don't know whether my lawyer, Mr. Kraskin, is on the phone or not. But if he's not, I think I'm ready to respond. I usually defer to him.

CHAIRMAN MILLER: Mr. Ashe, is anybody --

MR. KRASKIN: Mr. Ramsey, I am here, but I will talk when you ask.

MR. RAMSEY: Okay. And it might be better for me to confer with opposing counsel.

But, basically, the position we took

in arbitration was at this point we -- consistent with the position we took throughout the whole proceeding -- that we think that if the CMRS providers are requesting a point of direct interconnection, we have to let them have it. And we think that's the only -- as you have pointed out through these proceedings, our position was that's the only way we could actually be in an arbitration over rates.

So certainly it's consistent with our position to say if they want a direct interconnection, we have the obligation to let them have one. Our issue is, Who pays for making that connection?

CHAIRMAN MILLER: Mr. Walker.

MR. WALKER: As to Issue 7(A) --

CHAIRMAN MILLER: If you could, identify yourself for the record.

MR. WALKER: I'm Henry Walker, here on behalf of AT&T Wireless.

As to Issue 7(A), we do say quite clearly in our reply brief that we accept the concession of the ICOs that a CMRS provider may establish their point of interconnection at any -- establish point of interconnection within the rural LEC's network or any other mutually agreeable point.

There being no dispute between the

parties over the location of the POI, the TRA should rule that the POI may be located on the network of the LEC or at any other mutually agreeable point.

So I guess all we're saying is we agree with Director Jones; it's no longer an issue. I think we would feel more comfortable that you issue a finding on that point rather than just dismissing it. Therefore, there would be a record that the TRA has made a decision.

MR. RAMSEY: And, you know, given the history of the parties -- this is Bill Ramsey again. I apologize.

When you talk about any mutually agreeable point, that's the only place to the extent these parties haven't agreed on -- if it's a point outside one of our networks, there may be a dispute. But certainly if it's a point on our network, we have no problem. I think if you order that any mutually agreeable point is a part of the agreement, you need to do that with the understanding that the parties sometimes are not able to agree to a point. If it's outside our network, we'd have to negotiate with them on that -- on whatever point that is.

With that clarification, I agree with Mr. Walker.

CHAIRMAN MILLER: Do you have any further questions, Director Tate?

DIRECTOR TATE: After hearing that, Director Jones, are you still of the opinion to move to dismiss 7(A)?

DIRECTOR JONES: After hearing the parties' preference with respect to that issue, wanting a ruling from this Authority, I would second Chairman Miller's motion.

DIRECTOR TATE: Okay. Then I will agree as well.

Thank you all for coming forward.

CHAIRMAN MILLER: Thank you.

Issue No. 8: What is the appropriate pricing methodology for establishing a --

DIRECTOR JONES: Chairman Miller, may I?

CHAIRMAN MILLER: Certainly, Director Jones.

DIRECTOR JONES: I'm not certain whether Director Tate voted on 7(B) on the --

DIRECTOR TATE: Was your motion separate or together?

DIRECTOR JONES: 7(B), the percentage of the cost of the direct connection.

DIRECTOR TATE: I thought that his motion was both as to 7(A) and (B) and --

CHAIRMAN MILLER: It was.

DIRECTOR TATE: -- I would agree with that.

DIRECTOR JONES: Okay. Then I -- let me back up. I need to bifurcate.

DIRECTOR TATE: Sure.

CHAIRMAN MILLER: Sure.

DIRECTOR JONES: I apologize for that. I need to bifurcate my position on it.

I will stand on my original position that I could not make a determination from the record as to what percentage of the cost of direct connection of the facilities should be borne by the ICO and would instead direct the parties' attention to what I believe to be the appropriate standard to apply in 47 C.F.R. 51-709(b).

Thank you.

CHAIRMAN MILLER: Thank you.

Issue No. 8: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of indirect or direct traffic?

In my opinion, the Authority has only

one option for setting the applicable reciprocal compensation rate.

Although the Coalition proposes rates, I agree with the CMRS providers that these rates are not compliant with the required TELRIC methodology. The rates offered by the Coalition are derived from their interstate access rates. No TELRIC cost studies were presented in this case; therefore, I do not find setting a cost-based rate an option at this time.

Although FCC Rule 51.705 allows state commissions to implement bill-and-keep compensation arrangements, I do not find this option substantiated by the record. The record in this proceeding contains no evidence that traffic is roughly equal or not equal between the parties. In order for me to be persuaded that traffic is equal, thus justifying bill-and-keep, there should be some evidence to lead me to such a conclusion.

The use of interim rates pending the implementation of a TELRIC-based rate remains a legally sound alternative. In Iowa Utilities Board versus the FCC, the Eighth Circuit vacated the FCC rules that established a specific range of rates to be used by state commissions for setting rates for transport and termination of telecommunications traffic until such

time as the state commissions set TELRIC rates. The vacatur the Court -- in the vacatur, the Court first held that while the FCC has jurisdiction to impose a pricing methodology on state commissions, it does not have the jurisdiction to impose actual prices state commissions must use.

Second, the Court also found that the prices the FCC sought to impose on the state commissions were infirm because they relied on hypothetical -- the hypothetical most-efficient-carrier rationale, which we have found to violate the Act, and because they rely on the erroneous definition of "avoided retail costs."

Thus, the Eighth Circuit's vacating of the FCC's rules regarding default proxies was based on the methods upon which the proxy prices were developed and upon the FCC's attempted imposition of the proxy prices on state commissions without the jurisdiction to do so. The interim nature of proxy prices was not addressed by the Eighth Circuit and was not a basis for vacating the FCC's default proxy rules.

The various state commissions have jurisdiction per the Act to set rates when the carriers fail to do so on a -- by voluntary contract. State commissions may, consistent with the FCC rules, set

interim rates subject to a true-up during the process of establishing TELRIC rates.

An example of this is found at AT&T Corporation versus the FCC, a case in which the FCC granted Bell Atlantic 271 approval which included a placeholder rate, or interim rate, established by the New York Public Service Commission for conditioning loops for DSL service. The FCC listed several factors that led it to conclude that Bell Atlantic's use of an interim rate did not prevent approval of the 271 application including the fact that the conditioning of DSL loops is a relatively new issue. The issue of reciprocal compensation for indirect interconnection between the ICOs and CMRS providers is similarly new.

Given the lack of cost or traffic studies upon which to implement permanent rates, interim rates, subject to a true-up, are appropriate.

I am of the opinion that an interim rate be established and, therefore, so move. This interim rate should be the reciprocal compensation rate set for BellSouth in the permanent pricing docket, Docket No. 97-01262, subject to a true-up. This is the proper course of action for two reasons.

First, the rate will be subject to true-up, thus mitigating the risk that either the ICOs

or CMRS providers would be unduly enriched or left inadequate compensation once the final rate is established.

Secondly, the rate is a reasonable interim rate since it is a rate for an incumbent LEC.

I feel it is impossible to make an intelligent decision on establishing a permanent rate in this docket without the benefit of a cost study or traffic study. With the approval of this interim rate, I also move that we have additional proceedings in order to establish a permanent rate for this traffic and to answer additional questions that I have whether such rates must be symmetrical between the ICOs and the CMRS providers.

And I so move.

DIRECTOR JONES: Chairman Miller, I would agree that the Authority is under no obligation to adopt a presumption of equal traffic. And in this instance I believe that the more prudent course to take is the one that you suggested in your motion, to adopt the interim rate equal to the reciprocal comp rate that was developed in permanent prices for BellSouth until permanent rates can be set.

And with those comments, I would second your motion.

DIRECTOR TATE: I disagree with my colleagues and believe that another alternative under FCC Rule 51.705 does allow us to implement bill-and-keep arrangements.

The assumption is that traffic is roughly balanced and there would be no revenues or payment issues. And certainly the rule also allows that rebuttable presumption to be rebutted.

I do not feel that any -- the evidentiary record did not contain information that refuted this assumption that the traffic was roughly balanced between the ICO and CMRS networks. Bill and south -- bill-and-keep, while it may not be associated with specific revenue streams between entities, does have many advantages, including administrative simplification, and does not require subsequent proceedings, although they are expressly permitted.

And with that, I would respectfully disagree.

CHAIRMAN MILLER: Issue No. 9: Assuming the TRA does not adopt bill-and-keep as the compensation mechanism, should the parties agree on a factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS providers do not measure the traffic?

Since the parties provided no factor, I move the parties be directed to file an agreed-upon factor to use as a proxy for mobile-to-land and land-to-mobile traffic balance if the CMRS providers do not measure traffic.

This factor should be filed with the Authority by January 25th, 2005. If agreement on the factor to be used has not been reached by this date, I further move that the parties furnish this information as a final and best offer by February 8th, 2005.

DIRECTOR JONES: I agree.

DIRECTOR TATE: I would be in agreement.

CHAIRMAN MILLER: Issue No. 10: Assuming the TRA does not adopt bill-and-keep as the compensation mechanism for all traffic exchanged and if a CMRS provider and an ICO are exchanging only a de minimus amount of traffic, should the compensation each other -- should they compensate each other on a bill-and-keep basis? If so, what level should be considered de minimus?

I am of the opinion that the parties should exchange de minimus amounts of traffic on a bill-and-keep basis. However, I do not believe that there is an agreement among the parties of exactly what

level of traffic should be considered de minimus.

Therefore, I move that the parties file with the Authority what level of traffic is to be considered de minimus by January 25th, 2005. If an agreement on a de minimus amount of traffic cannot be reached by that date, the parties will file final and best offers on this amount by January 8th -- I mean by February 8th, 2005.

And I so move.

DIRECTOR JONES: I agree.

DIRECTOR TATE: See, you-all, it would have been so much simpler if you had just gone along with me, but I would be in agreement with my colleagues.

CHAIRMAN MILLER: Should the -- should the parties establish a factor to delineate what percentage of traffic is interMTA and thereby subject to access rates? If so, what should be the factor?

I am of the opinion that there is insufficient evidence in the record to determine if a factor should be used and what percentage of traffic is interMTA. Therefore, I move that the CMRS providers furnish each ICO member with six months of data that specifies interMTA traffic originated by the CMRS providers and terminated by each ICO member. This data

should be sufficient to determine if the factor is appropriate and what percentage of the traffic is interMTA. However, in the event that this information is insufficient to provide the parties with the necessary information to determine a factor, the parties can petition the Authority for assistance.

And I so move.

DIRECTOR JONES: Chairman Miller, could you repeat the last part of your motion?

CHAIRMAN MILLER: This data should be sufficient to determine if the factors are appropriate and what percentage of traffic is interMTA. However, in the event that the information is insufficient to provide the parties with the necessary information, then they can -- then the parties can petition us for assistance.

DIRECTOR JONES: I'll second that and vote yes.

DIRECTOR TATE: I would find that there was no evidence that the interMTA traffic is anything other than an insignificant amount, nor was there evidence that the traffic was other than balanced and, again, would just move that this be based on bill-and-keep.

CHAIRMAN MILLER: Issue 12(A): Must

an ICO provide dialing parity?

47 C.F.R. Section 51.207 states that a LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identify of the customer's or for the called party's telecommunications service provider.

Additionally, the FCC included CMRS providers in the number pooling requirements as well as the number portability requirements.

As a result, I can find no reason that the CMRS providers should be treated any differently from other telecommunications providers when it comes to dialing parity. Therefore, I am of the opinion that the ICO members must provide dialing parity for any telecommunications provider, including CMRS providers.

And I so move.

DIRECTOR JONES: I would also like to offer that 47 USC Section 251(b)(3) applies to the ICOs. And the FCC further has held that the CMRS providers offering telephone exchange service are entitled to receive the benefits of local dialing parity.

So I would add those cites in addition to the ones that you mentioned, Chairman Miller, in

seconding your motion, along with my comments.

DIRECTOR TATE: And I guess I would just expand on that a little bit to say that cellular, broadband, PCS fall within the definition because they provide a comparable service, and that they may become a true economic substitute for wireline. And, clearly, in order to foster competition between carriers, they fall within the statutory definition of telecommunications service and would agree that dialing parity is required. So I would vote yes.

CHAIRMAN MILLER: Issue 12(B): Must an ICO charge its end user the same rate for calls to a CMRS NPA/NXX as calls to a land line NPA/NXX in the same rate center?

The FCC has stated that the LECs may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates in the MTA because this is local traffic. It should be noted, however, that such traffic may result in the same call being viewed as a local call by the carriers and a toll call by the end user. Therefore, even though the intraMTA CMRS to LEC calling is local, nothing prevents the LEC from charging its end user for a toll call.

I am of the opinion, however, that the

rates subscribers pay for such calls that originate and terminate within a local calling exchange area of the LEC should be the same local rate.

Therefore, I move that the ICO members are not required to charge end users the same rate for calls to a CMRS NPA/NXX as calls to a land line numbers -- as calls to land line numbers, unless the call originates and terminates within the local exchange area of the LEC. ICO member end users may be charged additional charges for calls outside of the LEC's local exchange area.

And I so move.

DIRECTOR TATE: I think I may need just a minute, if we could just take five.

CHAIRMAN MILLER: Certainly.

(Recess taken from 10:39 a.m. to 10:51 a.m.)

CHAIRMAN MILLER: We'll reconvene. We're back on the record.

Director Tate.

DIRECTOR TATE: Thank you, Chairman Miller, for giving me a moment.

I guess, once again, sometimes you just don't like the lot that you're given.

The FCC has explained that nothing

prevents the LEC from charging its end users for toll calls, and I would really encourage you-all to think long and hard, given the competitive world in which we are, before charging end users, and that there are many other ways, including arrangements to have a wider calling area or reverse billing arrangements, that would make it appear to end users that they have made a local call rather than a toll call.

However, with those statements made, I would agree with Chairman Miller's motion.

DIRECTOR JONES: I vote yes.

CHAIRMAN MILLER: Issue 13: Should the scope of the interconnection agreement be limited to traffic for which accurate billing records (11-01-01 or other industry standard) are delivered?

The provision of billing records is the responsibility of the parties to the interconnection agreement. However, either or both parties can enter into a separate agreement with a third party to furnish billing records to the other.

If either party in a two-party interconnection agreement does not have the ability to identify all types of traffic, such as transit traffic, then it will be necessary for that party to make the necessary modifications to its network that will

provide the ability to enter into an agreement with a third-party provider to provide the needed billing records.

This might require some or all small ICO members to enter into such agreements with the transit provider and the transit and -- that transits the traffic between the parties. Many such agreements already exist between BellSouth and various CMRS providers.

Therefore, I move the following: (1) the interconnection agreement should set forth all terms and conditions which include traffic for which billing records are provided that enable the parties to accurately bill one another for mutually exchange -- for the mutual exchange of traffic. Such billing may be accomplished using EMI 11-01-01 records and the SS7 data or any other acceptable method. Billing errors that may occur should not be used as an excuse to limit the type of traffic covered by the agreement; (2) it is the responsibility of the billing party, not any other party, to determine the amount to be billed; (3) if the billing party does not have its own record for billing purposes, then it should be willing to use the records made available to it by a third party until such time as the billing party can install its own billing

system; (4) the parties should utilize an industry standard record for billing purposes, such as furnished by BellSouth, who is the transiting carrier; and (5) any disputes relating to the provision of the interconnection agreements can be brought before the Authority for resolution.

And I so move.

DIRECTOR JONES: Chairman Miller, do you have an extra copy of that motion? I need to --

CHAIRMAN MILLER: Sure. Let me get staff to make copies of it for you, Director Jones.

DIRECTOR JONES: Okay. Thank you.

(Pause in proceedings.)

DIRECTOR TATE: I'd like to hear your comments.

DIRECTOR JONES: The resolution of this issue is not addressed by the Act or FCC regulations. Here the Coalition has not provided an explanation for why, absent a legal mandate, the agreement should be limited to traffic for which accurate billing records are delivered.

Instead, the Coalition has raised issues that relate to the transiting terms between it and the transiting provider. These issues are, in my opinion, best left to be resolved between the ICOs and

their chosen transit provider.

Based on these findings, it is my position that the scope of the agreement in answer to that issue should not be limited to the traffic for which accurate billing records are delivered. However, in reading Chairman Miller's motion, which goes into some specifics of the form or provisions that should be contained in the interconnection agreement, after having read those, I take no particular exception to those.

So I would second that motion along with my comments.

DIRECTOR TATE: I would agree with the motion and just say -- and, you know, once again, restate that I think we are -- we should all be here and be supportive of the goal of exchanging accurate billing records for the consumers, who are your customers.

Thank you.

CHAIRMAN MILLER: Issue No. 14: Should the scope of the interconnection agreement be limited to traffic transited by BellSouth?

I am of the opinion that interconnection agreements are, by design, for the direct interconnection and the direct linking of

parties' networks and, therefore, are intended to be two-party agreements.

However, I also believe that indirect interconnection is merely ancillary to a direct interconnection agreement and although not absolutely necessary in an interconnection agreement, it may be desirable in many instances.

It remains the responsibility of the party originating the transit traffic to ensure the transiting carrier has established a connection with the terminating carrier and that the traffic is identified in a manner that allows the terminating carrier to bill for such traffic. Although traffic provisions are not a requirement in an interconnection agreement, the originating carrier should be -- should ensure that the third-party transiting carrier will comply with the terms and conditions contained in the interconnection agreement between the originating and terminating carriers.

For these reasons, I am of the opinion that: (1) the scope of the interconnection agreement is a two-party agreement and is not limited to the traffic transited by a third party; (2) if an ICO is receiving transited traffic, then this traffic is subject to the agreement between the terminating

carrier and transporting carrier; (3) third-party transit traffic may be routed in the way that either party to the interconnection agreement sees fit, provided that the transited traffic reaches the terminating carrier and that such traffic is properly identified and billed; and (4) it remains the responsibility of the originating carrier to ensure that the transiting carrier has established a connection with the terminating carrier and that the traffic is identified in a manner that allows the terminating carrier to bill for such traffic.

And I so move.

DIRECTOR JONES: Chairman Miller, just so I can be certain, was the crux of the resolution of this issue that the scope of the interconnection agreement should not be limited by the traffic transited by BellSouth?

CHAIRMAN MILLER: That's correct.

DIRECTOR JONES: I will second your motion.

DIRECTOR TATE: I would agree.

CHAIRMAN MILLER: Issue No. 15: Should the scope of the interconnection agreement be limited to indirect traffic?

The parties -- excuse me -- the

parties have only included issues in this proceeding that involve indirect traffic or transit traffic and indirect interconnection. As a result, the arbitrators will rule only on these issues. However, the parties are free to continue negotiations not only on the issues involved here but on other issues not before the Authority.

Many times in the past, arbitrators -- arbitrations -- let me start again.

Many times in the past, arbitration -- in past arbitrations the parties have continued to negotiate after the arbitrators have rendered their decision. The result has been that the interconnection agreement contained many additional rates, terms, and conditions not addressed in the arbitration. In this case, the eventual agreement reached by the parties may not necessarily reflect the decisions of the arbitrators.

For the reasons stated, I believe that: (1) the scope of the interconnection agreement is a two-party agreement and is not limited to indirect traffic, however, the only issues in this proceeding involve indirect traffic and indirect interconnection which may or may not be limited to -- limit the resulting agreement; (2) if an ICO is receiving

indirect traffic, then the indirect traffic is subject to the agreement between the terminating carrier and the transporting carrier; and (3) indirect and/or third-party traffic should be routed in the way that either party to the interconnection agreement sees fit, provided that the indirect traffic reaches the terminating carrier and that such traffic is properly identified.

And I so move.

DIRECTOR JONES: On this issue I find that the law is silent. The record, however, indicates that the terms and conditions for direct traffic are, in fact, exchanged between the parties during the negotiations. Although the parties may have focused on the indirect terms and conditions, this is not a reason to limit the scope of the interconnection agreements.

Therefore, I conclude here that the agreement should include the terms and conditions for all traffic exchanged between the parties.

And I'm not certain whether that is consistent with -- with your conclusion. I know our travel was a little different.

CHAIRMAN MILLER: Well, I apologize, Director Jones. I was writing while I should have been listening.

DIRECTOR JONES: That's okay. My question is at the end. It's just that my motion would be that the agreements should include the terms and conditions for all traffic exchanged between the parties, in answer to the issue, Should the scope of the interconnection agreement be limited to indirect?

CHAIRMAN MILLER: And I said it should not be limited, but it's up to the parties to decide what goes in.

Is that consistent or inconsistent?

DIRECTOR JONES: I believe that the motions are consistent.

CHAIRMAN MILLER: I believe you're right.

DIRECTOR JONES: But we differ a little on how we --

CHAIRMAN MILLER: Yeah.

DIRECTOR JONES: -- on our support for it.

CHAIRMAN MILLER: We've been doing that all day.

DIRECTOR TATE: I was shocked to find, when I first arrived, that rarely does our decision end the discussions. And so I guess that's good. And that, you know, in reality you-all will continue

negotiations. And certainly I would encourage you to do that.

And in -- regarding this issue, I will agree with Chairman Miller's motion.

CHAIRMAN MILLER: Issue No. 16: What standard commercial terms and conditions should be included in the interconnection agreement?

The ICO members and the CMRS providers both submitted standard terms and conditions that shared numerous similarities. However, the most striking differences in the -- is the repeated mention of BellSouth in the ICO's proposed terms. Since this agreement is between the ICO members and the CMRS providers and the hearing officer has previously ruled on the joinder of BellSouth to this matter, it is inconsistent to adopt terms which are inclusive of a nonparty.

I agree with the CMRS providers that any provision of -- provisions that calls for the blocking of traffic, without first exhausting all measures of resolution, does not promote the public interest.

Further, I cannot support the ICO members' proposal because it does not explicitly state that the Authority or another regulatory body will

assist in the arbitration process.

Therefore, I am of the opinion that the standard commercial terms and conditions proposed by the CMRS providers be adopted with the addition that traffic may be blocked and the interconnection agreement may be terminated only in the event of default of a nondisputed amount and upon a 90-day notice and permission from the appropriate governing body.

And I so move.

DIRECTOR JONES: I have to say that on this particular issue, in looking at it, I found that it's extremely broad and encompasses extensive language on a variety of issues. It actually would have been preferable to have specific issues such as Issues 17 and 18 -- which you touched on a little in part of your motion, Chairman Miller -- before the arbitrators, rather than an entire slate of language, which is what we have here.

Be that as it may, this issue was presented -- as presented was accepted for arbitration and is before the arbitrators for a decision.

However, based on my comments, I would move that the arbitrators hold this issue, except as addressed in Issues 17 and 18, in abeyance pending

further negotiations by the parties, so that some of this broad language can perhaps become more specific as the terms of the agreement are hammered out.

And if the parties are then unable to reach an agreement to the language that is the subject of this issue, Issue 16, within a reasonable time frame following these deliberations, then the parties shall notify this agency of such -- of such failure to reach an agreement, so that an expedited date for deliberations could be scheduled on the outstanding issues that remain at that time.

And I so move.

DIRECTOR TATE: I would just like to state that -- and reiterate what Chairman Miller said. And that is that blocking traffic is absolutely not in the public interest and should only be blocked in the very most exceptional of circumstances.

Therefore, I would reject the ICO members' proposed terms and accept the standard terms and conditions proposed by the CMRS providers and agree with Chairman Miller's motion.

CHAIRMAN MILLER: Thank you.

Issue No. 17: Under which circumstances should either party be permitted to block traffic or terminate the interconnection agreement?

This proceeding is predominantly about the treatment of local traffic. CMRS local traffic is determined in terms of MTAs, and it has been argued in this case that intraMTA traffic is local traffic subject to reciprocal compensation. The CMRS providers are carriers of a significant amount of local traffic. In many cases, cellular service is used in emergency situations and even is a replacement for a land line at times.

Considering the manner of use of cellular service, I cannot recommend any policy that would put the flow of traffic at risk. Therefore, I am of the opinion that such traffic may be blocked and the interconnection agreement may be terminated only in the event of default of a nondisputed amount and upon 90 days' notice and with the appropriate permission from the governing -- permission from the appropriate governing body.

And I so move.

DIRECTOR JONES: I vote yes.

DIRECTOR TATE: I would agree.

CHAIRMAN MILLER: Issue No. 18: If the ICO changes its network, what notification should it provide and which carrier bears the cost?

I am of the opinion that any LEC must

comply with FCC Rules 47 C.F.R. Sections 51.325 through 51.335 regarding modification of network changes and should bear -- and should bear the cost of those charges.

If other affected providers object to such modifications, the dispute resolution process should be employed, during which the LEC proposing the changes must keep the existing network configured until the dispute is resolved.

While I do not believe the record indicates the ICO members have requested the CMRS providers to bear the cost of an ICO network change, each party should be responsible for the cost and activities associated with accommodating such changes.

For these reasons, I believe that any LEC that wishes to initiate a network change must do so in accordance with the FCC Rules 47 C.F.R. Sections 51.325 through 51.335.

And I so move.

DIRECTOR JONES: I second and vote yes.

DIRECTOR TATE: Although the ICO members have stated that the rules regarding notification of network changes are not applicable, they did not provide any proof in support of this

opinion.

And I would also vote yes and agree with the motion.

CHAIRMAN MILLER: Director Jones, did you vote?

DIRECTOR JONES: Yes, I did.

CHAIRMAN MILLER: Okay. I'm sorry.

DIRECTOR JONES: Thank you.

CHAIRMAN MILLER: All right. Then we'll move on to the ICO issues.

If I could deal with Issue 1 and 3 together, they have both been withdrawn, so we'll move on.

Without objection, I'd like to consider Issues 2, 4, 5, 6, 7, 9, and 10 together.

I move that the arbitrators find that the ICO members have incorporated these issues into other issues considered previously. And, therefore, there is no need for the Authority to render a decision.

These issues have been placed on a final matrix by the ICO members; however, no testimony was filed on behalf of the Coalition with regard to these issues.

Per the Coalition brief, the ICO

members' additional issues have been incorporated into discussions addressing the CMRS issues. The Coalition merely submitted the ICO issues as an opportunity to highlight some of the issues that were more significant with regard to the new terms and conditions for an existing indirect interconnection.

ICO Issue No. 8: Any agreement must accurately define the scope of traffic authorized to be delivered over an interconnection to ensure that the interconnection agreement is not misused.

I move that the arbitrators find that the ICO members have abandoned this issue and pursuant to the Coalition's own admission this issue has been incorporated into previous issues; and, therefore, there is no need for the Authority to render a decision, as this matter is moot.

This issue was placed on the final matrix by the ICO members; however, no testimony was filed on behalf of the Coalition with regard to this issue.

Per the Coalition brief, the ICO's additional issues have been incorporated into discussions addressing the CMRS issues. The Coalition merely submitted the ICO issues as an opportunity to highlight some of the other issues that were more

significant with regard to new terms and conditions for an existing indirect interconnection agreement.

DIRECTOR JONES: I agree with that assessment.

DIRECTOR TATE: And I would agree as well.

CHAIRMAN MILLER: In conclusion, I would like to volunteer to serve as the hearing officer in this docket going forward, for the purposes of preparing this matter for a hearing by the full panel in order to establish permanent pricing.

I think there are several issues that have to be addressed. In my mind, the issue of whether the parties have to have symmetrical reciprocal pricing is an issue.

I think we have to determine -- in order to set permanent rates, we're going to have to determine -- we're going to have to have cost studies. We may have to have traffic studies. And I'd like the ability, as hearing officer -- I'd like the charge, as hearing officer, to allow me to address those issues and to order those if necessary.

DIRECTOR JONES: Chairman Miller, if you put that in the form of a motion, I'll certainly second it.

CHAIRMAN MILLER: I so move.

DIRECTOR JONES: I second and vote yes.

DIRECTOR TATE: Although you know how I differ with both of you-all on some of these issues, yes, I welcome your participation as the hearing officer and whatever you need to do to accomplish those purposes.

CHAIRMAN MILLER: It is my intention to move as expeditiously as possible to establish permanent rates, because I think we have a duty to do that.

There are a lot of reasons that I've taken the action I have in this docket and in Docket No. 00-00523, but I think it's incumbent on us to make sure that we establish a permanent price in these matters as expeditiously as we possibly can. That's the reason I am volunteering, and that's the reason I am going to push it to a conclusion as quickly as I can.

And I'd appreciate the participation of the parties in that process and cooperation.

MR. WALKER: I'm sorry. Did you skip Issue 19? Or was it subsumed in other issues?

CHAIRMAN MILLER: Did I skip 19? I

don't have a 19.

MR. WALKER: Never mind.

MR. RAMSEY: Chairman Miller --

DIRECTOR JONES: I don't have a 19 either.

MR. WALKER: We think it's moot.

DIRECTOR JONES: Okay. Thank you.

CHAIRMAN MILLER: Mr. Ramsey.

MR. RAMSEY: Chairman Miller, pardon my interruption. I just discussed this with Mr. Walker.

On Issue No. 11, on the interMTA factor --

CHAIRMAN MILLER: Yes, sir.

MR. RAMSEY: -- your ruling didn't set forth any deadline for providing the six months of data. And I don't -- Mr. Walker didn't have any authority, but maybe we can get to -- either get to a drop-dead deadline or, better yet, let us try to negotiate the factor with the deadlines you imposed under some of the other issues.

And if we can't exchange information, say if we can't come to an agreement by February 8, 2005, we'll figure out some way to exchange that information. Maybe that would be more expeditious.

I'm just proposing that, because now it's just open ended. Unless we have a deadline where that data is to be provided or a deadline to try to agree and submit it to the Authority, that issue is just going to be floating around.

CHAIRMAN MILLER: Well, let's set the 25th of January and then February 8th if you can't agree. Is that -- like we treated the other matters.

MR. RAMSEY: And that way we'll -- and then if we can't agree, that will mean that they'll have to provide data at that time, by the 8th or something like that. We're just trying to expedite the process.

MR. WALKER: I don't know how much of an undertaking it is to get six months of data for each ICO in the Coalition. But as soon as we -- if we can't meet those deadlines, we'll discuss it with Mr. Ramsey as to what is realistic.

CHAIRMAN MILLER: If it's all right with my fellow directors, if you come to an impasse, if it's -- if the requirement is unreasonable or if -- if it's all right with my other panelists, if you'll contact me as soon as possible and let me know that as hearing officer, and I'll --

DIRECTOR TATE: Or we could place this

on the agenda on the 31st and just have a status report from you-all.

MR. RAMSEY: Either way is fine with me. I just -- you know, it's a matter that was open ended, and it's something we've got to resolve. And we just need to have some sort of deadline placed among us, because I know how lawyers are.

DIRECTOR TATE: Why don't we do both. I suggest this, for the conference, the Authority conference -- excuse me for stepping in.

CHAIRMAN MILLER: No, no. Thank you.

DIRECTOR TATE: That we'll put this on the agenda, so it's just listed there in case there is anything that you-all need to discuss either with the panel or just the hearing officer.

And then in addition to that, if you-all come to an impasse, contact the hearing officer.

MR. WALKER: That's fine. Thank you.

MR. RAMSEY: Thank you.

CHAIRMAN MILLER: Thank you.

Are there any other matters that need to be addressed?

Seeing none, I declare we stand adjourned.

(Proceedings adjourned at 11:25 a.m.)

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, Patricia W. Smith, Registered Professional Reporter, with offices in Nashville, Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 14th day of January, 2005.

PATRICIA W. SMITH, REGISTERED PROFESSIONAL REPORTER AND NOTARY PUBLIC FOR THE STATE OF TENNESSEE

My Commission Expires:

July 19, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the Petition for Reconsideration, Amendment and Clarification of Cellco Partnership d/b/a Verizon Wireless upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: February 2, 2005

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February 3, 2005

Via Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with ALLTEL Pennsylvania, Inc.,
Docket No. A-310489F7004

Dear Mr. McNulty:

Cellco Partnership d/b/a Verizon Wireless learned late yesterday afternoon that the Commission's Carry-In Agenda for today's public meeting indicates that the Commission will consider a Petition for Reconsideration, Clarification and Modification of Commission Order Entered January 18, 2005 filed by ALLTEL Pennsylvania, Inc. (ALLTEL) in the above-referenced proceeding (ALLTEL Petition), together with a recommendation by the Office of Special Assistants that the Commission grant reconsideration on the matters set forth in the ALLTEL Petition pending review of and consideration on the merits (Bureau No. OSA-0078). Verizon Wireless respectfully requests that the Commission strike this item from the agenda for today's meeting and defer consideration of ALLTEL's Petition until Verizon Wireless has had an opportunity to answer the Petition as provided by 52 Pa. Code § 5.572(e).

Counsel for Verizon Wireless obtained a copy of the ALLTEL Petition this afternoon. In the transmittal letter, counsel for ALLTEL requests that the Petition be considered at today's public meeting, without any regard to Verizon Wireless's right to answer.[1] The Certificate of Service indicates that Patricia Armstrong, counsel for ALLTEL, served a copy of the Petition on the Office of Special Assistants by hand delivery on February 1, 2005, but served Verizon Wireless's copy on the same day by mail. To date, we still have not received this service copy or any other notice from ALLTEL of its Petition or request for expedited consideration. As a result, Verizon Wireless has had no opportunity to respond ALLTEL's submission before (a) the Commission granted ALLTEL's informal request that the Petition be considered at today's public meeting,

[1] The transmittal letter is dated, apparently incorrectly, January 31, 2005.

KJR

NS

and (b) the Office of Special Assistants recommended reconsideration of the matters raised in the Petition pending consideration of the merits.

Professional courtesy, if not professional ethics, requires counsel to ensure that opposing parties receive pleadings at substantially the same time they are received by presiding officers or Commission staff. In the ordinary course, failure to adhere to this standard of conduct is merely discourteous and unprofessional. However, in cases such as this one, when extremely expedited consideration is sought, a delay in service can deprive the opposing party of notice and opportunity to be heard before the staff makes a recommendation or the Commission acts on that recommendation. That is precisely what happened here.

ALLTEL offers no reason why its Petition must be considered on an expedited, ex parte basis. Therefore, this matter (Bureau No. OSA-0078) be stricken from the agenda for today's public meeting.

Verizon Wireless notes that it, too, has filed a Petition for Reconsideration, Amendment and Clarification of the January 18, 2005 Order in this matter. The Petition was filed and served yesterday, with courtesy copies to the Commissioners and the Director of the Office of Special Assistants, all via overnight delivery service. Although the two Petitions address different aspects of the Commission's Order, they are not unrelated, and interests of administrative efficiency and consistent adjudication suggest that they should be considered simultaneously. For these reasons, and in the interests of basic fairness, if the Commission does consider ALLTEL's Petition at today's public meeting and grant the requested reconsideration pending review of and consideration on the merits (which it should not), it should do so with respect to Verizon Wireless's Petition as well.

Respectfully submitted,

Christopher M. Arfaa /sam

Christopher M. Arfaa

cc: Certificate of Service
Chairman Wendell Holland
Vice Chairman Robert Bloom
Commissioner Glenn Thomas
Commissioner Kim Pizzingrilli
Cheryl Walker Davis, Esq.

NS

CERTIFICATE OF SERVICE

I, Christopher M. Arfaa, hereby certify that I have this day caused to be served a copy of: the foregoing document in Docket No. A-310489F7004 upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

Via Hand Delivery

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Counsel for
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NS

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.	:	A-310489F7004

PETITION FOR RECONSIDERATION, AMENDMENT, AND CLARIFICATION OF CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

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Pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code. § 5.572, Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless" or "Cellco") hereby requests reconsideration, amendment and clarification of the Commission's Order entered January 18, 2005 (Arbitration Order) in the above-captioned matter. In support of this Petition, Verizon Wireless states as follows:

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Verizon Wireless seeks reconsideration, amendment and clarification of the Arbitration Order in order to ensure that the parties' interconnection agreement complies with federal law. The Arbitration Order accepts the reciprocal compensation rates produced by ALLTEL Pennsylvania Inc.'s (ALLTEL) second cost study, set forth in ALLTEL Exhibit CC-2, for use in this proceeding and also states that "a generic investigation shall be instituted to establish permanent rates for those services." (Arbitration Order at 7, 64.) However, the imposition of the rates produced by ALLTEL's cost study ***prior*** to the completion of the Commission's investigation of those rates violates controlling Federal Communications Commission (FCC) rules and thus constitutes an error of law warranting reconsideration.

2. FCC Rules require reciprocal compensation rates to be based upon (1) forward-looking economic costs, using a cost study that complies with FCC standards, (2) default proxy rates, or (3) a bill-and-keep arrangement whereby each carrier recovers its costs from its customers rather than the interconnecting

carrier. 47 C.F.R. § 51.705(a). The rules require that any state proceeding to set reciprocal compensation rates "shall provide notice and an opportunity for comment to affected parties." 47 C.F.R. § 51.505(e)(2). As ALJ Weismandel found, Verizon Wireless "amply demonstrated" that "ALLTEL Exhibit CC-2 was not presented in sufficient time nor in a format allowing it to be examined and tested by Cellco. (Tr. 49 – 57, 119 – 124, 135 – 136, 205 – 209, 215 – 217)." (Recommended Decision (RD) at 20.) The Commission apparently accepted this finding but reasoned that "the concerns of Verizon Wireless, to be afforded more time in which to review the study, will be addressed by the institution of a generic investigation of ALLTEL's reciprocal compensation rates." (Arbitration Order at 65.)

3. While Verizon Wireless supports the Commission's institution of a generic investigation into ALLTEL's reciprocal compensation rates,[1] the rates produced by that unexamined cost study cannot be adopted until that investigation is completed, and affected parties, including Verizon Wireless, are given a meaningful opportunity to comment as required by 47 C.F.R. § 51.505(e)(2). Furthermore, as ALLTEL's own cost witness admitted to ALJ Weismandel,[2] the format of CC-2 prevents thorough review of the study at this time, thus precluding

[1] ALLTEL also supports such an investigation. ALLTEL Exceptions at 32 & n.76 (proposing investigation like that of Verizon Pennsylvania's rates).

[2] Tr. at 257:17- 258:1.

the Commission itself from giving the "full and fair effect" to the FCC's pricing methodology required by FCC rules. 47 C.F.R. § 51.505(e)(1).

4. In the absence of a cost study that complies with FCC requirements, the only lawful reciprocal compensation arrangement is interim rates, proxy rates or a bill-and-keep arrangement. 47 C.F.R. §§ 51.707(a); 51.715. The record in this proceeding makes all of these options available to the Commission. Since the Commission cannot, at this time, adopt a permanent, TELRIC-based reciprocal compensation rate, the Arbitration Order should be amended to require the parties' interconnection agreement to provide that the interim reciprocal compensation rates approved by the Commission in the order entered January 18, 2005 in the ALLTEL – Verizon –PA complaint proceeding[3] (Complaint Order) and the Arbitration Order shall govern until the Commission completes its anticipated generic investigation into ALLTEL's proposed rates and cost study. Alternatively, the record permits the Commission to adopt either the blended rate of $.0078 per minute originally proposed by Verizon Wireless or Verizon Pennsylvania's Commission-approved, TELRIC-derived rates as proxy rates pending completion of the generic investigation. What the record does not permit is a finding that ALLTEL's proposed rates are based upon a valid cost study – indeed, if it did, there would be no need for the generic investigation into those rates that the Commission has ordered.

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[3] *ALLTEL Pennsylvania, Inc. v. Verizon Pennsylvania, Inc. et al.*, Docket No. C-20039321 (Pa. PUC Jan. 18, 2005).

5. In addition to the foregoing amendment, Verizon Wireless requests clarification of the Arbitration Order to provide that, whatever rates are incorporated into the parties' interconnection agreement in this proceeding, (1) those rates shall be superseded by the permanent rates approved in the Commission's generic investigation into ALLTEL's rates for local transport and termination, and (2) the parties shall "true-up" the amounts paid under the interconnection agreement from its effective date (June 23, 2003) until the incorporation of the permanent rates to reflect what would have been paid had the permanent rates been in place since the effective date.

ARGUMENT

A. Reconsideration Is Warranted.

6. This petition for reconsideration, amendment and clarification is brought pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g),[4] and Section 5.572(a) of the Commission's regulations, 52 Pa. Code § 5.572(a).[5] The standard for determining whether a petition for reconsideration

[4] Section 703(g) provides: "Rescission and amendment of orders. -- The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders." 66 Pa. C.S. § 703(g).

[5] Section 5.572(a) provides: "Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired." 52 Pa. Code § 5.572(a).

under Section 703(g) should be granted was articulated in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

> A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the Court in the Pennsylvania Railroad Company case (citation omitted), wherein it was said that: "Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them." What we expect to see raised in such petitions are new and novel arguments, not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.

Id. at 558-559. The Commission has also recognized that a petition for reconsideration is properly granted "where the petitioner pleads newly discovered evidence, alleges errors of law, or a change in circumstances." *Application of Superior Water Company for Approval to Begin to Offer, Render, Furnish or Supply Water Service to the Public in Portions of Douglass Township, Montgomery County, PA*, Docket No. A-212955F0012, 2004 Pa. PUC LEXIS 16 (Pa. PUC Feb. 18, 2004) (citing *Pennsylvania P.U.C. v. Fawn Lake Forest Water Co.*, Docket No. R-912117, 1993 Pa. PUC LEXIS 33 (Pa. PUC Jan. 4, 1993)). In the interconnection context, the Commission has concluded that reconsideration is warranted when the petitioner alleges that an interconnection arbitration order violates federal law. *See, e.g., Petition of NEXTLINK Pennsylvania, L.L.P. for*

Arbitration of an Interconnection Agreement with Bell Atlantic – Pennsylvania, Inc., Pursuant to the Telecommunications Act of 1996, Docket A-310260F0002, 1998 Pa. PUC LEXIS 71 (Pa. PUC Aug. 13, 1998) (granting reconsideration of arbitration order to ensure compliance with federal law governing interconnection agreements).

7. Reconsideration of the Commission's acceptance of the CC-2 rates is clearly warranted in this case. First, the Commission appears to have "overlooked or not addressed," *Duick, supra,* the fact that providing Verizon Wireless the opportunity to test ALLTEL's rates and cost model in a ***future*** proceeding does not provide a basis under federal law for imposing those rates on Verizon Wireless in ***this*** arbitration proceeding. Second, setting reciprocal compensation rates based on ALLTEL's CC-2 cost study prior to completing the Commission's investigation of those rates violates FCC rules and thus constitutes an "error[] of law," *Superior Water Co., supra.* Third, reconsideration is warranted to permit clarification of the Arbitration Order to state that the rates incorporated into the parties' interconnection agreement shall be replaced with the rates approved by the Commission pursuant to its generic investigation of ALLTEL's costs for local transport and termination and subject to true-up from the effective date of the agreement. True-up upon adoption of permanent rates is

required to ensure that Verizon Wireless pays no more, and ALLTEL receives no less, than the reciprocal compensation mandated by federal law.[6]

B. Federal Law Precludes Adoption of the Rates Produced by ALLTEL Exhibit CC-2 In This Proceeding.

8. Section 51.705 of the FCC's rules prescribe how state commissions may set the reciprocal compensation rates for incumbent local exchange carriers (LECs) such as ALLTEL:

> (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.

47 C.F.R. § 51.705(a). In addition, Section 20.11 of the FCC's rules requires that compensation between CMRS providers and LECs for termination of traffic be "reasonable." *Id.* § 20.11(b).

9. The FCC has established specific requirements for cost studies used to support proposed rates for network elements and intercarrier compensation rates based on those elements. 47 C.F.R. §§ 51.505, 51.511. An incumbent LEC must

[6] Reconsideration of the Commission's acceptance of the rates produced by Exhibit CC-2 is also warranted because admission of those rates and Exhibit CC-2, which ALLTEL

prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the FCC's "TELRIC" methodology. *Id.* § 51.505(e)(1). The FCC's rules also provide that affected parties – i.e., those who will pay the rates – must be afforded the opportunity to test the incumbent LEC's proof:

> ***any*** state proceeding conducted pursuant to this section ***shall*** provide ***notice and an opportunity for comment to affected parties*** and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

47 C.F.R. § 51.505(e)(2) (emphasis added). At a minimum, "notice and an opportunity to comment" requires the provision of the proffered cost study to affected parties in a suitable format with sufficient time to permit meaningful review. As Verizon Wireless Witness Wood testified, these requirements have produced an industry standard as to how cost models are constructed and presented:

> the models are presented in fully-functioning form, to the extent possible, the models are presented in a format that permits review and manipulation, the operation of the model is fully described and documented, and all inputs and assumptions are explained and their source documented. While parties

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presented during the rebuttal phase of this case, violated 52 Pa. Code § 5.243(e). *See infra* n.14.

> may disagree on the proper methodology to be employed in a cost study or the inputs and assumptions used, they do so on the basis of having complete access to the study and underlying computer models.[7]

This is precisely the standard this Commission endorsed when investigating Verizon Pennsylvania's UNE costs and rates in the landmark *MFS III* proceedings. In *MFS III,* the ability of interested parties to review the cost study's inputs and assumptions and their underlying documentation and, most critically, their ability to run various alternative inputs using the computer models used in the study, were critical to the Commission's conclusion that "the parties have had a meaningful opportunity to review and study Bell's cost studies." Interim Order, *Applications of MFS Intelenet et al.*, Docket Nos. 310203F0002 *et al.*, 1997 Pa. PUC LEXIS 50 at *34 (Pa. PUC Apr. 10, 1997). The timing and format of ALLTEL's presentation of Exhibit CC-2 in this proceeding deprived Verizon Wireless of any such opportunity.

10. Throughout this arbitration proceeding, ALLTEL consistently thwarted Verizon Wireless' attempts to conduct meaningful review of the two cost studies ALLTEL presented. Verizon Wireless's Interrogatory I-13 requested, for each rate proposed by ALLTEL in this proceeding, that ALLTEL "identify and provide copies of all cost models, cost inputs, and cost assumptions relating to the rate, including all supporting documentation."[8] ALLTEL provided its first study,

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[7] Verizon Wireless St. 2.0 (Wood Direct) at 8:8 – 9:7.

[8] Verizon Wireless' first set of interrogatories were filed as Exhibit A to the Motion to Compel Discovery Responses filed by Verizon Wireless on Jan. 14, 2004 (Motion to

Exhibit CC-1 (but not Exhibit CC-2), and then responded to Verizon Wireless's Interrogatory I-13 with the statement: "Cost studies have been provided."[9] However, despite repeated requests, ALLTEL failed to provide the passwords necessary to examine and test the assumptions and inputs, forcing Verizon Wireless to file a motion to compel.[10] ALJ Weismandel granted the motion and ordered ALLTEL to "serve a full and complete answer and provide the documents requested" and to "take any and all actions necessary, including but not limited to providing all required passwords, to enable [Verizon Wireless] to change inputs and assumptions and recalculate results in the functioning electronic copies of the cost models provided to [Verizon Wireless]." ALLTEL's response to this order provided the requisite passwords to access Exhibit CC-1, but it did not inform Verizon Wireless of the existence of the study eventually admitted as Exhibit CC-2, even though ALLTEL had been working on CC-2 since the previous year.[11]

Compel). Interrogatory I-13 is also reproduced at page 2 of ALJ Weismandel's January 20, 2004 Order Granting Motion To Compel.

[9] *See* Order Granting Motion To Compel, Docket No. A-310489F0007, slip op. at 2 (Jan. 20, 2004).

[10] Verizon Wireless' attempts to extract this information is documented in its January 14, 2004 Motion to Compel. ALLTEL's representation in its Exceptions that Verizon Wireless "did not attempt, through any contact with ALLTEL, to review" this study, ALLTEL Exc. at 8 – a representation cited by the Commission in the Arbitration Order – is patently ***false***. As set forth in the Motion to Compel, Verizon Wireless personnel and attorneys requested the necessary passwords in telephone calls, e-mail messages, and meetings on multiple occasions. (Motion to Compel ¶¶ 9-14.)

[11] Tr. at 245:7-9.

11. ALLTEL did not identify or provide Exhibit CC-2 in its January 12, 2004 response to Verizon Wireless's Interrogatory I-13, nor did it do so on January 21, 2004, the date by which it was ordered by Judge Weismandel to provide a "full and complete answer" to that interrogatory. Nor did it include CC-2 in the direct testimony it served on Verizon Wireless on January 23, 2004. In fact, ALLTEL did not disclose the existence of CC-2 to Verizon Wireless until it served rebuttal testimony on February 4, 2004, six days before the February 10, 2004 hearing in this matter.[12] Even then, ALLTEL did not provide documentation of major portions of the new cost study to Verizon Wireless until the next day (February 5, 2004), and it ***never*** provided the underlying models for the investment portion of the study in electronic format.[13]

12. Despite the fact that they used different methodologies and produced different rates, ALLTEL introduced both studies into evidence.[14] Verizon Wireless demonstrated in detail how Exhibit CC-1 failed to comply with

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[12] *See* Tr. at 135:24 – 136:22 (Sterling).

[13] *See* Tr. 52:11-57:10 (Wood).

[14] Since ALLTEL had the burden of proving that its proposed rates comply with FCC requirements, 47 C.F.R. § 51.505(e), any cost study it intended to rely upon should have been included in its case-in-chief. In addition, Exhibit CC-2 differed substantially from the cost study ALLTEL had presented in its case-in-chief. Exhibit CC-2 was thus admitted over Verizon Wireless's objection that its submission during the rebuttal phase of this proceeding violated 52 Pa. Code § 5.234(e) ("No participant will be permitted to introduce evidence during a rebuttal phase . . . which should have been included in the participant's case-in-chief or which substantially varies from the participant's case-in-chief."). *See* Verizon Wireless and ALLTEL Pennsylvania, Inc.'s Joint Stipulation to Reopen Record (filed Feb. 13, 2004); *see also* Order Reopening Record and Admitting

applicable FCC rules.[15] ALJ Weismandel concurred and recommended rejection of the study. (RD at 20.) By requiring a generic investigation into ALLTEL's reciprocal compensation rates, the Commission has impliedly adopted this recommendation.

13. The timing and format in which ALLTEL submitted its new cost study (ALLTEL Exhibit CC-2) prevent the adoption of the rates it produced at this time because ALLTEL deprived Verizon Wireless of "notice and an opportunity for comment" on the cost study, the models on which it relies, and its inputs and assumptions. ***First,*** the submission of the cost study with ALLTEL's rebuttal testimony mere days before hearings simply did not afford sufficient time for review. Even ALLTEL's cost witness admitted that the extreme lateness of the submission of the new study deprived Verizon Wireless's cost expert of the opportunity to review the model in detail.[16]

Exhibits (Feb. 17, 2004). The Commission's reliance on Exhibit CC-2 thus violates the Commission's own regulations.

[15] Verizon Wireless St. No. 2.0 (Wood Direct) at 9-13; Verizon Wireless St. No. 2.1 (Wood Rebuttal) at 2-5. ALLTEL in effect acknowledged these deficiencies when it abandoned the rates produced by its initial study in favor of the rates produced by its new study. *See* ALLTEL St. No. 2R (Caballero Rebuttal) at 4-5) (proposing rates based on new study). In fact, ALLTEL Witness Caballero admitted that Exh. CC-1 was not a TELRIC study at all when he testified that, at the time it was filed, "we had not at ALLTEL finalized a TELRIC study for ALLTEL Pennsylvania." Tr. at 205:3-4 (Caballero).

[16] Tr. at 228:19 – 229:1 (Caballero).

14. ***Second***, although the "vast majority" of the FCC-mandated TELRIC methodology relates to the investment stage of a cost model,[17] ALLTEL failed to provide the actual cost models used to calculate the network investment in the new study, instead proffering several thousand pages of paper documentation.[18] As Verizon Wireless Witness Wood testified, "[e]ven if Verizon Wireless had time to assess a box full of documents [on the weekend before a Tuesday hearing], those particular documents would really have no value in determining whether this was a reasonable calculation."[19] This omission was substantial. As Mr. Wood testified, the investment associated with the facilities used to provide local transport and termination is "the most important input" to ALLTEL's cost studies.[20] The "bottom up" calculation of network investment in the new cost study was a "fundamentally different process" and required "a completely different computer model" from that used in the original study[21] – a computer model that was not provided to Verizon Wireless.[22] ALLTEL Witness Caballero confirmed the importance of the missing models when he testified that the investment in the new study was derived from a number of "very different models,

[17] Tr. at 56:3-7.

[18] Tr. at 54:13 – 55:6; Tr. at 119:23 – 120:25.

[19] Tr. at 55:3-6.

[20] Tr. at 120:13 (Wood).

[21] Tr. 57:6 - 57:10 (Wood).

[22] Tr. at 57:2-57:10, 119:19 – 120:25.

engineering models, pricing models," that were not provided or made available to Verizon Wireless.[23] Mr. Caballero also confirmed that it was in this area where the real difference between the original and the new studies lay.[24]

15. ***Third***, the portion of the new study that ***was*** provided in electronic format was not verifiable. It was (and presumably remains) password-protected, in contravention of the ALJ's order compelling ALLTEL to provide complete responses to Verizon Wireless's interrogatories.[25] In addition, the model contained some 40 "hidden macros," which inhibited full examination of the model.[26] The negative effect on Verizon Wireless's ability to review the models was amply demonstrated by Verizon Wireless Witness Wood's testimony,[27] illustrated by the names ALLTEL gave to the macros (e.g.,

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[23] Tr. at 206:4-5.

[24] *See* Tr. at 205:19-21. At hearing, ALLTEL Witness Caballero sought to excuse ALLTEL's failure to provide the investment models in a reviewable format by asserting that they are not "easy to put on a CD-ROM" and the only practical way for Verizon Wireless to review them would be to travel to ALLTEL's premises in Arkansas. (Tr. at 208:13-22.) This may well be true, but by choosing to rely on such models to calculate investment and then submitting the resulting study only at the last minute, ALLTEL nevertheless deprived Verizon Wireless of notice and an opportunity to comment on the models, and thus the study itself. Perhaps if ALLTEL had notified Verizon Wireless in December or January that it was revising its cost study based on the models in question, or disclosed that fact in its interrogatory response, Verizon Wireless could have reviewed the models on ALLTEL's premises. ALLTEL, for whatever reason, did not do so.

[25] Tr. at 50:9-18.

[26] Tr. at 58:12 – 67:8; Verizon Wireless Exh. DJW-7.

[27] Tr. 58-67; 121-122.

"HideActiveSheetReallyWell"),[28] and even confirmed by ALLTEL Witness Caballero's admission on the stand that the macros were ***designed*** to inhibit access to the model.[29] As Mr. Wood testified, the hidden macros "make it impossible for anyone other than an ALLTEL employee to go through this and get any meaningful analysis, any meaningful sensitivity runs, any of that kind of review, the kind of review we'd normally do for this kind of model."[30] In short, the format of Exhibit CC-2 made it "***impossible to verify the accuracy of the results.***"[31] ***Even ALLTEL's cost witness, Mr. Caballero, agreed with this assessment.***[32]

16. ALLTEL has thus failed prove that its proposed rates are supported by a lawful cost study. By filing CC-2 at the last minute, by failing to provide the models underlying the calculations of its network investment in a reviewable format, and by making it impossible to verify the electronic models it did provide, ALLTEL has not only deprived ***Verizon Wireless*** of the notice and a meaningful opportunity to comment required by 47 C.F.R. § 51.505(e)(2) – it has also deprived ***the Commission*** of the basis on which it could adopt ALLTEL's proposed rates.

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[28] Tr. at 66:22.

[29] Tr. at 216:7 – 216:18.

[30] Tr. at 122:16 – 122:19.

[31] Tr. at 122:20 – 122:22 (emphasis added).

[32] Tr. at 257:17- 258:1.

17. ALJ Weismandel found that "as Cellco amply demonstrated, ALLTEL Exhibit CC-2 was not presented in sufficient time nor in a format allowing it to be examined and tested by Cellco. (Tr. 49 – 57, 119 – 124, 135 – 136, 205 – 209, 215 – 217)." (RD at 20.) On review, the Commission reasoned that this concern "will be addressed by the institution of a generic investigation of ALLTEL's reciprocal compensation rates." (Arbitration Order at 65.) The Commission thus necessarily accepted ALJ Weismandel's finding with respect to notice and opportunity to comment but rejected his conclusion with respect to the legal effect of that finding. Despite this finding and ALLTEL's admission that verification of the model was "***impossible,***"[33] and the further finding that a generic proceeding to investigate ALLTEL's transport and termination rates is required, the Commission found Exhibit CC-2 to be an "acceptable" TELRIC study and accepted the rates produced by Exhibit CC-2 for use in this proceeding. (Arbitration Order at 7, 64.)

18. Verizon Wireless respectfully submits that the Commission's acceptance of the rates produced by Exhibit CC-2 for any purpose prior to the completion of its investigation of those rates constitutes an error of law in at least two fundamental respects. ***First***, the Arbitration Order accepts the CC-2 rates without having provided Verizon Wireless adequate notice and opportunity for comment and thus violates the clear command of FCC Rule 51.505(e)(2), 47

[33] Tr. at 257:17- 258:1 (emphasis added).

C.F.R. § 51.505(e)(2). ***Second***, since ALLTEL failed to provide the models used to calculate the network investment inputs into CC-2, and since even ALLTEL agrees that the electronic models it did provide were "impossible" to verify, the Commission cannot have given "full and fair effect" to the FCC's cost based pricing methodology as required by FCC Rule 51.505(e)(1).[34] ***This is confirmed by the Commission's determination that a generic proceeding is required to investigate ALLTEL's reciprocal compensation rates.*** The Commission's determination in the Arbitration Order that CC-2 is an "acceptable TELRIC study" – that is, compliant with FCC requirements – prior to the completion of that proceeding to determine that very issue was unlawful, arbitrary and capricious.[35]

C. The Parties' Interconnection Agreement Should Incorporate The Interim Reciprocal Compensation Rates Approved by the Commission, Verizon Wireless's Proposed Proxy Rates, or Another Pennsylvania Incumbent LEC's Approved Rates Pending Completion of the Commission's Generic Investigation of ALLTEL's Permanent Rates.

19. Since there is no basis for the Commission to set permanent reciprocal compensation rates on the basis of ALLTEL's forward-looking economic costs at this time, the Commission must select interim or proxy rates (or bill-and-keep) for inclusion in the parties' interconnection agreement until permanent rates are adopted at the conclusion of the Commission's generic

[34] ALLTEL's failure also prevents the "creation of a written factual record that is sufficient for purposes of review" required by 47 C.F.R. § 51.505(e)(2).

[35] In addition, the admission of Exhibit CC-2 in violation of the Commission's own regulation at 52 Pa. Code § 5.243(e) was unlawful, arbitrary and capricious. *See supra* n.14.

investigation of ALLTEL's reciprocal compensation rates – a procedure expressly approved by the FCC. *See* 47 C.F.R. § 51.707. Although in *Iowa Utilities Board v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000), *aff'd in part and rev'd in part on other grounds sub nom. Verizon Communications v. FCC*, 535 U.S. 467 (2002), the FCC's specific proxy ***prices*** were vacated as rates that are properly within the discretion of state commissions to determine, "[t]he court did not . . . find unlawful the establishment and use of proxies by State commissions." *In re Covad Communications Company's (U 5752 C) Petition for Arbitration of Interconnection Agreement with Roseville Telephone Company (U 1015 C)*, Decision No. 01-06-089, 2001 Cal. PUC LEXIS 596, *12 (Cal. PUC June 28, 2001). Thus, in the absence of a TELRIC-compliant cost study, the Commission may adopt proxy reciprocal compensation rates provided they are superseded once the Commission establishes permanent rates (or a bill-and-keep arrangement) and the Commission sets forth a reasonable basis for the selection of the particular proxies, 47 C.F.R. § 51.707(a).[36] Such an approach is consistent with federal law as well as with this Commission's prior orders. *See, e.g., Petition of MCI Metro Access Transmission Services, Inc. for Arbitration of Its Interconnection Request to Bell Atlantic-PA, Inc.*, Docket No. A-310236F0002, 1996 Pa. PUC LEXIS 169, *10-11 (Pa. PUC, Dec. 20, 1996) (holding that, despite the Eighth Circuit's stay of the FCC's proxy rules, "to the extent that this Commission is not satisfied with

[36] In addition, rates charged CMRS providers for termination of traffic must be "reasonable." 47 C.F.R. § 20.11.

any cost studies proffered in a proceeding for the establishment of rates for the completion of this interconnection arbitration, we may use the FCC-specified proxies, should those proxies coincide with our informed, independent judgment concerning the applicable rates").

20. The record in this proceeding supports adoption of one of several different sets of proxy rates.[37] ***First***, the Commission could order the parties to utilize the interim rates it has already approved in the ALLTEL complaint proceeding and incorporated into the Arbitration Order ($.012 per minute for direct traffic and bill-and-keep for indirect traffic), subject to true-up.[38]

21. ***Second***, the Commission could adopt the blended rate of $.0078 per minute for both direct and indirect traffic originally proposed by Verizon Wireless as a proxy pending the setting of ALLTEL's permanent reciprocal compensation rates, subject to true-up. This blended rate is based upon the tariffed rates of other Pennsylvania ILECs for similar services, the reciprocal compensation rates

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[37] As Verizon Wireless argued extensively below, since both parties agree that Exhibit CC-2 is unverifiable, and because even limited review has raised substantial questions as to the inputs used in the study, there is no "reasonable basis" in the record for the adoption of the rates produced by Exhibit CC-2 as proxies. *See* Main Brief of Cellco Partnership d/b/a Verizon Wireless at 27-29; Reply Brief of Cellco Partnership d/b/a Verizon Wireless at 31-32.

[38] True-up of amounts paid commencing on June 23, 2003 would ensure consistency between this solution and the Commission's determination in the Complaint Order that interim rates otherwise should only be effective until the effective date of the interconnection agreement.

contained in Verizon Wireless's agreements with Pennsylvania ILECs similar to ALLTEL, and a "best in class" analysis for ALLTEL's cost study areas.[39]

22. ***Third,*** the Commission could adopt the approved, TELRIC-based reciprocal compensation rates of another incumbent LEC as proxies for ALLTEL's rates. This approach ensures that the parties' agreement incorporates rates that, while not ALLTEL-specific, are based on a TELRIC-compliant cost study. This was the approach taken by the California Public Utilities Commission (CPUC) in an arbitration where a midsize incumbent local exchange carrier (Roseville), like ALLTEL here, had failed to produce a lawful cost study. *See In re Covad Communications Company's (U 5752 C) Petition for Arbitration of Interconnection Agreement with Roseville Telephone Company (U 1015 C)*, 2001 Cal. PUC LEXIS 596 (*Covad – Roseville Arbitration*). The CPUC found that a particular set of approved UNE rates for Pacific Bell came closest to complying with TELRIC-derived prices and that, therefore, it was reasonable to adopt them for Roseville, subject to true-up, pending completion of the investigation into its own UNE rates. *Id.* at *24-25. Similarly, and most recently, the Tennessee

[39] Verizon Wireless St. No. 2.0 (Wood Direct) at 13-14. Although ALLTEL took great issue with Verizon Wireless's proposal because it was based in part on the rates of LECs that have service territories more contiguous than ALLTEL's, Verizon Wireless Witness Wood explained that the non-contiguous character of ALLTEL's service territory – the product of ALLTEL's voluntary choice to purchase LECs in different geographical areas – does not cause an increase of local transport and termination costs. (Tr. at 98:8 – 98:22.) This is because the cost of transport facilities between these territories is driven not by the facility mileage (length) but by the facility termination equipment (the electronics on both ends), and the slight cost of increased mileage is offset by the efficiencies generated by aggregation of traffic from widely dispersed customers. (Tr. at 114:18 – 117:11.).

Regulatory Authority (TRA) adopted the TELRIC-derived reciprocal compensation rates of BellSouth as interim proxy rates for rural LECs, subject to true-up upon the establishment of permanent rates. *See* Transcript of Proceedings of Jan. 12, 2005 before the Tennessee Regulatory Authority, *Petition for Arbitration of Cellco Partnership d/b/a*, TRA Docket No. 03-00585, at 40-41 (*Tennessee Transcript*) (attached hereto as Exhibit A). In Pennsylvania, the approved, TELRIC-based reciprocal compensation rates of Verizon Pennsylvania similarly could provide proxies for ALLTEL's rates, subject to true-up.

23. On balance, the first approach – the use of the interim rates approved in the ALLTEL complaint proceeding and incorporated into the Arbitration Order – seems the best at this stage in the proceeding. The record and determinations the Commission has already made in the ALLTEL complaint proceeding provide ample "reasonable basis" for the use of the interim rates as proxies and thus would allow the Commission to resolve this matter with a minimum of additional findings and analysis. The record would also support use of Verizon Wireless's proposed blended rate or Verizon Pennsylvania's approved rates as interim proxies.

D. The Arbitration Order Should Be Clarified To Provide That The Rates Adopted In This Proceeding Shall Be Superseded By and Subject to True-up With The Permanent Reciprocal Compensation Rates Set in the Commission's Generic Investigation of ALLTEL's Rates.

24. Since any interim or proxy rates may differ from the ALLTEL-specific, TELRIC-compliant rates ultimately approved in the Commission's

generic investigation, true-up is required to ensure ultimately that Verizon Wireless pays no more, and ALLTEL receives no less, than the reciprocal compensation rates mandated by the 1996 Act and the FCC's implementing regulations. *See Tennesee Transcript* (attached hereto as Exhibit A) at 41-42 ("the [proxy] rate will be subject to true-up, thus mitigating the risk that either the ICOs or CMRS providers would be unduly enriched or left inadequate compensation once the final rate is established"); *Covad – Roseville Arbitration,* 2001 Cal. PUC LEXIS 596, *21 (true-up required to compensate either carrier for difference between proxy rates and permanent rates).[40]

25. In addition to producing a just and reasonable result, truing up the interim or proxy rates with TELRIC-derived rates will lessen the vulnerability of the Arbitration Order to challenge on the ground that it fails to comply with the federal pricing standards, thus increasing the likelihood that this dispute will, at long last, be brought to an end. Therefore, irrespective of the rates approved in this proceeding, the Arbitration Order should be clarified to provide that, upon the

[40] This Commission has taken a similar approach in the past. In arbitrating an interconnection agreement between AT&T Communications of Pennsylvania, Inc. and GTE North, Inc., the arbitrator, upon finding that GTE North had failed to support its proposed nonrecurring charges for ordering and installation of unbundled network elements, recommended that GTE North bear the cost of the nonrecurring charges subject to reconciliation and reimbursement after permanent rates are implemented. *Petition of AT&T Communications of Pennsylvania, Inc. for Arbitration to Establish an Interconnection Agreement with GTE North, Inc.*, Docket No. A-310125F0002, 1996 Pa. PUC LEXIS 157, *31 (Pa. PUC Dec. 6, 1996). The Commission agreed, stating "the prudent course is to wait for the completion of our analysis of an approved TELRIC study so that permanent rates for non-recurring charges can be established. At that time, AT&T will be required to reimburse GTE for any non-recurring charges borne by GTE at its initial cost and expense." *Id.* *32.

completion of the Commission's investigation into ALLTEL's reciprocal compensation rates, (1) the parties shall amend their interconnection agreement to incorporate those rates, and (2) the parties shall adjust their past compensation to allow each carrier to receive the level of compensation it would have received had the rates adopted in this proceeding equaled the rates approved in the ALLTEL generic investigation proceeding.

CONCLUSION

For all of the foregoing reasons, Verizon Wireless respectfully requests that the Commission—

a. Grant reconsideration of the Arbitration Order entered January 18, 2005;

b. Amend the Arbitration Order to provide that the parties' interconnection agreement shall incorporate the interim rates for reciprocal compensation for transport and termination of local traffic of $.012 per minute for directly exchanged traffic and bill-and-keep for indirectly exchanged traffic pending completion of the Commission's generic proceeding to investigate ALLTEL's reciprocal compensation rates;

c. Clarify the Arbitration Order to provide that, upon the completion of the Commission's investigation into ALLTEL's reciprocal compensation rates, (1) the parties shall amend their interconnection agreement to incorporate those rates, and (2) the parties shall adjust their past compensation to allow each carrier to

receive the level of compensation it would have received had the rates adopted in this proceeding equaled the rates approved in the ALLTEL generic investigation proceeding; and

d. Grant such other relief as is just and reasonable.

Respectfully submitted,

Christopher M. Arfaa /sau

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Counsel for Cellco Partnership d/b/a Verizon Wireless

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Washington, DC 20005

DATED: February 2, 2005

COMMONWEALTH OF PENNSYLVANIA

DATE: February 4, 2005

SUBJECT: A-310489F7004

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary KB

Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnect Agreement with ALLTEL Pennsylvania, Inc.

Attached is a copy of a Petition for Reconsideration, Clarification and Modification of Commission Order, filed by Cellco Partnership d/b/a Verizon Wireless in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

ksb

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Thomas, Thomas, Armstrong & Niesen

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CHARLES E. THOMAS
(1913 - 1998)

February 7, 2005

RECEIVED
2005 FEB -7 PM 3:53
PA PUC
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, P. O. Box 3265
Harrisburg, PA 17105-3265

DOCKETED
MAY 24 2005

Re: ALLTEL Pennsylvania, Inc., Complainant v. Verizon Pennsylvania Inc., and CELLCO Partnership, d/b/a Verizon Wireless, Respondents
Docket No. C-20039321

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

ALLTEL Pennsylvania, Inc. ("ALLTEL") filed Petitions for Reconsideration at both of the above referenced dockets on February 1, 2005. Verizon Wireless filed a Petition for Reconsideration with respect to A-310489F7004 on February 2, 2005. At the Commission's Public Meeting of February 3, 2005, reconsideration was granted pending further review on the merits with respect to both dockets.

ALLTEL and Verizon Wireless are pursuing settlement negotiations in an effort to amicably resolve both dockets and seek to avoid the need for disposition of the Petitions for Reconsideration. Accordingly, the parties hereby jointly request an extension of time to file responses to the pending Petitions for Reconsideration until February 25, 2005.

Attached hereto is an e-mail from Verizon Wireless indicating their concurrence in this request.

Very truly yours,

KJR

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Patricia Armstrong
Patricia Armstrong

DOCUMENT FOLDER

Enclosures
cc: Cheryl Walker Davis, Office of Special Assistants (w/encl.)
F:\CLIENTS\Utility\AP\ITORP\050204 Sec. McNulty.wpd

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Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALLTEL Pennsylvania, Inc., Complainant v. Verizon Pennsylvania Inc., Respondent And Cellco Partnership, d/b/a Verizon Wireless, *Indispensable Party*	:	Docket No. C-20039321
Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.	:	Docket No. A-310489F7004

RECEIVED
2005 FEB -7 PM 3:53
PA PUC
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of February, 2005, served a true and correct copy of the foregoing Letter upon the persons and in the manner listed below by first class mail, postage prepaid:

HAND DELIVERY

Office of Special Assistants
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
3rd Floor East
P.O. Box 3265
Harrisburg, PA 17105-3265

FIRST CLASS MAIL

Christopher M. Arfaa, Esquire
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Elaine D. Critides, Esquire
Associate Director, Regulatory Matters
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Todd S. Stewart, Esquire
Hawke McKeon Sniscak & Kennard LLP
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P.O. Box 1778
Harrisburg, PA 17105-1778

Patricia Armstrong

Patricia Armstrong

From: Christopher.Arfaa@dbr.com
Sent: Friday, February 04, 2005 4:19 PM
To: parmstrong@ttanlaw.com
Cc: critiel@NE.VerizonWireless.com
Subject: Docket Nos. A-310489F7004 and C-20039321
Importance: High

Patty:

Verizon Wireless concurs in the request set forth in your draft letter to Secretary McNulty for an extension of time until February 25, 2005 for the parties to file their answers to the petitions for reconsideration filed in Docket Nos. A-310489F7004 and C-20039321. You may attach this email to your letter as documentation of our concurrence.

Chris

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CHARLES E. THOMAS
(1913 - 1998)

February 18, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, P. O. Box 3265
Harrisburg, PA 17105-3265

Re: ALLTEL Pennsylvania, Inc., Complainant v. Verizon Pennsylvania Inc., and CELLCO Partnership, d/b/a Verizon Wireless, Respondents
Docket No. C-20039321

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

ALLTEL Pennsylvania, Inc. ("ALLTEL") filed Petitions for Reconsideration at both of the above referenced dockets on February 1, 2005. Verizon Wireless filed a Petition for Reconsideration with respect to A-310489F7004 on February 2, 2005. At the Commission's Public Meeting of February 3, 2005, reconsideration was granted pending further review on the merits with respect to both dockets.

ALLTEL and Verizon Wireless are pursuing settlement negotiations in an effort to amicably resolve both dockets and seek to avoid the need for disposition of the Petitions for Reconsideration. Accordingly, the parties, by letter dated February 1, 2005, jointly requested an extension of time to file responses to the pending Petitions for Reconsideration until February 25, 2005 which was agreed to by your office. The parties, hereby jointly request a further extension of time until March 11, 2005 to file said responses in order to further pursue negotiations.

Attached hereto is an e-mail from Verizon Wireless indicating their concurrence in this further request.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Patricia Armstrong
Patricia Armstrong

Enclosures
cc: Cheryl Walker Davis, Office of Special Assistants (w/encl.)
Christopher M. Arfaa, Esquire (w/encl.)
Elaine D. Critides, Esquire (w/encl.)
Thomas Sniscak, Esquire (w/encl.)

52

Patricia Armstrong

From: Christopher.Arfaa@dbr.com
Sent: Friday, February 18, 2005 2:46 PM
To: parmstrong@ttanlaw.com; Elaine.Critides@VerizonWireless.com
Cc: stephen.b.rowell@alltel.com
Subject: RE: Extension

We concur in the filing of your draft.

Chris Arfaa
215.988.2715

-----Original Message-----
From: Patricia Armstrong [mailto:parmstrong@ttanlaw.com]
Sent: Thursday, February 17, 2005 3:50 PM
To: Elaine. Critides@VerizonWireless. com; Arfaa, Christopher M.
Cc: Stephen. B. Rowell@Alltel. Com
Subject: Extension
Importance: High

Chris and Elaine
Attached is the draft letter I propose filing with the PUC tomorrow with your concurrence

Patricia Armstrong
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7627

contained in the message. If you have received the message in error,

please advise the sender by reply e-mail@dbr.com, and delete the message.

Thank you very much.

COMMONWEALTH OF PENNSYLVANIA

DATE: February 23, 2005

SUBJECT: A-310489F7004
C-20039321

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary KB

Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with ALLTEL Pennsylvania, Inc. A-310489F7004

ALLTEL Pennsylvania, Inc., vs Verizon Pennsylvania, Inc., and CELLCO Partnership, d/b/a Verizon Wireless C-20039321

Attached is a copy of a Request for Extension of Time to File Responses filed by ALLTEL, Pennsylvania Inc.and Verizon Wireless in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

ksb

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CHARLES E. THOMAS
(1913 - 1998)

March 10, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, P. O. Box 3265
Harrisburg, PA 17105-3265

Re: ALLTEL Pennsylvania, Inc., Complainant v. Verizon Pennsylvania Inc., and CELLCO Partnership, d/b/a Verizon Wireless, Respondents
Docket No. C-20039321

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the TCA 96 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

ALLTEL Pennsylvania, Inc. ("ALLTEL") filed Petitions for Reconsideration at both of the above referenced dockets on February 1, 2005. Verizon Wireless filed a Petition for Reconsideration with respect to A-310489F7004 on February 2, 2005. At the Commission's Public Meeting of February 3, 2005, reconsideration was granted pending further review on the merits with respect to both dockets.

ALLTEL and Verizon Wireless are pursuing settlement negotiations in an effort to amicably resolve both dockets and seek to avoid the need for disposition of the Petitions for Reconsideration. In an effort to accommodate these settlement negotiations, the Commission has granted, upon the parties' joint requests, extensions of time for the parties to file responses to the pending Petitions for Reconsideration. Under the current schedule, responses are due tomorrow, March 11, 2005. However, because of continuing settlement discussions, the parties jointly request and would greatly appreciate a further extension of time until March 25, 2005 to file responses in order to further pursue negotiations.

Attached hereto is an e-mail from Verizon Wireless indicating their concurrence in this further request.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Patricia Armstrong per rcm
Patricia Armstrong

Enclosures
cc: Cheryl Walker Davis, Office of Special Assistants (w/encl.)
Christopher M. Arfaa, Esquire (w/encl.)
Elaine D. Critides, Esquire (w/encl.)
Thomas Sniscak, Esquire (w/encl.)

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Vickie Joseph

From: Christopher.Arfaa@dbr.com
Sent: Thursday, March 10, 2005 1:38 PM
To: rmatz@ttanlaw.com
Cc: Elaine.Critides@VerizonWireless.com
Subject: RE: Extension

Gina:

Verizon Wireless concurs in the requests for two additional two-week extensions. Thanks for your efforts.

Chris Arfaa
215.988.2715

-----Original Message-----
From: Regina Matz [mailto:rmatz@ttanlaw.com]
Sent: Thursday, March 10, 2005 1:18 PM
To: Arfaa, Christopher M.
Subject: RE: Extension

Chris,

Thanks for sending the earlier letter.

Inserted is a draft to request further extension. We'll file today after we get your email. Call if there are any questions.

Gina

-----Original Message-----
From: Christopher.Arfaa@dbr.com [mailto:Christopher.Arfaa@dbr.com]
Sent: Thursday, March 10, 2005 1:02 PM
To: rmatz@ttanlaw.com
Subject: FW: Extension
Importance: High

Chris Arfaa
215.988.2715

-----Original Message-----
From: Patricia Armstrong [mailto:parmstrong@ttanlaw.com]
Sent: Thursday, February 17, 2005 3:50 PM

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law
SUITE 500
212 LOCUST STREET
P. O. BOX 9500
HARRISBURG, PA 17108-9500
www.ttanlaw.com
FIRM (717) 255-7600
FAX (717) 236-8278

PATRICIA ARMSTRONG
Direct Dial: (717) 255-7627
Email:parmstrong@ttanlaw.com

CHARLES E. THOMAS
(1913 - 1998)

KJR

March 24, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, P. O. Box 3265
Harrisburg, PA 17105-3265

Re: ALLTEL Pennsylvania, Inc., Complainant v. Verizon Pennsylvania Inc., and CELLCO Partnership, d/b/a Verizon Wireless, Respondents
Docket No. C-20039321

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the TCA 96 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

ALLTEL Pennsylvania, Inc. ("ALLTEL") filed Petitions for Reconsideration at both of the above referenced dockets on February 1, 2005. Verizon Wireless filed a Petition for Reconsideration with respect to A-310489F7004 on February 2, 2005. At the Commission's Public Meeting of February 3, 2005, reconsideration was granted pending further review on the merits with respect to both dockets.

ALLTEL and Verizon Wireless are pursuing settlement negotiations in an effort to amicably resolve both dockets and seek to avoid the need for disposition of the Petitions for Reconsideration. In an effort to accommodate these settlement negotiations, the Commission has granted, upon the parties' joint requests, extensions of time for the parties to file responses to the pending Petitions for Reconsideration. Under the current schedule, responses are due tomorrow, March 25, 2005. However, because of continuing settlement discussions, the parties jointly request and would greatly appreciate a further extension of time until April 8, 2005 to file responses in order to further pursue negotiations.

Attached hereto is an e-mail from Verizon Wireless indicating their concurrence in this further request.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Patricia Armstrong
Patricia Armstrong

Enclosures
cc: Cheryl Walker Davis, Office of Special Assistants (w/encl.)
Christopher M. Arfaa, Esquire (w/encl.)
Elaine D. Critides, Esquire (w/encl.)
Thomas Sniscak, Esquire (w/encl.)

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Patricia Armstrong

From: Christopher.Arfaa@dbr.com .
Sent: Wednesday, March 23, 2005 5:57 PM
To: parmstrong@ttanlaw.com; Elaine.Critides@VerizonWireless.com
Subject: RE:

Verizon Wireless concurs in the request for an additional two-week extension.

Thanks.

Chris Arfaa
215.988.2715

-----Original Message-----
From: Patricia Armstrong [mailto:parmstrong@ttanlaw.com]
Sent: Wednesday, March 23, 2005 3:16 PM
To: Elaine. Critides@VerizonWireless. com; Arfaa, Christopher M.
Subject:

Please send an email as in the past concurring in the request.

Thanks

Patricia Armstrong
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7627

****

please advise the sender by reply e-mail@dbr.com, and delete the message.

Thank you very much.

COMMONWEALTH OF PENNSYLVANIA

DATE: March 31, 2005

SUBJECT: C-20039321,A-310489F7004

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary KB

ALLTEL Pennsylvania, Inc. v. Verizon Pennsylvania Inc., and CELLCO Partnership d/b/a Verizon Wireless

Cellco Partnership d/b/a Verizon Wireless for Arbitration

Attached is a copy of a Ltr/Petition for Extension of Time to File Responses, filed by ALLTEL Pennsylvania, Inc. and Verizon Wireless in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

ksb

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law
SUITE 500
212 LOCUST STREET
P. O. BOX 9500
HARRISBURG, PA 17108-9500
www.ttanlaw.com
FIRM (717) 255-7600
FAX (717) 236-8278

ORIGINAL

RECEIVED
2005 APR -8 PM 4:07
PA PUC
SECRETARY'S BUREAU

D. MARK THOMAS

Direct Dial: (717) 255-7619
Email: dmthomas@ttanlaw.com

CHARLES E. THOMAS
(1913 - 1998)

April 8, 2005

DOCKETED
MAY 24 2005

HAND DELIVERED

DOCUMENT FOLDER

KJR

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: ALLTEL Pennsylvania, Inc., Complainant v. Verizon Pennsylvania Inc., and CELLCO Partnership, d/b/a Verizon Wireless, Respondents
Docket No. C-20039321

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the TCA 96 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

ALLTEL Pennsylvania, Inc. ("ALLTEL") filed Petitions for Reconsideration at both of the above referenced dockets on February 1, 2005. Verizon Wireless filed a Petition for Reconsideration with respect to A-0489F7004 on February 2, 2005. At the Commission's Public Meeting of February 3, 2005, reconsideration was granted pending further review on the merits with respect to both dockets. By prior letters submitted on behalf of both parties, extensions of time have been granted for the parties to file responses to the pending Petitions. Under the current schedule responses would have been due today, April 8, 2005.

ALLTEL and Verizon Wireless are pleased to report that they have come to terms with respect to settlement of the issues between the parties in the complaint and arbitration proceedings. Accordingly, ALLTEL and Verizon Wireless request that the Commission suspend the schedule currently pending for resolution of the outstanding Petitions for Reconsideration to permit the parties to draft and file the necessary pleadings and/or documents seeking resolution of the two dockets consistent with their settlement of the issues.

Attached hereto is an e-mail from Verizon Wireless indicating their concurrence in this further request.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By
D. Mark Thomas

Enclosure

cc: Cheryl Walker Davis, Office of Special Assistants (w/encl.)
Christopher M. Arfaa, Esquire (w/encl.)
Elaine D. Critides, Esquire (w/encl.)
Thomas Sniscak, Esquire (w/encl.)

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43

vmoore@ttanlaw.com

From: Elaine.Critides@VerizonWireless.com
Sent: Friday, April 08, 2005 3:06 PM
To: dmthomas@ttanlaw.com; christopher.arfaa@dbr.com; Elaine.Critides@VerizonWireless.com
Cc: Stephen.B.Rowell@alltel.com
Subject: RE: ALLTEL Pennsylvania, Inc.

I concur with the content of the letter. Thank you.

-----Original Message-----
From: vmoore@ttanlaw.com [mailto:vmoore@ttanlaw.com]**On Behalf Of** dmthomas@ttanlaw.com
Sent: Friday, April 08, 2005 2:59 PM
To: Arfaa, Christopher M.; Elaine.Critides@VerizonWireless.com
Subject: ALLTEL Pennsylvania, Inc.

Chris/Elaine:

Let me know if the attached is okay as quickly as possible. I must get it to the PUC today. I will also need an email verifying Verizon Wireless' concurrence.

D. MARK THOMAS
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7619
(717) 236-8278 (Fax)

ORIGINAL

Thomas, Thomas, Armstrong & Niesen

Attorneys and Counsellors at Law

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212 LOCUST STREET
P. O. BOX 9500
HARRISBURG, PA 17108-9500

www.ttanlaw.com

FIRM (717) 255-7600
FAX (717) 236-8278

PATRICIA ARMSTRONG

Direct Dial: (717) 255-7627
E-Mail: parmstrong@ttanlaw.com

CHARLES E. THOMAS
(1913 - 1998)

September 8, 2005

DOCUMENT
FOLDER

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In re: Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Joint Petition of ALLTEL Pennsylvania, Inc. and Verizon Wireless.

Copies of the Joint Petition are being served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Patricia Armstrong
Patricia Armstrong

Enclosures
cc: Certificate of Service
Stephen B. Rowell, Esquire (w/encl.)
Lynn Hughes (w/encl.)
James T. Meister, Jr. (w/encl.)
Daniel Logsdon (w/encl.)

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RECEIVED
2005 SEP -8 PM 3:43
PA PUC
SECRETARY'S BUREAU

9/9/05

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.	:	Docket No. A-310489F7004

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of September, 2005, served a true and correct copy of the foregoing Joint on behalf of ALLTEL Pennsylvania, Inc. and Verizon Wireless upon the persons and in the manner indicated below:

HAND DELIVERY

Office of Special Assistants
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
3rd Floor East
Harrisburg, PA 17105-3265

VIA FIRST CLASS MAIL, POSTAGE PREPAID

Christopher M. Arfaa
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103

Elaine D. Critides, Esquire
Associate Director, Regulatory
Verizon Wireless
Suite 400 West
1300 Eye Street, N.W.
Washington, DC 20005

Patricia Armstrong

ORIGINAL

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition for Approval of a Commercial Mobile Radio Services Interconnection Agreement Between ALLTEL Pennsylvania, Inc. and Verizon Wireless Under §252(e) of the Telecommunications Act of 1996	:	Application Docket No. A-310489F7004

RECEIVED
2005 SEP -8 PM 3:43
PA PUC
SECRETARY'S BUREAU

DOCKETED
SEP 15 2005

DOCUMENT FOLDER

JOINT PETITION

NOW COME, ALLTEL Pennsylvania, Inc. ("ALLTEL") and Cellco Partnership, d/b/a Verizon Wireless, on behalf of itself and its affiliates operating in the state of Pennsylvania ("Verizon Wireless") and respectfully submit to the Pennsylvania Public Utility Commission ("Commission") for approval, the attached Commercial Mobile Radio Services Interconnection Agreement ("Agreement") pursuant to Section 252(e) of the Telecommunications Act of 1996 ("TA-96") and this Commission's Orders entered June 3, 1996, In Re: Implementation of the Telecommunications Act of 1996, Docket No. M-00960799, and January 18, 2005, Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc., Docket No. A-310489F7004. The Agreement provides for interconnection between the two companies, thereby facilitating Verizon Wireless' provision of commercial mobile radio service ("CMRS") to end user customers in Pennsylvania and amicably resolves the issues in the pending arbitration at Docket No. A-310489F7004. ALLTEL and Verizon Wireless, therefore,

respectfully request that the Commission approve the Agreement. In support of this request, ALLTEL and Verizon Wireless represent, as follows:

1. ALLTEL is an incumbent local exchange carrier authorized to provide local exchange telecommunications services in portions of Pennsylvania.

2. Verizon Wireless is a Commercial Mobile Radio Service provider authorized to provide service in Pennsylvania pursuant to authority granted by the Federal Communications Commission.

3. On November 26, 2003, Verizon Wireless filed a Petition pursuant to Section 252(b) of TA-96 seeking Commission arbitration of 15 unresolved issues for an interconnection with ALLTEL. On December 22, 2003, ALLTEL responded to the Petition and identified 18 additional unresolved issues. In the aforesaid January 18, 2005 Order at Docket No. A-310489F7004, the Commission addressed the issues and directed the parties to file an interconnection agreement consistent with the directives therein. Both ALLTEL and Verizon Wireless filed petitions seeking reconsideration of portions of the January 18, 2005 Order. The Commission at public meeting of February 3, 2005, granted reconsideration pending further review on the merits of the petitions.

4. Following the filing of the petitions seeking reconsideration, ALLTEL and Verizon Wireless engaged in extensive settlement discussions in an effort to amicably resolve their differences with respect to an interconnection agreement and, at their request, the Commission granted extensions for filing responses to the petitions. By letter dated April 8, 2005, ALLTEL and Verizon Wireless notified the Commission that they had amicably settled their differences

and requested that the arbitration be suspended to permit the parties the necessary time to finalize an interconnection agreement.

5. The Agreement submitted for approval herewith is the result of the aforesaid settlement and is filed pursuant to Section 252(e) of TA-96.

6. The Agreement sets forth the terms, conditions and prices under which ALLTEL and Verizon Wireless will offer and provide network interconnection, reciprocal call transport and termination and ancillary network services to each other. The Agreement is an integrated package that reflects a balancing of interests critical to both parties and the terms thereof were negotiated by the parties compromising where necessary in order to resolve their differences regarding interconnection terms and conditions.

7. The Agreement satisfies the requirements for Commission approval pursuant to §252(e)(2)(A) of TA-96, which provide as follows:

> (2) GROUNDS FOR REJECTION.--The State commission may only reject--
>
> > (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
> >
> > > (I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> > >
> > > (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity[.]

8. The Agreement does not discriminate against any other telecommunications carrier. Other carriers are not bound by the Agreement and remain free to negotiate independently with ALLTEL or Verizon Wireless pursuant to Section 252 of TA-96.

9. The Agreement is consistent with the public interest, convenience and necessity as required by §252(e)(2)(a)(ii). The Agreement permits the interconnection of the ALLTEL and Verizon Wireless networks and exchange of traffic upon rates and terms satisfactory to both ALLTEL and Verizon Wireless.

10. Upon approval of this Agreement, Verizon Wireless asks that its petition seeking reconsideration of the January 18, 2005 Order, be withdrawn.

11. Upon approval of this Agreement, ALLTEL also seeks withdrawal of its petition for reconsideration, with the limited exception that ALLTEL does not withdraw its request for reconsideration with respect to Ordering Paragraph 4 of the January 18, 2005 Order. Ordering Paragraph 4 provides that a generic investigation into ALLTEL's reciprocal compensation rates be initiated by separate order. Upon approval of the Agreement, ALLTEL requests herein that Ordering Paragraph 4 of the January 18, 2005 Order be reconsidered and set aside because the Parties have now amicably resolved the rate issue without the necessity of further time consuming and costly litigation.

WHEREFORE, ALLTEL Pennsylvania, Inc. and Verizon Wireless respectfully request that the Commission approve the attached Commercial Mobile Radio Services Interconnection Agreement pursuant to Section 252(e) of

the Telecommunications Act of 1996, that their requests for reconsideration be withdrawn, except that ALLTEL requests that Ordering Paragraph 4 be vacated in accordance with its reconsideration request and this petition.

Respectfully submitted,

ALLTEL PENNSYLVANIA, INC.

By

Patricia Armstrong, Esquire
Michael L. Swindler, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600

VERIZON WIRELESS

By

Christopher Arfaa, Esquire
Drinker, Biddle and Reath
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996
(215) 988-2700

Dated: August 9, 2005

PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOTICE TO BE PUBLISHED

Joint Petition for Approval of a Commercial Mobile Radio Services Interconnection Agreement between Cellco Partnership, d/b/a Verizon Wireless and Alltel Pennsylvania, Inc., pursuant to Section 252(e) of the Telecommunications Act of 1996. Docket Number: A-310489F7004.

Cellco Partnership, d/b/a Verizon Wireless, and ALLTEL Pennsylvania, Inc., by its counsel, filed on September 8, 2005, at the Pennsylvania Public Utility Commission, a Joint Petition for approval of a Commercial Mobile Radio Services Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. All such Comments are due on or before 10 days after the date of publication of this notice. Copies of the Cellco Partnership, d/b/a Verizon Wireless, and ALLTEL Pennsylvania, Inc., Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

Contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

BY THE COMMISSION

James J. McNulty
Secretary

A-310489 F7004

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing document upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

Via hand delivery:	*Via overnight delivery service:*
D. Mark Thomas, Esq. Thomas Thomas Armstrong & Niesen 212 Locust Street Harrisburg, PA 17108-9500 Charles F. Hoffman, Esq. Office of Trial Staff Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street Harrisburg, PA 17105 Irwin A. Popowsky, Esq. Office of Consumer Advocate 555 Walnut Street, 5th Floor Forum Place Harrisburg, PA 17101-1923 Carol Pennington, Esq. Office of Small Business Advocate 1102 Commerce Building 300 North Second Street Harrisburg, PA 17101	Mandy Jenkins Staff Manager -- Wholesale Services ALLTEL Communications, Inc. One Allied Drive Little Rock, AR 72202

Dated: November 26, 2003

Christopher M. Arfaa
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
(215) 988-2700

Counsel for
Cellco Partnership d/b/a Verizon Wireless

NS

COMMONWEALTH OF PENNSYLVANIA

DATE: *September 15, 2005*

SUBJECT: A-310489F7004

DOCUMENT FOLDER

TO: *Office of Special Assistants*

FROM: James J. McNulty, Secretary

JOINT PETITION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS AND ALLTEL PENNSYLVANIA, INC., FOR APPROVAL OF A COMMERCIAL MOBILE RADIO SERVICES INTERCONNECTION AGREEMENT, FILED PURSUANT TO SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996.

Attached is a copy of a Joint Petition for Approval of a Commercial Mobile Radio Services Interconnection Agreement filed by Cellco Partnership d/b/a Verizon Wireless, and Alltel Pennsylvania, Inc., which has been captioned and docketed to the above-referenced number.

Enclosed is a copy of the notice that we provided to the Pennsylvania Bulletin to be published in the Saturday, October 1, 2005 Edition. Comments are due on or before 10 days after the publication of this notice.

This matter is assigned to your Office for appropriate action.

Attachment

cc: Bureau of Fixed Utility Services
Office of Administrative Law Judge-copy of memo only

DOCKETED
SEP 15 2005

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law
SUITE 500
212 LOCUST STREET
P. O. BOX 9500
HARRISBURG, PA 17108-9500
www.ttanlaw.com
FIRM (717) 255-7600
FAX (717) 236-8278

PATRICIA ARMSTRONG
Direct Dial: (717) 255-7627
E-Mail: parmstrong@ttanlaw.com

CHARLES E. THOMAS
(1913 - 1998)

ORIGINAL

December 7, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT FOLDER

In re: Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

Pursuant to Ordering Paragraph 5 of the Commission's Order in the above referenced proceeding, we are enclosing a CD containing the Interconnection Agreement in pdf format.

DOCKETED
FEB 8 2006

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By Patricia Armstrong
Patricia Armstrong

Enclosure
cc: Certificate of Service (w/o enclosure)
Daniel E. Logsdon, Jr. (w/o enclosure)

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RECEIVED
2005 DEC -7 PM 3:51
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SECRETARY'S BUREAU

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.	:	Docket No. A-310489F7004

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of December, 2005, served a true and correct copy of the foregoing letter on behalf of ALLTEL Pennsylvania, Inc. and Verizon Wireless upon the persons and in the manner indicated below:

HAND DELIVERY

Office of Special Assistants
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
3rd Floor East
Harrisburg, PA 17105-3265

VIA FIRST CLASS MAIL, POSTAGE PREPAID

Christopher M. Arfaa
Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103

Elaine D. Critides, Esquire
Associate Director, Regulatory
Verizon Wireless
Suite 400 West
1300 Eye Street, N.W.
Washington, DC 20005

Patricia Armstrong